

# TITLE 1

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## *Civil Procedure Law*

### TABLE OF CONTENTS

*Chapter*

#### **Part I. Procedure before Trial**

1. General Provisions
2. Limitation of Actions
  - A. General
  - B. Limitations in Particular Actions
  - C. Computation of Limitations
  - D. Tolling the Statute
3. Commencement of Action
  - A. Jurisdiction
  - B. Form, Issuance, and Service of Process
  - C. Appearance
4. Venue and Removal of Causes
5. Parties
  - A. General
  - B. Capacity of Parties
  - C. Substitution of Parties
  - D. Joinder of Parties
  - E. Intervention
  - F. Interpleader
  - G. Class Actions
6. Joinder of Claims, Consolidation, and Severance
7. Provisional Remedies
  - A. In General
  - B. Attachment
  - C. Arrest
  - D. Preliminary Injunctions
  - E. Receivership
  - F. Notice of Pendency

8. Form, Filing, and Service of Papers
9. Pleadings
10. Motions in General
11. Pretrial Motions and Practice
12. Pretrial Conferences
13. Disclosure
  - A. Deposition
  - B. Physical or Mental or Blood Examination of Persons
  - C. Enforcement
14. Subpoenas and Oaths and Affirmations
15. Calendar Practice
16. Special Proceedings
  - A. General Procedure
  - B. Writs of Certiorari, Mandamus, Prohibition, and Error
  - C. Writ of Quo Warranto
  - D. Habeas Corpus
  - E. Condemnation Proceedings
  - F. Special Proceedings Concerning Mentally Disabled and Legally Incompetent Persons

## **Part II. Trial Procedure**

21. General Provisions Relating to Trials
22. Trial by Jury
23. Trial by the Court
24. Trial by Referee
25. Evidence
26. Trial and Post-Trial Motions

## **Part III. Judgments: Enforcement of Judgments and Orders**

41. Judgments in General
42. Default Judgments
43. Declaratory Judgments
44. Enforcement of Judgments and Orders
  - A. Enforcement Generally
  - B. Enforcement by Execution and Its Adjuncts
  - C. Enforcement of judgments by Means Other than Execution
45. Costs and Interest

- A. Costs Generally
- B. Interest

#### **Part IV. Appellate Procedure**

- 51. Appeals from Courts of Record
- 52. Appeals from Courts Not of Record

#### **Part V. Special Matters**

- 61. Action to Recover a Chattel
- 62. Actions to Recover Possession of Real Property
  - A. Ejectment
  - B. Summary Proceeding to Recover Possession of Real Property
- 63. Bonds and Security
- 64. Arbitration
- 65. Suits by or against Indigent Persons
- 66. Claims before Permanent Claims Commission
- 67. Procedure for Changing the Name of an Individual

#### **Appendix I. Pleading Forms**

- 1. Complaint on a Promissory Note
- 2. Complaint on an Account
- 3. Complaint in Action for Breach of Contract
- 4. Complaint for Goods Sold and Delivered
- 5. Complaint for Money Lent
- 6. Complaint for Money Paid by Mistake
- 7. Complaint for Money Had and Received
- 8. Complaint for Negligence
- 9. Complaint in Action for Damages for Assault and Battery
- 10. Complaint in Action for Libel Where Statement Is Not Libelous Per Se
- 11. Complaint in Action for False Imprisonment
- 12. Complaint for Damages for Fraud
- 13. Complaint in Action for Conversion
- 14. Complaint in Action for Trespass
- 15. Complaint in Action of Ejectment and Mesne Profits

16. Complaint in Action for Damages and to Enjoin Nuisance
17. Complaint for Specific Performance of Contract
18. Answer Containing Denials
19. Defense of Accord and Satisfaction
20. Defense of Assumption of Risk
21. Defense of Contributory Negligence
22. Defense of Payment
23. Defense of Res Judicata
24. Defense of Another Action Pending
25. Reply to Answer

## **Appendix II.**

Form for Summons on Service by Publication

# PART I

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## *Procedure Before Trial*

### ***Chapter 1. GENERAL PROVISIONS***

- § 1.1. Application of Civil Procedure Law.
- § 1.2. Actions and special proceedings.
- § 1.3. One form of civil action.
- § 1.4. Construction.
- § 1.5. Harmless error.
- § 1.6. Enforcement.
- § 1.7. Time.
- § 1.8. Representation of parties in action.

#### **§ 1.1. Application of Civil Procedure Law.**

The Civil Procedure Law shall govern the procedure in all civil actions and special proceedings before all judges and in all courts in the judicial branch of the Government, except where the procedure is regulated by inconsistent statutes or rules adopted in conformity therewith. Acts required by provisions of this title to be done by clerks of court may be done by a justice of the peace or stipendiary magistrate in applying those provisions to courts not of record.<sup>1</sup>

#### **§ 1.2. Actions and special proceedings.**

*1. Prosecution as action.* Any independent application to a court for relief shall be prosecuted in the form of an action, except where prosecution in the form of a special proceeding is authorized. Except where otherwise required by statute or rule of court, procedure in special proceedings shall be the same as in actions.

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<sup>1</sup> *Prior legislation:* L. 1963-64, ch. III (6:1).

2. *Error in form of application for relief.* If a court has obtained jurisdiction over the parties, an application for relief shall not be dismissed because not brought as an action or special proceeding or motion, whichever may be proper, but the court shall make whatever order is required for its proper prosecution.<sup>2</sup>

**§ 1.3. One form of civil action.**

There is only one form of civil action. The distinction between actions at law and suits in equity, and the form of those actions and suits heretofore existing, are abolished.<sup>3</sup>

**§ 1.4. Construction.**

The provisions of this title shall be construed to promote the just, speedy, and inexpensive determination of every action.<sup>4</sup>

**§ 1.5. Harmless error.**

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.<sup>5</sup>

**§ 1.6. Enforcement.**

1. *Dismissal for noncompliance with provisions of title or court order.* If a claimant fails to comply with a provision of this title or with any order of a court issued in pursuance of such provisions, the court on its own motion or upon application of an opposing party, may dismiss the claimant's pleading on terms. Unless the order specifies otherwise, the dismissal shall not be on the merits.

2. *Costs for failure to comply.* Where the failure of a party to comply with this title results in added expense to another party, by requiring disclosure devices, proof, motions, or otherwise, such expense, including reasonable attorney's fees, shall be assessed as costs against the party failing to comply. Refiling of an action shall be contingent on the payment of accrued costs.<sup>6</sup>

**§ 1.7. Time.**

1. *Computation.* In computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by executive order, the day of the act, event, or default after which the designated period

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<sup>2</sup> *Prior legislation:* L. 1963-64, ch. III (6:2).

<sup>3</sup> *Prior legislation:* L. 1963-64, ch. III (6:3).

<sup>4</sup> *Prior legislation:* L. 1963-64, ch. III (6:4); 1956 Code 6:1.

<sup>5</sup> *Prior legislation:* L. 1963-64, ch. III (6:5).

<sup>6</sup> *Prior legislation:* L. 1963-64, ch. III (6:6); 1956 Code 6:597.

of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded from the computation.

2. *Enlargement.* When under this title or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, except as otherwise provided by law, at any time in its discretion: (a) order the period enlarged if application is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the prescribed period permit the act to be done when the failure to act was the result of excusable neglect.

3. *Additional time for service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, five days shall be added to the prescribed period if the mail is sent to him within the Republic of Liberia, and ten days shall be added if mail is sent to him abroad. Whenever a certain period of time must elapse after service of a notice or paper on a party before the adverse party has the right to do some act or take some proceedings, and the notice or paper has been served by mail, five days shall be added to the prescribed period if mail is sent to the person within the Republic of Liberia, and ten days shall be added if mail is sent to him abroad.

4. *Stay.* Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.

5. *Unaffected by expiration of term.* The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action that has been pending before it.<sup>7</sup>

#### **§ 1.8. Representation of parties in action.**

1. *Who may represent a party.* A party, other than an infant or incompetent person, may prosecute or defend a civil action in person or by attorney or both, except that (a) a corporation or voluntary association shall appear by attorney, and (b) a party may be represented in a court of a stipendiary magistrate or justice of the peace by a husband, wife, father, mother, brother, sister, son, daughter, or guardian. If a party appears by attorney, he may not act through another person not an attorney except by consent of the court and after notice of the change has been served on the other parties.

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<sup>7</sup> *Prior legislation:* Par. 1: L. 1963-64, ch. III(6:7); 1956 Code 6:30; L. 1893-94, 10 (2nd), § 3. Par. 2: L. 1963-64, ch. III (6:7); 1956 Code 6:31; OBB 113, Judiciary Act, art. IV, § 11. Par. 3: L. 1963-64, ch. III (6:7); 1956 Code 6:33. Par. 5: L. 1963-64, ch. III (6:7); 1956 Code 6:32.

2. *Change of attorney.* An attorney of record may be changed by court order or, unless the party is an infant or an incompetent person, by filing with the clerk of the court a notice of change together with a statement of consent to the change signed by the attorney and the party. A copy of notice of such change shall be served on the other parties.

3. *Death, removal, or disability of attorney.* If an attorney dies, becomes physically or mentally incapacitated or is disbarred, suspended, or otherwise becomes disabled at any time before final judgment, no further proceeding shall be taken without leave of court in the action against the party whom he represented until thirty days after notice to appoint another attorney has been given to that party either personally or in such manner as the court directs.<sup>8</sup>

## ***Chapter 2. LIMITATION OF ACTIONS***

### **Subchapter A. General**

- § 2.1. Application of chapter.
- § 2.2. Effect of failure to commence action within time limited.
- § 2.3. Effect of written waiver, part payment, acknowledgment, or new promise.
- § 2.4. Delay for period less than allowed by statute of limitations.
- § 2.5. Savings provisions.
- § 2.6. Cause of action accruing outside Republic.
- § 2.7. Suits by Government.

### **Subchapter B. Limitations in Particular Actions**

- § 2.11. Actions based on personal injuries.
- § 2.12. Actions affecting real property.
- § 2.13. Actions based on written instruments.
- § 2.14. Actions to enforce a judgment.
- § 2.15. Actions for breach of contract not based on written instrument
- § 2.16. Actions affecting personal property.
- § 2.17. Action by or on behalf of a corporation against director or officer.
- § 2.18. Actions based on fraud, mistake, or fraudulent concealment.

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<sup>8</sup> *Prior legislation:* L. 1963-64, ch. III (6:8); 1956 Code 6:229.



§ 2.19. Actions based on official misconduct.

§ 2.20. Other actions.

### **Subchapter C. Computation of Limitations**

§ 2.31. General method of computation.

§ 2.32. When claim is interposed: complaint.

§ 2.33. Co-defendants united in interest.

§ 2.34. When claim interposed: defense or counterclaim.

§ 2.35. Effect of death while claim being interposed.

§ 2.36. When right to relief accrues: demand necessary.

§ 2.37. When right to relief accrues: action based on agent's misconduct.

§ 2.38. When right to relief accrues: action on an account.

§ 2.39. Effect of accrual of right after death.

### **Subchapter D. Tolling the Statute**

§ 2.61. Personal disabilities.

§ 2.62. Infancy.

§ 2.63. Insanity.

§ 2.64. Imprisonment.

§ 2.65. Effect of multiple disabilities.

§ 2.66. Effect of death of person under disability.

§ 2.67. Death of claimant: effect on his claim.

§ 2.68. Death of claimant: effect on defense or counterclaim.

§ 2.69. Death of defendant.

§ 2.70. Absence from Republic or concealment.

§ 2.71. Effect of war.

§ 2.72. Effect of stay of commencement of action.

§ 2.73. Effect of termination of action.

§ 2.74. Effect of change of representative character of action.

## ***Subchapter A. GENERAL***

### **§ 2.1. Application of chapter.**

Every action must be commenced within the time prescribed in this chapter unless a different time is specifically prescribed by statute. Except as otherwise provided, a claim upon which an action cannot be maintained as prescribed in this chapter or by other statutory provision cannot be effectually interposed as a defense or counterclaim.<sup>9</sup>

### **§ 2.2. Effect of failure to commence action within time limited.**

The failure to commence an action within the time limited therefor shall constitute a defense to the action, which shall be pleaded affirmatively in the answer or reply as required by section 9.8 (4).<sup>10</sup>

### **§ 2.3. Effect of written waiver, part payment, acknowledgment, or new promise.**

A person against whom a right to relief has accrued may waive his defense under the provisions of this chapter by a written waiver signed by him. In any case founded upon a contract, payment by the debtor of any part of the principal or interest or a new written promise to perform signed by the obligor shall start the running of the statute of limitations anew.<sup>11</sup>

### **§ 2.4. Delay for period less than allowed by statute of limitations.**

A court may refuse equitable relief to a plaintiff who has unjustifiably delayed bringing an action to the detriment of a defendant although the period within which the action must be commenced under the other provisions of this chapter has not yet expired.<sup>12</sup>

### **§ 2.5. Savings provisions.**

1. *Actions accruing after effective date.* The provisions of this chapter shall apply to all rights to relief which accrue after the effective date of this chapter.

2. *Actions barred before effective date.* Any action which was barred on or before the effective date of this chapter shall not be affected by the provisions of this chapter, except that provisions of this chapter authorizing the revival of a barred claim or starting again the running of the statute of limitations against a claim shall be applicable to such claim.

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<sup>9</sup> *Prior legislation:* L. 1963-64, ch. III (6:201).

<sup>10</sup> *Prior legislation:* L. 1963-64, ch. III (6:202).

<sup>11</sup> *Prior legislation:* L. 1963-64, ch. III (6:203).

<sup>12</sup> *Prior legislation:* L. 1963-64, ch. III (6:204).

3. *Actions accruing before effective date and not yet barred.* The time limited for commencing an action on a claim which accrued before this chapter became effective and was not then barred shall be the time specified by the statutes of limitations in effect before the enactment of this title.<sup>13</sup>

#### **§ 2.6. Cause of action accruing outside Republic.**

An action based on a right to relief which accrued outside the Republic cannot be commenced after the expiration of the time limited by the laws either of this Republic or of the state where the right to relief accrued.<sup>14</sup>

#### **§ 2.7. Suits by Government.**

Unless otherwise specifically provided by statute, no statute of limitations shall bar any action brought or any defense or counterclaim interposed by the Government of the Republic of Liberia.<sup>15</sup>

## ***Subchapter B. LIMITATIONS IN PARTICULAR ACTIONS***

#### **§ 2.11. Actions based on personal injuries.**

1. *Injuries to the person.* Except as otherwise provided in paragraphs 2 and 3 below, an action for damages for injuries to the person shall be commenced within three years of the time the right to relief accrued.

2. *Malpractice not involving fraud.* An action for damages for medical malpractice not involving fraud or fraudulent concealment shall be commenced within three years of the time the right to relief accrued; provided, however, that the right to relief shall be deemed to have accrued as of the date of the termination of the agreements or of the relationship during which the malpractice occurred.

3. *Malpractice involving fraud.* An action for damages for medical malpractice based upon fraud or fraudulent concealment by the defendant of the information establishing a right to relief shall be commenced within two years of the time the right to relief accrued; provided, however, that the right to relief shall be deemed to have accrued as of the time the plaintiff discovered or reasonably could have discovered the fraud or the malpractice fraudulently concealed.

4. *Injuries to the reputation.* An action for injuries to the reputation shall be commenced within one year of the time the right to relief accrued.

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<sup>13</sup> *Prior legislation:* L. 1963-64, ch. III (6:205).

<sup>14</sup> *Prior legislation:* L. 1963-64, ch. III (6:206).

<sup>15</sup> *Prior legislation:* L. 1963-64, ch. III (6:207).

5. *Injuries to domestic relations.* An action for injuries to domestic relations shall be commenced within one year of the time the right to relief accrued.<sup>16</sup>

### **§ 2.12. Actions affecting real property.**

1. *Against person disqualified from holding.* There shall be no limitation on an action to recover real property from a person constitutionally disqualified from holding real property within the Republic.

2. *To recover real property.* An action to recover real property or its possession shall be barred if the defendant or his privy has held the property adversely for a period of not less than twenty years.

3. *Eliminating the right of redemption after a judicial sale of mortgaged realty.* That prior to the commencement of any proceeding for the foreclosure of mortgage affecting real property, a condition of which is the sale of such property upon default, the mortgagor or his successor in interest or legal representative shall be given a grace period of at least six calendar months to comply with the terms of said mortgage. That a mortgagee or his successor in interest or one (1) legal representative shall ensure that any realty to be sold as a result of successful foreclosure proceedings shall be sold at the fair market value at the time of sale.<sup>17</sup>

4. *To recover damages.* An action for damages for injuries to real property shall be commenced within three years of the time the right to relief accrued.<sup>18</sup>

### **§ 2.13. Actions based on written instruments.**

1. *For debt or damages for breach of contract.* An action to obtain payment of a debt or for damages for breach of a contract based on a written instrument or acknowledgment shall be commenced within seven years of the time the right to relief accrued.

2. *On bond or note secured by mortgage.* An action upon a bond or note, the payment of which is secured by a mortgage upon real or personal property or upon a bond or note and the mortgage so secured or upon a mortgage upon real or personal property or any interest therein shall be commenced within seven years of the time the right to relief accrued.

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<sup>16</sup> *Prior legislation:* L. 1963-64, ch. III (6:211); 1956 Code, 6:50(e); Rev. Stat. § 263; OBB 144, Act annulling and forbidding a Statute of Limitations; OBB 30, Legal Principles and Rules, t. II, ch. I, § 18, 2 Hub. 1524; Acts 1844, Act to repeal the Limitation Act of 1841, 2 Hub. 1639; 1841 Digest, pt. I, Act annulling and forbidding a Statute of Limitations, 2 Hub. 1508 (1st); Acts 1841, Act to amend and repeal certain laws, §7, 2 Hub. 1450.

<sup>17</sup> The present Paragraph (3) was promulgated to replace the previous paragraph which was repealed by Interim National Assembly decree No. 20, Eliminating the Right of redemption After a Judicial Sale of Mortgaged Realty, issued on December 24, 1985.

<sup>18</sup> *Prior legislation:* L. 1963-64, ch. III (6:212); 1956 Code 6:50(a); Rev. Stat. § 263; OBB 144, Act annulling and forbidding a Statute of Limitations; OBB 30, Legal Principles and Rules, t. II, ch. I, § 18, 2 Hub. 1524; Acts 1844, Act to repeal the Limitation Act of 1841, 2 Hub. 1639; 1841 Digest, pt. 1, Act annulling and forbidding a Statute of Limitations, 2 Hub. 1508 (1st); Acts 1841, Act to amend and repeal certain laws, § 7, 2 Hub. 1450.

3. *To establish a will.* An action to establish a will shall be commenced within one year after the death of the testator; provided, however, that when a will has been lost, concealed, or destroyed, the time within which an action shall be commenced to establish such will shall be computed from the time that the plaintiff or his predecessor in interest discovered the loss, concealment, or destruction or could with reasonable diligence have discovered it.

4. *On instrument establishing a trust.* An action upon a deed or other instrument establishing a trust shall be commenced within seven years of the time the right to relief accrued; provided, however, that an action to establish a will which creates a testamentary trust shall be commenced as provided in paragraph 3 above.<sup>19</sup>

#### **§ 2.14. Actions to enforce a judgment.**

1. *Judgment of sum of money in courts of record.* A judgment for a sum of money or directing the payment of a sum of money rendered by a court of record is presumed to be paid and satisfied after the expiration of ten years from the time the person who recovered it was first entitled to enforce it. This presumption shall be conclusive except as against a person who within such ten year period:

- (a) Acknowledges the indebtedness, such acknowledgment to be in writing and signed by him, or
- (b) Makes part payment of the amount for which the judgment was rendered, property acquired by an enforcement order or by levy upon an execution being such a payment unless the person to be charged shows that it did not include property claimed by him, or
- (c) Is the heir or personal representative of such person or is a person whom he otherwise represents.

If such an acknowledgment or payment is made, the judgment is conclusively presumed to be paid and satisfied as against any person after the expiration of ten years after the last acknowledgment or payment by him.

2. *Judgment for sum of money in court not of record.* The provisions of paragraph 1 above shall apply equally to judgments of courts not of record, but such a judgment shall be conclusively presumed to be paid and satisfied after the expiration of three years from the time the person who recovered it was first entitled to enforce it or after an acknowledgment or part payment.

3. *Pleading giving rise to presumption.* The presumption created by this section may be availed of under an allegation that the action was not commenced within the time limited.<sup>20</sup>

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<sup>19</sup> *Prior legislation:* L. 1963-64, ch. III (6:213); 1956 Code 6:50(c); L. 1935-36, ch. XXIII, § 8; Rev. Stat. §263; OBB 144, Act annulling and forbidding a Statute of Limitations; OBB 30, Legal Principles and Rules, t. II, ch. 1, §18, 2 Hub. 1524; Acts 1844, Act to repeal the Limitation Act of 1841, 2 Hub. 1639; 1841 Digest, pt. I, Act annulling and forbidding a Statute of Limitations, 2 Hub. 1508 (1st); Acts 1841, Act to amend and repeal certain laws, § 7, 2 Hub. 1450.

<sup>20</sup> *Prior legislation:* L. 1963-64, ch. III (6:214); 1956 Code 6:50(b); Rev. Stat. §263; OBB 144, Act annulling and forbidding a Statute of Limitations; OBB 30, Legal Principles and Rules, t. II, ch. I, § 18, 2 Hub. 1524; Acts 1844, Act to repeal the Limitation Act of 1841, 2 Hub. 1639; 1841 Digest, pt. 1, Act annulling and forbidding a Statute of Limitations, 2 Hub. 1508 (1st); Acts 1841, Act to amend and repeal certain laws, §7,2 Hub. 1450.

### **§ 2.15. Actions for breach of contract not based on written instrument.**

An action to obtain payment of a debt or for damages for a breach of a contract not based on a written instrument or acknowledgment, whether such contract is express or implied in fact or in law, shall be commenced within three years of the time the right to relief accrued.<sup>21</sup>

### **§ 2.16. Actions affecting personal property.**

1. *To recover a chattel.* An action to recover a chattel shall be commenced within three years of the time the right to relief accrued.

2. *For damages.* An action to recover damages for injury to personal property shall be commenced within three years of the time the right to relief accrued.<sup>22</sup>

### **§ 2.17. Action by or on behalf of a corporation against director or officer.**

1. *Limitation on time of commencement.* An action by or on behalf of a corporation against a present or former director or officer for the violation of or failure to perform his duty as such director or officer shall be commenced within three years of the time the right to relief accrued, except that an action based on fraud or fraudulent concealment shall be governed by the provisions of section 2.18.

2. *Personal disabilities in representative action.* In a representative action the time limited for commencing an action under the provisions of this section shall not be extended by personal disabilities on the part of any person in whom such a right to relief accrues.<sup>23</sup>

### **§ 2.18. Actions based on fraud, mistake, or fraudulent concealment.**

1. *Action in general based on fraud or mistake.* Except as otherwise specifically provided by statute, an action based on fraud or mistake shall be commenced within two years of the time the right to relief accrued; provided, however, that the right to relief shall be deemed to have accrued as of the time the claimant or his predecessor in interest discovered the fraud or mistake or with reasonable diligence could have discovered it.

2. *Action to impose constructive trust.* An action to impose a constructive trust shall be commenced within two years of the time the right to relief accrued; provided, however, that the right to relief shall be deemed to have accrued as of the time the claimant or his predecessor in interest discovered or with reasonable diligence could have discovered the facts which gave rise to the right to have a constructive trust declared.

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<sup>21</sup> *Prior legislation:* L. 1963-64, ch. III (6:215); 1956 Code 50(d); L. 1935-36, ch. XXIII, § 8; Rev. Stat. § 263; OBB 144, Act annulling and forbidding a Statute of Limitations; OBB 30, Legal Principles and Rules, t. II, ch. 1, § 18, 2 Hub. 1524; Acts 1844, Act to repeal the Limitation Act of 1841, 2 Hub. 1639; 1841 Digest, pt. 1, Act annulling and forbidding a Statute of Limitations, 2 Hub. 1508 (1st); Acts 1841, Act to amend and repeal certain laws, § 7, 2 Hub. 1450; Corn. L. (Jan. 12, 184; pub. 1944), 2 Hub. 1639 (3rd).

<sup>22</sup> *Prior legislation:* L. 1963-64, ch. III (6:216).

<sup>23</sup> *Prior legislation:* L. 1963-64, ch. III (6:217).

3. *Action to annul marriage on ground of fraud.* An action to annul a marriage on the ground of fraud shall be commenced within one year of the time the plaintiff discovered the facts constituting the fraud or could with reasonable diligence have discovered them; provided, however, that if the plaintiff is a person other than the spouse whose consent was obtained by fraud, the time within which the action shall be commenced shall be computed from the time, if earlier, when that person discovered the facts constituting the fraud or could with reasonable diligence have discovered them.

4. *Action for fraudulent concealment.* Except as otherwise specifically provided by statute, an action based on fraudulent concealment shall be commenced within two years of the time the claimant or his predecessor in interest discovered or with reasonable diligence could have discovered the fraudulent concealment.<sup>24</sup>

#### **§ 2.19. Actions based on official misconduct.**

An action against a public officer upon a liability incurred by him by doing an act in his official capacity or by omission of an official duty shall be commenced within three years of the time the right to relief accrued.<sup>25</sup>

#### **§ 2.20. Other actions.**

All actions for which no other period of limitations is specifically provided shall be commenced within three years of the time the right to relief accrued.<sup>26</sup>

### ***Subchapter C. COMPUTATION OF LIMITATIONS***

**§ 2.31. General method of computation.** The time within which an action shall be commenced shall, except as otherwise specifically prescribed by law, be computed from the time the right to relief accrued to the time the claim is interposed.<sup>27</sup>

#### **§ 2.32. When claim is interposed: complaint.**

A claim asserted in a complaint is interposed when the complaint is filed in a court of record or an oral complaint is made to a magistrate or justice of the peace.<sup>28</sup>

#### **§ 2.33. Co-defendants united in interest.**

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<sup>24</sup> *Prior legislation:* L. 1963-64, ch. III (6:218).

<sup>25</sup> *Prior legislation:* L. 1963-64, ch. III (6:219).

<sup>26</sup> *Prior legislation:* L. 1963-64, ch. III (6:220); 1956 Code 6:50(f); Rev. Stat. § 263; OBB 144, Act annulling and forbidding a Statute of Limitations; OBB 30, Legal Principles and Rules, t. II, ch. I, § 18, 2 Hub. 1524; Acts 1844; Act to repeal the Limitation Act of 1841, 2 Hub. 1639; 1841 Digest, pt. I, Act annulling and forbidding a Statute of Limitations, 2 Hub. 1508 (1st); Acts 1841, Act to amend and repeal certain laws, §7, 2 Hub. 1450.

<sup>27</sup> *Prior legislation:* L. 1963-64, ch. III (6:231).

<sup>28</sup> *Prior legislation:* L. 1963-64, ch. III (6:232).

An action commenced against a defendant is deemed commenced against any co-defendant who is united in interest with him.<sup>29</sup>

**§ 2.34. When claim interposed: defense or counterclaim.**

1. *When defense or counterclaim not barred.* A defense or counterclaim is not barred if it was not barred at the time the claim asserted in the complaint was interposed.

2. *When defense or counterclaim not barred to extent of demand in complaint.* If a defense or counterclaim arises out of the transaction or occurrence or series of transactions or occurrences upon which a claim asserted in the complaint depends, such defense or counterclaim shall not be barred to the extent of the demand on such claim in the complaint, notwithstanding that such defense or counterclaim was otherwise barred at the time the claim asserted in the complaint was interposed.<sup>30</sup>

**§ 2.35. Effect of death while claim being interposed.**

1. *Death of defendant.* If the defendant dies after a claim has been interposed under the provisions of section 2.32 but before service of summons in the prescribed manner is completed, and the time for such service had not expired at the time of his death, the claim shall be deemed to have been interposed within the period of limitation if the summons is served upon the personal representative of the deceased defendant within sixty days after letters are issued; provided, however, that letters shall be issued within one year of his death, as set forth in section 2.69 below; and provided further that the claimant may avail himself of the provisions of section 2.69(2) below if no personal representative has been appointed within the period specified therein.

2. *Death of plaintiff.* If the plaintiff dies after a claim has been interposed under the provisions of section 2.32 but before the service of summons in the prescribed manner is completed, and the time for such such service had not expired at the time of his death, the claim shall be deemed to have been interposed within the period of limitation if the summons is served upon the defendant by the personal representative of the plaintiff within six months after letters are issued; provided, however, that letters shall be issued within one year of his death, as set forth in section 2.67 below; and provided further that the provisions of section 2.67(2) shall apply if no personal representative has been appointed within the period specified therein.<sup>31</sup>

**§ 2.36. When right to relief accrues: demand necessary.**

When a demand is necessary to entitle a person to maintain an action, the right to relief shall be deemed to have accrued when the right to make the demand is complete, except that:

- (a) When the right to make the demand grows out of the receipt or detention of money or property by a trustee, agent, attorney, or other person acting in a fiduciary capacity, the right to relief occurs when the

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<sup>29</sup> *Prior legislation:* L. 1963-64, ch. III (6:233).

<sup>30</sup> *Prior legislation:* L. 1963-64, ch. III (6:234).

<sup>31</sup> *Prior legislation:* L. 1963-64, ch. III (6:235).



person who has the right to make the demand discovers the facts upon which that right depends or could with reasonable diligence have discovered such facts; and

- (b) When there is a deposit of money to be repaid only upon a special demand or a delivery of personal property not to be returned specifically or in kind at a fixed time or upon a fixed contingency, the right to relief shall be deemed to have accrued as of the time of the demand for repayment or return.<sup>32</sup>

**§ 2.37. When right to relief accrues: action based on agent's misconduct.**

When a judgment is entered against a principal in an action based on an injury resulting from an act or omission of his deputy or agent, the right to relief of such principal in an action against his deputy or agent to recover damages by reason of such judgment shall be deemed to have accrued when the action against the principal is finally determined.<sup>33</sup>

**§ 2.38. When right to relief accrues: action on an account.**

In an action based on a mutual, open, and current account, where there have been reciprocal demands between the parties, the right to relief shall be deemed to have accrued as of the time of the last transaction in the account on either side.<sup>34</sup>

**§ 2.39. Effect of accrual of right after death.**

1. *Right accruing after death before issuance of letters.* If a right to relief accrues after the death of a claimant or of the person liable but before the issuance of letters to his personal representative, the right shall be deemed, for the purpose of determining the period of limitation, to have accrued when the letters are issued or as of two years after the death, whichever event first occurs.

2. *Recovery of personal property by representative of decedent.* The right of an executor or of an administrator to recover personal property wrongfully taken after death and before issuance of letters or to recover damages for taking, detaining, or injuring personal property within that period shall be deemed to have accrued when the letters are issued or as of two years after the death, whichever event first occurs.

3. *When right to relief accrued more than two years after death.* If the right to relief in either paragraph above can be shown in fact to have accrued more than two years after the death of the claimant or of the person liable, the period of limitation shall be computed from such later date on which the right to relief actually accrued.<sup>35</sup>

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<sup>32</sup> *Prior legislation:* L. 1963-64, ch. III (6:236).

<sup>33</sup> *Prior legislation:* L. 1963-64, ch. III (6:237).

<sup>34</sup> *Prior legislation:* L. 1963-64, ch. III (6:238).

<sup>35</sup> *Prior legislation:* L. 1963-64, ch. III (6:239).

## ***Subchapter D. TOLLING THE STATUTE***

### **§ 2.61. Personal disabilities.**

1. *Definition.* Infancy, insanity, and imprisonment are personal disabilities.
2. *Effect.* Except as otherwise provided in section 2.17(2), if a person is under a personal disability when or after a right to relief accrues in his favor, the time otherwise limited for commencing an action on such right to relief shall be extended as set forth in sections 2.62 through 2.65 below.<sup>36</sup>

### **§ 2.62. Infancy.**

1. *Expiration of time during disability.* If a right to relief accrues in favor of an infant and the time otherwise limited for commencing an action thereon expires before he attains his majority, the time within which the action must be commenced shall be extended until one year after his disability ends or until five years after the expiration of the time limited for commencing the action, whichever event first occurs.
2. *Expiration of time less than one year after termination of disability.* If a right to relief accrues in favor of an infant and the time otherwise limited for commencing an action thereon expires less than one year after he attains his majority, the time within which the action must be commenced shall be extended until one year after he attains his majority.<sup>37</sup>

### **§ 2.63. Insanity.**

1. *Expiration of time during disability.* If a right to relief accrues in favor of a person who is insane or who thereafter becomes insane and the time otherwise limited for commencing an action thereon expires while he is still under such disability, the time within which the action must be commenced shall be extended until one year after his disability ceases or until five years after the expiration of the time limited for commencing the action, whichever event first occurs.
2. *Expiration of time less than one year after termination of disability.* If a right to relief accrues in favor of a person who is insane or who thereafter becomes insane and the time otherwise limited for commencing an action thereon expires less than one year after the disability ceases the time within which the action shall be commenced shall be extended one year after the disability ceases.<sup>38</sup>

### **§ 2.64. Imprisonment.**

1. *Expiration of time during disability.* If a right to relief accrues in favor of a person who then or thereafter is imprisoned on a criminal charge and the time otherwise limited for commencing an action thereon expires while

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<sup>36</sup> *Prior legislation:* L. 1963-64, ch. III (6:261).

<sup>37</sup> *Prior legislation:* L. 1963-64, ch. III (6:262); 1956 Code 6:51; Rev. Stat. § 263.

<sup>38</sup> *Prior legislation:* L. 1963-64, ch. III (6:263); 1956 Code 6:51; Rev. Stat. § 263.

he is still under such disability, the time within which the action shall be commenced shall be extended until one year after his disability ceases or until five years after the expiration of the time limited for commencing the action, whichever event first occurs.

*2. Expiration of time less than one year after termination of disability.* If a right to relief accrues in favor of a person who is then or thereafter under a disability as set forth in paragraph 1 and the time otherwise limited for commencing an action thereon expires less than one year after the disability ceases, the time within which the action shall be commenced shall be extended one year after the disability ceases.<sup>39</sup>

#### **§ 2.65. Effect of multiple disabilities.**

If a person in whom a right to relief accrues is under multiple disabilities when or after such right accrues, the time otherwise limited for commencing an action on such right shall be extended until all disabilities cease or until the expiration of the longest extension available to him under any disability from which he suffers; but the extensions to which he is entitled shall run concurrently and not consecutively.<sup>40</sup>

#### **§ 2.66. Effect of death of person under disability.**

If a person in whose favor a right to relief accrued while he was under a disability dies either before or after his disability terminated but before expiration of the time limited for commencing an action as computed in view of the provisions of section 2.62, 2.63, 2.64, or 2.65, the time within which the action shall be commenced shall be extended as provided in section 2.67 below. A disability existing at the time of the death of a person shall be deemed to have terminated at that time.<sup>41</sup>

#### **§ 2.67. Death of claimant: effect on his claim.**

*1. Extension of time allowed.* The period of one year after the death of a person in whose favor a right to relief has accrued is not a part of the time within which an action on such right must be commenced by his personal representative.

*2. Appointment of special representative to bring action; statute tolled.* If no personal representative has been appointed six months after the death of the claimant, any distributee, next of kin, legatee, or creditor of the decedent may petition the court for the appointment of a special representative to bring an action on the accrued right to relief. Service upon the defendant of a summons and a copy of the petition, which shall specify the nature of the claim in the same manner as if it were a complaint issued in an action on the claim, shall toll the statute.<sup>42</sup>

#### **§ 2.68. Death of claimant: effect on defense or counterclaim.**

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<sup>39</sup> *Prior legislation:* L. 1963-64, ch. III (6:264); 1956 Code 6:51; Rev. Stat. § 263.

<sup>40</sup> *Prior legislation:* L. 1963-64, ch. III (6:265).

<sup>41</sup> *Prior legislation:* L. 1963-64, ch. III (6:266).

<sup>42</sup> *Prior legislation:* L. 1963-64, ch. III (6:267).

When a defendant has served an answer containing a defense or counterclaim and the action is terminated because of the plaintiff's death, the time which elapsed between the commencement and termination of the action is not a part of the time within which an action must be commenced to recover upon a claim arising out of the facts alleged in such defense or counterclaim or the time within which such defense or counterclaim may be interposed in another action brought by the plaintiff's successor in interest.<sup>43</sup>

#### **§ 2.69. Death of defendant.**

1. *Extension of time allowed.* The period of one year after the death, within or without the Republic, of a person against whom a right to relief has accrued is not a part of the time within which an action on such right must be commenced against his personal representative.

2. *Appointment of special representative to defend action; statute tolled.* If no executor or administrator is appointed within six months after the death of the defendant, any person in whom a right to relief had accrued against the decedent may petition the court for the appointment of a special representative to defend an action brought against the estate on such a right to relief, the nature of which shall be set forth in the same manner as in a complaint. The appointment of such a representative shall toll the statute. The court may grant such petition and appoint a special representative or may stay further action and direct that the claim be tried upon appointment of an executor or administrator, as it deems expedient and equitable.<sup>44</sup>

#### **§ 2.70. Absence from Republic or concealment.**

1. *Defendant's absence or concealment.* If when a claim for relief accrues against a person he is absent from the Republic, the time within which the action must be commenced shall be computed from the time he comes into or returns to the Republic. If, after a claim for relief has accrued against a person, he departs from the Republic and remains continuously absent therefrom for four months or more, or if he conceals himself within the Republic for the purpose of avoiding service of process, the time of such absence from the Republic or concealment is not a part of the time within which action must be commenced.

2. *Plaintiff's absence.* If when a claim for relief accrues in favor of a person he is absent from the Republic, the time of his absence from the Republic up to one year is not a part of the time within which the action must be commenced. If after a claim has accrued in favor of a person, he departs from the Republic and remains continuously absent therefrom for four months or more, the time of his absence from the Republic up to one year is not a part of the time within which action must be commenced.<sup>45</sup>

#### **§ 2.71. Effect of war.**

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<sup>43</sup> *Prior legislation:* L. 1963-64, ch. III (6:268).

<sup>44</sup> *Prior legislation:* L. 1963-64, ch. III (6:269).

<sup>45</sup> *Prior legislation:* L. 1963-64, ch. III (6:270); 1956 Code 6:51; Rev. Stat. § 263.

1. *Right to relief accruing in enemy country.* When a right to relief accrues in a foreign country with which the Republic of Liberia or any of its allies is then or subsequently at war or in a territory then or subsequently occupied by the government of such a foreign country, the time which elapses between the commencement of the war or of such occupation and the termination of hostilities with such foreign country or of such occupation is not a part of the time within which the action shall be commenced; provided, however, that if the time within which the action would, in accordance with the provisions of this paragraph, have to be commenced expires less than six months after the termination of such hostilities or occupation, it shall be extended until six months after such termination.

2. *Party who is enemy alien.* When a person is unable to commence an action in the courts of this Republic because any party is an alien subject or citizen of a foreign country at war with the Republic or any of its allies, whether the right to relief accrued during or prior to the war, the time which elapses between the commencement of the war and the termination of hostilities with such country is not a part of the time within which the action must be commenced; provided, however, that if the time within which the action would, in accordance with the provisions of this paragraph, have to be commenced expires less than six months after the termination of hostilities, it shall be extended until at least six months after such termination.

3. *Claimant a non-enemy in enemy country.* When a right to relief accrues in favor of a person not entitled to the benefits of paragraph 2 who is a resident of or a sojourner in a foreign country with which the Republic of Liberia or any of its allies is at war or in a territory occupied by the government of such a foreign country, the period of such residence or sojourn during which the war continues or the territory is so occupied is not a part of the time within which the action must be commenced; provided, however, that if the time within which the action would, in accordance with the provisions of this paragraph, have to be commenced expires less than six months after the termination of such hostilities or occupation, it shall be extended until at least six months after such termination.<sup>46</sup>

#### **§ 2.72. Effect of stay of commencement of action.**

When the commencement of an action has been stayed by a court or by a statutory prohibition, the duration of the stay is not part of the time limited for commencement of the action. A statutory grant of immunity from suit shall be deemed to be a stay of commencement of action within the meaning of this section.<sup>47</sup>

#### **§ 2.73. Effect of termination of action.**

If an action is timely commenced and is terminated in any manner other than by a dismissal of the complaint for failure to prosecute the action or a final judgment on the merits, the plaintiff may commence a new action upon the same right to relief after the expiration of the time limited by statute therefor and within six months after

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<sup>46</sup> *Prior legislation:* L. 1963-64, ch. III (6:271).

<sup>47</sup> *Prior legislation:* L. 1963-64, ch. III (6:272).

the termination, and the defendant may interpose any defense or counterclaim which might have been interposed in the original action.<sup>48</sup>

#### **§ 2.74. Effect of change of representative character of action.**

If the representative character of a class action begun under section 5.91 is eliminated in accordance with the provisions of section 5.92, any member of the class who had not intervened prior to the elimination of the representative character of the action may thereafter intervene in the original action as provided in section 5.62 or may, within six months after notice of such change, commence a separate action against the defendant upon the right to relief which would have been decided by the court in the representative action; and the defendant may interpose any defense or counterclaim which might have been interposed in the original representative action.<sup>49</sup>

## ***Chapter 3. COMMENCEMENT OF ACTION***

### **Subchapter A. Jurisdiction**

- § 3.1. Personal jurisdiction over nondomiciliary who has been in Liberia.
- § 3.2. Personal jurisdiction over nondomiciliary through acts within Liberia.
- § 3.3. Personal jurisdiction over domiciliaries and nondomiciliaries in certain kinds of actions.

### **Subchapter B. Form, Issuance, and Service of Process**

- § 3.31. Commencement by filing complaint and issuance of writ.
- § 3.32. Summons to be issued forthwith.
- § 3.33. Form of summons.
- § 3.34. Written directions.
- § 3.35. Resummons.
- § 3.36. Person who may serve.
- § 3.37. Territorial limits of effective service.
- § 3.38. Personal service of summons within Liberia.
- § 3.39. Personal service of summons outside Liberia.
- § 3.40. Service by publication and mailing.
- § 3.41. When service by publication is complete.

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<sup>48</sup> *Prior legislation:* L. 1963-64, ch. III (6:273).

<sup>49</sup> *Prior legislation;* L. 1963-64, ch. III (6:274).

- § 3.42. Return.
- § 3.43. Amendment.
- § 3.44. Defense by person not personally served.

#### **Subchapter C. Appearance**

- § 3.61. Appearance by defendant defined.
- § 3.62. Time when appearance required.
- § 3.63. Effect of appearance on personal jurisdiction.

## ***Subchapter A. JURISDICTION***

### **§ 3.1. Personal jurisdiction over nondomiciliary who has been in Liberia.**

A nondomiciliary who has been in Liberia shall be subject to the jurisdiction of Liberian courts in the same manner as if he were a domiciliary of Liberia.<sup>50</sup>

### **§ 3.2. Personal jurisdiction over nondomiciliary through acts within Liberia.**

After proper service of summons, a court may exercise jurisdiction over a nondomiciliary, even though he has not been in Liberia, as to a claim arising from any of the acts enumerated in this section in the same manner as if he were a domiciliary, if, in person or through an agent, he

- (a) Transacts any business within Liberia or makes a contract with a person in Liberia which is to be performed there, or
- (b) Commits a tortuous act within Liberia, or
- (c) Owns, uses, or possesses any real property situated within Liberia.<sup>51</sup>

### **§ 3.3. Personal jurisdiction over domiciliaries and nondomiciliaries in certain kinds of actions.**

After proper service of summons, a court may exercise personal jurisdiction over a person in the following actions:

- (a) To annul a marriage or for divorce, if the marital status is subject to adjudication in Liberian courts;
- (b) Affecting the possession of, interest in, or title to, real or personal property within Liberia;
- (c) In which a levy upon property of the defendant has been made within Liberia pursuant to an order of attachment or a chattel has been seized in an action to recover a chattel.

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<sup>50</sup> *Prior legislation:* L. 1963-64, ch. III (6:301).

<sup>51</sup> *Prior legislation:* L. 1963-64, ch. III (6:302).

The provisions of this section are applicable to any defendant whether a domiciliary or nondomiciliary.<sup>52</sup>

## ***Subchapter B. FORM, ISSUANCE, AND SERVICE OF PROCESS***

### **§ 3.31. Commencement by filing complaint and issuance of writ.**

A civil action is commenced in a court of record by filing a complaint or petition with the clerk and issuance of the appropriate writ. In a court not of record, a civil action is commenced by making of an oral complaint to the justice or magistrate and issuance of the appropriate writ.<sup>53</sup>

### **§ 3.32. Summons to be issued forthwith.**

On the filing of a complaint, the clerk of the court, or in a court not of record the magistrate or justice, shall issue the writ of summons or other writ forthwith.<sup>54</sup>

### **§ 3.33. Form of summons.**

The summons shall be directed to the ministerial officer of the court in which the action is brought; shall state the court and names of the parties, together with their addresses if known; shall be signed by the clerk and bear the seal of the court; shall state the time within which the defendant is required to appear and defend; and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In a court not of record, a statement of the substance of the complaint shall be included in the summons.<sup>55</sup>

### **§ 3.34. Written directions.**

The plaintiff shall file with the complaint in a court of record an application for issuance of the summons called the "written directions" which shall fulfill the following requirements:

- (a) It must be addressed to the clerk of the court;
- (b) It must state the name of the plaintiff and his place of residence;
- (c) It must state the name of the defendant and his place of residence;
- (d) It must contain a brief statement of the object of the action;
- (e) It must request the clerk of the court to issue a writ of summons and direct it to the ministerial officer who is to serve it;

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<sup>52</sup> *Prior legislation:* L. 1963-64, ch. III (6.303).

<sup>53</sup> *Prior legislation:* L. 1963-64, ch. III (6:331); 1956 Code 6:167, 168; Rev. Stat. §§ 275, 284, 629; J. P. Code § 16; Acts 1846, Act to amend the Judiciary Act, §8, 2 Hub. 1653; OBB 33, Legal Principles and Rules, t. II, ch. II, §§ I, 3, 2 Hub. 1527.

<sup>54</sup> *Prior legislation:* L. 1963-64, ch. III (6:332); 1956 Code 6:167, 168; Rev. Stat. § 630.

<sup>55</sup> *Prior legislation:* L. 1963-64, ch. III (6:333); 1956 Code 6:201; Rev. Stat. §§ 277, 630; J. P. Code § 17; Legal Principles and Rules, t. II, ch. II, § 3,2 Hub. 1527.



- (f) It must state the date by which the defendant must appear;
- (g) It must state the term of the court in which the defendant must appear;
- (h) It must state a date on or before which the sheriff must make his return, which date shall not be later than the date on which the defendant must make his appearance;
- (i) It must state the opening date of the session of court for which the action is docketed and require the defendant to attend on that date;
- (j) It must inform the defendant that if he fails to appear judgment will be taken against him; and
- (k) It must be signed by the plaintiff or his counsel.<sup>56</sup>

### **§ 3.35. Resummons.**

If the return on a summons states that the summons was not served on a defendant, a writ of resummons may issue as to such defendant. A writ of resummons differs from a writ of summons only by the insertion therein after the word "summoned" of the words "as you were before commanded." It shall be served and the return shall be made thereon in the same manner as if it were a summons.<sup>57</sup>

### **§ 3.36. Person who may serve.**

Except as otherwise provided by law, service of all process shall be made by the ministerial officer of the court which issued the process or by his deputy, or in the absence or inability of both, by some person specifically appointed by the court for that purpose. Special appointments to serve process shall be freely made when substantial savings in travel will result therefrom.<sup>58</sup>

### **§ 3.37. Territorial limits of effective service.**

All process of courts of record may be served anywhere within the Republic of Liberia. Service in a county, district, or territory other than that in which the court issuing the process is located shall be by the ministerial officer of the corresponding court of the county, district, or territory where the person to be served is located. Process of a justice's court may be served only within the county in which the justice sits; and process of a magistrate's court may be served only in the magisterial area for which the magistrate sits.<sup>59</sup>

### **§ 3.38. Personal service of summons within Liberia.**

1. *Upon a natural person.* Personal service of summons within Liberia upon a natural person other than an infant or incompetent shall be made by reading and delivering the summons to:

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<sup>56</sup> *Prior legislation:* L. 1963-64, ch. III (6:334); 1956 Code 6:167; Rev. Stat. § 277; OBB, Legal Principles and Rules, t. II, ch. II, § 3, 2 Hub. 1527.

<sup>57</sup> *Prior legislation:* L. 1963-64, ch. III (6:335); 1956 Code 6:203, 204; Rev. Stat. §§ 280, 633; J. P. Code § 20; OBB 33, Legal Principles and Rules, t. II, ch. H, §§ 5, 6, 2 Hub. 1527.

<sup>58</sup> *Prior legislation:* L. 1963-64, ch. III (6:336); 1956 Code 6:220; Rev. Stat. § 632; J. P. Code § 19.

<sup>59</sup> *Prior legislation:* L. 1963-64, ch. III (6:337); 1956 Code 6:223.

- (a) The person to be served; or
- (b) A person designated by the person to be served as his agent for service in a writing which shall be probated and registered in the office of the Registrar of Deeds of the county in which the person to be served resides within three years of service unless the designation has been revoked by filing a revocation or by the death or legal incompetency of the person or agent.

2. *Upon an infant.* Personal service within Liberia upon an infant shall be made by reading and delivering the summons to the parent or guardian of the infant, or, if there is no parent or guardian within Liberia, to the person having the care and control of the infant, or with whom he resides, or by whom he is employed. If the infant is of the age of fourteen years or over, the summons shall also be read and served personally upon him within Liberia.

3. *Upon a person declared to be incompetent.* Personal service upon a person judicially declared to be incompetent to manage his affairs and for whom a committee or guardian has been appointed shall be made by personally reading and delivering the summons within Liberia to the committee or guardian.

4. *Upon a partnership.* Personal service upon persons carrying on business as a partnership may be made by reading and personally delivering the summons within Liberia to:

- (a) Any one of them, or
- (b) To an agent appointed in the same manner and subject to the same conditions as an agent appointed under paragraph 1(b) of this section, or
- (c) If the partnership is subject to suit under a common name, by reading and personally delivering the summons within Liberia to an officer or managing or general agent.

5. *Upon an unincorporated association.* Personal service upon an unincorporated association in a suit against it in its common name shall be made by reading and personally delivering the summons within Liberia to an officer, a managing or general agent, or to any other agent appointed in the same manner and subject to the same conditions as an agent appointed under paragraph 1(b) of this section.

6. *Upon a corporation.* Personal service shall be made upon a domestic or foreign corporation by reading and personally delivering the summons within Liberia to an officer, or managing or general agent, or to any other agent authorized by appointment or by statute to receive service of process, and, if the summons is delivered to a statutory agent, by, in addition, mailing a copy thereof to the defendant.

7. *Upon the Republic of Liberia.* Personal service shall be made upon the Republic of Liberia by delivering the summons to the Minister of Justice, Solicitor General, [a Deputy Minister of Justice], or an Assistant Minister of Justice or to the County, District, or Territorial Attorney for the county, district, or territory in which the action is brought.

8. *Upon an officer or agency of the Republic.* Personal service shall be made upon an officer or agency of the Republic of Liberia by serving the Republic of Liberia and by delivering the summons to such officer or to the chairman, if there is a chairman, or chief executive officer of such agency.

9. *Upon a subdivision of government or a municipal corporation.* Personal service upon a subdivision of the government subject to suit or upon a municipal corporation shall be made by reading and delivering the summons to the chief executive thereof.<sup>60</sup>

### **§ 3.39. Personal service of summons outside Liberia.**

The following persons may be served with summons outside Liberia in the same manner as if such service were made within Liberia and with the same jurisdictional effect as if the summons were delivered within Liberia:

- (a) A person domiciled in Liberia;
- (b) A person subject to the jurisdiction of the courts of Liberia under sections 3.1, 3.2, or 3.3 of this title.

Such service outside Liberia may be made by a ministerial officer of a court in the jurisdiction where service is made or by any attorney, solicitor, barrister, or equivalent who is duly qualified to serve a summons in such jurisdiction.<sup>61</sup>

### **§ 3.40. Service by publication and mailing.**

If the return on the writ of resummons shows that the defendant has not been served and if the plaintiff makes application not later than ten days after such return, the court shall order service of the summons to be made by publication. An order for service by publication shall direct that the summons be published together with a brief statement of the object of the action in a recognized newspaper for a specified time, at least once in each of four successive weeks. The first publication shall be made within twenty days after the order is granted. On the day of each publication, a copy thereof together with a copy of the complaint shall be mailed by registered mail to the last known address of the defendant.<sup>62</sup>

### **§ 3.41. When service by publication is complete.**

Service by publication is complete on the day when the last notice is published pursuant to the order of the court, except that

- (a) If the defendant shall have appeared before such last notice is published, the service shall be deemed complete on the day of his appearance; or

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<sup>60</sup> *Prior legislation:* L. 1963-64, ch. III (6:338); 1956 Code 6:221; Rev. Stat. §§ 279, 283.

<sup>61</sup> *Prior legislation:* L. 1963-64, ch. III (6:339).

<sup>62</sup> *Prior legislation:* L. 1963-64, ch. III (6:340); 1956 Code 6:222; Rev. Stat. § 281; L. 1903-04, 10 (3rd).

(b) If the defendant has received the mailed copy of the publication containing the summons as evidenced by the return of a receipt signed by him, the service shall be deemed complete as of the date of such receipt.<sup>63</sup>

### **§ 3.42. Return.**

1. *Personal service.* The person serving the process personally shall make return as to service thereof to the court promptly and in any event within the time during which the person served must appear. If the process commands the officer to whom it is directed to take some action other than service, he shall report the action taken by him on or before the date set therefor in the writ or order. Return of service shall specify the papers served, the person who was served, and the date, place, and manner of service.

2. *Service by publication and mailing.* Publication may be proved by a copy of the publication accompanied by the affidavit of the publisher or printer or foreman of the paper in which publication was made. Mailing the summons may be proved by the post office receipt showing that registered mail addressed to the defendant at his last known address was deposited in the post office. Such receipt shall be made a part of the return of the person who made the service. If the return is disputed, the service may be proved by the record of the post office showing that delivery of the mail was made to the defendant or that he refused delivery.<sup>64</sup>

### **§ 3.43. Amendment.**

At any time in its discretion and upon such terms as it deems just, a court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.<sup>65</sup>

### **§ 3.44. Defense by person not personally served.**

A person served with a summons other than by personal delivery to him, within or without Liberia, who does not appear, may be allowed to defend the action at any time before final judgment or within five years after entry of the judgment or within thirty days after written notice of the judgment is personally delivered to him within or without Liberia, whichever period first expires, upon a finding of the court that he may have a meritorious defense and that he has not personally received notice of the summons in time to appear as required by section 3.62 and defend. If the defense is successful, the court may direct and enforce restitution of property or rights lost by the judgment, except that where the title of a purchaser in good faith and for value would be affected, the court may order the value or the purchase price paid in lieu of restoration of the property.<sup>66</sup>

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<sup>63</sup> *Prior legislation:* L. 1963-64, ch. III (6:341).

<sup>64</sup> *Prior legislation:* L. 1963-64, ch. III (6:342); 1956 Code 6:224; Rev. Stat. §§ 278, 632; J. P. Code §19; OBB 33, Legal Principles and Rides, t. II, ch. II, § 4, 2 Hub. 1527.

<sup>65</sup> *Prior legislation:* L. 1963-64, ch. III (6:343).

<sup>66</sup> *Prior legislation:* L. 1963-64, ch. III (6:344).

## ***Subchapter C. APPEARANCE***

### **§ 3.61. Appearance by defendant defined.**

Service of an answer or a notice of appearance or the making by the defendant of a motion constitutes an appearance by him.<sup>67</sup>

### **§ 3.62. Time when appearance required.**

An appearance shall be made within ten days after service of the summons or resummmons.<sup>68</sup>

### **§ 3.63. Effect of appearance on personal jurisdiction.**

An appearance of the defendant is equivalent to personal service of the summons upon him, unless an objection to jurisdiction of the person is asserted by motion under section 1 1.2(1)(b) or in the answer and is upheld by the court.<sup>69</sup>

## ***Chapter 4. VENUE AND REMOVAL OF CAUSES***

§ 4.1. Actions tried in county of residence of party.

§ 4.2. Real property actions.

§ 4.3. Action to recover a chattel.

§ 4.4. Actions against certain parties.

§ 4.5. Change of place of trial.

### **§ 4.1. Actions tried in county of residence of party.**

*1. General requirement as to actions in Circuit Courts.* Except as otherwise provided, an action in the Circuit Court shall be tried in the county in which one of the parties resided or was regularly employed or had his regular place of business when the action was commenced. If none of the parties then resided or had his regular place of business in any county of the Republic of Liberia, an action may be tried in any county designated by the plaintiff.

*2. General requirement as to actions in courts not of record.* An action in the court of a stipendiary magistrate or a justice of the peace shall be tried before a magistrate or justice of the peace having jurisdiction over the

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<sup>67</sup> *Prior legislation:* L. 1963-64, ch. III (6:361); 1956 Code 6:290; Rev. Stat. § 285.

<sup>68</sup> *Prior legislation:* L. 1963-64, ch. III (6:362).

<sup>69</sup> *Prior legislation:* L. 1963-64, ch. III (6:363).

territory wherein one of the parties resided or was regularly employed or had his regular place of business when the action was commenced. If none of the parties then resided or was regularly employed or had his regular place of business in any county of the Republic of Liberia, an action may be tried before any stipendiary magistrate or justice of the peace designated by the plaintiff.

3. *Definition of residence.* A party resident in more than one county or in more than one magisterial area, town, or city shall be deemed a resident of either county, and of either magisterial area, town, or city. An executor, administrator, trustee, committee, or guardian, or receiver shall be deemed a resident of the county of his appointment as well as the county in which he actually resides. A corporation organized under the laws of the Republic of Liberia or a foreign corporation doing business there shall be deemed a resident of the county and of the magisterial area, town, or city in which its principal office or other recognized office is located. An unincorporated association or partnership shall be deemed a resident of any county and of any magisterial area, town, or city in which an officer of the association suing or being sued or partner suing or being sued resides or in which the association or partnership has its principal office. In an action by an assignee for a sum of money, other than an assignee for the benefit of creditors or a holder in due course of a negotiable instrument, the assignee's residence shall be deemed the same as that of the assignor at the time of the assignment.<sup>70</sup>

#### **§ 4.2. Real property actions.**

Every action to recover or to procure a judgment establishing, determining, defining, forfeiting, annulling, or otherwise affecting an estate, right, title, lien, or other interest in real property shall be tried in the county in which all or part of the subject of the action is situated. If such an action is before the court of a stipendiary magistrate or justice of the peace, the action shall be brought before the magistrate or justice of the magisterial area, town, or city in which all or part of the subject of the action is situated.<sup>71</sup>

#### **§ 4.3. Action to recover a chattel.**

An action to recover a chattel in the Circuit Court may be tried in the county in which all or part of the subject of the action is situated; and such an action may be tried before a stipendiary magistrate or justice of the peace of the magisterial area, town, or city in which an or part of the subject of the action is situated.<sup>72</sup>

#### **§ 4.4. Actions against certain parties.**

1. *Against counties, cities, towns, and villages.* The place of the trial of an action against a county shall be in that county, and against a city, town, or village, in the county in which such city, town, or village is located.

2. *Actions against a governmental agency.* An action against a governmental agency shall be tried in the county where such agency has its principal office or where it has facilities involved in the action.<sup>73</sup>

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<sup>70</sup> *Prior legislation:* L. 1963-64, ch. III (6:401); 1956 Code 6:70; Rev. Stat. § 264.

<sup>71</sup> *Prior legislation:* L. 1963-64, ch. III (6:402); 1956 Code 6:71; Rev. Stat. § 265.

<sup>72</sup> *Prior legislation:* L. 1963-64, ch. III (6:403).

#### **§ 4.5. Change of place of trial.**

1. *When place of trial may be changed.* The court may change the place of trial of an action in any of the following cases:

- (a) On motion, if the county, or in the case of an action in a court not of record, the magisterial area, town, or city designated is not proper;
- (b) If there is reason to believe that an impartial trial cannot be had in the proper county, magisterial area, town, or city; or
- (c) On motion, if all the parties agree and if the convenience of material witnesses and the ends of justice will be promoted thereby.

2. *Time of motion.* A motion for change of place of trial on the ground that the place designated for that purpose is not the proper place must be made on or before the date on which the defendant is required to plead. A motion for change of place of trial on any other ground must be made at any time before commencement of trial.

3. *Order and subsequent proceedings.* An order changing the place of trial shall become effective upon entry. In an action in the Circuit Court or probate court, the clerk of the court from which it is changed must forthwith deliver to the clerk of the court to which it is changed all papers on file and all records in the action. Subsequent proceedings shall be had in the county, magisterial area, town, or city to which the change is made as if it had been designated originally as the place of trial.<sup>74</sup>

## **Chapter 5. PARTIES**

### **Subchapter A. General**

- § 5.1. Designation of parties.
- § 5.2. Fictitious parties abolished.
- § 5.3. Unknown parties.
- § 5.4. Misnomers.
- § 5.5. Public officers described by title.

### **Subchapter B. Capacity of Parties**

- § 5.11. Capacity generally.

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<sup>73</sup> *Prior legislation:* L. 1963-64, ch. III (6:404).

<sup>74</sup> *Prior legislation:* L. 1963-64, ch. III (6:405); 1956 Code 6:72, 73; Rev. Stat. §§ 266, 635; L. 1908-09, 48 (2nd), §5; L. 1896-97, 16 (2nd), §§ 2, 3; L. 1879-80, 9, § 6; L. 186546, 46.

- § 5.12. Infants.
- § 5.13. Incompetents.
- § 5.14. Married women.
- § 5.15. Partnerships.
- § 5.16. Unincorporated associations.
- § 5.17. Corporations.
- § 5.18. The Republic and its subdivisions.

#### **Subchapter C. Substitution of Parties**

- § 5.31. Substitution in case of death.
- § 5.32. Substitution in case of incompetency.
- § 5.33. Substitution in case of assignment for benefit of creditors.
- § 5.34. Substitution upon transfer of interest.
- § 5.35. Substitution of public officers.
- § 5.36. Procedure for substitution.
- § 5.37. Effect of failure to substitute.
- § 5.38. Extension of time for taking procedural steps.

#### **Subchapter D. Joinder of Parties**

- § 5.51. When joinder required.
- § 5.52. Effect of failure to join.
- § 5.53. Persons not required to be joined.
- § 5.54. Additional parties may be brought in.
- § 5.55. When joinder permitted.
- § 5.56. Effect of misjoinder.
- § 5.57. Protection of parties joined in action.

#### **Subchapter E. Intervention**

- § 5.61. Intervention as of right.
- § 5.62. Permissive intervention.
- § 5.63. Procedure.



§ 5.64. Duty of court when constitutionality questioned.

#### **Subchapter F. Interpleader**

§ 5.81. When interpleader permitted.

§ 5.82. Deposit of money or property.

§ 5.83. Injunction in interpleader.

§ 5.84. Adjudication by court.

§ 5.85. Effect of subchapter D.

§ 5.86. Other remedies abolished.

#### **Subchapter G. Class Actions**

§ 5.91. When class actions allowed.

§ 5.92. Elimination of representative character.

§ 5.93. Secondary action by shareholders.

§ 5.94. Protective orders; notice.

§ 5.95. Court approval for termination of action.

§ 5.96. Effect of judgment in class action.

#### **Subchapter A. GENERAL**

##### **§ 5.1. Designation of parties.**

1. *In actions generally.* Except as otherwise specifically provided by law, a person who brings a civil action in court against another shall be called the plaintiff, and the person against whom it is brought shall be called the defendant.

2. *In admiralty.* A person who brings an action in admiralty shall be called the libellant, and the person against whom it is brought shall be called the libellee.

3. *Claimants.* A person who has a claim (including a counterclaim) against another may be referred to as a claimant in relation to such claim; and any party against whom such claim is made may be referred to as a defendant in relation thereto.<sup>75</sup>

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<sup>75</sup> *Prior legislation:* L. 1963-64, ch. III (6:501); 1956 Code 6:90; Rev. Stat. § 252; OBB 30, Legal Principles and Rules, t. II, ch. I, § 2, 2 Hub. 1524.

## **§ 5.2. Fictitious parties abolished.**

All fictitious parties and fictitious designations of parties required by the common law are hereby abolished. No person who has capacity to sue and be sued shall, except as otherwise provided by law, be required to join another or to sue in the name of another to enforce a claim on his own behalf or on behalf of a person whom he represents.<sup>76</sup>

## **§ 5.3. Unknown parties.**

A person who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party to an action may proceed against such a person as an unknown party by designating as much of his name and identity as is known. If the name or the remainder of his name becomes known, all subsequent proceedings shall be taken under his true name, and all prior proceedings shall be deemed amended accordingly.<sup>77</sup>

## **§ 5.4. Misnomers.**

1. *Not ground for dismissal.* Misnomer of a party shall not, unless it affects substantial rights of other parties, constitute grounds for dismissal of a claim for relief or of a defense; but the names of the parties may be corrected at any time, before or after judgment, on motion, upon such terms and proof as the court may require.

2. *Misnomer of plaintiff* When an action is brought in good faith in the name of some actual or supposed person, individually or in a representative capacity, and it appears that the action should have been brought in the name of some other person or in some other capacity, such error shall be considered one of misnomer only; provided, however, that the action was commenced by or with the express or implied consent of the proper person and that the defendant, from all the facts within his knowledge, did know or reasonably should have known what claim for relief the plaintiff was suing for.

3. *Misnomer of defendant.* If the name or the capacity of a defendant is erroneously stated, the error shall similarly be considered one of misnomer only; provided, however, that the proper defendant, personally or by his attorney, defended in the name of the named defendant or that the proper defendant actually did learn or should have learned of the commencement of the action and, from all the facts within his knowledge, did know or reasonably should have known what claim or relief the plaintiff was suing for; and provided further that the service of summons or other jurisdictional act relied upon would have given the court jurisdiction of the proper defendant if he had been properly named in the complaint and summons.

4. *Procedure.* In the cases set forth in paragraphs 2 and 3 above the defendant or any other party may suggest the existence of the error by motion, or an interested person may intervene to make such suggestion; and the court shall order all pleadings, process, and other papers to be amended or to be deemed amended accordingly.

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<sup>76</sup> *Prior legislation:* L. 1963-64, ch. III (6:502); 1956 Code 6:91; Rev. Stat. § 267.

<sup>77</sup> *Prior legislation:* L. 1963-64, ch. III (6:503).

The court's order shall protect the defendant and any other interested persons from unfair prejudice; if the error is timely suggested, ordinarily both the costs and the expenses necessarily resulting to the named or proper defendant or to the interested person shall be taxed against the person who made the error as terms for permitting the amendment.

5. *Applicability of section.* The provisions of this section shall apply to all civil actions and special proceedings and to all parties to such actions and proceedings, however denominated, including persons who seek to intervene.<sup>78</sup>

#### **§ 5.5. Public officers described by title.**

When a public officer may sue and be sued in his official capacity, he may be described as a party, by his official title rather than by name, subject to the power of the court to require that his name be added.<sup>79</sup>

## ***Subchapter B. CAPACITY OF PARTIES***

#### **§ 5.11. Capacity generally.**

1. *Natural persons.* Every natural person shall have capacity to sue and be sued, except as otherwise provided in this subchapter.
2. *Persons other than natural persons.* Except as otherwise specifically provided by the statute laws of this Republic, every person other than a natural person shall have capacity to sue and be sued in accordance with the provisions of this subchapter.
3. *Persons acting in representative capacity.* The capacity of any person acting in a representative capacity shall be determined by the statutes of this Republic.<sup>80</sup>

#### **§ 5.12. Infants.**

1. *Representative required.* An infant shall sue and be sued through a representative.
2. *Suit by or against infant who has guardian.* If an infant has a general or testamentary guardian, the guardian shall sue or defend on behalf of the infant. If, however, the guardian fails to bring or to defend an action on behalf of the infant, or if the court finds that he has an interest adverse to the infant, the court shall appoint a guardian *ad litem, sua sponte*, or upon the application of a relative or friend or upon the application of the infant himself if he is fourteen years of age or older.

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<sup>78</sup> *Prior legislation:* L. 1963-64, ch. III (6:504).

<sup>79</sup> *Prior legislation:* L. 1963-64, ch. III (6:505).

<sup>80</sup> *Prior legislation:* L. 1963-64, ch. III (6:511); 1956 Code 6:110.

3. *Suit by or against infant who has no guardian.* If the infant does not have a general or testamentary guardian, he may sue by his next friend or by a guardian *ad litem*. The court shall appoint a guardian *ad litem* upon the application of a relative or friend or upon the application of the infant if he is fourteen years of age or older. A plaintiff who brings an action against an infant may, at the commencement thereof, apply to the court for the appointment of a guardian *ad litem* for the infant if he has no general or testamentary guardian; and if no appearance is made on behalf of an infant in any action against him, the plaintiff may apply for the appointment of a guardian *ad litem*. Application for the appointment of a guardian *ad litem* shall be made to the court in which the action is to be brought or is pending, or, if the action is to be brought or is pending in a court of a justice of the peace or a magistrate, the application shall be made to the probate court.

4. *Court to act sua sponte.* In any case in which an infant is not represented in an action, or is inadequately represented, the court shall, *sua sponte*, appoint a guardian *ad litem* or make such other order as it deems proper for his protection.<sup>81</sup>

### **§ 5.13. Incompetents.**

1. *Representative required.* Every person who is in fact incompetent, whether or not he has been so adjudged by a court, shall sue and be sued through a representative.

2. *Suit by or against incompetent who has guardian.* If the incompetent has a guardian, committee, conservator, trustee, or other similar fiduciary, such representative shall sue or defend on behalf of the incompetent. If, however, such representative fails to bring or to defend an action on behalf of the incompetent, or if the court finds that he has an interest adverse to the incompetent, the court shall appoint a guardian *ad litem*, as provided in paragraph 3.

3. *Suit by or against incompetent who has no guardian.* If the incompetent does not have any such representative as listed in paragraph 2 above, he may sue by his next friend or by a guardian *ad litem*. The court shall appoint a guardian *ad litem* upon the application of a relative or friend. A plaintiff who brings an action against an incompetent may, at the commencement thereof, apply to the court for the appointment of a guardian *ad litem* for the incompetent if he has no representative; and if no appearance is made on behalf of an incompetent defendant in any action against him, the plaintiff may apply for the appointment of a guardian *ad litem*. Application for the appointment of a guardian *ad litem* shall be made to the court in which the action is to be brought or is pending, or, if the action is to be brought or is pending in a court of a justice of the peace or a magistrate, the application shall be made to the probate court.

4. *Court to act sua sponte.* In any case in which an incompetent is not represented in an action, or is inadequately represented, the court shall, *sua sponte*, appoint a guardian *ad litem* or make such other order as it deems proper for his protection.<sup>82</sup>

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<sup>81</sup> Prior legislation: L. 1963-64, ch. HI (6:512); 1956 Code 6:112; Rev. Stat. §§ 270, 271.

<sup>82</sup> Prior legislation: L. 1963-64, ch. III (6:513); 1956 Code 6:112.

#### **§ 5.14. Married women.**

When a right of action accrues in favor of or against a married woman, her husband must be joined with her except when the action is between her and her husband or when she sues or is sued in connection with a business or enterprise in which she is engaging under her own name in accordance with the provisions of the Domestic Relations Law. In no case shall it be necessary for her to appear by guardian.<sup>83</sup>

#### **§ 5.15. Partnerships.**

Two or more persons carrying on an enterprise as a partnership registered in accordance with the provisions of the Associations Law may sue or be sued in the partnership name; provided, however, that if any persons holding themselves out to be a partnership have not registered in accordance with the Associations Law, they may nevertheless be sued in the partnership name by any person who has dealt with them as a partnership.<sup>84</sup>

#### **§ 5.16. Unincorporated associations.**

An unincorporated association may sue and be sued in its association name.<sup>85</sup>

#### **§ 5.17. Corporations.**

Any corporation, domestic or foreign, has the capacity to sue or be sued in Liberian courts, subject, however, to the provisions of the Associations Law; and any registered cooperative society has the capacity to sue or be sued in Liberian courts, subject, however, to the provisions of the Associations Law.<sup>86</sup>

#### **§ 5.18. The Republic and its subdivisions.**

The Republic of Liberia, its subdivisions, agencies, and officers, and municipal corporations chartered by the Legislature may sue and be sued in Liberian courts, subject, however, to the provisions of chapter 66 of this title.<sup>87</sup>

### ***Subchapter C. SUBSTITUTION OF PARTIES***

#### **§ 5.31. Substitution in case of death.**

1. *In general.* Except as otherwise specifically provided by law, if any party to an action dies while such action is pending before any court in this Republic, the action may be continued by or against the executors,

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<sup>83</sup> *Prior legislation:* L. 1963-64, ch. III (6:514); 1956 Code 6:1 1 1; Rev. Stat. §§ 268, 269.

<sup>84</sup> *Prior legislation:* L. 1963-64, ch. III (6:515); 1956 Code 6:110.

<sup>85</sup> *Prior legislation:* L. 1963-64, ch. III (6:516); 1956 Code 6: 110.

<sup>86</sup> *Prior legislation:* L. 1963-64, ch. III (6:517); 1956 Code 6: 110.

<sup>87</sup> *Prior legislation:* L. 1963-64, ch. III (6:518).

administrators, or other legal representatives of the deceased party or parties in accordance with the provisions of this subchapter and the statutes relating to survival of actions.

2. *Devolution of rights or liabilities to other parties.* In the event of the death of one or more plaintiffs or of one or more defendants in an action in which the rights sought to be enforced survive only to the surviving plaintiffs or against the surviving defendants, the action shall not abate. The death shall be noted on the record, and the action shall proceed in favor of or against the surviving parties.<sup>88</sup>

#### **§ 5.32. Substitution in case of incompetency.**

If a party becomes incompetent, the court shall direct the action to be continued by or against the legal representative or a guardian *ad litem* of the incompetent. The court shall protect the interests of the incompetent in accordance with the provisions of section 5.13(2)-(4) above.<sup>89</sup>

#### **§ 5.33. Substitution in case of assignment for benefit of creditors.**

When a party to an action assigns his property for the benefit of creditors, the action shall be continued by or against the receiver, trustee, curator of estate, or other successor in interest of such party; provided, however, that the party shall be entitled to maintain and shall continue to be liable in actions for personal injuries.<sup>90</sup>

#### **§ 5.34. Substitution upon transfer of interest.**

In case of any transfer of interest other than one for which special provisions are set out in this subchapter, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted in the action or to be joined with the original party.<sup>91</sup>

#### **§ 5.35. Substitution of public officers.**

1. *Continuance against successor.* When a public officer is a party to an action and during the pendency of the action dies or otherwise ceases to hold office, the action does not abate but may be continued by or against his successor if it is shown to the court that there is need for so continuing it. Before a substitution is made, his successor and, unless the court otherwise orders, the original party shall be given notice of the motion for substitution and accorded an opportunity to object.

2. *Use of name of substituted party.* Proceedings following substitution of a public officer shall be in the name of the substituted party, and any misnomer shall be subject to the provisions of section 5.4. An order of substitution may be entered at any time, but the failure to enter such an order shall not affect the substitution.

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<sup>88</sup> *Prior legislation:* L. 1963-64, ch. III (6:531); L. 1958-59, ch. XLI, § 1(6:100); 1956 Code 6:100; Rev. Stat. §§ 260, 274; OBB 22, 30, 63, Legal Principles and Rules, t. I, § 9; t. II, ch. I, § 19; ch. XIV, § 5, 2 Hub. 1515, 1527, 1563.

<sup>89</sup> *Prior legislation:* L. 1963-64, ch. III (6:532); 1956 Code 6:101.

<sup>90</sup> *Prior legislation:* L. 1963-64, ch. III (6:533); 1956 Code 6:102; OBB 63, Legal Principles and Rules, t. II, ch. XIV, § 5, 2 Hub. 1562.

<sup>91</sup> *Prior legislation:* L. 1963-64, ch. III (6:534); 1956 Code 6:103.

3. *Description only by official title.* When a public officer is described by his official title, as provided in section 5.5 above, and his name is not added, no formal substitution is necessary.<sup>92</sup>

#### **§ 5.36. Procedure for substitution.**

1. *Persons who may move; notice.* A motion to substitute a party may be made by any party to an action or by the successors to or representatives of a party; notice of the motion shall be served on all parties to the action.

2. *Court may order substitution.* Any person may notify a court of the death of a party to an action before it or that any party has been adjudged incompetent, and the court shall in such case order substitution for the deceased or incompetent party. A court may, *sua sponte*, order substitution of a party in any case in which the interests of justice require it.

3. *Compulsory substitution.* If a person who should be substituted does not appear voluntarily, he may be made a party by service of a summons upon him.

4. *Substitution after judgment.* If the event requiring substitution occurs after judgment is entered in any action in which an appeal is noticed, application for substitution shall be made to the trial court before the appeal is perfected and to the appellate court thereafter; provided, however, that if an application is made to the wrong court, the appeal shall not thereupon be dismissed, nor the application prejudiced thereby, but it shall be forwarded to the court which has jurisdiction with costs therefor charged to the applicant.<sup>93</sup>

#### **§ 5.37. Effect of failure to substitute.**

If substitution is not made within a reasonable time, which in the event of the death of a party shall be not more than one year thereafter, the court may, upon motion of an opposing party, (a) dismiss the action as to the plaintiff for whom substitution should have been made in accordance with the provisions of section 11.5 of this title, or (b) direct the entry of judgment by default against the defendant for whom substitution has not been made and/or against his representatives and successors in interest, as shall be appropriate.<sup>94</sup>

#### **§ 5.38. Extension of time for taking procedural steps.**

If an event requiring substitution occurs before the expiration of the time for making a motion for a new trial, for taking an appeal, or for taking any other procedural step in an action, the time therefor is extended, as to all parties, until fifteen days after substitution is made.<sup>95</sup>

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<sup>92</sup> *Prior legislation:* L. 1963-64, ch. III (6:535); 1956 Code 6:104.

<sup>93</sup> *Prior legislation:* L. 1963-64, ch. III (6:536); L. 1958-59, ch. XLI, § 1(6: 100); 1956 Code 6:100 (2nd par.).

<sup>94</sup> *Prior legislation:* L. 1963-64, ch. III (6:537); L. 1958-59, ch. XLI, 1 (6: 100); 1956 Code 6:100 (2nd par.).

<sup>95</sup> *Prior legislation:* L. 1963-64, ch. III (6:538).

## ***Subchapter D. JOINDER OF PARTIES***

### **§ 5.51. When joinder required.**

1. *Parties who should be joined.* Persons (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) who might be inequitably affected by a judgment in such action shall be made plaintiffs or defendants therein.

2. *Compulsory joinder.* When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff. When a person who should be joined according to the provisions of paragraph 1 has not been made a party and is subject to the jurisdiction of the court, the court shall order him summoned to appear in the action.<sup>96</sup>

### **§ 5.52. Effect of failure to join.**

1. *When court may proceed in absence of person who should be joined.* If jurisdiction over a person who should be joined according to the provisions of section 5.51(1) above can be obtained only by his consent or voluntary appearance, the court may dismiss without prejudice or, when justice requires, proceed in the action without making him a party. In determining whether to proceed or to dismiss without prejudice, the court shall consider: (a) whether the plaintiff has another effective remedy if the action is dismissed on account of the nonjoinder; (b) the prejudice which may accrue to the defendant or to the person not joined as a result of the nonjoinder; (c) whether and by whom prejudice might have been avoided or may in the future be avoided; (d) the feasibility of a protective provision by order of the court or in its final judgment; and (e) whether an effective judgment may be rendered in the absence of the person who should be joined.

2. *Nonjoinder not waived.* The objection that a court cannot proceed in the absence of a person who should be joined is not waived at any time before judgment in the trial court. If the court on appeal finds that joinder of an additional party is indispensable to an enforceable judgment, it shall remand the case to the trial court for retrial after joinder of such party.<sup>97</sup>

### **§ 5.53. Persons not required to be joined.**

Unless the court otherwise orders, an executor, administrator, guardian, committee, conservator, trustee of an express trust, person with whom or in whose name a contract has been made for the benefit of another, or a person so authorized by statute may sue or be sued without joining with him the person for or against whose interest the action is brought.<sup>98</sup>

### **§ 5.54. Additional parties may be brought in.**

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<sup>96</sup> *Prior legislation:* L. 1963-64, ch. III (6:551); 1956 Code 6:120; Rev. Stat. § 272.

<sup>97</sup> *Prior legislation:* L. 1963-64, ch. III (6:552); 1956 Code 6:120.

<sup>98</sup> *Prior legislation:* L. 1963-64, ch. III (6:553); 1956 Code 6:91; Rev. Stat. § 267.



1. *Procedure.* Parties may be added by order of any court except the Supreme Court on motion of any party, or on its own initiative at any stage of the action on any terms that are just.

2. *For relief as to counterclaims.* When the presence of persons other than the parties to the original action is required for the granting of complete relief as to a counterclaim, any court except the Supreme Court may on application in a proper case order them to be brought in as parties to the action if jurisdiction can be obtained over them.<sup>99</sup>

#### **§ 5.55. When joinder permitted.**

1. *As to plaintiffs.* All persons may join in one action as plaintiffs who assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any question of law or fact common to all of them would arise in the action.

2. *As to defendants.* All persons may be joined in one action as defendants against whom there is asserted jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any question of law or fact common to all of them would arise in the action.

3. *Interest in every claim unnecessary.* A plaintiff or defendant need not be interested in every claim included in the action or in obtaining or defending against all the relief demanded. Judgment shall be given for or against each party according to his right to relief or his liability.<sup>100</sup>

#### **§ 5.56. Effect of misjoinder.**

Misjoinder of parties is not ground for dismissal of an action, but for a motion to drop the misjoined party. Parties may be dropped by order of the court on motion of any party or on its own initiative at any stage of the action on any terms that are just.<sup>101</sup>

#### **§ 5.57. Protection of parties joined in action.**

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him and may order separate trials or make other orders to prevent delay or prejudice.<sup>102</sup>

## ***Subchapter E. INTERVENTION***

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<sup>99</sup> *Prior legislation:* L. 1963-64, ch. III (6:554); 1956 Code 6:123, 125.

<sup>100</sup> *Prior legislation:* L. 1963-64, ch. III (6:555); 1956 Code 6:120.

<sup>101</sup> *Prior legislation:* L. 1963-64, ch. III (6:556); 1956 Code 6:125.

<sup>102</sup> *Prior legislation:* L. 1963-64, ch. III (6:557); 1956 Code 6:124.

### **§ 5.61. Intervention as of right.**

1. *In general.* Upon timely application, any person shall be allowed to intervene in an action:

- (a) When a statute of the Republic of Liberia confers an unconditional right to intervene; or
- (b) When the representation of the applicant's interests by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or
- (c) When the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or of an officer thereof.

2. *Right of government officer or agency.* When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a Liberian government officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency shall, upon timely application, be permitted to intervene in the action.<sup>103</sup>

### **§ 5.62. Permissive intervention.**

1. *In general.* Upon timely application, any person may be allowed to intervene in an action:

- (a) When a statute of the Republic of Liberia confers a conditional right to intervene; or
- (b) When the applicant's claim or defense and the main action have a question of law or fact in common.

2. *Consideration by court.* In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.<sup>104</sup>

### **§ 5.63. Procedure.**

A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.<sup>105</sup>

### **§ 5.64. Duty of court when constitutionality questioned.**

When the constitutionality of an act of the Legislature affecting the public interest is drawn into question in any action to which the Republic of Liberia or an officer, agency, or political subdivision thereof is not a party, the court shall so notify the Attorney General or a County, District, or Territorial Attorney, who shall have the right to intervene in support of the constitutionality of the statute.<sup>106</sup>

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<sup>103</sup> *Prior legislation:* L 1963-64, ch. III (6:561); 1956 Code 6:129.

<sup>104</sup> *Prior legislation:* L. 1963-64, ch. III (6:562); 1956 Code 6:130.

<sup>105</sup> *Prior legislation:* L. 1963-64, ch. III (6:563); 1956 Code 6:131.

<sup>106</sup> *Prior legislation:* L. 1963-64, ch. III (6:564); 1956 Code 6:131.

## ***Subchapter F. INTERPLEADER***

### **§ 5.81. When interpleader permitted.**

1. *By plaintiff.* When two or more persons have claims against another (hereinafter in this subchapter referred to as the "complainant") such that the complainant is or may be exposed to double or multiple liability, he may join all such claimants as opposing parties in one action and require them to interplead their claims.

2. *By defendant.* A defendant in an action in a circuit or probate court who is or may be similarly exposed to double or multiple liability may obtain interpleader by way of counterclaim against parties to the action; he shall be entitled to join any claimants not parties and to require them to interplead their claims.

3. *Extent of right.* The claims which a complainant may require to be interpleaded against him may arise out of money, or other property in his possession or out of a bond, note, certificate, policy of insurance, or other instrument issued by him providing for the delivery, payment, or loan of money or other property or out of any other obligation, written or unwritten, made by him; but it shall not be ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical, but are adverse to or independent of one another, or that the complainant avers that he is not liable in whole or in part to any or all of the claimants.<sup>107</sup>

### **§ 5.82. Deposit of money or property.**

1. *Requirement of deposit in court.* The court in which claims are inter-pleaded in accordance with the provisions of section 5.81 may require the complainant to deposit in court the money or property in his possession or the amount of the money or other property due on the instrument or obligation in question or to give bond in such amount and with such surety as the court deems proper conditioned upon compliance by the complainant with any future order or decree of the court in regard to the subject matter of the controversy.

2. *Preservation of subject matter.* The court may make such order as it deems appropriate to preserve the subject matter of the controversy; if it is subject to deterioration or depreciation, the court may order such subject matter sold and give judgment as to the proceeds from such sale.<sup>108</sup>

### **§ 5.83. Injunction in interpleader.**

The court which has jurisdiction of an action of interpleader shall have power to issue its process for every claimant and to issue an order of injunction against each of them, enjoining him from instituting or prosecuting an action in any other court on account of the subject matter of the controversy until further order of the issuing court. The sheriff of the county, district, or territory where any one or more of the claimants lives or may be

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<sup>107</sup> *Prior legislation:* L. 1963-64, ch. III (6:581); 1956 Code 6:132, 133(1), (5).

<sup>108</sup> *Prior legislation:* L. 1963, ch. III (6:582); 1956 Code 6:133(1) (b).

found shall serve such claimant or claimants with the process and order of injunction, which shall be returnable at such time as the court may determine.<sup>109</sup>

**§ 5.84. Adjudication by court.**

The court shall hear and determine the cause as among the claimants (and the complainant if he denies liability in whole or in part) and shall upon final determination thereof, if the complainant is found not liable, discharge him from further liability to all the claimants as to the subject matter of the controversy. It shall make the injunction permanent and shall enter such other orders and decrees as may be necessary and convenient to carry out and enforce its judgment.<sup>110</sup>

**§ 5.85. Effect on subchapter D.**

The provisions of this subchapter supplement, and do not in any way limit, the joinder of parties provided in subchapter D.<sup>111</sup>

**§ 5.86. Other remedies abolished.**

Bills of interpleader and bills in the nature of interpleader are henceforth abolished.<sup>112</sup>

## ***Subchapter G. CLASS ACTIONS***

**§ 5.91. When class actions allowed.**

When there is a question of law or fact common to persons of a numerous class whose joinder is impracticable due to their number, their absence from the jurisdiction, or otherwise, one or more of them whose claims or defenses are representative of the claims or defenses of all and who will fairly and adequately protect the interests of all may sue or be sued on behalf of all.<sup>113</sup>

**§ 5.92. Elimination of representative character.**

Except when a class action is maintained as of right, the court may, at any time prior to entry of final judgment, order an amendment of the pleadings eliminating therefrom all reference to the representative character of the action and render judgment in such form as to bind only the parties to the action. In determining whether to order pleadings to be so amended, the court shall consider: (a) the size of the class and the court's ability to identify its members; (b) the nature and identity of interest of members of the class; (c) the number of

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<sup>109</sup> *Prior legislation:* L. 1963-64, ch. III (6:583); 1956 Code 6:133(3).

<sup>110</sup> *Prior legislation:* L. 1963-64, ch. III (6:584); 1956 Code 6:133(4).

<sup>111</sup> *Prior legislation:* L. 1963-64, ch. III (6:585).

<sup>112</sup> *Prior legislation:* L. 1963-64, ch. III (6:586).

<sup>113</sup> *Prior legislation:* L. 1963-64, ch. III (6:591); 1956 Code 6:126.

representatives, the extent of their interest, and the apparent ability and zeal with which they pursue their claims or defenses; (d) the adequacy of notice to members of the class; (e) the extent to which a decree issued by the court may be subject to relitigation by members of the class or may leave open further issues to be litigated by them; and (f) the extent to which a decree binding on the individual parties only will remedy the injury complained of by or against the members of the class.<sup>114</sup>

**§ 5.93. Secondary action by shareholders.**

In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall aver:

- (a) That the plaintiff was a shareholder at the time of the transaction of which he complains or that his share thereafter devolved on him by operation of law, and
- (b) That the action is not a collusive one to confer on a court of the Republic of Liberia jurisdiction of an action over which it would not otherwise have had jurisdiction.

The complaint shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires and the reason for his failure to obtain such action or the reasons for not making such efforts.<sup>115</sup>

**§ 5.94. Protective orders; notice.**

The court may, at any stage of the action, impose upon any or all parties such terms as shall fairly and adequately protect the interests of the members of the class on whose behalf the action is brought or defended. It may order that notice shall be given in such manner as it directs: (a) of the pendency of the action; (b) of a proposed settlement; (c) of rendition of judgment; or (d) of any other proceedings in the action, including notice to come in and present claims.<sup>116</sup>

**§ 5.95. Court approval for termination of action.**

A class action shall not be compromised, discontinued, or dismissed by consent, by default, or for failure to prosecute except with the approval of the court.<sup>117</sup>

**§ 5.96. Effect of judgment in class action.**

Except when the court, in accordance with the provisions of section 5.92 above, orders amendment of the pleadings to eliminate all reference to the representative character of the action, the judgment in an action

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<sup>114</sup> *Prior legislation:* L. 1963-64, ch. III (6:592).

<sup>115</sup> *Prior legislation:* L. 1963-64, ch. III (6:593); 1956 Code 6:127.

<sup>116</sup> *Prior legislation:* L. 1963-64, ch. III (6:594).

<sup>117</sup> *Prior legislation:* L. 1963-64, ch. III (6:595); 1956 Code 6:128.

brought under the provisions of section 5.91 above shall bind all members of the class on whose behalf the claims or defenses were made even if they do not participate in the action. When appropriate, members of the class shall be given notice to present their individual claims to share in an award, to prove their individual damages, or to litigate subsidiary issues not settled by the judgment in the class action.<sup>118</sup>

## **Chapter 6. JOINDER OF CLAIMS, CONSOLIDATION, AND SEVERANCE**

§ 6.1. Joinder permitted.

§ 6.2. Successive claims.

§ 6.3. Consolidation of claims.

§ 6.4. Judgment on multiple claims.

§ 6.5. Severance and separate trials.

### **§ 6.1. Joinder permitted.**

Two or more claims for relief, whether legal or equitable, may be joined in one pleading, provided that all claims so joined are triable in the same court and all belong to one of the following classes:

- (a) Contracts, express or implied;
- (b) Injuries to the person or property or both;
- (c) Injuries to the reputation;
- (d) Recovery of real property, with or without damages for the withholding thereof and for the rents and profits thereof;
- (e) Recovery of personal property, with or without damages for withholding such property;
- (f) Claims arising by virtue of a contract or by operation of law against a party in a fiduciary capacity.<sup>119</sup>

### **§ 6.2. Successive claims.**

A claim which heretofore was cognizable only after another claim had been prosecuted to a conclusion may now be joined with such other claim in a single action. But the court shall grant relief in the action in accordance with the relative substantive rights of the parties, and it may condition relief accordingly.<sup>120</sup>

### **§ 6.3. Consolidation of claims.**

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<sup>118</sup> *Prior legislation:* L. 1963-64, ch. III (6:596).

<sup>119</sup> *Prior legislation:* L. 1963-64, ch. III (6:601).

<sup>120</sup> *Prior legislation:* L. 1963-64, ch. III (6:602).

1. *Court order of consolidation.* When actions involving a common question of law or fact are pending before a court of record, the court, upon motion by any party or *sua sponte*, may order a joint trial of any or all the matters in issue or the consolidation of the actions; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

2. *Order to avoid unnecessary costs or delay.* The court in which the actions are consolidated or issues or claims tried together may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay.<sup>121</sup>

#### **§ 6.4. Judgment on multiple claims.**

When more than one claim for relief is presented in an action, the court may enter or direct the entry of a judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision shall be subject to revision at any time before the entry of judgment adjudicating all the claims.<sup>122</sup>

#### **§ 6.5. Severance and separate trials.**

1. *Order of severance and priority.* To further convenience or to avoid prejudice, a court may order severance of claims or issues. The court may order the trial of any claim or issue prior to the trial of other claims or issues.

2. *Jurisdiction unaffected by severance.* If severance is ordered, the court shall retain jurisdiction of all parties and of all severed claims.

3. *Protection of parties.* The provisions of paragraph 1 shall be in addition to any other provisions for the protection of parties.<sup>123</sup>

## ***Chapter 7. PROVISIONAL REMEDIES***

### **Subchapter A. In General**

§ 7.1. Kinds of provisional remedies.

§ 7.2. Provisional remedy in connection with counterclaim.

§ 7.3. Definition of "sheriff."

§ 7.4. Courts authorized to grant provisional remedies.

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<sup>121</sup> *Prior legislation:* L. 1963-64, ch. III (6:603).

<sup>122</sup> *Prior legislation:* L. 1963-64, ch. III (6:604).

<sup>123</sup> *Prior legislation:* L. 1963-64, ch. III (6:605); 1956 Code 6:125 (last sent.), 599.

§ 7.5. Effect of judgment for defendant on order granting provisional remedy.

### **Subchapter B. Attachment**

§ 7.11. Grounds for attachment.

§ 7.12. Debt or property subject to attachment; proper garnishee.

§ 7.13. Attaching creditor's rights in personal property.

§ 7.14. Discharge of garnishee's obligation.

§ 7.15. Application for order of attachment.

§ 7.16. Order of attachment.

§ 7.17. Service of writ of attachment.

§ 7.18. Levy on real property.

§ 7.19. Levy on personal property by seizure.

§ 7.20. Levy on personal property by service of writ of attachment.

§ 7.21. Sheriff's duties after levy.

§ 7.22. Priority of attachment.

§ 7.23. Garnishee's statement.

§ 7.24. Disclosure.

§ 7.25. Proceeding to determine adverse claims.

§ 7.26. Discharge of attachment.

§ 7.27. Vacating or modifying attachment.

§ 7.28. Annulment of attachment.

§ 7.29. Return of property; directions to clerk and sheriff.

§ 7.30. Disposition of attached property after execution issued.

### **Subchapter C. Arrest**

§ 7.41. Grounds for arrest.

§ 7.42. Order of arrest.

§ 7.43. Papers necessary to secure order.

§ 7.44. Service of writ; hearing.

§ 7.45. Release because of privilege or lack of grounds.

§ 7.46. Bail; release from custody.



- § 7.47. Action against bail surety.
- § 7.48. Liability of sheriff on bail bond.
- § 7.49. Vacating order of arrest; reducing bail.

#### **Subchapter D. Preliminary Injunctions**

- § 7.61. Grounds for preliminary injunction.
- § 7.62. Notice required.
- § 7.63. Procedure for securing preliminary injunction.
- § 7.64. Temporary restraining order.
- § 7.65. Vacating or modifying preliminary injunction or temporary restraining order.

#### **Subchapter E. Receivership**

- § 7.81. Appointment and powers of temporary receivers.
- § 7.82. Oath.
- § 7.83. Bond.
- § 7.84. Accounts.
- § 7.85. Removal.

#### **Subchapter F. Notice of Pendency**

- § 7.91. Notice of pendency.
- § 7.92. Filing, content, and indexing of notice of pendency.
- § 7.93. Duration of notice of pendency.
- § 7.94. Motion for cancellation of notice of pendency.
- § 7.95. Bond for cancellation of notice of pendency.

### ***Subchapter A. IN GENERAL***

#### **§ 7.1. Kinds of provisional remedies.**

The provisional remedies include attachment, arrest, injunction, receivership, and notice of pendency. On a motion for a provisional remedy, the plaintiff shall state whether any other provisional remedy has been secured or sought in the same action against the same defendant, and the court may require the plaintiff to elect

between those remedies to which he would otherwise be entitled. For this purpose, seizure of a chattel in an action to recover a chattel is a provisional remedy.<sup>124</sup>

### **§ 7.2. Provisional remedy in connection with counterclaim.**

A claim contained in a counterclaim entitles a defendant to the same provisional remedies to which he would be entitled if he were the plaintiff, the party against whom the judgment in the counterclaim is demanded were the defendant, and the claim were contained in the complaint.<sup>125</sup>

### **§ 7.3. Definition of "sheriff."**

Except where the context indicates to the contrary, the term "sheriff" as used in this chapter shall be deemed to include the ministerial officer of a court other than a Circuit Court when the provision wherein it is used is applied to such a court.<sup>126</sup>

### **§ 7.4. Courts authorized to grant provisional remedies.**

Provisional remedies may be granted only by courts of record, except that a justice or magistrate may issue an order of attachment authorizing the seizure of personal property only. A plaintiff in a court not of record may apply for any provisional remedy other than attachment and, if the statutory requirements are fulfilled, be granted an order allowing such remedy in the Circuit Court of the judicial circuit in which the court where the action is pending is located.<sup>127</sup>

### **§ 7.5. Effect of judgment for defendant on order granting provisional remedy.**

An order granting a provisional remedy is annulled immediately on judgment for the defendant unless an appeal is taken. The taking of an appeal continues a provisional remedy in effect until a judgment is rendered.<sup>128</sup>

## ***Subchapter B. ATTACHMENT***

### **§ 7.11. Grounds for attachment.**

An order of attachment may be granted in any action where the plaintiff has demanded and where there is reasonable ground for believing that he would be entitled, in whole or in part, or in the alternative to a money judgment against one or more defendants, when

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<sup>124</sup> *Prior legislation:* L. 1963434, ch. III (6:701); 1956 Code 6:380.

<sup>125</sup> *Prior legislation:* L. 1963-64, ch. III (6:702).

<sup>126</sup> *Prior legislation:* L. 1963.64, ch. III (6:703).

<sup>127</sup> *Prior legislation:* L. 1963-64, ch. III (6:704).

<sup>128</sup> *Prior legislation:* L. 1963-64, ch. III (6:705).

- (a) The defendant is a foreign corporation or not a domiciliary of the Republic; or
- (b) The defendant is domiciled in the Republic and cannot be personally served despite diligent efforts to do so; or
- (c) The defendant, with intent to defraud his creditors or to avoid service of summons, has departed or is about to depart from the Republic, or keeps himself concealed therein; or
- (d) The defendant, with intent to defraud his creditors, has assigned, disposed of or secreted property, or removed it from the Republic or is about to do any of these acts; or
- (e) The action is one for a money judgment enforceable under subchapter B of chapter 44.

The definition of the term money judgment in section 41.1 is applicable to this section.<sup>129</sup>

#### **§ 7.12. Debt or property subject to attachment; proper garnishee.**

Any debt or property against which a money judgment may be enforced as provided in section 44.23 is subject to attachment. The proper garnishee of any such debt or property is the person designated in section 44.36; for the purpose of applying the provisions of section 44.36 to attachment, references to a "judgment debtor" in that section shall be construed to mean "defendant."<sup>130</sup>

#### **§ 7.13. Attaching creditor's rights in personal property.**

Where a clerk of court has delivered a writ of attachment to a sheriff, the plaintiff's rights in a debt owed to the defendant or in an interest of the defendant in personal property against which debt or property a judgment may be enforced, are superior to the extent of the amount of the attachment to the rights of any transferee of the debt or property, except:

- (a) A transferee who acquired the debt or property before it was levied upon for fair consideration or without knowledge of the order of attachment; or
- (b) A transferee who acquired the debt or property for fair consideration after it was levied upon without knowledge of the levy and while such debt or property was not in the possession of the sheriff.<sup>131</sup>

#### **§ 7.14. Discharge of garnishee's obligation.**

A person who, pursuant to an order of attachment, pays or delivers to the sheriff money or other personal property in which a defendant has or will have an interest, or so pays a debt he owes the defendant, is discharged from his obligation to the defendant to the extent of the payment or delivery.<sup>132</sup>

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<sup>129</sup> *Prior legislation:* L. 1963-64, ch. III (6:711); L. 1959-60, ch. XLVIII (6:392); 1956 Code 6:392; Rev. Stat §§ 262, 322, 323; L. 1879-80, 9, § 1; OBB 33, Legal Principles and Rules, t II, ch. II. § 7, 10, 13, 2 Hub. 1527; 1828 Code, Orb. No. 13, 2 Hub. 1272, 1319.

<sup>130</sup> *Prior legislation:* L. 1963-64, ch. III (6:712); 1956 Code 6:398; Rev. Stat. § 327; OBB 33, Legal Principles and Rules, t. II, ch. II, § 16, 2 Hub. 1527.

<sup>131</sup> *Prior legislation:* L. 1963-64, ch. III,(6:713).

### **§ 7.15. Application for order of attachment.**

1. *Affidavit.* On an application for an order of attachment, the plaintiff shall file an affidavit subscribed and sworn to by himself, his attorney or agent, stating his claim and the damages that he believes he has sustained thereby, showing that one or more of the grounds of attachment provided by section 7.11 exist, and that he fears that the defendant cannot be found to be summoned or will not appear or answer if summoned, and that therefore he may be unable to enforce a judgment against the defendant without an attachment. A copy of the complaint shall be presented to the judge with the application.

2. *Bond by plaintiff.* On an application for an order of attachment, the plaintiff shall give a bond in an amount equal to one and one-half times the amount demanded in the complaint that the plaintiff shall pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the plaintiff fails to prosecute the case successfully or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property, and that the plaintiff shall pay to the sheriff all of his allowable fees.<sup>133</sup>

### **§ 7.16. Order of attachment.**

An order of attachment may be granted without notice in any court before or after service of summons and at any time prior to judgment. It shall specify the amount of the plaintiff's demand, be indorsed with the name and address of the plaintiff's attorney, and shall be directed to the sheriff of the county where the action was commenced who may direct it to the sheriff of another county where any property in which the defendant has an interest is located or where a garnishee may be served. The order shall direct the sheriff to levy within his jurisdiction at any time before final judgment upon so much of the property and upon so much of the debts owing to the defendant as will satisfy the plaintiff's demand together with probable interest, costs, sheriff's fees, and expenses.<sup>134</sup>

### **§ 7.17. Service of writ of attachment.**

If the property attached is in the possession of the defendant, a copy of the writ of attachment shall be served on him at the time of levy in the same manner as a summons. If the property attached is in the possession of a person other than the defendant, a copy of the writ of attachment shall be served on the defendant in the manner prescribed in section 8.3 at the time of service of the summons or at any time prior to the levy.<sup>135</sup>

### **§ 7.18. Levy on real property.**

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<sup>132</sup> *Prior legislation:* L. 1963-64, ch. III (6:714).

<sup>133</sup> *Prior legislation:* L. 1963-64, ch. III (6:715); 1956 Code 6:396, 397; Rev. Stat. §§ 325, 326; L. 1879-80, 9, §3; OBB 33, Legal Principles and Rules, t. II, ch. II, §14,2 Hub. 1527.

<sup>134</sup> *Prior legislation:* L. 1963-64, ch. III (6:716); 1956 Code 6:390; Rev. Stat. § 326; OBB 33, Legal Principles and Rules, t. II, ch. II, §8,2 Hub. 1527.

<sup>135</sup> *Prior legislation:* L. 1963-64, ch. III (6:717); 1956 Code 6:396; Rev. Stat. § 326; OBB 33, Legal Principles and Rules, t. II, ch. 11, §14,2 Hub. 1527.

The sheriff shall levy on real property under an order of attachment by posting notice of the attachment in a prominent place of the property and also on the door of the courthouse of the circuit where the property is located and in two other prominent public places in the circuit. The sheriff shall also file a notice of the attachment with reference to such real property in the office of the clerk of the probate court of the county where the property is located. The filing of such a notice shall have the same effect as the filing of a notice of pendency.<sup>136</sup>

#### **§ 7.19. Levy on personal property by seizure.**

The sheriff shall levy on personal property capable of manual delivery by taking property into his actual custody. The sheriff shall forthwith serve a copy of the writ of attachment in the same manner as service of a summons on the person from whose possession or custody the property is taken and give a receipt to such person.<sup>137</sup>

#### **§ 7.20. Levy on personal property by service of writ of attachment.**

1. *Method of levy.* The sheriff shall levy upon any interest of the defendant in personal property not capable of manual delivery or upon any debt owed to the defendant by serving a copy of the writ of attachment on the garnishee, or upon the defendant if the property to be levied upon is in the defendant's possession or custody, in the same manner as service of summons.

2. *Effect of levy on garnishee; prohibition against transfer.* A levy by service of a writ of attachment upon a person other than the defendant is effective only if, at the time of service, he owes a debt to the defendant or if he is in the possession or custody of property in which he knows or has reason to believe the defendant has an interest or if the plaintiff has stated in a notice which may be served with the writ that a specified debt is owed by the person served to the defendant or that the defendant has an interest in specified property in the possession or custody of the person served. All property in which the defendant is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the defendant, shall be subject to the levy. The person served with the writ shall forthwith transfer or deliver all such property and pay all such debts upon maturity to the sheriff and execute any documents necessary to effect the payment, transfer, or delivery. After such payment, transfer, or delivery, property coming into the possession or custody of the garnishee or debt incurred by him shall not be subject to levy. Until such payment, transfer, or delivery is made, or until the expiration of ninety days after the service of the writ of attachment upon him or of such further time as is provided by any subsequent order of the court, notice of which is served upon him by writ, whichever event first occurs, the garnishee is forbidden to cause or suffer any sale, assignment, or transfer of, or any interference with any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order

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<sup>136</sup> *Prior legislation:* L. 1963-64, ch. III (6:718).

<sup>137</sup> *Prior legislation:* L. 1963-64, ch. III (6:719); 1956 Code 6:398; Rev. Stat. § 327; OBB 33, Legal Principles and Rules, t. II, ch. II, §16, 2 Hub. 1527.

of the court. A garnishee, however, may collect or redeem an instrument received by him for such purpose and he may sell or transfer in good faith property held as collateral or otherwise pursuant to pledge thereof or at the direction of any person other than the defendant authorized to direct sale or transfer, provided that the proceeds in which the defendant has an interest be retained subject to the levy. A plaintiff who has specified personal property or a debt to be levied upon in a notice served with a writ of attachment shall be liable to the owner of the property or the person to whom the debt is owed, if other than the defendant, for any damages sustained by reason of the levy.

3. *Proceeding to compel delivery or payment.* Where property or debts have been levied upon by service of a writ of attachment, the plaintiff may commence a special proceeding against the garnishee served with the writ to compel the payment, delivery, or transfer to the sheriff of such property or debts. Notice of petition shall also be served on the sheriff of the county in which the attachment was issued. A garnishee may interpose any defense or counterclaim which he might have interposed against the defendant if sued by him. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 7.25.

4. *Failure to proceed.* At the expiration of ninety days after a levy is made by service of the writ of attachment or of such further time as the court, upon motion of the plaintiff, has provided, the levy shall be void except as to property or debts which the sheriff has taken into his actual custody, collected, or received, or as to which a proceeding in paragraph 3 has been commenced.<sup>138</sup>

#### **§ 7.21. Sheriff's duties after levy.**

1. *Retention of property.* The sheriff shall hold and safely keep all property or debts paid, transferred, assigned, or delivered to him or taken into his custody to answer any judgment that may be obtained against the defendant in the action, unless otherwise directed by the court or the plaintiff, subject to the payment of the sheriff's fees and expenses. If the urgency of the case requires, the court may direct sale or other disposition of property, specify the manner and terms thereof, with or without notice.

2. *Valuation of property seized.* After a levy under a writ of attachment and prior to making a return, the sheriff may call upon two qualified persons to appraise the attached property. If the appraisal indicates that more or less property has been seized than is sufficient to satisfy the amount stated in the writ of attachment, the sheriff may accordingly seize additional property or return some of the seized property to the person from whose possession or custody it was taken.

3. *Return; inventory.* Within five days after service of a writ of attachment or forthwith after such writ has been vacated or annulled, the sheriff shall file a return which shall include an inventory of property manually seized, a

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<sup>138</sup> *Prior legislation:* L. 1963-64, ch. III (6:720); 1956 Code 6:400, 402, 403; Rev. Stat. §§329, 334, 335; OBB 33, Legal Principles and Rules, t. H, ch. II, §§ 20, 21, 2 Hub. 1527.

statement of other property levied upon, a description of real property levied upon, the names and addresses of all persons served with the writ of attachment, and an estimate of the value of all property levied upon.<sup>139</sup>

**§ 7.22. Priority of attachment.**

The priority among two or more writs of attachment against the same defendant shall be in the order in which they were delivered to the officer who levied upon the property or debt.<sup>140</sup>

**§ 7.23. Garnishee's statement.**

Within ten days after service upon a garnishee of a writ of attachment, or within such shorter time as the court may direct, the garnishee shall file with the clerk of the court issuing the writ a statement specifying all debts of the garnishee to the defendant, when the debts are due, all property in the possession or custody of the garnishee in which the defendant has an interest, and the amounts and value of the debts and property specified. If the garnishee has money belonging to the defendant in at least the amount of the attachment, he may limit his statement to that fact.<sup>141</sup>

**§ 7.24. Disclosure.**

Upon motion of any interested person, at any time after the granting of an order of attachment and prior to final judgment in the action, upon such notice as the court may direct, the court may order disclosure by any person of information regarding any property in which the defendant has an interest or any debt owing to the defendant.<sup>142</sup>

**§ 7.25. Proceeding to determine adverse claims.**

Prior to the application of property which has been attached for the satisfaction of a judgment, any interested person may commence a special proceeding against the plaintiff to determine the rights of adverse claimants to the property or debt, by filing a notice of petition with the clerk and serving copies thereof upon all interested parties. The proceeding shall be commenced in the county where the writ of attachment is filed. The court may vacate or discharge the attachment, void the levy, direct the disposition of the property or debt, direct that bonds be provided or released, or direct that damages be awarded. Where there appear to be disputed questions of fact, the court shall order a separate trial indicating the person who shall have possession of the property pending a decision and the bond, if any, which such person shall give. If the court determines that the

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<sup>139</sup> *Prior legislation:* L. 1963-64, ch. III (6:721); 1956 Code 6:399, 401, 404, 406; Rev. Stat. §§ 328, 336; OBB 33, 63, 71, Legal Principles and Rules, t. II, ch. II, §§ 18, 19, 22, 23; ch. XIV, § 3, ch. XVIII, §§ 8, 10, 2 Hub. 1527, 1562, 1570.

<sup>140</sup> *Prior legislation:* L. 1963-64, ch. III (6:722).

<sup>141</sup> *Prior legislation:* L. 1963-64, ch. III (6:723).

<sup>142</sup> *Prior legislation:* L. 1963-64, ch. III (6:724).

adverse claim was fraudulent, it may require the claimant to pay the plaintiff reasonable expenses incurred in the proceeding, including reasonable attorney's fees, and any other damages suffered by reason of the claim.<sup>143</sup>

#### **§ 7.26. Discharge of attachment.**

A defendant whose property has been levied upon under an order of attachment may move, upon notice to the plaintiff and the sheriff, for an order discharging the attachment as to all or a part of the property upon payment of the sheriff's fees and expenses. On such a motion, the defendant shall give a bond, in an amount equal to the value of the property sought to be discharged, that the defendant will pay to the plaintiff the amount of any judgment which may be recovered in the action against him, not exceeding the amount of the bond.<sup>144</sup>

#### **§ 7.27. Vacating or modifying attachment.**

Prior to the application of property which has been levied upon to the satisfaction of a judgment, the defendant, the garnishee, or any person having an interest in the property may move, on notice to all parties and the sheriff, for an order vacating or modifying the order of attachment. Upon the motion, the court shall give the plaintiff a reasonable opportunity to correct any defect in the attachment. If, after the defendant has appeared in the action, the court determines that the attachment is unnecessary to the security of the plaintiff, it shall vacate the order of attachment.<sup>145</sup>

#### **§ 7.28. Annulment of attachment.**

An order of attachment is annulled when the action in which it was granted abates or is discontinued, or a judgment entered therein in favor of the plaintiff is fully satisfied, or a final judgment is entered therein in favor of defendant.<sup>146</sup>

#### **§ 7.29. Return of property; directions to clerk and sheriff.**

Upon motion of any interested person, on notice to the sheriff and each party, the court may direct the sheriff to remove a notice of attachment and to dispose of, account for, assign, return, or release any property or debt, or the proceeds thereof, or any bond, or to file additional inventories or returns, subject to the payment of the sheriff's fees and expenses.. The court shall direct that notice of motion be given to other persons interested in the property or debt, or the proceeds thereof, sought to be returned or released.<sup>147</sup>

#### **§ 7.30. Disposition of attached property after execution issued.**

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<sup>143</sup> *Prior legislation:* L. 1963-64, ch. III (6:725).

<sup>144</sup> *Prior legislation:* L. 1963-64, ch. III (6:726); 1956 Code 6:410; Rev. Stat. § 331.

<sup>145</sup> *Prior legislation:* L. 1963-64, ch. III (6:727); 1956 Code 6:408; Rev. Stat. § 330; OBB 33, Legal Principles and Rules, t. II, ch. II, §§ 24, 25, 26, 2 Hub. 1527.

<sup>146</sup> *Prior legislation:* L. 1963-64, ch. III (6:728).

<sup>147</sup> *Prior legislation:* L. 1963-64, ch. III (6:729); 1956 Code 6:412; Rev. Stat. § 332.



Where an execution is issued upon a judgment entered against the defendant, the sheriff's duty with respect to custody and disposition of property acquired by levy pursuant to an order of attachment is the same as if he had acquired it by levy pursuant to the execution.<sup>148</sup>

## ***Subchapter C. ARREST***

### **§ 7.41. Grounds for arrest.**

An order for arrest as a provisional remedy may be granted only where the plaintiff has demanded, and where there is reasonable ground for believing that he would be entitled to

- (a) A judgment requiring payment of a sum of money, failure to satisfy which through execution will subject the judgment debtor to imprisonment under section 44.71(2);
- (b) A judgment requiring payment of a sum of money failure to pay which may be punishable as a contempt under section 44.71(3); or
- (c) A judgment requiring the performance of an act, neglect or refusal to perform which would be punishable by the court as a contempt under section 44.71(4);

and where the defendant is not a resident of the Republic or is about to depart therefrom, by reason of which nonresidence or departure there is danger that such judgment will be rendered ineffectual.<sup>149</sup>

### **§ 7.42. Order of arrest.**

An order of arrest as a provisional remedy may be granted, in the discretion of the court, without notice, before or after service of summons and at any time before judgment. The order shall be issued by a judge of the court in which the action is pending or is about to be commenced. It shall specify the amount of bail. Pursuant to the order, the clerk shall issue a writ to the sheriff which shall be endorsed with the name and address of the plaintiff's attorney and be directed to the sheriff of any county in which the defendant may be located. The writ shall command the sheriff to arrest the defendant forthwith, and bring him before the court in the county where the arrest is made, for a hearing within a time specified in the order, not exceeding forty-eight hours, exclusive of Sundays and public holidays.<sup>150</sup>

### **§ 7.43. Papers necessary to secure order.**

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<sup>148</sup> *Prior legislation:* L. 1963-64, ch. III (6:730).

<sup>149</sup> *Prior legislation:* L. 1963-64, ch. III (6:741); 1956 Code 6:421; Rev. Stat. § 306; OBB 33, Legal Principles and Rules, t. II, ch. II, §§ 28, 29, 2 Hub. 1527.

<sup>150</sup> *Prior legislation:* L. 1963-64, ch. III (6:742); 1956 Code 6:421 (last sent.); Rev. Stat. § 311; OBB 33, Legal Principles and Rules, t II, ch. II, §§ 28,29, 2 Hub. 1527.

1. *Affidavit.* On a motion for an order of arrest, the plaintiff shall show, by affidavit and such other evidence as may be submitted, that he has a valid claim, that he has demanded and that there is reasonable ground for believing that he would be entitled to a judgment of the nature specified in section 7.41 and either that the defendant is not a resident of the Republic or that he is about to depart therefrom, by reason of which nonresidence or departure there is a danger that such judgment or order will be rendered ineffectual. The plaintiff shall also show sufficient facts from which the amount of bail may be determined.

2. *Bond to be given by plaintiff.* Before granting an order of arrest, the court shall require the plaintiff to give a bond in an amount fixed by the court conditioned on payment by the plaintiff to the defendant of all legal costs and damages which may be sustained by reason of the arrest if the defendant recovers judgment or if it is finally decided that the plaintiff was not entitled to arrest the defendant.<sup>151</sup>

#### **§ 7.44. Service of writ; hearing.**

The clerk shall deliver to the sheriff the writ of arrest, a copy of the affidavit and other papers on which the order of arrest was based, and the summons and complaint, if not already served. The sheriff shall serve such papers upon the defendant at the time of making the arrest. If, within the time specified in the order, the sheriff shall not have brought the defendant before the court for a hearing, he shall be liable to the defendant for damages for delay.<sup>152</sup>

#### **§ 7.45. Release because of privilege or lack of grounds.**

If the court finds at any time after the arrest that the defendant is privileged from arrest, it shall discharge him from custody and vacate the order of arrest. If the court finds at or after the hearing that the defendant should not be continued in custody, it may discharge him from custody and vacate the order of arrest.<sup>153</sup>

#### **§ 7.46. Bail; release from custody.**

A defendant who has been arrested shall be given immediate opportunity to procure a bail bond or, if in custody, shall be allowed to give a bail bond at any time before compliance with the judgment. Such bond shall be in the amount specified as bail in the order of arrest and shall be to the effect that the defendant will pay the sum of money or perform the act required by the judgment which may be entered against him in the action or, in default of such payment or performance, that he will at all times render himself amenable to proceedings to punish him for default. In lieu of a bond the defendant may deposit with the sheriff the amount of money specified as bail in the order of arrest. After the defendant has deposited the required amount of money or after he has given the bail bond to the sheriff and it has received the ex parte approval of the judge, the sheriff shall immediately release the defendant, give him a receipt for any money deposited, and, if a bond was furnished,

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<sup>151</sup> *Prior legislation:* L. 1963-64, ch. III (6:743); 1956 Code 6:423; Rev. Stat. § 312.

<sup>152</sup> *Prior legislation:* L. 1963-64, ch. III (6:744); 1956 Code 6:424; Rev. Stat. § 309; OBB 33, Legal Principles and Rules, t. II, ch. H, §32, 2 Hub. 1527.

<sup>153</sup> *Prior legislation:* L. 1963-64, ch. III (6:745).

within three days serve a copy thereof upon the plaintiff, whereupon the sheriff shall be exonerated from all liability. If the court does not approve the bond, the court shall remand the defendant to the custody of the sheriff. Except as otherwise provided in this subchapter, the provisions of chapter 63 apply to acceptance of bail and justification of bail surety.<sup>154</sup>

**§ 7.47. Action against bail surety.**

An action shall not be commenced against a bail surety until after the return of execution wholly or partly unsatisfied if the order of arrest was granted under section 7.41(a). In an action to recover on a bail bond, it shall be a defense to the bail surety that the principal has died, that he has been legally discharged from the obligation to perform the act to secure which the bail bond was given, that he is imprisoned on a criminal charge, or that the defendant has surrendered himself or been surrendered to the sheriff. Such defenses shall bar recovery on the bond if they arise at any time prior to rendition of a judgment thereon; but if they arise after the commencement of action on the bond, the court may condition a judgment in favor of the bail surety upon such terms as justice requires.<sup>155</sup>

**§ 7.48. Liability of sheriff on bail bond.**

If the sheriff allows the person who has been arrested to escape or if he fails to deposit as required by section 63.1 any money or other valuables given him as security for the bail bond, he shall be liable as bail surety. The sheriff shall be discharged from such liability upon the allowance of bail given by him or upon recapture of the defendant at any time before he is finally charged as such surety.<sup>156</sup>

**§ 7.49. Vacating order of arrest; reducing bail.**

Whether or not he is in the sheriff's custody, the defendant may move at any time to vacate or modify the order of arrest or to reduce bail. The court shall give the plaintiff a reasonable opportunity to comply with the provisions of this subchapter or to make any correction or amendment which will tend to uphold the validity of the arrest. The failure of the plaintiff diligently to prosecute the action in which the order of arrest was granted shall be a ground for vacating the order of arrest.<sup>157</sup>

## ***Subchapter D. PRELIMINARY INJUNCTIONS***

**§ 7.61. Grounds for preliminary injunction.**

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<sup>154</sup> *Prior legislation:* L. 1963-64, ch. III (6:746); 1956 Code 6:426, 427, 429; Rev. Stat. §§ 313, 314; OBB 33, 40, Legal Principles and Rules, t. II, ch. II, § 34; ch. III, § 4; 2 Hub. 1527, 1535.

<sup>155</sup> *Prior legislation:* L. 1963-64, ch. III (6:747).

<sup>156</sup> *Prior legislation:* L. 1963-64, ch. III (6:748); 1956 Code 6:431; Rev. Stat. § 317.

<sup>157</sup> *Prior legislation:* L. 1963-64, ch. III (6:749); 1956 Code 6:428; Rev. Stat. § 319.

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.<sup>158</sup>

#### **§ 7.62. Notice required.**

A preliminary injunction may be granted only upon notice to the defendant. Notice of the motion may be served either prior to commencement of the action or at any time prior to judgment.<sup>159</sup>

#### **§ 7.63. Procedure for securing preliminary injunction.**

1. *Affidavit and other evidence.* On a motion for a preliminary injunction, the plaintiff shall show by affidavit and such other evidence as may be submitted, that he has a claim against the defendant, and that one of the grounds provided in section 7.61 exists as a basis for issuance of the requested order.

2. *Pleadings and service of writ of injunction.* If on a motion for a preliminary injunction the complaint in an action has not yet been served, it shall be filed at the time of making the motion. If a preliminary injunction is granted, the judge shall direct the issuance of a writ of injunction, specifying the acts restrained or to be performed. Such writ shall be served on the defendant in the manner of service of summons. If an answer has not yet been served in the action, it shall be served within ten days after service of the writ of injunction.

3. *Bond.* Prior to the granting of a preliminary injunction, the plaintiff shall give a bond in an amount to be fixed by the court, to the effect that the plaintiff, if it is finally determined that he was not entitled to an injunction, will pay all damages and costs which may be incurred by any party who is found to have been wrongfully enjoined.<sup>160</sup>

#### **§ 7.64. Temporary restraining order.**

1. *Prerequisites for issuance.* If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss, or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Prior to the granting of a motion for a temporary restraining order, the plaintiff shall give a bond in an amount to be fixed by the court, to the effect that the plaintiff, if it is finally determined that he was not entitled to a restraining order, will pay all damages and costs which may be incurred by any party who is found to have been wrongfully restrained.

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<sup>158</sup> *Prior legislation:* L. 1963-64, ch. III (6:761).

<sup>159</sup> *Prior legislation:* L. 1963-64, ch. III (6:762).

<sup>160</sup> *Prior legislation:* L. 1963-64, ch. III (6:763).

2. *Contents; duration.* Every temporary restraining order granted shall be indorsed with the date and hour of issuance, shall be filed forthwith in the clerk's office and entered of record, shall define the injury and state why it is irreparable, and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a period not to exceed ten days, or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

3. *Time for hearing of preliminary injunction.* Upon the granting of a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time. Such hearing shall take precedence over all matters except older matters of the same character. The party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order.

4. *Service of order.* Unless the court orders otherwise, a temporary restraining order together with the papers on which it was based, and a notice of hearing for the preliminary injunction, shall be personally served upon the defendant in the same manner as a summons.<sup>161</sup>

#### **§ 7.65. Vacating or modifying preliminary injunction or temporary restraining order.**

1. *Preliminary injunction.* A defendant enjoined by a preliminary injunction may move at any time on notice to the plaintiff to vacate or modify it.

2. *Temporary restraining order.* On motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his absence or disability, another judge, may vacate or modify the order. An order granted without notice and vacating or modifying a temporary restraining order shall be effective when, together with the papers on which it is based, it is filed with the clerk and served upon the plaintiff.

3. *Bond as prerequisite for vacating or modifying.* As a condition to granting an order vacating or modifying a preliminary injunction or a temporary restraining order, a court may require the defendant to give a bond, in an amount to be fixed by the court, that the defendant will pay to the plaintiff any loss sustained by reason of the vacating or modifying order.

4. *Answer as prerequisite for vacating or modifying.* If, when a defendant moves to vacate or modify a preliminary injunction or a temporary restraining order, the answer in the action has not yet been filed, it shall be filed at the time of making the motion.<sup>162</sup>

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<sup>161</sup> *Prior legislation:* L. 1963-64, ch. III (6:764); 1956 Code 6:1080-1084; Rev. Stat. §§ 339-342; OBB 33, Legal Principles and Rules, t. II, ch. II, §§ 37-39, 2 Hub. 1527.

<sup>162</sup> *Prior legislation:* L. 1963-64, ch. III (6:765); 1956 Code 6:1084; Rev. Stat. §§ 341, 344; OBB 33, Legal Principles and Rules, t. II, ch. II, § 41, 2 Hub. 1527.

## ***Subchapter E. RECEIVERSHIP***

### **§ 7.81. Appointment and powers of temporary receiver.**

1. *Appointment.* Upon motion of a person having an apparent interest in property which is the subject of an action in a court of record a temporary receiver of the property may be appointed at the time of or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the Republic, or lost, materially injured, or destroyed. A motion made by a person not already a party to the action constitutes an appearance in the action and the person shall be joined as a party.

2. *Powers.* The court appointing a receiver may authorize him to take and hold real and personal property, and sue for, collect and sell debts or claims, upon such trusts and for such purposes as the court shall direct. A receiver shall have no power to employ counsel unless expressly so authorized by order of the court. Upon motion of the receiver or a party, power granted to a temporary receiver may be extended or limited or the receivership may be extended to another action involving the same property.

3. *Duration of receivership.* A temporary receivership shall not continue after final judgment unless otherwise directed by the court.<sup>163</sup>

### **§ 7.82. Oath.**

A temporary receiver, before entering upon his duties, shall be sworn faithfully and fairly to discharge the trust committed to him. The oath may be administered by a notary public.<sup>164</sup>

### **§ 7.83. Bond.**

A temporary receiver shall give a bond in an amount to be fixed by the court making the appointment that he will faithfully discharge his duties.<sup>165</sup>

### **§ 7.84. Accounts.**

A temporary receiver shall keep written accounts itemizing receipts and expenditures and naming the depository of receivership funds, which shall be open to inspection by any person interested in the property. Upon motion of the receiver or of any person interested in the property, the court may require the keeping of particular records or direct or limit inspection or require presentation of a temporary receiver's accounts. Notice of a

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<sup>163</sup> *Prior legislation:* L. 1963-64, ch. III (6:781).

<sup>164</sup> *Prior legislation:* L. 1963-64, ch. III (6:782).

<sup>165</sup> *Prior legislation:* L. 1963-64, ch. III (6:783).

motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on his bond as well as upon each party not in default for failure to appear.<sup>166</sup>

#### **§ 7.85. Removal.**

Upon motion of any party or upon its own initiative, the court which appointed a receiver may remove him at any time.<sup>167</sup>

### ***Subchapter F. NOTICE OF PENDENCY***

#### **§ 7.91. Notice of pendency.**

A notice of pendency may be filed in any action in a court of the Republic of Liberia in which the judgment or order demanded would affect the title to, or the possession, use, or enjoyment of, real property. The pendency of such an action is constructive notice, from the time of filing of the notice only, to a purchaser from, or encumbrancer against, any defendant against whose name a notice of pendency is indexed. A person whose conveyance or encumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as if he were a party.<sup>168</sup>

#### **§ 7.92. Filing, content, and indexing of notice of pendency.**

1. *Filing.* In a case specified in section 7.91, the notice of pendency shall be filed at the time of or after service of summons and prior to judgment in the office of the clerk of the Circuit Court of the county in which the land is located. The clerk of the Circuit Court shall transmit a copy of such notice for filing to the clerk of the probate court of the same county. Unless the complaint has already been filed in such office, it shall be filed with the notice of pendency.

2. *Content; designation of index.* A notice of pendency shall state the names of the parties to the action, the object of the action, and a description of the property affected. The notice of pendency shall contain a designation of the names of each defendant against whom the notice is directed to be indexed.

3. *Indexing.* The clerk of the probate court with whom a notice of pendency is filed shall immediately record it and index it against the names designated. In an action for partition, a notice of pendency shall be indexed against the names of each plaintiff and each defendant.<sup>169</sup>

#### **§ 7.93. Duration of notice of pendency.**

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<sup>166</sup> *Prior legislation:* L. 1963-64, ch. III (6:784).

<sup>167</sup> *Prior legislation:* L. 1963-64, ch. III (6:785).

<sup>168</sup> *Prior legislation:* L. 1963-64, ch. III (6:791).

<sup>169</sup> *Prior legislation:* L. 1963-64, ch. III (6:792).

A notice of pendency shall be effective until the expiration of a period of two years from the date of filing or until judgment, whichever first occurs. Before expiration of a period or extended period, the court upon motion of the plaintiff and upon such notice as it may require, for good cause shown, may grant an extension for an additional period not exceeding two years. An extension order shall be filed, recorded, and indexed before expiration of the prior period.<sup>170</sup>

**§ 7.94. Motion for cancellation of notice of pendency.**

1. *Mandatory cancellation.* The court, upon motion of any person aggrieved and upon such notice as it may require, shall direct any clerk of a probate court with whom a notice of pendency has been filed to cancel such notice if the action has been settled, discontinued, or abated; or if the time to appeal from a final judgment against the plaintiff has expired.

2. *Discretionary cancellation.* The court, upon motion of any person aggrieved and upon such notice as it may require, may direct any clerk of a probate court with whom a notice of pendency has been filed to cancel such notice if the plaintiff has not prosecuted the action in good faith.

3. *Costs and expenses.* The court, in an order cancelling a notice of pendency under this section, may direct the plaintiff to pay any costs and expenses occasioned by the filing and cancellation in addition to any costs of the action.<sup>171</sup>

**§ 7.95. Bond for cancellation of notice of pendency.**

Upon motion of any person aggrieved and upon such notice as it may require, the court may direct any clerk of a probate court with whom a notice of pendency has been filed to cancel such notice upon such terms as are just, if the moving party shall give a bond in an amount to be fixed by the court and if the court finds that adequate relief can be secured to the plaintiff by the giving of such a bond.<sup>172</sup>

## ***Chapter 8. FORM, FILING, AND SERVICE OF PAPERS***

§ 8.1. Form of papers.

§ 8.2. Filing of papers.

§ 8.3. Service of papers.

**§ 8.1. Form of papers.**

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<sup>170</sup> *Prior legislation:* L. 1963-64, ch. III (6:793).

<sup>171</sup> *Prior legislation:* L. 1963-64, ch. III (6:794).

<sup>172</sup> *Prior legislation:* L. 1963-64, ch. III (6:795).



1. *Quality, size, and legibility.* Each paper served or filed shall be durable, white, and except for summonses, subpoenas, and exhibits, of legal size. The writing, typewriting, or printing shall be legible and in black ink. Beneath each signature shall be printed the name signed.

2. *Language.* Each paper served or filed shall be in the English language which, where practicable, shall be of ordinary usage. Where an affidavit or exhibit is in a foreign language, the certified copy of the original shall be annexed to the paper with which it is served or filed, accompanied by an English translation and an affidavit by the translator stating his qualifications and that the translation is accurate.

3. *Caption.* Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the file number of the action if one has been assigned. In a complaint or a judgment the title of the action shall include the names of all the parties, but in all other papers it shall be sufficient to state the name of the first party on each side with an appropriate indication of any omissions.

4. *Name of attorney or party.* Each paper served or filed shall be signed by the attorney for the party serving or filing the paper and his address shall be stated thereon, or if the party does not appear by attorney, the paper shall be signed by the party, whose address shall be stated thereon. The signature of an attorney or a party constitutes a certificate by him that he has read the paper; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

5. *Copies.* Unless otherwise specifically provided, copies of all papers and affidavits and exhibits may be served and filed.

6. *Defects in form; waiver.* A defect in form of a paper, if a substantial right of any party is not prejudiced thereby, shall be disregarded by the court, and leave to correct shall be freely granted. The party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within two days after the receipt thereof, he returns the paper to the party serving it with a statement of particular objections.<sup>173</sup>

## **§ 8.2. Filing of papers.**

1. *Requirement.* All pleadings, affidavits, and other papers required to be served in an action shall be filed. If a party fails to comply with this paragraph, the court, on motion by any party, may order any papers not filed to be regarded as stricken.

2. *Place of filing.* Except as otherwise required by law or order of court, papers required to be filed shall be filed with the clerk of the court in which the action is pending or will be brought.<sup>174</sup>

## **§ 8.3. Service of papers.**

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<sup>173</sup> *Prior legislation:* Par. 3: L. 1963-64, ch. III (6:801); 1956 Code 6:254; Rev. Stat. §§ 286, 289; L. 1911-12, 3, §6. Par. 4: L. 1963-64, ch. III (6:801); 1956 Code 6:257.

<sup>174</sup> *Prior legislation:* L. 1963-64, ch. III (6:802).

1. *General requirement.* Every order required to be served, every pleading, every written motion other than one which may be heard *ex parte* and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties affected thereby; but no service need be made on parties in default for failure to appear except as provided in section 9.2(2).

2. *Person who may serve.* A person who may serve a summons under the provisions of section 3.36 may serve any other paper required by law to be served.

3. *Upon an attorney.* Except as otherwise required by law or order of court, papers required to be served upon a party in a pending action shall be served upon his attorney by one of the following methods:

- (a) By delivering the paper to the attorney personally;
- (b) By mailing the paper to the attorney by registered mail at the address designated by him for that purpose or, if none is designated, at his last known address;
- (c) If the office of the attorney is open, by leaving the paper with a person in charge;
- (d) By leaving the paper at the residence of the attorney within the Republic with a person of suitable age and discretion; providing that the person to whom the paper is delivered is then residing therein. Service upon an attorney shall not be made at his residence unless service at his office cannot be made. Receipt of the paper may be proved by a receipt by the party to whom the paper was delivered.

4. *Upon a party.* If a party has not appeared by attorney or his attorney cannot be served, service shall be upon the party himself by one of the following methods:

- (a) By delivering the paper to the party personally;
- (b) By mailing the paper to the party at his last known address by registered mail;
- (c) By leaving the paper at the residence of the party within the Republic with a person of suitable age and discretion; providing that the person to whom the paper is delivered is then residing therein.

5. *When service by mail is complete.* Service by mail shall be complete upon deposit of the paper in a post office or official depository of the post office within Liberia. The date of such deposit shall be evidenced by the post office receipt showing the mailing of the paper by registered mail to the addressee at his last known address.<sup>175</sup>

## ***Chapter 9. PLEADINGS***

§ 9.1. Kinds of pleadings.

§ 9.2. Service of pleadings.

§ 9.3. Form of pleadings.

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<sup>175</sup> *Prior legislation* Par. 1: L. 1963-64, ch. III (6:803); 1956 Code 6: 226; Rev. Stat. 300. Pars. 3, 4, 5: L. 1963-64, ch. III (6: 803); 1956 Code 6: 227.

- § 9.4. Verification and signing of pleadings.
- § 9.5. Pleading special matters.
- § 9.6. Alternative pleadings.
- § 9.7. Claims for relief.
- § 9.8. Defenses and objections.
- § 9.9. Counterclaims.
- § 9.10. Amended pleadings.
- § 9.11. Procedure in case of newly discovered evidence before trial.
- § 9.12. Construction of pleadings; relief to be granted.
- § 9.13. Costs arising out of untrue statements in pleadings.

### **§ 9.1. Kinds of pleadings.**

1. *Pleadings required.* Except as provided in paragraph 2, there shall be a complaint and an answer; and there shall be a reply to an answer which contains affirmative matter or a counterclaim. No other pleading shall be allowed.

2. *When answer not required.* If a defendant appears within the time prescribed by section 3.62, his failure to interpose an answer shall be deemed a general denial of all the allegations in the complaint. At the trial, such a defendant may cross-examine plaintiff's witnesses and introduce evidence in support of his denial but he may not introduce evidence in support of any affirmative matter.<sup>176</sup>

### **§ 9.2. Service of pleadings.**

1. *Time of service of complaint.* The complaint shall be served with the summons or, in case the summons is served by publication, the complaint shall be mailed to the last known address of the defendant with a copy of the publication containing the summons.

2. *Manner of service.* Any pleading asserting new or additional claims for relief shall be served upon a party who has not appeared in the manner provided for service of a summons. In any other case, a pleading shall be served in the manner provided for service of papers generally.

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<sup>176</sup> *Prior legislation:* L. 1963-64, ch. III (6:901); 1956 Code 6:250; Rev. Stat. §§ 291, 294, 297; OBB 46, Legal Principles and Rules, t. II, ch. VI, §§ 1, 4, 2 Hub. 1541.

3. *Time of service of responsive pleading.* Except as provided in section 11.3(10) service of an answer or reply shall be made within ten days of service of the pleading to which it responds.<sup>177</sup>

### **§ 9.3. Form of pleadings.**

1. *Pleadings to be written.* All pleadings shall be in writing, except that in a justice's or magistrate's court, the pleadings shall be oral and the substance of the answer shall be written on the back of the summons.

2. *Technical form not required.* Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading are required. Pleading forms contained, in the appendix of forms are sufficient under the requirements of this title and are illustrative of the degree of particularity required.

3. *Paragraphs and separately numbered claims and defenses.* All averments of claim or defense shall be made in numbered paragraphs. Each paragraph shall be limited as far as practicable to a single set of circumstances. A paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense shall be separately stated and numbered whenever a separation facilitates the clear presentation of the matters set forth.

4. *Adoption by reference; exhibits.* Any statement in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.<sup>178</sup>

### **§ 9.4. Verification and signing of pleadings.**

1. *Verification required.* Every written pleading except one containing only issues of law shall be verified on oath or affirmation that the averments or denials are true upon the affiant's personal knowledge or upon his information and belief.

2. *Person required to verify.* The verification shall be made by:

- (a) the party serving the pleading, or, if there are two or more parties united in interest and pleading together by at least one of them; or
- (b) by the attorney of such party; provided, however, that the complaint in an action to secure an injunction or in a prohibition proceeding shall in every case be verified by the party himself.

3. *Equity rule abolished.* The rule in equity that averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished.

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<sup>177</sup> *Prior legislation:* L. 1963-64, ch. III (6:902); 1956 Code 6:221, 226, 297, 311; Rev. Stat. §§ 288, 291, 294, 300, 636; J. P. Code § 23; OBB 113, Judiciary, art. IV, §11; OBB 44, 45, Legal Principles and Rules, t. II, ch. V, §5; t. VI, § 1, 2 Hub. 1540, 1541.

<sup>178</sup> *Prior legislation:* Par 1: L. 1963-64, ch. III (6:903); 1956 Code Par. 2: L. 1963-64, ch. III (6:903); 1956 Code 6:251. Par. 4: L. 1963-64, ch. III (6:903); 1956 Code 6:256.

4. *Signature required; meaning.* Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. A party who is not represented by an attorney shall sign his pleading. The signature of an attorney constitutes a certificate by him that he has read the pleading, that to the best of his knowledge, information, and belief, there is good ground to support it, and that it is not interposed for delay. The signature of a party constitutes a certificate by him that the pleading is not interposed for delay.

5. *Effect of improper verification or certification.* If a pleading is not properly verified or certified, or if it is verified or certified with intent to defeat the purpose of this section, it may be stricken, and the action may proceed as though the pleading had not been served.

6. *Disciplining the attorney.* For a willful violation of this section an attorney may be subjected to appropriate disciplinary action.<sup>179</sup>

#### **§ 9.5. Pleading special matters.**

1. *Capacity.* It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

2. *Fraud, mistake, condition of mind.* In all averments of fraud or mistake the circumstances constituting the fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.

3. *Conditions precedent.* In pleading the performance or occurrence of conditions precedent it is sufficient to aver generally that all conditions precedent have been duly performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

4. *Official document or act.* In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law.

5. *Judgment.* In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

6. *Time and place.* For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

7. *Special damages.* When items of special damage are claimed, they shall be specifically stated.<sup>180</sup>

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<sup>179</sup> *Prior legislation:* L. 1963-64, ch. III (6:904); 1956 Code 6:257; Acts 1846, Act to amend the Judiciary Act, § 8, 2 Hub. 1652.

### **§ 9.6. Alternative pleadings.**

A party may set forth two or more statements of a claim or defense in the alternative. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. All statements shall be made subject to the obligations set forth in section 9.4.<sup>181</sup>

### **§ 9.7. Claims for relief.**

A pleading which sets forth a claim for relief, whether an original claim or counterclaim, shall contain (a) a short and plain statement of the claim showing that the pleader is entitled to relief, and (b) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.<sup>182</sup>

### **§ 9.8. Defenses and objections.**

1. *Presentation of defenses in responsive pleading.* Every defense, in law or fact, to a claim for relief in any pleading, whether a claim or counterclaim, shall be asserted in the responsive pleading thereto if one is required, except that the defenses enumerated in section 11.2 may at the option of the pleader be made by motion.

2. *Denials.* A party shall deny those averments of an adverse party which are known or believed by him to be untrue. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this shall have the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he shall make his denials as specific denials of designated averments or paragraphs, or he shall generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, if he does so intend to controvert all its averments, he may do so by a general denial.

3. *Effect of failure to deny.* Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.

4. *Affirmative defenses.* In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of

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<sup>180</sup> *Prior legislation:* L. 1963-64, ch. III (6:905); 1956 Code 6:258.

<sup>181</sup> *Prior legislation:* L. 1963-64, ch. III (6:906); 1956 Code 6:25.1.

<sup>182</sup> *Prior legislation:* L. 1963-64, ch. III (6:907); 1956 Code 6:270; OBB 41, Legal Principles and Rules, t. II, ch. II, §§ 3, 5, 2 Hub. 1536; Acts 1846, Act to amend the Judiciary Act, §8, 2 Hub. 1653.

consideration, fraud, illegality, injury by a fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.

5. *Objection in responsive pleading to lack of definiteness and certainty.* If a complaint or answer is so vague or ambiguous that a responsive pleading cannot be framed with complete understanding of the allegations of the preceding pleading, the party making the responsive pleading may include therein an objection on that ground. Any such objection shall include a statement of the defects complained of and the clarification desired. The party to whose pleading objection has been made may on trial introduce evidence to prove his allegations without modifying them or may within two days after the service of the objecting pleading serve an amended pleading called a 'better writ' to meet the objection of his opponent. The latter may then amend his pleading in response to the allegations of the better writ. Neither the better writ nor a pleading amended because of such writ shall affect the right of the party serving it to an amendment within the provisions of section 9.10.

6. *Objection to scandalous matter.* A party may include in his answer or reply an objection to the pleading to which he is responding on the ground that it contains scandalous matter unnecessarily inserted, or he may move within ten days after service of a reply to strike scandalous matter unnecessarily inserted therein. The court may order any such matter stricken from a pleading either on the making of such an objection or motion by the opposing party or on its own motion.<sup>183</sup>

#### **§ 9.9. Counterclaims.**

1. *Counterclaims permitted.* A pleading may state as a counterclaim against an opposing party any claim triable in the court in which the action was brought and belonging to the same class as the claim made by the opposing party, as those classes are defined by section 6.1 of this title.

2. *Counterclaim in excess of opposing claim.* A counterclaim may claim relief equal to or in excess of the amount sought by the opposing party.

3. *Counterclaim maturing or acquired after pleading.* A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

4. *Omitted counterclaim.* When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect or when justice requires, he may set up the counterclaim by amendment under the provisions of section 9.10.

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<sup>183</sup> *Prior legislation:* Par. 1: L. 1963-64, ch. III (6:908); 1956 Code 6:292, 294, 311; Rev. Stat. §§ 289, 290, 295; OBB 44, 45, Legal Principles and Rules, t. II, ch. V, §§ 3, 8; ch. VI, §§ 1-2, 2 Hub. 1540, 1541. Par. 2: L. 1963-64, ch. III (6:908); 1956 Code 6:292; Rev. Stat., § 290. Par. 3: L. 1963-64, ch. III (6:908); 1956 Code 6:296; Rev. Stat., §§ 288, 296, 302; OBB 44, Legal Principles and rules, t. H, ch. H, § 6, 2 hub. 1540. Par. 4: L. 1963-64, ch. III (6:908); 1956 Code 6:294; Rev. Stat. §§ 289, 290; OBB 44, Legal Principles and Rules, t. II, ch. V, § 8, 2 Hub. 1540. Par. 5: L. 1961-64, ch. III (6:908); 1956 Code 6:260; Rev. Stat. §303. Par. 6: L. 1963-64, ch. III (6:908); 1956 Code 6:259; Rev. Stat. §301.

5. *Bringing in additional parties.* When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim, the court shall order them to be brought in as defendants as provided in this title, if jurisdiction of them can be obtained.

6. *Separate judgment or counterclaim.* If the court orders separate trials, judgment on a counterclaim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.<sup>184</sup>

#### **§ 9.10. Amended pleadings.**

1. *Amendment to pleading permitted.* At any time before trial any party may, insofar as it does not unreasonably delay trial, once amend any pleading made by him by:

- (a) Withdrawing it and any subsequent pleading made by him;
- (b) Paying all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading; and
- (c) Substituting an amended pleading.

2. *Pleading in response to amended pleading.* There shall be an answer or reply to an amended pleading if an answer or reply is required to the pleading being amended. Service of such an answer or reply shall be made within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

3. *Amendment of pleading already filed in case of amendment of pleading to which it responds.* If an amendment is made in a pleading after the service of a responsive pleading, an amendment may be made within ten days to the responsive pleading if such amendment is necessitated by the new matter added to the opposing pleading, and such amendment to the responsive pleading shall not affect the right of the party making it to make another amendment under paragraph I of this section.

4. *Relation back of amendments.* Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment is deemed to have been interposed at the time the claims in the original pleading were interposed.

5. *Method of amending.* An amended pleading in a court of record shall be rewritten, retyped, or reprinted in its entirety and served on the opposing party in accordance with the requirements of section 8.3.<sup>185</sup>

#### **§ 9.11. Procedure in case of newly discovered evidence before trial.**

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<sup>184</sup> *Prior legislation:* L. 1963-64, ch. III (6:909); 1956 Code 6:295; Rev. Stat. §§289, 294, 636; J. P. Code § 23.

<sup>185</sup> *Prior legislation:* L. 1963-64, ch. III (6:910); 1956 Code 6:320-322; Rev. Stat. §§ 304, 305, 631(4); J. P. Code § 18(4); OBB 41, 44, 45, Legal Principles and Rules, t. II, ch. IV, § 23; ch. V, § 6; ch. VI, § 7, 2 Hub. 1536,1540,1541.



At any time before submission of the case to the court or jury, the court may, on motion with notice, grant to a party permission to introduce new evidence in addition to the allegations of his pleading. A motion under this section shall be granted only if the moving party shows to the satisfaction of the court by affidavit that at the time of service of the pleading he did not know and could not with reasonable diligence have known of the facts as to which such evidence is offered. If the motion is granted, the former pleading shall be withdrawn and a new one filed which shall conform to the evidence introduced.<sup>186</sup>

#### **§ 9.12. Construction of pleadings; relief to be granted.**

1. *Construction to do substantial justice.* All pleadings shall be so construed as to do substantial justice.

2. *Granting of justified relief.* Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.<sup>187</sup>

#### **§ 9.13. Costs arising out of untrue statements in pleadings.**

Allegations or denials made without reasonable cause and not in good faith and found to be untrue shall subject the attorney pleading them to the payment of reasonable expenses actually incurred by the other party by reason of untrue pleading, together with a reasonable attorney's fee, to be taxed by the opposing counsel and approved by the court.<sup>188</sup>

## ***Chapter 10. MOTIONS IN GENERAL***

- § 10.1. Definition and general procedure.
- § 10.2. Judge may hear motion.
- § 10.3. Where motion to be made.
- § 10.4. Motion papers.
- § 10.5. Incorrect designation not ground for denial.
- § 10.6. Relief demanded by other than moving party.
- § 10.7. Default on motion.
- § 10.8. Form of order.
- § 10.9. Entry and filing of order.
- § 10.10. Service of order.

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<sup>186</sup> *Prior legislation:* L. 1963-64, ch. III (6:911).

<sup>187</sup> *Prior legislation: Par. 1:*L. 1963-64, ch. III (6:912); 1956 Code 6:253. *Par. 2:* L. 1963-64, ch. III (6:912); 1956 Code 6:841.

<sup>188</sup> *Prior legislation:* L. 1963-64, ch. III (6:913).

§ 10.11. Noting order as judgment.

### **§ 10.1. Definition and general procedure.**

1. *Motion defined; when and how made.* A motion is an application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought. A written motion is made when a notice of the motion is served. Unless made during a hearing or trial, a motion shall be in writing and shall state with particularity the grounds therefor and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

2. *Application by motion.* Every application to the court for an order shall be made by motion.<sup>189</sup>

### **§ 10.2. Judge may hear motion.**

Except as otherwise expressly provided by statute or rule of court any motion may be heard by the court or a judge thereof. A statute providing that a motion is to be made to a court or that an order shall be given by a court shall be deemed to refer to the court or a judge thereof. The Circuit Court of each judicial district and each probate court may require by rule that motions be made before the court on particular days of the week or times of the month, but no rule of court shall contain any provision preventing a party from making a motion before a judge of such court when the court cannot hear and determine the motion if the party will be prejudiced by delay.<sup>190</sup>

### **§ 10.3. Where motion to be made.**

1. *In the Circuit Court.* A motion in an action or proceeding in the Circuit Court shall be made in the Circuit Court or before the resident or assigned judge of the judicial district where the action is pending or has been tried, or in the case of an action not yet commenced, in any judicial district where venue is proper.

2. *In Probate Court.* A motion in an action or proceeding in the Monthly and Probate Court of Montserrat County or in a provisional monthly and probate court shall be made before such court or before a judge of such court.<sup>191</sup>

### **§ 10.4. Motion papers.**

1. *Notice of motion.* A notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded, and the grounds therefor. Relief in the alternative or of several different types may be demanded.

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<sup>189</sup> *Prior legislation:* L. 1963-64, ch. III (6:1001); 1956 Code 6:360.

<sup>190</sup> *Prior legislation:* L. 1963-64, ch. III (6:1002).

<sup>191</sup> *Prior legislation:* L. 1963-64, ch. III (6:1003).

2. *Affidavit for ex parte motion.* An ex parte motion shall be accompanied by an affidavit stating the result of any prior motion for similar relief.

3. *Furnishing papers to the court.* The moving party shall furnish at the hearing all papers not previously filed and necessary to the consideration of the questions involved. Where such papers are in the possession of an adverse party, they shall be produced at the hearing by the latter on notice served with the motion papers. Only papers served in accordance with the provisions of this section shall be read in support of, or in opposition to the motion, unless the court for good cause shall otherwise direct.<sup>192</sup>

#### **§ 10.5. Incorrect designation not ground for denial.**

The incorrect designation of the kind of motion applied for shall not be ground for its denial.<sup>193</sup>

#### **§ 10.6. Relief demanded by other than moving party.**

Papers served in resistance to a motion may include a demand for relief from the moving party. Relief in the alternative or of several different types may be demanded; relief need not be responsive to that demanded by the moving party.<sup>194</sup>

#### **§ 10.7. Default on motion.**

If the party making a motion fails to appear, the motion shall be denied provided the motion papers are submitted to the court. If a party does not appear to oppose a motion or fails to furnish the papers demanded on due notice, the motion shall be granted on proof of due service of the notice and required papers.<sup>195</sup>

#### **§ 10.8. Form of order.**

An order determining a motion, whether made by a court or a judge, shall be in writing if made upon supporting papers. It shall be signed by the judge who made it, state the court of which he is judge and the place and date of the signature, recite the papers used on the motion, and give the determination or direction in such detail as the judge deems proper.<sup>196</sup>

#### **§ 10.9. Entry and filing of order.**

An order determining a motion shall be entered and filed by the clerk of the court where the action or proceeding is triable.<sup>197</sup>

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<sup>192</sup> *Prior legislation:* L. 1963-64, ch. III (6:1004); 1956 Code 6:360.

<sup>193</sup> *Prior legislation:* L. 1963-64, ch. III (6:1005).

<sup>194</sup> *Prior legislation:* L. 1963-64, ch. III (6:1006).

<sup>195</sup> *Prior legislation:* L. 1963-64, ch. III (6:1007).

<sup>196</sup> *Prior legislation:* L. 1963-64, ch. III (6:1008).

<sup>197</sup> *Prior legislation:* L. 1963-64, ch. III (6:1009).

**§ 10.10. Service of order.**

Service of an order may be made by serving a copy of the order certified to be a true copy by the clerk or an attorney.<sup>198</sup>

**§ 10.11. Noting order as judgment.**

The clerk shall note an order directing the payment of money, including motion costs, or affecting the title to real property, as a judgment in accordance with the provisions of section 41.4, at the request of any party.<sup>199</sup>

## ***Chapter 11. PRETRIAL MOTIONS AND PRACTICE***

§ 11.1. Demurrers abolished.

§ 11.2. Motion to dismiss.

§ 11.3. Motion for summary judgment.

§ 11.4. Motion or supporting papers in bad faith.

§ 11.5. Want of prosecution.

§ 11.6. Voluntary discontinuance.

§ 11.7. Offer to allow judgment.

§ 11.8. Tender.

**§ 11.1. Demurrers abolished.**

Demurrers are hereby abolished. Defenses and objections to the pleadings shall be presented in the pleadings or by motion.<sup>200</sup>

**§ 11.2. Motion to dismiss.**

*1. Time; grounds.* At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds:

- (a) That the court has not jurisdiction of the subject matter of the action;
- (b) That the court has not jurisdiction of the person;

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<sup>198</sup> *Prior legislation:* L. 1963-64, ch. III (6:1010).

<sup>199</sup> *Prior legislation:* L. 1963-64, ch. III (6:1011).

<sup>200</sup> *Prior legislation:* L. 1963-64, ch. III (6:1101); 1956 Code 6:293; Rev. Stat. §§ 291,293.

- (c) That the court has not jurisdiction of a thing involved in the action;
- (d) That there is another action pending between the same parties for the same cause in a court in the Republic of Liberia;
- (e) That the party asserting the claim has not legal capacity to sue.

2. *Deferring hearing permitted.* A motion under this section shall be heard and determined before trial on application of either party, unless the court for good cause orders that the hearing and determination thereof be deferred until the trial.

3. *Evidence.* Upon the hearing of the motion, either party may submit affidavits, depositions, admissions, and documentary evidence to be considered by the court with the pleadings.

4. *Immediate trial permitted.* The court may on hearing of the motion try and determine immediately any disputed questions of fact upon affidavits and evidence offered by the parties unless the opposing party is entitled to and has not waived a jury trial.

5. *Facts available to opposing party.* Should it appear from affidavits submitted in opposition to the motion that facts essential to opposition may exist but cannot then be obtained, the court may defer hearing of the motion or grant a continuance.

6. *Waiver.* A party waives any defense enumerated in paragraph 1 of this section which he does not present either by motion as hereinbefore provided or in his answer or reply, except that lack of jurisdiction over the subject matter is not so waived; but no defense is waived because another defense is asserted in the same motion or in the responsive pleading.<sup>201</sup>

### **§ 11.3. Motion for summary judgment.**

1. *Time for motion; grounds.* A party seeking to recover upon a claim or to obtain a declaratory judgment may, at any time after the expiration of ten days from the commencement of the action or after service of the answer if the answer is served before the expiration of such period often days or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or a part thereof. A party against whom a claim or counterclaim is sought may, at any time, move with or without supporting affidavits for summary judgment in his favor as to all or a part thereof.

2. *Time of hearing and serving resisting affidavits.* The hearing shall be held at least five days after service of the notice of motion. The adverse party may serve resisting affidavits prior to the day of the hearing.

3. *Basis for granting summary judgment.* The court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law. When a motion for summary judgment is made and supported as provided in this section, the

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<sup>201</sup> *Prior legislation:* L. 1963-64, ch. III (6:1102); 1956 Code 6:293; Rev. Stat. §§ 291, 293.

adverse party may not rest on mere allegations or denials of his pleading, but his response by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue for trial; if he does not so respond, summary judgment, if appropriate, shall be entered against him.

4. *Judgment for opposing party without cross-motion.* If it appears that the opposing, rather than the moving, party is entitled to summary judgment, the court may grant such judgment without the necessity of a cross-motion.

5. *Summary judgment not available in marital actions.* A motion for summary judgment shall not be made in an action for an annulment or divorce.

6. *Judgment for less than all the relief asked.* Judgment may be granted as to one or more claim or defenses, or as to one or more of several parties plaintiff or defendant to the extent warranted, on such terms as may be just. The court may render a summary judgment, interlocutory in character, on the issue of liability alone although there is a genuine issue as to the amount of damages.

7. *Limitation of issues of fact for trial.* If a motion for summary judgment is denied or is granted for less than all the relief asked, the court, by examining the papers before it and by interrogating counsel, shall, if practicable, ascertain which facts are not in dispute and are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order authorized under section 12.5.

8. *Materials considered on motion.* The court shall consider the pleadings, affidavits, depositions, admissions, and documentary evidence submitted by the parties. Supporting and resisting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supported or opposed by depositions or by further affidavits.

9. *Facts unavailable to opposing party.* Should it appear from affidavits submitted in resistance to the motion that facts essential to justify resistance may exist but cannot then be obtained, the court may defer the hearing of the motion or grant a continuance.

10. *Time for answer after denial of motion.* The making of a motion for summary judgment before a responsive pleading is due under the provisions of section 9.2(3) postpones the time within which such pleading must be served after denial of the motion until five days after service of notice of the court's action.<sup>202</sup>

#### **§ 11.4. Motion or supporting papers in bad faith.**

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<sup>202</sup> *Prior legislation:* L 1963-64, ch. III (6: 1103).

If the court determines that any motion or supporting paper is employed under sections 11.2 or 11.3 in bad faith or solely for the purpose of delay, it shall order the party employing it to pay to the other parties the reasonable expenses which the motion or supporting paper caused them to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.<sup>203</sup>

#### **§ 11.5. Want of prosecution.**

Where a claimant unreasonably neglects to proceed in the action against any party who may be liable to a separate judgment, the court, on its own motion or upon the application of that party, on notice, may dismiss the claimant's pleading on terms. Unless the order specifies otherwise, the dismissal is not on the merits.<sup>204</sup>

#### **§ 11.6. Voluntary discontinuance.**

1. *Without an order.* Except as otherwise provided by law any party asserting a claim may discontinue it without an order

- (a) By serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading or a motion for summary judgment is served, whichever first occurs, and filing the notice with proof of service with the court; or
- (b) By filing with the court a stipulation in writing signed by the attorneys of record for all parties.

2. *By order of court.* Except as provided in paragraph 1, an action shall not be discontinued by the claimant except upon order of the court and upon such terms and conditions as the court deems proper.

3. *Discontinuance after submission.* A discontinuance may not be granted after the case has been submitted to the court or jury to determine the facts except upon the stipulation of all parties.

4. *Effect of discontinuance.* Unless otherwise stated in the notice, stipulation, or order of discontinuance, the discontinuance is without prejudice, except that a discontinuance by means of notice under paragraph 1(a) of this section operates as an adjudication on the merits if the party has once before discontinued by any method an action based on or including the same claim for relief in a court of the Republic of Liberia.

5. *Costs of previously discontinued action.* If a plaintiff who has discontinued an action in any court, domestic or foreign, commences another action based upon or including the same claim against the same defendant, the court, upon motion by the defendant, may make such order for the payment of costs of the action previously discontinued as it may deem proper and may stay the proceedings in the subsequent action until the plaintiff has complied with the order.<sup>205</sup>

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<sup>203</sup> *Prior legislation:* L. 1963-64, ch. III (6:1104).

<sup>204</sup> *Prior legislation:* L. 1963-64, ch. III (6:1105); 1956 Code 6:597; Rev. Stat. §§ 282, 403, 408; OBB 67, Legal Principles and Rules, t. II, ch. XVI, § 3, 2 Hub. 1565.

<sup>205</sup> *Prior legislation:* L. 1963-64, ch. III (6:1106); 1956 Code 6:596.

### **§ 11.7. Offer to allow judgment.**

Except in an action for annulment or divorce, any party against whom a claim is asserted and who may be liable to a separate judgment may, at any time more than ten days before trial, serve upon the claimant a written offer to allow judgment to be taken against him for a sum or property or to the effect therein specified, with costs then accrued. If within ten days thereafter, the defendant serves a written notice that he accepts the offer, either party may file the offer, with proof of acceptance, and thereupon the court shall have judgment entered accordingly. If the offer is not accepted and the claimant fails to obtain a more favorable judgment, he shall not recover costs from the time of the offer, but shall pay costs, plus reasonable attorney's fees fixed by the court, for defending the action from that time. An offer of judgment shall not be made known to the jury.<sup>206</sup>

### **§ 11.8. Tender.**

1. *Act of tender and payment into court.* In any action based upon contract, express or implied, a defendant who, before the action was commenced, tendered to the plaintiff or his agent an amount which he deemed sufficient to pay his obligation under the contract, may pay the amount tendered into court before serving his answer and allege the tender and payment in the answer.

2. *Effect.* Within ten days after service of the answer, the plaintiff may withdraw the amount deposited upon court order stating that the withdrawal is in satisfaction of the claim involved. The court shall have judgment entered dismissing the complaint without costs upon proof of such withdrawal. Where there is no withdrawal, the amount deposited, other than such sum as shall be applied to any judgment for plaintiff, shall be repaid to the defendant at the termination of the action. If it be determined upon the trial that the tender was made as alleged and was sufficient to have satisfied the obligation due under the contract, the plaintiff shall not recover interest from the date of the tender, nor costs of the action, but shall pay to the defendant costs, plus reasonable attorney's fees fixed by the court, for defending the action.

3. *Application to all types of claims.* A party against whom a counterclaim is asserted may allege a tender in the same cases and manner and with the same effect as in the case of a defendant pleading an answer to a complaint.

4. *Validity of tender.* The validity of a tender, for the purpose of this section, is unaffected by the place where made, unless a place for payment is specified in the contract, or by the debtor's request for a bill or receipt for the amount tendered, but no tender made before the obligation has become due is valid under this section. It may be made in legal tender or by certified check and is kept good if the debtor is able, during the entire period between the tender and the payment into court, to pay the creditor an equivalent sum of money on demand. The payment into court may be from any funds available to the debtor. Tender and payment into court shall not

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<sup>206</sup> *Prior legislation:* L. 1963-64, ch. III (6:1107).



be deemed an admission of the claim involved and shall not be made known to the jury. Where the allegation of tender or its validity is in question, the issue shall be determined by the court outside the presence of the jury.<sup>207</sup>

## ***Chapter 12. PRETRIAL CONFERENCES***

- § 12.1. Requirement for pretrial conference; scope of hearing.
- § 12.2. Time and notice of hearing; calendar.
- § 12.3. Conference of attorneys before pretrial conference.
- § 12.4. Attendance at conference required.
- § 12.5. Order.

### **§ 12.1. Requirement for pretrial conference; scope of hearing.**

1. *Purpose.* The court may direct the attorneys for the parties to appear before it for a conference for the following purposes in every action in which it appears likely that the time and expense of the litigation will be lessened thereby:

- (a) Simplification of the issues;
- (b) Obtaining admissions of fact and of documents to avoid unnecessary proof;
- (c) Limitation of the number of witnesses;
- (d) Disposition of any pending motions in the case;
- (e) Reference to a referee for findings on any issues which it seems advisable to refer in this manner;
- (f) Facilitation of the disposition of the case by any other means consonant with other provisions of the law.

2. *Settlement not to be discussed.* Settlement shall not be discussed except upon the request of all the parties.<sup>208</sup>

### **§ 12.2. Time and notice of hearing; calendar.**

As soon as possible after the case has been docketed, the clerk of the court shall, if directed by the court, serve on the attorneys a notice specifying the time and place for holding a pretrial conference. The time fixed for the conference shall be at least ten days after service of the notice. Upon motion of any party or upon its own initiative the court may on ten days' notice to the attorneys, order earlier or subsequent pretrial conferences.

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<sup>207</sup> *Prior legislation:* L. 1963-64, ch. III (6:1108).

<sup>208</sup> *Prior legislation:* L. 1963-64, ch. III (6:1201).

The court shall establish a special calendar on which actions scheduled for pretrial conferences shall be placed.<sup>209</sup>

**§ 12.3. Conference of attorneys before pretrial conference.**

The attorneys shall confer before the date scheduled for the pretrial conference to reach agreement upon as many matters as possible. Each attorney shall prepare and submit at the pretrial conference a memorandum statement of the matters agreed upon and of the factual and legal contentions to be made on behalf of his client as to the issues remaining in dispute.<sup>210</sup>

**§ 12.4. Attendance at conference required.**

1. *Attendance by attorneys and parties.* Attorneys who are thoroughly familiar with the action and are fully authorized to settle it or to make binding stipulations and concessions shall attend the pretrial conference. The parties may attend and the court may require their attendance.

2. *Penalty.* If the attorney for a party fails to prepare for, appear at, or participate in a pretrial conference, the court may treat such failure as a contempt and compel the appearance of the attorney. If a party fails to appear when ordered, the court may impose a fine and proceed with the case.<sup>211</sup>

**§ 12.5. Order.**

At the conclusion of the conference the court shall make a pretrial order reciting the action taken at the conference, including, but not restricted to, a statement of the issues for trial limiting them to those not disposed of by admissions or agreements of counsel, any leave granted for disclosure procedures, any disposition of motions, and any agreements by the parties with respect to the extent or manner of proof at the trial. The order shall be signed by the court and attorneys and, when entered, it shall become part of the record, superseding the pleadings and controlling the subsequent course of the action unless modified at or before trial to prevent manifest injustice.<sup>212</sup>

## ***Chapter 13. DISCLOSURE***

### **Subchapter A. Depositions**

§ 13.1. Depositions before action or pending appeal.

§ 13.2. Testimony of witness for action in another jurisdiction.

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<sup>209</sup> *Prior legislation:* L. 1963-64, ch. III (6:1202).

<sup>210</sup> *Prior legislation:* L. 1963-64, ch. III (6:1203).

<sup>211</sup> *Prior legislation:* L. 1963-64, ch. III (6:1204).

<sup>212</sup> *Prior legislation:* L. 1963-64, ch. III (6:1205).

- § 13.3. Depositions pending action.
- § 13.4. Securing attendance of witnesses.
- § 13.5. Production of things at the deposition.
- § 13.6. Failure of party giving notice to attend or to serve subpoena on witness.
- § 13.7. Persons before whom depositions may be taken.
- § 13.8. Conduct of examination and preparation of deposition.
- § 13.9. Objections to errors and irregularities in depositions.
- § 13.10. Use of depositions.

#### **Subchapter B. Physical or Mental or Blood Examination of Persons**

- § 13.51. Order for examination.
- § 13.52. Testimony of examining physician.
- § 13.53. Examination before commencement of action.

#### **Subchapter C. Enforcement**

- § 13.71. Motion to compel party to answer question.
- § 13.72. Penalties for failure to comply with order to disclose.

## ***Subchapter A. DEPOSITIONS***

### **§ 13.1. Depositions before action or pending appeal.**

#### *1. Before action.*

(a) *Petition.* A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of record of the Republic of Liberia may file a verified petition in the Circuit Court of the county wherein such adverse party or one of such adverse parties resides or can be served with process. If no adverse party resides or can be served with process in a county, the petition may be filed in any Circuit Court. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in a court of the Republic of Liberia but is presently unable to bring it or cause it to be brought; (2) the subject matter of the expected action and his interest therein; (3) his reasons for desiring to perpetuate such evidence; (4) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (5) the names and addresses of the persons to be examined and the

substance of the testimony which he expects to elicit from each. The petition shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition for the purpose of perpetuating such evidence.

- (b) *Notice and service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least ten days before the date of hearing the notice shall be served either within or without the Republic in the manner provided in chapter 3 for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in chapter 3, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent and otherwise carry out the purpose of the procedure.
- (c) *Order and examination.* If the court is satisfied that the perpetuation of evidence may prevent a failure or delay of justice, it shall make an order designating or describing the person whose deposition may be taken, and specify the subject matter of the examination. The depositions may then be taken or evidence secured in accordance with this chapter. For the purpose of applying the provisions of this chapter to depositions for perpetuating testimony, each reference in such chapter to the court in which the action is pending shall be deemed to refer to the court in which the petition to secure such testimony or other evidence was filed.

2. *Pending appeal.* If an appeal has been taken from a judgment of a Circuit Court or before taking of an appeal if the time therefor has not expired, the Circuit Court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate the testimony or other evidence for use in the event of further proceedings in the Circuit Court. In such case the party who desires to preserve the evidence may make a motion in the Circuit Court for leave to take the depositions upon the same notice and service thereof as if the action were pending in the Circuit Court. The motion shall show: (a) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (b) the reason for desiring to perpetuate such evidence. If the court finds that the perpetuation of the evidence is pro-per to avoid a failure or delay of justice, the moving party may proceed in the same manner as specified in this chapter for taking of depositions or securing such other evidence in actions pending in the Circuit Court.

3. *Action abolished.* An action to perpetuate testimony is henceforth not cognizable in the courts of the Republic of Liberia.<sup>213</sup>

### **§ 13.2. Testimony of witness for action in another jurisdiction.**

When under any mandate, writing, or commission issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness or witnesses in the Republic of Liberia, witnesses may be compelled to appear and testify in the same

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<sup>213</sup> *Prior legislation:* L. 1963-64, ch. III (6:1301).

manner and by the same process as may be employed for the purpose of taking testimony in actions pending in Liberia. The Circuit Court shall make any appropriate order in aid of taking such a deposition.<sup>214</sup>

### **§ 13.3. Depositions pending action.**

1. *Oral or written questions.* If the deposition is to be taken within Liberia, the examination shall be conducted only by oral questions. If the deposition is to be taken outside Liberia, the examination shall be conducted only by written questions.

2. *Application to court.* If an action has been commenced, any party may apply to the court, on notice, for leave to take the deposition of a person to secure evidence in support of a claim or defense in the action.

3. *Procedure when deposition to be taken within Liberia.* On the granting of an application made under paragraph 2 for leave to take a deposition within Liberia, the court, acting under the provisions of section 13.7, shall appoint a commissioner to take the deposition. The moving party shall give to every other party in the action three days' notice of the taking of the deposition, unless the court permits a shorter period. The notice shall be in writing, stating the time and place for taking the deposition, the name and address of each person to be examined, if known, and, if any name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

4. *Procedure when deposition to be taken outside Liberia.* If the person to be examined is outside Liberia, the party desiring his deposition shall, at the time of applying for leave of court in accordance with paragraph 2, file with the clerk of the court in which the action is pending written questions to be put to the deponent. On granting of an application for leave to take such a deposition the court, acting under the provisions of section 13.7, shall appoint a commissioner or issue letters rogatory. A magistrate or justice may not appoint a commissioner to take a deposition outside Liberia or issue letters rogatory. In an action in such a court, a party desiring to secure a deposition outside Liberia shall apply to the Circuit Court to which an appeal from the magistrate's or justice's court would lie, and such court may issue the commission or letters rogatory and stay the proceedings in the court below until the deposition has been secured. Notice of the taking of the deposition together with a copy of the written questions shall be served on every other party to the action at least fourteen days before the taking is to occur. The notice shall state the name and address of the person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within four days after receiving service of notice, a party may serve written cross-questions upon every other party. A copy of the notice and copies of all written questions shall be delivered by the party taking the deposition to the officer designated in the notice: The officer shall proceed promptly to take the testimony of the witness in response to the written questions and to prepare the deposition. The questions

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<sup>214</sup> *Prior legislation:* L. 1963-64, ch. III (6:1302).

shall not be revealed to the prospective deponent in advance of propounding them at the taking of the deposition.<sup>215</sup>

#### **§ 13.4. Securing attendance of witnesses.**

Where the person to be examined is not a party or a person who at the time of taking the deposition is an officer, director, member, or employee of a party, he shall be served with a subpoena. Unless the court orders otherwise, such subpoena must be served at least ten days before the examination. Proof of service of a notice to take a deposition as provided in section 13.3(3) or (4) constitutes a sufficient authorization for issuance by the clerk of the court of a subpoena for the persons named or described therein and for production by them of designated books, papers, and portable things as authorized in section 13.5.<sup>216</sup>

#### **§ 13.5. Production of things at the deposition.**

The notice or subpoena may require the production of books, papers, and portable things to be received in evidence at the deposition or used to refresh a witness's memory.<sup>217</sup>

#### **§ 13.6. Failure of party giving notice to attend or to serve subpoena on witness.**

If the party giving notice of the taking of a deposition upon oral examination fails to attend and proceed without informing all parties within a reasonable time that he will not attend, or if he fails to serve a subpoena upon a witness and the witness does not attend, and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him in so attending, including reasonable attorney's fees.<sup>218</sup>

#### **§ 13.7. Persons before whom depositions may be taken.**

1. *Within Liberia.* Within Liberia, depositions shall be taken before an officer authorized to administer oaths or before a person appointed for the purpose by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

2. *In foreign countries.* In a foreign country depositions shall be taken (1) on notice before a charge d'affaires, secretary of an embassy or legation, consul general, consul, vice consul or consular agent of Liberia, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient on application and notice, and on such terms, and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by

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<sup>215</sup> *Prior legislation:* L. 1963-64, ch. III (6:1303); 1956 Code 6:490, 491, 761, 762; Rev. Stat. §§ 363, 364; J. P. Code § 12(6); OBB 57, Legal Principles and Rules, t. II, ch. XII, §§ 24-26, 2 Hub. 1555.

<sup>216</sup> *Prior legislation:* L. 1963-64, ch. III (6:1304).

<sup>217</sup> *Prior legislation:* L. 1963-64, ch. III (6:1305).

<sup>218</sup> *Prior legislation:* L. 1963-64, ch. III (6:1306).

name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."

3. *Disqualification for interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel or is financially interested in the action.<sup>219</sup>

### **§ 13.8. Conduct of examination and preparation of deposition.**

1. *Oath of witness; record, objections; continuous examination.* The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken in writing. All objections made at the time of the examination as to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition and the deposition shall proceed. Evidence objected to shall be taken subject to the objections which may be ruled upon at the trial. All depositions shall be taken continuously and without unreasonable adjournment unless the court otherwise orders or the parties and the deponent otherwise stipulate.

2. *Examination and cross-examination.* Examination and cross-examination of deponents shall proceed as permitted in the trial of actions in open court.

3. *Translation of questions and answers into foreign language.* If the deponent to be examined does not understand and speak the English language, the court shall appoint a translator to translate all questions and answers into the language which he understands and speaks.

4. *Submission to witness; signing; changes.* When the testimony is fully transcribed, the officer taking the deposition shall require counsel on both sides to correct the minutes. The deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any immaterial changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the parties by stipulation waive the signing. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or other reason, if any, why the witness did not sign; and the deposition may then be used as fully as though signed, unless on a motion to suppress under section 13.9 the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

5. *Certification and filing by officer.* The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. If the deposition was taken

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<sup>219</sup> *Prior legislation:* L. 1963-64, ch. III (6:1307); 1956 Code 6:761; Rev. Stat. §§ 363, 366; OBB 57, Legal Principles and Rules, t. II, ch. XII, §§ 25, 26, 2 Hub. 1555.

under section 13.3(4) on written questions, he shall attach to it the copy of the notice and written questions received by him. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing. He shall also send copies of the deposition to all parties.

6. *Exhibits.* The officer taking the deposition shall mark for identification any documentary evidence or other exhibits proved or identified by the witness, and shall give to the parties other than the party producing such evidence an opportunity to copy and inspect it. The officer shall then return it to the party offering it and it shall be produced in evidence at the trial.

7. *Costs of deposition and copies.* Unless the court orders otherwise, the party taking the deposition shall bear the cost thereof and shall at his own expense promptly make a copy available to any party requesting it.<sup>220</sup>

### **§ 13.9. Objections to errors and irregularities in depositions.**

1. *When deposition offered in evidence.* Subject to the other provisions of this section, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

2. *To disqualification of person taking deposition.* Objection to the taking of a deposition because of disqualification of the person by whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

3. *To errors in manner of taking deposition.* Errors and irregularities occurring at the oral examination in the manner or taking the deposition, in the form of the question or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

4. *To transcription, preparation, and filing.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with under section 13.8 by the person taking the deposition are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with reasonable diligence might have been, ascertained.<sup>221</sup>

### **§ 13.10. Use of depositions.**

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<sup>220</sup> *Prior legislation:* L. 1961-CA, ch. III (6:1308); 1956 Code 6:761; Rev. Stat. § 363; OBB 57, Legal Principles and Rules, t. 11, ch. XII, § 26, 2 Hub. 1555.

<sup>221</sup> *Prior legislation:* L. 1963--64, ch. III (6:1309); 1956 Code 6:494.



1. *Circumstances under which usable.* At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used in accordance with any of the following provisions:

- (a) Any deposition may be used by any party for the purpose of impeaching the testimony of the deponent as a witness.
- (b) The deposition of an adverse party or of anyone who at the time of talking the deposition was an officer, director, member, or managing or authorized agent of an adverse party may be used against such adverse party by any other party for any purpose.
- (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose against any other party who was present or represented at the taking of the deposition or who had the notice required under this title provided the court finds: (1) that the witness is dead; (2) that the witness is out of the Republic of Liberia, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make its use desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

2. *Substitution of parties, prior actions.* Substitution of parties does not affect the right to use depositions previously taken. When an action has been brought in any court of the Republic of Liberia and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if taken therein.

3. *Effect of using depositions.* The introduction in evidence of a deposition or any part thereof makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use of a deposition as described in subparagraphs (a) or (b) of paragraph 1 of this section.<sup>222</sup>

## ***Subchapter B.* PHYSICAL OR MENTAL OR BLOOD EXAMINATION OF PERSONS**

### **§ 13.51. Order for examination.**

After commencement of an action in which the mental or physical condition or the blood relationship of a party, or of an agent or person in the custody or under the legal control of a party, is in controversy, the court in which

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<sup>222</sup> *Prior legislation:* L. 1963-64, ch. III (6:1310); 1956 Code 6:493; Rev. Stat. §§363, 366; OBB 57, Legal Principles and Rules, t. II, ch. XII, § 24, 2 Hub. 1555.

the action is pending may grant an order that such party or other person shall submit to a physical or mental or blood examination by a physician. Such an order shall be granted only on a motion for good cause shown and upon notice to the party to be examined and to all other parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.<sup>223</sup>

**§ 13.52. Testimony of examining physician.**

A physician who makes an examination pursuant to the provisions of section 13.51 may be called at the trial as a witness by the party who caused the examination to be made and is thereupon subject to examination and cross-examination like any other witness.<sup>224</sup>

**§ 13.53. Examination before commencement of action.**

A person who, before the commencement of an action or pending an appeal desires to secure a disclosure such as that obtainable under section 13.51 may secure an order in accordance with, and subject to, the conditions applicable to section 13.1.<sup>225</sup>

## ***Subchapter C. ENFORCEMENT***

**§ 13.71. Motion to compel party to answer question.**

If a party fails to answer any question propounded upon oral or written deposition, the deposition shall be completed on other matters or adjourned, as the proponent of the question may elect. Thereafter such proponent may on reasonable notice to all persons affected apply to the court to compel the question to be answered. If the motion is granted and if the court finds that the other party has without substantial justification failed to answer, the court shall require such party to pay to the examining party the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, it shall require the examining party to pay to the other party the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.<sup>226</sup>

**§ 13.72. Penalties for failure to comply with order to disclose.**

If a party fails to obey an order made under section 13.1 or 13.3 to appear at an examination for questioning or if a party or his agent or a person in the custody or under the legal control of a party fails to obey an order made under section 13.51 to appear for and submit to a physical or mental or blood examination, or if a party fails to

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<sup>223</sup> *Prior legislation:* L. 1963-64, ch. III (6:1351).

<sup>224</sup> *Prior legislation:* L. 1963-64, ch. III (6:1352).

<sup>225</sup> *Prior legislation:* L. 1963-64, ch. III (6:1353).

<sup>226</sup> *Prior legislation:* L. 1963-64, ch. III (6:1371).

obey an order made under section 13.71 requiring him to answer a designated question, the court may make such orders with regard to the failure as are just, among them the following:

- (a) an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order to disclose;
- (b) an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses;
- (c) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party; or
- (d) an order holding the disobedient party in contempt of court, except that no person may be held in contempt for refusal to submit to a physical or mental examination.<sup>227</sup>

## ***Chapter 14. SUBPOENAS AND OATHS AND AFFIRMATIONS***

- § 14.1. Scope of subpoena; form.
- § 14.2. Authority to issue.
- § 14.3. Service of subpoena; payment of fees.
- § 14.4. Motion to quash, fix conditions, or modify.
- § 14.5. Attendance pursuant to subpoena.
- § 14.6. Disobedience of subpoena.
- § 14.7. Oaths and affirmations.

### **§ 14.1. Scope of subpoena; form.**

A subpoena may require the attendance of a person to give testimony or to produce books, documents, or other things or both. A subpoena requiring the production of books, documents, or other things is referred to herein as a *subpoena duces tecum*. Every subpoena shall be issued under the signature of the judge or clerk and the seal of the court, shall state the name of the court and the title of the action, and shall command the person to whom it is directed to attend and give testimony or to produce the books, documents, or other things designated or to do both at a time and place therein specified.<sup>228</sup>

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<sup>227</sup> *Prior legislation:* L. 1963-64, ch. III (6:1372).

<sup>228</sup> *Prior legislation:* L. 1963-64, ch. III (6:1401); 1956 Code 6:745.

#### **§ 14.2. Authority to issue.**

1. *Without court order.* Subpoenas may be issued without a court order by the clerk of the court in which the action is brought or a judge of such court where there is no clerk.

2. *With court order.* A court order is required to compel attendance of any person confined in prison or to compel production of an original record or document where a certified transcript or copy is admissible in evidence.<sup>229</sup>

#### **§ 14.3. Service of subpoena; payment of fees.**

A subpoena shall be served by delivering a copy thereof to the person named therein. At the time of service, mileage shall be tendered or transportation provided.<sup>230</sup>

#### **§ 14.4. Motion to quash, fix conditions, or modify.**

The court in which the subpoena is returnable may on motion made before the time specified in the subpoena for compliance therewith quash or modify the subpoena if it is unreasonable or oppressive, or the court may impose reasonable conditions upon the grant or denial of a motion to quash or modify.<sup>231</sup>

#### **§ 14.5. Attendance pursuant to subpoena.**

1. *When person to attend.* A subpoena may provide that the person subpoenaed shall appear on the date stated and any recessed or adjourned date of the trial, hearing, or examination. If he is given reasonable notice of such recess or adjournment, no further process shall be required to compel his attendance on the adjourned date.

2. *Fee.* No witness shall be allowed to demand his fee after coming to the stand. This must be settled before or after he testifies.

3. *Attendance by substitute.* Any person may comply with a *subpoena duces tecum* by having the requisite books, documents, or things produced by a person able to identify them and testify concerning them.<sup>232</sup>

#### **§ 14.6. Disobedience of subpoena.**

Failure by a person without adequate excuse to comply with a subpoena served upon him shall be punishable as contempt of court. If the person who disobeys a subpoena is a party, the court may impose any of the penalties specified in section 13.72 which it deems appropriate.<sup>233</sup>

#### **§ 14.7. Oaths and affirmations.**

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<sup>229</sup> *Prior legislation:* L. 1963-64, ch. III (6:1402); 1956 Code 6:745.

<sup>230</sup> *Prior legislation:* L. 1963-64, ch. III (6:1403); 1956 Code 6:746.

<sup>231</sup> *Prior legislation:* L. 1963-64, ch. III (6:1404); 1956 Code 6:747.

<sup>232</sup> *Prior legislation:* L. 1963-64, ch. III (6:1405).

<sup>233</sup> *Prior legislation:* L. 1963-64, ch. III (6:1406); 1956 Code 6:748.

An oath or affirmation shall be administered in the form best calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs.<sup>234</sup>

## ***Chapter 15. CALENDAR PRACTICE***

§ 15.1. Control of calendars.

§ 15.2. Method of calendaring.

§ 15.3. Trial preferences.

### **§ 15.1. Control of calendars.**

The Chief Justice of the Supreme Court with the assistance of the Court Administrator shall formulate rules regulating the calendar practice for all courts of record.<sup>235</sup>

### **§ 15.2. Method of calendaring.**

Immediately upon receiving a return showing that the defendant or defendants in an action have been properly served with summons, the clerk shall place the case on the jury or nonjury calendar for civil cases, whichever may be appropriate, for the term of court next to open, except that if all defendants in a case have not been served at least fifteen days before the opening of such term of court, the case shall be placed on the calendar for the term after the one next to open. The cases docketed for a term of court shall be docketed in order of the date on which the clerk receives proof of service, except that cases entitled to preference shall be accorded priority over others.<sup>236</sup>

### **§ 15.3. Trial preferences.**

The following types of cases shall be entitled to a preference on the trial calendar:

- (a) An action brought by or against the Republic of Liberia or a political subdivision or municipal corporation of the Republic, or an officer or agency of the Republic on application of any such party;
- (b) An action for which a preference is provided by statute;
- (c) An action in which the interest of justice will be served by an early trial, including cases in which a material witness is about to depart from the country.<sup>237</sup>

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<sup>234</sup> *Prior legislation:* L. 1963-64, ch. III (6:1407); 1956 Code 6:560, 561; OBB 61, Legal Principles and Rules, t. II, ch. XIII, §§1, 2, 4.

<sup>235</sup> *Prior legislation:* L. 1963-64, ch. III (6:1501); 1956 Code 6:593.

<sup>236</sup> *Prior legislation:* L. 1963-64, ch. III (6:1502).

<sup>237</sup> *Prior legislation:* L. 1963-64, ch. III (6:1503).

## ***Chapter 16. SPECIAL PROCEEDINGS***

### **Subchapter A. General Procedure**

- § 16.1. Application of subchapter.
- § 16.2. Parties.
- § 16.3. Commencement of special proceeding.
- § 16.4. Citation; order to show cause.
- § 16.5. Pleadings.
- § 16.6. Time for return.
- § 16.7. Severance.
- § 16.8. Motions.
- § 16.9. Hearing.
- § 16.10. Trial.
- § 16.11. Judgment.

### **Subchapter B. Writs of Certiorari, Mandamus, Prohibition, and Error**

- § 16.21. Purpose of writs.
- § 16.22. Procedure in mandamus and prohibition.
- § 16.23. Procedure in certiorari.
- § 16.24. Procedure on application and hearing of writ of error.
- § 16.25. Parties.
- § 16.26. Appeal to Supreme Court en banc.
- § 16.27. Limitations on issuance.

### **Subchapter C. Writ of Quo Warranto**

- § 16.31. Grounds for issuance of writ of quo warranto.
- § 16.32. Procedure.
- § 16.33. Bond by relator.
- § 16.34. Arrest.
- § 16.35. Jury trial.

- § 16.36. Judgment.
- § 16.37. Appeal to Supreme Court en banc.

#### **Subchapter D. Habeas Corpus**

- § 16.51. Writ of habeas corpus defined.
- § 16.52. Who is entitled to writ.
- § 16.53. Procedure for obtaining writ.
- § 16.54. Jurisdiction to issue writ.
- § 16.55. When writ may issue.
- § 16.56. Damages for failure to issue writ.
- § 16.57. Form of writ.
- § 16.58. Service of writ.
- § 16.59. Duty of court or judge.
- § 16.60. Duty of defendant.
- § 16.61. Penalty for failure to return writ.
- § 16.62. Penalty for refusal to produce the body.
- § 16.63. Writ of arrest in habeas corpus proceeding.
- § 16.64. General powers of court or judge.
- § 16.65. Compulsory writ of habeas corpus.
- § 16.66. Citizens to aid execution of compulsory writ.
- § 16.67. Procedure at hearing.
- § 16.68. Damages for obstruction.
- § 16.69. Appeals from habeas corpus proceeding as supersedeas.

#### **Subchapter E. Condemnation Proceedings**

- § 16.71. Provision of funds for condemnation.
- § 16.72. When condemnation proceedings are necessary.
- § 16.73. Petition.
- § 16.74. Notice to be given.
- § 16.75. Procedure.
- § 16.76. Payment of judgment.

## **Subchapter F. Special Proceedings Concerning Mentally Disabled and Legally Incompetent Persons**

- § 16.81. Definitions.
- § 16.82. Jurisdiction.
- § 16.83. Emergency hospitalization.
- § 16.84. Hospitalization or commitment to custody by court order.
- § 16.85. Procedures for hospitalization and commitment to custody are exclusive.
- § 16.86. Judicial discharge of persons hospitalized or committed to custody.
- § 16.87. Administrative release of hospitalized person.
- § 16.88. Habeas corpus.
- § 16.89. Application to persons heretofore hospitalized or committed to custody.
- § 16.90. Hospitalization, commitment to custody, and adjudication of incompetency.
- § 16.91. Adjudication of incompetency and appointment of guardian.
- § 16.92. Bond, powers, and duties of guardian.
- § 16.93. Title to property of adjudicated incompetent.
- § 16.94. Compensation of guardian.
- § 16.95. Ancillary guardianship of nonresident incompetent.
- § 16.96. Restoration to legal capacity and discharge of guardian of property.
- § 16.97. Costs of proceedings.
- § 16.98. Support of mentally disabled persons in Government institutions.
- § 16.99. Receipt for person hospitalized and his personal property.
- § 16.100. Representation by counsel.
- § 16.101. Appeals.

## ***Subchapter A. GENERAL PROCEDURE***

### **§ 16.1. Application of subchapter.**

Except as otherwise provided by statute, the procedure in special proceedings shall be in accordance with the provisions of this subchapter.<sup>238</sup>

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<sup>238</sup> *Prior legislation:* L. 1963-64, ch. III (6:1601).



## **§ 16.2. Parties.**

The party commencing a special proceeding shall be styled the petitioner and any adverse party the respondent. After a proceeding has commenced, no party shall be joined or interpleaded and no intervention shall be allowed except by leave of court.<sup>239</sup>

## **§ 16.3. Commencement of special proceeding.**

A special proceeding is commenced by filing a petition with the clerk and issuance of a citation.<sup>240</sup>

## **§ 16.4. Citation; order to show cause.**

1. *Contents of citation.* A citation shall specify the time and place of the hearing on the petition, shall specify the supporting affidavits, if any, accompanying the petition, and shall direct that the respondent shall appear and file a return.

2. *Service of citation.* A citation shall be served in the same manner as a summons in an action. The petition and affidavits specified in the citation shall be served therewith on any adverse party at any time specified by the judge before the time at which the petition is noticed to be heard.

3. *Order to show cause.* The court may grant an order to show cause to be served, in lieu of a citation, at a time and in a manner specified in the order. The petition and supporting affidavits shall be served with the order to show cause.<sup>241</sup>

## **§ 16.5. Pleadings.**

There shall be a petition, which shall comply with the rules of a complaint in an action, and a return if there is an adverse party. There may be such other pleadings as are authorized in an action. The petition shall be accompanied by an affidavit stating the result of any prior application for a similar relief.<sup>242</sup>

## **§ 16.6. Time for return.**

A return and supporting affidavits, if any, shall be served at least one day before the time at which the petition is noticed to be heard.<sup>243</sup>

## **§ 16.7. Severance.**

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<sup>239</sup> *Prior legislation:* L. 1963-64, ch. III (6:1602).

<sup>240</sup> *Prior legislation:* L. 1963-64, ch. III (6:1603); 1957-58 Supp. 6:1254(1); L. 1955-56, ch. XVIII, § 1, L. 1954-55, ch. VIII, § 2.

<sup>241</sup> *Prior legislation:* L. 1963-64, ch. III (6:1604); 1957-58 Supp. 6:1202, 1211, 1221, 1254; L. 1955-56, ch. XVIII, §1; 1956 Code 6:1202, 1211, 1221, Rev. Stat. §§1388(2), 1397(1), 1399(1).

<sup>242</sup> *Prior legislation:* L. 1963-64, ch. III (6:1605); 1957-58 Supp. 6:1201, 1211, 1221, 1242; L. 1955-56, ch. XVIII, §1; 1956 Code 6:1201, 1211, 1221, 1242; Rev. Stat. §§ 1388(1), 1397(1), (2), 1399(1), 1400(1), (2).

<sup>243</sup> *Prior legislation:* L. 1963-64, ch. III (6:1606).

The court may at any time order a severance of a particular claim or counterclaim, or as to a particular party, and order that, as to such claim or party, the special proceeding continue as an action or as a separate special proceeding.<sup>244</sup>

#### **§ 16.8. Motions.**

Motions in a special proceeding made before the time at which the petition is noticed to be heard, shall be noticed to be heard at that time.<sup>245</sup>

#### **§ 16.9. Hearing.**

1. *Furnishing papers.* The petitioner shall furnish at the hearing all papers not previously filed which are necessary to the consideration of the questions involved. If such papers are in the possession of an adverse party, they shall be produced by such party at the hearing on notice. The court may require the submission of additional proof. All papers furnished to the court shall be filed if not filed previous to the hearing.

2. *Summary determination.* The court shall make a summary determination upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. The court may make any orders permitted on a motion for summary judgment under paragraphs 6 and 7 of section 11.3.<sup>246</sup>

#### **§ 16.10. Trial.**

If triable issues of fact are raised on a special proceeding, they shall be tried forthwith and the court shall make a final determination thereon. If issues are triable of right by jury, the court shall give the parties an opportunity to demand a jury trial of such issues. Failure to make such demand within the time limited by the court, or, if no such time is limited, before the trial begins, shall be deemed a waiver of the right to trial by jury.<sup>247</sup>

#### **§ 16.11. Judgment.**

The court shall direct that a final judgment be entered determining the rights of the parties to the special proceeding.<sup>248</sup>

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<sup>244</sup> *Prior legislation:* L. 1963-64, ch. III (6:1607).

<sup>245</sup> *Prior legislation:* L. 1963-64, ch. III (6:1608).

<sup>246</sup> *Prior legislation:* L. 1963-64, ch. III (6:1609).

<sup>247</sup> *Prior legislation:* L. 1963-64, ch. III, 6:1610; 1957-58 Supp. 6:1212, 1222, 1233, 1254(3); L. 1955-56, ch. XVIII, § 3; 1956 Code 6:1212, 1222, 1233; Rev. Stat. §§1397 (3), 1399 (2).

<sup>248</sup> *Prior legislation:* L. 1963-64, ch. III (6:1611); 1957-58 Supp. 6:1212, 1213, 1222, 1254(3); L. 1955-56, ch. XVIII, § 1; 1956 Code 6:1212, 1222, 1233, 1244; Rev. Stat. §§ 1397 (3), 1400 (3).

## **Subchapter B. WRITS OF CERTIORARI, MANDAMUS, PROHIBITION, AND ERROR**

### **§ 16.21. Purpose of writs.**

1. *Certiorari.* Certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court.
2. *Mandamus.* Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty.
3. *Prohibition.* Prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein.
4. *Writ of error.* A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment.<sup>249</sup>

### **§ 16.22. Procedure in mandamus and prohibition.**

1. *Citation or alternative writ.* When a petition for a writ of mandamus or prohibition is made to a justice of the Supreme Court, such justice shall issue or cause the clerk to issue a citation to the parties named as respondents. If the urgency of the situation warrants, the justice may issue in lieu of a citation an alternative writ requiring the respondents (a) to do an act or to refrain from pursuing a judicial action or proceeding specified therein until a hearing has been held on the writ, and (b) to show cause, on the date fixed therein, why a peremptory writ should not issue.
2. *Time for appearance and hearing.* A citation or alternative writ issued under this section shall require the respondent to appear at a time to be specified by the justice. The justice shall commence the hearing at the specified time and continue it without interruption until the matter is determined.
3. *Peremptory writ.* At the conclusion of the hearing, the justice shall dismiss the citation or quash the alternative writ if such a writ was issued, or issue a peremptory writ requiring the respondent in a mandamus proceeding to perform the duty therein specified, or in a prohibition proceeding, to desist from continuance of the action or proceeding in the inferior court.<sup>250</sup>

### **§ 16.23. Procedure in certiorari.**

1. *Contents of petition.* A petition for a writ of certiorari shall contain the following:

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<sup>249</sup> *Prior legislation:* L. 1963-64, ch. III (6:1621); 1957-58 Supp. 6:1200, 1210; 1956 Code 6:1200, 1210; Rev. Stat. §§ 1388, 1397.

<sup>250</sup> *Prior legislation:* L. 1963-64, ch. III (6:1622); 1957-58 Supp. 1212, 1222; L. 195556, ch. XVIII, § 1; 1956 Code 6:1212, 1222; Rev. Stat. §§ 1397,1399.

- (a) A statement that the petitioner is a party to an action or proceeding pending before a court or judge or an administrative board or agency;
- (b) A statement of the decision of the official, board, or agency that is alleged to be illegal or of the intermediate order or interlocutory judgment of which review is sought;
- (c) Certification by two members of the bar that in their opinion the contention of the petitioner is sound in law.

2. *Necessary party.* The party in whose favor the act or decision complained of has been rendered shall be named as respondent and shall be served with a copy of the petition.

3. *Payment of accrued costs, bond.* The petitioner shall pay all the accrued costs, and he may be required to give a bond, conditioned on paying the respondent such damages as he may sustain if the writ is dismissed.

4. *Stay.* The issuance of the writ shall act as a stay of proceedings before the inferior tribunal.

5. *Procedure after issuance of writ.* The writ, accompanied by the petition, shall be served on the respondent and on the court, judge, administrator, or administrative board or agency whose decision or action is complained of. Issuance of the writ shall commence the proceeding. The writ shall direct such court, judge, administrator, or administrative board or agency to send up within five days to the justice who issued the writ a full and complete copy of the proceedings in the cause at issue with a certificate under the seal of the court, judge, administrator, or administrative board or agency that the same is a true copy; and the justice who issued the writ shall have the power to compel such return and to require it to be amended and perfected when necessary.

6. *Determination of issue.* If the issue is determined in favor of the petitioner, the justice who issued the writ shall direct such order to the court, judge, administrator, or administrative board or agency below as may be necessary to carry out the ends of substantial justice. If it is decided against the petitioner, the writ shall be dismissed, and the original action or proceeding shall continue in the court, board, or agency or before the judge or administrator in which or before whom it was pending.<sup>251</sup>

#### **§ 16.24. Procedure on application and hearing of writ of error.**

1. *Application.* A party against whom judgment has been taken, who has for good reason failed to make a timely announcement of the taking of an appeal from such judgment, may within six months after its rendition file with the clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error. Such an application shall contain the following:

- (a) An assignment of error, similar in form and content to a bill of exceptions, which shall be verified by affidavit stating that the application has not been made for the mere purpose of harassment or delay;
- (b) A statement why an appeal was not taken;

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<sup>251</sup> *Prior legislation:* L. 1963-64, ch. III (6:1623); 1957-58 Supp. 6:1201-1203; L. 195556, ch. XVIII, § 1; 1956 Code 6:1201-1203; Rev. Stat. §1388.

- (c) An allegation that execution of the judgment has not been completed; and;
- (d) A certificate of a counsellor of the Supreme Court, or of any attorney of the Circuit Court if no counsellor resides in the jurisdiction where the trial was held, that in the opinion of such counsellor or attorney real errors are assigned.

As a prerequisite to issuance of the writ, the person applying for the writ of error, to be known as the plaintiff in error, shall be required to pay all accrued costs, and may be required to file a bond in the manner prescribed in section 51.8. Such bond shall be conditioned on paying the costs, interest, and damages sustained by the opposing party if the judgment complained of is affirmed or the writ of error is dismissed.

*2. Issuance of service.* The Supreme Court or an assigned justice shall grant or deny the application. As soon as an application for a writ of error is granted, the clerk of the Supreme Court shall issue the writ, a copy of which, together with a copy of the assignment of error, shall be served by the marshal on the party in whose favor the judgment is granted and on the judge who rendered the judgment in the lower court. Such parties shall be known as the defendants in error.

*3. Effect of issuance of writ.* Proceedings to enforce the judgment complained of shall be stayed on issuance of the writ of error.

*4. Hearing and judgment.* The assignment of error shall be dealt with in the same manner as a bill of exceptions, and the hearing on the writ shall be upon certified copies of the record transmitted by the trial court. The Supreme Court hearing a matter on writ of error may grant such judgment as it may grant on an appeal. If the judgment is affirmed, the court may, in addition to costs, award the defendants in error their reasonable disbursements made in connection with the hearing of the writ.<sup>252</sup>

#### **§ 16.25. Parties.**

*1. Joinder of person in whose favor a body or officer has exceeded jurisdiction.* Where a proceeding under this subchapter is brought to restrain a body or officer from proceeding without or in excess of jurisdiction in favor of another person, the latter shall be joined as a party.

*2. Notice and intervention.* The court may direct that notice of the proceeding be given to any other person. It may allow other interested persons to intervene.<sup>253</sup>

#### **§ 16.26. Appeal to Supreme Court en banc.**

A final decision by a Supreme Court justice in a proceeding in certiorari, mandamus, or prohibition may be appealed to the Supreme Court en banc. The appeal shall be heard and determined immediately, in or out of term time.<sup>254</sup>

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<sup>252</sup> *Prior legislation* L. 1963-64, ch. III (6:1624); 1957-58 Supp. 6:1211, 1212; L. I 955-56, ch. XVIII, § 1; 1956 Code 6:1211, 1212; Rev. Stat. § 1397.

<sup>253</sup> *Prior legislation*: L. 1963-64, ch. III (6:1625).

### **§ 16.27. Limitations on issuance.**

The following limitations shall apply to the issuance of writs of certiorari, mandamus, prohibition, and error:

- (a) No such writ shall issue as a matter of right;
- (b) No such writ shall issue in any case in which it appears that the petition is devoid of legal merit and is made solely for the purpose of delay;
- (c) No peremptory writ shall issue before there has been an opportunity for arguments by all interested parties to be heard.<sup>255</sup>

## ***Subchapter C. WRIT OF QUO WARRANTO***

### **§ 16.31. Grounds for issuance of writ of quo warranto.**

Quo warranto is a special proceeding which may be instituted on any of the following grounds:

- (a) Against a person who usurps, intrudes into, or unlawfully holds or exercises within the Republic a franchise or a public office or an office in a domestic corporation;
- (b) Against a public officer or officer of a corporation who has done or permitted an act to be done which by law works a forfeiture of his office;
- (c) Against one or more persons who act as a corporation within the Republic without being duly incorporated, or exercise within the Republic any corporate rights, privileges, or franchises not granted them by law; or
- (d) Against a foreign corporation which exercises within the Republic any corporate rights, privileges, or franchises not granted to it by law.<sup>256</sup>

### **§ 16.32. Procedure.**

A proceeding under this subchapter shall be instituted by the Minister of Justice by his filing with a justice of the Supreme Court a petition requesting issuance of a writ of quo warranto. The petition shall be accompanied by a statement based on information of the Minister of Justice or on information given by another person (hereinafter called the "relator"), which information shall state facts justifying issuance of the writ. If the proceeding is brought against a person for usurping a public office, the Minister of Justice may include in his petition the name of the person who in his opinion is rightfully entitled to the office along with a statement of the facts showing his right thereto. Any person who in the opinion of the Minister of Justice is rightfully entitled

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<sup>254</sup> *Prior legislation:* L. 1963-64, ch. III (6:1626); 1957-58 Supp. 6:1256; L. 1955-1956, ch. XVIII, § 4; 1956 Code 6:1254.

<sup>255</sup> *Prior legislation:* L. 1963-64, ch. III (6:1627); 1957-58 Supp. 6:1253; L. 1955-56, ch. XVIII, §§ 1, 2, 4.

<sup>256</sup> *Prior legislation:* L. 1963-64, ch. III (6:1631); 1956 Code 6:1240, 1241; Rev. Stat. § 1400.

to the office and who is not a relator shall be joined as a respondent in the proceeding, and, in addition, the Minister of Justice may join as respondent any other claimant to the office.<sup>257</sup>

### **§ 16.33. Bond by relator.**

If the proceeding is initiated on the relation of a person who has an interest in the outcome of the proceeding, the Minister of Justice may require, as a condition of instituting the proceeding, that the relator give a bond secured in the manner provided in section 63.1 of this title to indemnify the Republic for the costs and expenses incurred in the proceeding.<sup>258</sup>

### **§ 16.34. Arrest.**

In a proceeding for usurping, intruding into, or unlawfully holding or exercising a public office, the respondent may be arrested subject to the provisions of subchapter C of chapter 7 of this title if the petitioner shows by affidavit that the respondent by means of such usurpation, intrusion into, or unlawful holding or exercising of the office received fees or emoluments therefrom.<sup>259</sup>

### **§ 16.35. Jury trial.**

A proceeding brought as prescribed in this subchapter is triable of right by a jury.<sup>260</sup>

### **§ 16.36. Judgment.**

1. *Ouster.* In a proceeding under this subchapter, where the respondent is adjudged guilty of usurping or intruding into or unlawfully holding or exercising an office, franchise, or privilege, a final judgment in favor of the petitioner shall order that the respondent be ousted and excluded therefrom.

2. *Restraint of exercise of corporate rights.* In a proceeding under this subchapter for the unlawful exercise of corporate rights, a final judgment in favor of the petitioner shall perpetually restrain the respondent from the commission or continuance of the acts complained of and may decree annulment of the respondent's corporate charter.

3. *Other claimant to office; assumption of duties.* If a proceeding under this subchapter involves a claim to office by a party who is not the incumbent, judgment may be rendered upon the right of both the respondent and the claimant or upon the right of the respondent only, as justice may require. If judgment is rendered in favor of the claimant, he shall be entitled to receive immediately from the respondent all property of every kind appertaining

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<sup>257</sup> *Prior legislation:* L. 1963-64, ch. III (6:1632); 1957-58 Supp. 6:1242; L. 1955-56, ch. XVIII, §1; 1956 Code 6:1242, 1243; Rev. Stat. §1400.

<sup>258</sup> *Prior legislation:* L. 1 ch. III (6:1633); 1957-58 Supp. 6:1242; L. 1955-56, ch. XVIII, § 1; 1956 Code 6:1242; Rev. Stat. § 1400(1).

<sup>259</sup> *Prior legislation:* L. 1963-64, ch. III (6:1634); 1957-58 Supp. 6:1242; 1956 Code 6:1242; Rev. Stat. § 1400(2).

<sup>260</sup> *Prior legislation:* L. 1963-64, ch. III (6:1635).

to the office and to assume immediately the duties of office after taking the oath of office and giving an official bond, as prescribed by law.

4. *Damages in independent action.* Where final judgment has been rendered upon the right and in favor of a person entitled to an office, he may recover by an independent action against the respondent the damages which he has sustained in consequence of the respondents usurpation, intrusion into, unlawful holding or exercise of the office.

5. *Fine.* As a part of the final judgment in an action for usurping or intruding into or unlawfully holding or exercising an office, franchise, or privilege, the court in its discretion may also adjudge that the respondent shall pay to the Republic a fine not exceeding one thousand dollars. The judgment for the fine may be noted as provided in section 41.4 and execution issued thereupon in favor of the Republic.<sup>261</sup>

#### **§ 16.37. Appeal to Supreme Court en banc.**

A final decision by a Supreme Court justice in a proceeding in quo warranto may be appealed to the Supreme Court en banc. The appeal shall be heard and determined immediately, in or out of term time.<sup>262</sup>

## ***Subchapter D. HABEAS CORPUS***

#### **§ 16.51. Writ of habeas corpus defined.**

The writ of habeas corpus is a writ directed to the sheriff or any other person (hereinafter referred to as the "defendant") who has the custody of a person (hereinafter referred to as the "prisoner"), directing the defendant to bring the body of the prisoner before the court or judge so that inquiry may be made into the cause of the confinement or detention and so that the discharge of the prisoner may be ordered if it appears proper to do so.<sup>263</sup>

#### **§ 16.52. Who is entitled to writ.**

Any person who is restrained of his liberty without due process of law is entitled to a writ of habeas corpus.<sup>264</sup>

#### **§ 16.53. Procedure for obtaining writ.**

The writ shall be obtained upon presentation of a petition signed by the prisoner or by some person on his behalf. It must state in substance:

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<sup>261</sup> *Prior legislation:* L. 1963-64, ch. III (6:1636); 1956 Code 6:1244; Rev. Stat. § 1400(3).

<sup>262</sup> *Prior legislation:* L. 1963-64, ch. III (6:1637); 1957-58 Supp. 6:1256; L. 1955-56, ch. XVIII, § 4; 1956 Code 6:1254.

<sup>263</sup> *Prior legislation:* L. 1963-64, ch. III (6:1651); 1956 Code 6:1140; Rev. Stat. § 1394; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 1, 2 Hub. 1582.

<sup>264</sup> *Prior legislation:* L. 1963-64, ch. III (6:1652); 1956 Code 6:1141; Rev. Stat. § 1394.



- (a) That the person on whose behalf the writ is applied for is restrained of his liberty, provided that in the case of an incompetent no allegation of restraint is necessary;
- (b) The officer or person by whom he is restrained and the place where he is restrained;
- (c) The cause or pretended cause of such restraint according to the best knowledge or belief of the applicant; and
- (d) The interest which the applicant has in the matter.

The applicant must satisfy the court or judge that the prisoner named in the writ is restrained of his liberty, unless he is an incompetent.<sup>265</sup>

#### **§ 16.54. Jurisdiction to issue writ.**

Every court of record, except the Supreme Court, shall have power to issue writs of habeas corpus in all cases whatever; and every judge of any such court shall have like power.<sup>266</sup>

#### **§ 16.55. When writ may issue.**

The writ of habeas corpus shall be issued as of right whenever the requirements of section 16.53 are satisfied. The writ shall not issue if the court or judge knows, either from the proceedings had upon a writ recently issued or from other judicial proceedings within the personal knowledge of such court or judge, that such confinement, detention, or custody is legal.<sup>267</sup>

#### **§ 16.56. Damages for failure to issue writ.**

An action of damages shall lie against every judge who refuses to issue a writ of habeas corpus either at the suit of the person applying for such writ or of the prisoner, but not of both. In such action it shall be necessary for the plaintiff to allege and prove only that the person named as prisoner was actually in confinement, detention, or custody and that the judge refused the writ or consented to the refusal by the court after reasonable proof of the fact of restraint had been made. The defendant in such action may then defend himself only by alleging and proving the existence of such judicial proceedings as might justify his conduct under the provisions of section 16.55. In every action of this nature the jury shall be the exclusive judge of what is reasonable evidence of detention, confinement, or custody.<sup>268</sup>

#### **§ 16.57. Form of writ.**

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<sup>265</sup> *Prior legislation:* L. 1963-64, ch. III (6:1653); 1956 Code 6:1142; Rev. Stat. § 1394; OB13 82, Legal Principles and Rules, t. II, ch. XXXIII, § 1, 2 Hub. 1582.

<sup>266</sup> *Prior legislation:* L. 1963-64, ch. III (6:1654); 1956 Code 6:1143; Rev. Stat. § 1394(2); L. 1889-90, 14, § 2; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, §3, 2 Hub. 1582.

<sup>267</sup> *Prior legislation:* L. 1963-64, ch. III (6:1655); 1956 Code 6:1144; Rev. Stat. §1394(3); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 4, 2 Hub. 1582.

<sup>268</sup> *Prior legislation:* L. 1963-64, ch. III (6:1656); 1956 Code 6:1145; Rev. Stat. § 1394(4); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 6, 2 Hub. 1582.

A writ of habeas corpus shall be issued in duplicate and signed by the clerk of the court or by the judge who issues it with his name and official title; if the clerk signs it, he shall annex the seal of the court. No person shall be denied the right to a hearing under a writ of habeas corpus because of a defect of form; and no writ of habeas corpus shall be quashed for any defect of form, nor shall any advantage be taken or allowed on account of any such defect.<sup>269</sup>

#### **§ 16.58. Service of writ.**

A writ of habeas corpus shall be served by leaving the original with the defendant. This service may be made by any person. The duplicate copy shall be returned to the court or judge issuing it with an affidavit of service attached.<sup>270</sup>

#### **§ 16.59. Duty of court or judge.**

Upon reasonable notice it shall be the duty of the court or judge before whom the writ has been made returnable to attend at the place and time appointed for the return of the writ, or to procure some other judge to do so, for the purpose of receiving the return and hearing the matter; and it shall be the duty of the judge who agrees to act for another judge in such case to keep his appointment. An action for damages may be brought against any judge who neglects his duty in a habeas corpus proceeding.<sup>271</sup>

#### **§ 16.60. Duty of defendant.**

It shall be the duty of every defendant upon whom a writ of habeas corpus is served:

- (a) To attend a hearing at the time and place named in the writ if he has reasonable notice thereof and to return the writ to the court at such hearing;
- (b) To report at the hearing (1) whether he has the prisoner in his custody or under his power or restraint; and (2) if he has the prisoner in his custody or under his power or restraint, the authority and true cause for such custody or restraint;
- (c) To deliver to such court or judge the originals of any documents relied on as justifying the detention, confinement, or restraint; and
- (d) To produce before the court or judge the body of the prisoner.

The defendant's report shall be signed by him and verified by his oath. If the defendant reports under oath to the court or judge that the prisoner named in the writ is not in his custody or power to produce and was not so at the time of the service of the writ, he shall be excused for not producing the prisoner unless the court or

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<sup>269</sup> *Prior legislation:* L. 1963-64, ch. III (6:1657); 1956 Code 6:1146; Rev. Stat. § 1394; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 7, 2 Hub. 1582.

<sup>270</sup> *Prior legislation:* L. 1963-64, ch. III (6:1658); 1956 Code 6:1147; Rev. Stat. § 1394(5); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 7, 2 Hub. 1582.

<sup>271</sup> *Prior legislation:* L. 1963-64, ch. III (6:1659); 1956 Code 6:1148; Rev. Stat. § 1394(6); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 9, 2 Hub. 1582.

judge shall, on hearing, order him to produce the prisoner. In that case, it shall be his duty to comply with the order; and if he fails to do so, he shall be deemed guilty of contempt and punished accordingly.<sup>272</sup>

#### **§ 16.61. Penalty for failure to return writ.**

If any writ of habeas corpus is not returned at the time and place specified therein, the court or judge shall, upon production of the duplicate copy and sufficient evidence that it has been served so as to give reasonable notice to the defendant, issue a writ of arrest against the defendant. The court or judge shall have the power to inquire into and decide the issue of reasonable notice. When the defendant is brought before the court or judge, he shall be punished by fine, imprisonment, or other means to compel him to produce the body of the prisoner. It shall also be the duty of the court or judge to issue a compulsory writ of habeas corpus directed to the sheriff or the deputy sheriff, as the court or judge may think proper. If, however, the court or judge determines that the defendant did not have reasonable notice of the time and place of the hearing, it or he shall appoint another time for the hearing at the same place and shall direct what notice thereof shall be given to the defendant. When the defendant has been given such notice in accordance with the instructions of the court or judge, he shall be bound to perform the duties which would have been required of him on the first hearing date and be subject to the same penalties for failure to perform.<sup>273</sup>

#### **§ 16.62. Penalty for refusal to produce the body.**

If a defendant upon whom a writ of habeas corpus has been duly served refuses or neglects to produce the body and to make a full and sufficient report at the time and place named in the writ and offers no sufficient excuse for such refusal or neglect, the court or judge before whom the writ is returnable shall, upon proof of the service thereof, forthwith issue a writ of arrest against the defendant. The defendant shall immediately be brought before the court or judge who issued the writ and shall be by it or him committed to the jail of the county in which such court or judge has jurisdiction. The defendant shall not be allowed any liberties of the jail (such as receiving food or other comforts from the outside) until he makes an adequate report and complies with all the orders made by the court or judge concerning the prisoner. If the disobedience is on the part of the sheriff, the writ of arrest shall be directed to a deputy sheriff or to some other person who shall act as sheriff during the imprisonment of the sheriff.<sup>274</sup>

#### **§ 16.63. Writ of arrest in habeas corpus proceeding.**

In any proceeding or action under any provision of this subchapter, it shall be lawful for the court in which the action or proceeding is brought or for any judge thereof to issue a writ of arrest without requiring the oath or other formalities required in other actions. All writs of arrest issued under this subchapter shall be discretionary

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<sup>272</sup> *Prior legislation:* L. 1963-64, ch. III (6:1660); 19% Code 6:1149; Rev. Stat. § 1394(5), (8); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 8, 2 Hub. 1582.

<sup>273</sup> *Prior legislation:* L. 1963-64, ch. III (6:1661); 1956 Code 6:1150; Rev. Stat. §1394(6); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, §§10, 11, 2 Hub. 1582.

<sup>274</sup> *Prior legislation:* L. 1963-64, ch. III (6:1662); 1956 Code 6:1151; Rev. Stat. § 1394(9).

with the court or judge, who may require that the ordinary procedures be followed and, even if such procedures are followed, refuse the writ.<sup>275</sup>

#### **§ 16.64. General powers of court or judge.**

Every court or judge to whom an application for a writ of habeas corpus is made or before whom it is returnable shall have the full power and authority at any time to inquire as to the situation of the prisoner and the intentions of the defendant. The court or judge may at any time when it appears proper issue a compulsory writ of habeas corpus directing the same either to the sheriff or his deputy.<sup>276</sup>

#### **§ 16.65. Compulsory writ of habeas corpus.**

The compulsory writ of habeas corpus differs from an ordinary writ in the following particulars:

- (a) It is addressed to a ministerial officer of the court instead of the defendant;
- (b) It orders the ministerial officer to compel the defendant to have the prisoner before the court; and
- (c) It authorizes the ministerial officer to use force to carry out its directions and to require the aid of all citizens in its execution; and
- (d) It commands the person to whom it is directed to return the writ to the court at the time and place specified with a report as to the manner in which the writ was executed.

All provisions of this subchapter governing the ordinary writ of habeas corpus shall apply to the compulsory writ except that it need not be issued in duplicate.<sup>277</sup>

#### **§ 16.66. Citizens to aid execution of compulsory writ.**

Whenever required, it shall be the duty of every male citizen over the age of sixteen years to give aid and assistance to a sheriff in executing a compulsory writ of habeas corpus. It shall be the duty of every sheriff to provide a sufficient force to secure the execution of every writ.<sup>278</sup>

#### **§ 16.67. Procedure at hearing.**

Whenever the defendant and the prisoner appear before any court or judge in pursuance of a writ of habeas corpus, it shall be lawful for the court or judge to examine them and any other persons without oath or upon oath or affirmation as the case may require. The court or judge may discharge, admit to bail, or remand the

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<sup>275</sup> *Prior legislation:* L. 1963-64, ch. III (6:1663); 1956 Code 6:1152; Rev. Stat. §1394(9); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, §18, 2 Hub. 1582.

<sup>276</sup> *Prior legislation:* L. 1963-64, ch. III (6:1664); 1956 Code 6:1153; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, §12, 2 Hub. 1582.

<sup>277</sup> *Prior legislation:* L. 1963-64, ch. III (6:1665); 1956 Code 6:1154; Rev. Stat. § 1394; OBB 82, Legal Principles and Rules, t. H, ch. XXIII, § 13, 2 Hub. 1582.

<sup>278</sup> *Prior legislation:* L. 1963-64, ch. III (6:1666); 1956 Code 6:1155; Rev. Stat. §1394(5); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 14, 2 Hub. 1582.

prisoner, as it appears proper, and may also commit or otherwise secure the defendant to answer for slave trading or any other crime of which the evidence gives reasonable cause to suppose him guilty.<sup>279</sup>

**§ 16.68. Damages for obstruction.**

An action of damages may be maintained by the person applying for the writ of habeas corpus or by the person intended to be benefitted thereby against any of the following:

- (a) A sheriff or deputy sheriff who makes a false report under any writ issued under the provisions of this subchapter;
- (b) Any person who does any act tending to obstruct or defeat the full effect of any writ of habeas corpus, ordinary or compulsory;
- (c) Any person who fails or refuses to perform any act which he is bound by law or has promised to do and which, if not omitted, would have tended to promote the execution or effect of any writ of habeas corpus, ordinary or compulsory; and
- (d) Any person who violates any duty imposed upon him by this sub-chapter.

A jury shall not award less than three hundred dollars to any successful plaintiff in any action brought under the provisions of this section; provided, however, that it may award a smaller amount if the injury consisted solely of an omission to act by a person other than a judge, sheriff, other public officer, or a defendant; and provided further that if several actions are brought by several persons against the same person for the same act or omission and the jury gives a verdict of three hundred dollars or more in the first tried action, it may in subsequent actions award whatever damages it deems proper notwithstanding the provisions of this section.<sup>280</sup>

**§ 16.69. Appeals from habeas corpus proceeding as supersedeas.**

An appeal from the judgment in a habeas corpus proceeding shall not act as a supersedeas or suspension of such judgment.<sup>281</sup>

## ***Subchapter E. CONDEMNATION PROCEEDINGS***

**§ 16.71. Provision of funds for condemnation.**

Whenever the Legislature of Liberia by statute or joint resolution authorizes work of a public or quasi-public nature to be done wholly or partly at public expense and directs the condemnation of private property therefor

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<sup>279</sup> *Prior legislation:* L. 1963-64, ch. III (6:1667); 1956 Code 6:1156; Rev. Stat. §1395(10); OBB 82, Legal Principles and Rules, t II, ch. XXIII, §15, 2 Hub. 1582.

<sup>280</sup> *Prior legislation:* L. 1963-64, ch. III (6:1668); 1956 Code 6:1157; Rev. Stat. § 1394 (11); OBB 82, Legal Principles and Rules, t. II, ch. XXIII, §§ 16, 17, 19, 20, 2 Hub. 1582.

<sup>281</sup> *Prior legislation:* L. 1963-64, ch. III (6:1669); 1956 Code 6:1158; L. 1893-94, 10 (2nd), §3.

if necessary, it shall in the same statute or resolution provide that there be included in the annual budget a sum for the compensation of the owners of real property which is to be wholly or partly condemned in such undertaking.<sup>282</sup>

#### **§ 16.72. When condemnation proceedings are necessary.**

When land is required for public use and the owner or owners or some of them will not consent to sell it to the government at the price offered by the government, condemnation proceedings shall be instituted and prosecuted in the manner prescribed in section 16.73 through 16.75.<sup>283</sup>

#### **§ 16.73. Petition.**

The Minister of Justice or a county attorney on behalf of the Republic, a county, or any other subdivision of the Republic shall prepare a condemnation petition, and shall serve copies thereof on all owners of and all other persons with a record interest in the property to be condemned (all such owners and persons are hereinafter referred to as "respondents") at least ten days before filing the petition in the circuit court of the county in which the land is located. The petition shall contain the following:

- (a) A clear description of the land to be acquired;
- (b) A statement of the use for which the land is to be acquired;
- (c) A statement of the rights of all the persons interested in the land;
- (d) A statement of the value of the land to the best of petitioner's knowledge;
- (e) A statement that the governments representative has been unable to come to an agreement with the respondents either (i) for the surrender of the property or (ii) as to the amount of compensation to be paid therefor; and
- (f) A prayer for the condemnation thereof.<sup>284</sup>

#### **§ 16.74. Notice to be given.**

When the petition has been filed, the judge sitting in chambers shall fix in writing the term at which the petition shall be heard. The petitioner shall be required forthwith to serve notice of the hearing date upon all respondents.<sup>285</sup>

#### **§ 16.75. Procedure.**

*1. When part of realty taken.* If the petitioner asks for only part of the realty and the part remaining will thereafter be of no practical use, the respondent shall make a special plea to that effect in his answer; and if

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<sup>282</sup> *Prior legislation:* L.1963-64, ch.III(6:1671);1956 Code 6:1180;L.1931-32, ch.IV, § 1.

<sup>283</sup> *Prior legislation:* L. 1963-64, ch. III (6:1672); 1956 Code 6:1181; Rev. Stat. § 1385.

<sup>284</sup> *Prior legislation:* L. 1963-64, ch. III (6:1673); 1956 Code 6:1182; L. 1931-32, ch. IV, § 2; Rev. Stat. § 1385(1).

<sup>285</sup> *Prior legislation:* L. 1963-64, ch. III (6:1674);1956 Code 6:1183; L. 1931-32, ch. IV, §3; Rev. Stat. § 1385(2).

such allegation is sustained and the court approves the condemnation, it shall order the taking of the entire property and the payment of compensation for the entire property taken.

2. *Right to jury trial.* The parties shall be entitled to a jury trial, and the proceedings shall be in accordance with the laws relating to actions for damages. The parties may by mutual consent waive jury trial of the value of the condemned property and have the value appraised by a referee appointed by the court.<sup>286</sup>

#### **§ 16.76. Payment of judgment.**

If on the basis of a jury verdict or the decision of a referee a judgment is given awarding compensation to the respondents or any of them, the clerk of the court shall forthwith send a certified copy thereof to the Minister of Finance. On warrant of the President, the Minister shall pay the amount of the judgment over to the person or persons in whose favor the judgment was given. In the event there is no one to receive payment, the Minister shall deposit the money in the nearest bank to the credit of the judgment creditor.<sup>287</sup>

## ***Subchapter F. SPECIAL PROCEEDINGS CONCERNING MENTALLY DISABLED AND LEGALLY INCOMPETENT PERSONS***

#### **§ 16.81. Definitions.**

As used in this subchapter, unless the context clearly indicates otherwise:

- (a) The term "mentally disabled person" means a person who, because of mental or emotional illness, incapacity, or deficiency, requires hospitalization or commitment to custody for his own welfare or the protection of others.
- (b) The term "hospitalization" means commitment of a mentally disabled person to a government or government-approved institution which accepts such persons for treatment.
- (c) The term "commitment to custody" means commitment to the custody of a person or persons as provided under section 16.84 (11) (c).
- (d) The term "superintendent" means the chief administrator of an institution or his deputy.
- (e) The term "adjudicated incompetent" means a person judicially declared incapable of managing his property.
- (f) The term "physician" means a psychiatrist.<sup>288</sup>

#### **§ 16.82. Jurisdiction.**

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<sup>286</sup> *Prior legislation:* L. 1963-64, ch. III (6:1675); 1956 Code 6:1184; L. 1931-32, ch. IV, §§ 4-6; Rev. Stat. § 1385(3).

<sup>287</sup> *Prior legislation:* L. 1963-64, ch. III (6:1676); 1956 Code 1185; L. 1931-32, ch. IV, § 7; Rev. Stat. § 1385 (4).

<sup>288</sup> *Prior legislation:* L. 1963-64, ch. III (6:1681).

Jurisdiction over mentally disabled persons not charged with crime and over the property of adjudicated incompetents is vested in the probate courts of the several counties.<sup>289</sup>

**§ 16.83. Emergency hospitalization.**

1. *Temporary custody.* Any sheriff, police officer, or health officer who has reasonable cause to believe that a person is mentally disabled and requires immediate hospitalization for his own welfare or the protection of others may take him into temporary custody for emergency hospitalization.

2. *Hospitalization.* On such an officer's written application stating the circumstances in which the condition of the person believed to be mentally disabled came to the officer's attention and the facts which led the officer to believe that emergency hospitalization was required, the superintendent of a government or government-approved institution may hospitalize said person for a period of not more than five days, at the expiration of which said person must be discharged unless a court has ordered otherwise as provided in this subchapter.<sup>290</sup>

**§ 16.84. Hospitalization or commitment to custody by court order.**

1. *Filing of petition.* Any person, including the superintendent of an institution, may file in probate court a petition for hospitalization or commitment to custody of a respondent within the territorial jurisdiction of the court.

2. *Contents of petition.* The petition shall contain:

- (a) A statement of the facts on which the petition is based;
- (b) The names and addresses of witnesses by whom the facts may be proved;
- (c) The names and addresses of the respondent and his spouse or nearest relative or, if not known, a sworn statement describing the petitioner's diligent efforts to ascertain the names and addresses of the respondent's spouse and nearest relative;
- (d) The name and address of the person with whom the respondent resides or who has custody or control of the respondent, or of the superintendent of an institution wherein the respondent is hospitalized or otherwise located;
- (e) A request that the respondent be hospitalized or committed to custody as a mentally disabled person;  
and
- (f) A statement of reasons why the request should be granted.

3. *Hearing on petition.* Upon the filing of the petition the clerk of the probate court shall immediately present it to the judge of the court who shall set it down for hearing on a date not later than ten days after the filing thereof.

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<sup>289</sup> *Prior legislation:* L. 1963-64, ch. III (6:1682); 1956 Code 6:1159, 1160, 1190, 1191, 1192;. 18:512 (b), 530 (h), 531 (h); Rev. Stat. § 72, 1268 (8), 1396; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § § 21, 22, 2 Hub. 1582.

<sup>290</sup> *Prior legislation:* L. 1963-64, ch. III (6:1683); 1956 Code 6:1159, 1160, 1191, 1192; 33:31; Rev. Stat. §§ 72, 1396; OBB 82, Legal Principles and Rules, t. 11, ch. XXIII, §§ 21, 22, 2 Hub. 1587, 1588.



4. *Notice of hearing.* The order setting the hearing on the petition shall direct that reasonable notice thereof, together with a copy of the petition, be served on the persons specified in paragraphs 2(c) and 2(d) of this section.

5. *Compulsory attendance of respondent.* In the discretion of the court, the order setting the hearing on the petition may direct that a writ be issued to the sheriff of the county or to the person having custody or control of the respondent, or to the superintendent of an institution wherein the respondent is hospitalized or otherwise located, commanding him to bring the respondent before the court at the time and place set for the hearing.

6. *Return of service.* All notices and writs shall be returned to the office of the clerk who issued them at or before the time set for the hearing on the petition with the time and manner of service thereof endorsed thereupon.

7. *Powers of court pending disposition.* Upon the filing of the petition the court shall have the power to make such orders as may be necessary to provide for medical or other examination into the respondent's condition and to provide for the respondent's maintenance, care, treatment or detention in his own home, or in a mental institution, or in such other place, exclusive of prison, as will afford access to medical or other examination and proper provision for the respondent's welfare and the protection of others pending disposition of the matter.

8. *Jury trial.* The respondent, his attorney, and any duly authorized representative of the respondent, shall have the right to demand that the question of whether the respondent is so mentally disabled as to require hospitalization or commitment to custody be tried by a jury. If a jury trial is demanded, the matter shall be referred to the Circuit Court which shall empanel a jury. The Circuit Court shall conduct a jury trial and transmit the verdict of the jury to the probate court; except that if the Circuit Court finds the verdict of the jury contrary to the weight of the evidence, the Circuit Court may set the verdict aside and order a new jury trial.

9. *Hearing without jury.* If a jury trial is not demanded, the probate court shall hear the matter without a jury.

10. *Testimony of physician.* No person shall be hospitalized or committed to custody unless a physician testifies that he is mentally disabled.

11. *Determination and order.* In accordance with the verdict of the jury or upon the hearing without a jury and subject to the provisions of paragraph 10 of this section, the probate court shall determine and order:

- (a) That the petition be dismissed; or
- (b) That the respondent be hospitalized in such manner and under such conditions as the court finds necessary for the welfare of the respondent or the protection of others; or

- (c) That the respondent be committed to the custody of a person or persons willing and able properly to care for him at a place other than a mental institution in such manner and under such conditions as the court finds necessary for the welfare of the respondent or the protection of others.<sup>291</sup>

**§ 16.85. Procedures for hospitalization and commitment to custody are exclusive.**

The procedures specified in this subchapter shall be the exclusive methods of instituting proceedings for hospitalization and commitment to custody of mentally disabled persons.<sup>292</sup>

**§ 16.86. Judicial discharge of persons hospitalized or committed to custody.**

1. *Filing of petition.* Any person hospitalized or committed to custody, or any other person on such person's behalf, may file in the probate court of the county where such person is hospitalized or located, or in the probate court of the county from which such person was hospitalized or committed to custody, a petition for discharge from hospitalization or from custody, or for modification or amendment of the order of hospitalization or commitment to custody.

2. *Contents of petition.* The petition shall contain:

- (a) A statement of the facts on which the petition is based;
- (b) The names and addresses of witnesses by whom the facts may be proved;
- (c) The names and addresses of the person hospitalized or committed to custody and of the superintendent of the institution wherein said person is hospitalized or of the person who has custody or control of said person;
- (d) The name of the court which issued the order of hospitalization or commitment to custody and the date of the order;
- (e) A request for discharge from hospitalization or commitment to custody; and
- (f) A statement of reasons why the request should be granted.

3. *Supporting affidavits.* The petitioner may file with the petition a supporting affidavit of the superintendent of the institution wherein the person in question is hospitalized or a supporting affidavit or affidavits of the person or persons to whose custody said person in question was committed.

4. *Order granting petition on affidavits or setting hearing.* Upon the filing of the petition the clerk of the probate court shall immediately present it to the judge of the court. If the petition is supported by an affidavit or affidavits under paragraph three of this section the court may, in its discretion, without further notice or hearing, order that the petition be granted and that the person in question be discharged from hospitalization or custody, or that the original order of hospitalization or commitment to custody be modified or amended. If the

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<sup>291</sup> *Prior legislation:* L. 1963-64, ch. III (6:1684); 1956 Code 6:1159, 1160, 1191, 1192; 33:31, 32; Rev. Stat. §§ 72, 1396; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, §§ 21,22,2 Hub. 1582.

<sup>292</sup> *Prior legislation:* L. 1963-64, ch. III (6:1685);1956 Code 6:1159, 1160, 1192; 33:31, 32; Rev. Stat. § 72, 1396; OBB 82, Legal Principles and Rules, t II, ch. XXIII, §21, 22, 2 Hub. 1582.

petition is not so granted, the court shall set it down for hearing on a date not later than ten days after the filing thereof.

5. *Notice of hearing.* The order setting the hearing on the petition shall direct that reasonable notice thereof be served on the petitioner and that such notice, together with a copy of the petition, be served on the person in question if said person is other than the petitioner, and on the superintendent of the institution wherein said person is hospitalized or on the person who has custody or control over said person.

6. *Compulsory attendance of person hospitalized or in custody.* In the discretion of the court, the order setting the hearing on the petition may direct that a writ be issued to the sheriff of the county, or to the superintendent of the institution wherein the person in question is hospitalized or otherwise located, or to the person having custody or control of said person, commanding him to bring said person before the court at the time and place set for the hearing on the petition.

7. *Return of service.* All notices and writs shall be returned to the office of the clerk who issued them at or before the time set for the hearing on the petition with the time and manner of service thereof endorsed thereupon.

8. *Procedure for hearing.* Procedure for the hearing on the petition shall be the same as provided in section 16.84 of this subchapter on a petition for hospitalization or commitment to custody, including the right of the person in question to a jury trial.

9. *Testimony of physician.* No petition filed pursuant to this section shall be granted unless a qualified physician testifies that the person filing such petition or on behalf of whom such petition is filed is not mentally disabled or that his condition warrants the requested modification of the order hospitalizing him or committing him to custody.

10. *Determination and order.* Upon the verdict of the jury or upon the hearing without a jury and subject to the provisions of paragraph 9 of this section, the probate court shall:

- (a) Determine and order that the person in question be discharged from hospitalization or custody unconditionally or under such conditions as the court finds necessary for the welfare of said person or the protection of others; or
- (b) Determine and order that the original order of hospitalization or commitment to custody be modified or amended as the court finds necessary for the welfare of the person in question or the protection of others; or

- (c) On a finding that the welfare of the person in question or the protection of others requires that the original order remain in force, dismiss the petition and order that thereafter no petition under this section shall be filed on behalf of said person without leave of court.<sup>293</sup>

**§ 16.87. Administrative release of hospitalized person.**

Any hospitalized person may be conditionally released from the hospital by the superintendent of the institution wherein such person is hospitalized if in the opinion of the superintendent such person does not at that time require hospitalization for his own welfare or the protection of others. Such release shall be only for so long as the person does not require hospitalization and subject to such other conditions as the superintendent deems necessary to impose for the welfare of the person released or the protection of others. If the need for the hospitalization of such person again becomes apparent, or if a violation of any of the conditions imposed on his release occurs, his return to the hospital by a sheriff, police officer, or health officer is authorized without a court order as required by section 16.84 of this title. The court which ordered the original hospitalization of a person shall be notified by the superintendent of the hospital of the release of such person or his rehospitalization pursuant to the provisions of this section.<sup>294</sup>

**§ 16.88. Habeas corpus.**

Nothing in this subchapter shall be construed to deny the benefit of the writ of habeas corpus to any person hospitalized or committed to custody. Should the court find that the person seeking the benefit of the writ was illegally hospitalized or committed to custody, the court shall enter an order discharging said person from hospitalization or from commitment to custody and shall transmit a certified copy of the order to the court which issued the original order of hospitalization or commitment to custody. Upon receipt of the certified copy, the court which issued the original order shall enter an order finding that said person has been discharged from hospitalization or from commitment to custody by order of the court issuing the writ.<sup>295</sup>

**§ 16.89. Application to persons heretofore hospitalized or committed to custody.**

Sections 16.86, 16.87, 16.88, and 16.97 of this subchapter shall apply to any person not charged with crime who was hospitalized or committed to custody prior to the effective date of this subchapter by reason of mental or emotional illness, incapacity, or deficiency.<sup>296</sup>

**§ 16.90. Hospitalization, commitment to custody, and adjudication of incompetency.**

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<sup>293</sup> *Prior legislation:* L. 1963-64, ch. III (6:1686); 1956 Code 6:1191; 33:31; Rev. Stat. §§ 72, 1396; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § 21, 2 Hub. 1582.

<sup>294</sup> *Prior legislation:* L. 1963-64, ch. III (6:1687).

<sup>295</sup> *Prior legislation:* L. 1963-64, ch. III (6:1688); 1956 Code 6:1159, 1160; Rev. Stat § 1394; OBB 82, Legal Principles and Rules, t II, ch. XXIII, §§ 21, 22, 2 Hub. 1582.

<sup>296</sup> *Prior legislation:* L. 1963-64, ch. III (6:1689).

An order or adjudication as to hospitalization or discharge therefrom, or as to commitment to custody or discharge therefrom, shall not be construed as an order or adjudication as to incompetency or restoration to legal capacity. A person may not, by reason of hospitalization or commitment to custody, be deprived of any civil rights, including but not limited to the rights to vote, hold or dispose of property, enter into contracts and other legal relationships, or hold or renew any license, benefit, or privilege. However, in hearing and determining a petition under section 16.84 or section 16.86 of this subchapter, the court may, in the same proceeding, hear and determine a petition respecting the same person under section 16.91 or section 16.96 of this subchapter.<sup>297</sup>

**§ 16.91. Adjudication of incompetency and appointment of guardian.**

1. *Filing of petition.* Any person may file in probate court a petition for adjudication of incompetency and appointment of a guardian of the property of a respondent residing or having property within the territorial jurisdiction of the court.

2. *Contents of petition.* The petition shall contain:

- (a) A statement of the facts on which the petition is based;
- (b) The names and addresses of witnesses by whom the facts may be proved;
- (c) The names and addresses of the respondent, his spouse, his nearest known next of kin, heirs at law and distributees, and the person with whom he resides or who has control or custody over him or the superintendent of an institution wherein he is hospitalized or otherwise located;
- (d) A request for adjudication of incompetency and appointment of a guardian of the respondents property; and
- (e) A statement of reasons why the request should be granted.

3. *Hearing on petition.* Upon the filing of the petition the clerk of the probate court shall immediately present it to the judge of the court who shall set it down for hearing on a date not sooner than five days nor more than 30 days after the filing thereof.

4. *Notice of hearing.* The order setting the hearing on the petition shall direct that reasonable notice thereof, together with a copy of the petition, be served on the persons specified in paragraph 2(c) of this section. The court shall direct such further notice of the hearing as may be proper.

5. *Return of service.* All notices and writs shall be returned to the office of the clerk who issued them at or before the time set for the hearing with the time and manner of service thereof indorsed thereupon.

6. *Guardian ad litem.* Upon the filing of the petition the court may appoint a responsible person to act as guardian ad litem of the respondent.

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<sup>297</sup> *Prior legislation:* L. 1963-64, ch. III (6:1690).

7. *Jury trial.* The respondent or any person on whom notice of the petition has been served shall have the right to demand that the question of whether the respondent is incapable of managing his own property be tried by a jury. If a jury trial is demanded, the matter shall be referred to the Circuit Court which shall empanel a jury, conduct a jury trial, and transmit the verdict of the jury to the probate court, except that if the Circuit Court finds that the verdict of the jury is contrary to the weight of the evidence, the Circuit Court may set the verdict aside and order a new jury trial.

8. *Hearing without jury.* If a jury trial is not demanded, the probate court shall hear the matter without a jury.

9. *Determination and order.* Upon the verdict of the jury or upon the hearing without a jury, the probate court shall:

- (a) Dismiss the petition; or
- (b) Declare and adjudicate the respondent to be an incompetent person and appoint a guardian of the respondent's property who shall have the charge and management thereof subject to the supervisory powers of the probate court and pursuant to the provisions of this subchapter.<sup>298</sup>

#### **§ 16.92. Bond, powers, and duties of guardian.**

1. *Bond.* Before entering on the discharge of his duties, the guardian of the property of an adjudicated incompetent shall execute an undertaking with surety approved by the probate court in such amount as the court may order, conditioned on the faithful performance of said duties.

2. *Powers and duties.* The guardian of the property of an incompetent person shall take possession of, maintain, and administer all the real and personal property of such person, collect all debts due such person, collect the rents and income from such property, make any reasonable expenditures necessary to preserve such property, and maintain or defend any action with respect to such property, and may lease any real or personal property of the incompetent person for a term not exceeding 20 years after the execution of such lease. Whenever it shall be proposed to compromise or settle any claim, whether in suit or not, by or against an incompetent person, or to compromise or settle any dispute concerning such person's real or personal property, the probate court, on petition of the guardian of such person's property, or of any party in interest setting forth all the facts and circumstances, and after such notice as the court shall direct, aided if necessary by the report of a referee, may enter a decree authorizing the compromise or settlement to be made.

3. *Distribution and accounting.* The guardian of the property of an incompetent person shall apply such part of the annual income and of the principal of such person's property as the court authorizes to the support of such person and the maintenance and education of such person's family and children. Once in each year, or oftener if required by the court, such guardian shall settle and account for his trust under oath. He shall account for all assets, profit and increase of the estate and the annual value thereof and shall be allowed credit for taxes,

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<sup>298</sup> *Prior legislation:* L. 1963-64, ch. III (6:1691); 1956 Code 6:112, 1160, 1190, 1191, 1192; 18:512(h), 530(h), 531(h); Rev. Stat. §§ 72, 1393, 1396; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, § §21, 22, 2 Hub. 1582.

repairs, improvements, expenses, and commissions. He shall not be answerable for any loss or decrease sustained without his fault.<sup>299</sup>

#### **§ 16.93. Title to property of adjudicated incompetent.**

Legal title to all the real and personal property of an adjudicated incompetent shall remain in such person subject, however, to all the inherent and statutory powers of the guardian of such person's property and to orders of the probate court.<sup>300</sup>

#### **§ 16.94. Compensation of guardian.**

The probate court shall allow a reasonable compensation for services rendered by the guardian of the property of an adjudicated incompetent not to exceed (a) 2 1/2 percent on all amounts received by the guardian to administer as the principal of the estate or received as income on the estate, plus (b) 2 1/2 percent on all amounts paid out of the principal or income of the estate for necessary expenses or to the person declared an incompetent or his legal representative.<sup>301</sup>

#### **§ 16.95. Ancillary guardianship of nonresident incompetent.**

1. *Petition for appointment.* When an adjudicated incompetent who is not a resident of Liberia is entitled to property or to maintain an action in Liberia, a guardian, committee, or conservator of such person's property duly appointed by legal authority in the jurisdiction where said person resides may petition the probate court of any county wherein the nonresident incompetent is entitled to property or to maintain or defend an action, for appointment as ancillary guardian.

2. *Evidence to accompany petition.* The petition shall be filed with evidence of the petitioner's qualifications for ancillary guardianship under the provisions of this section and with an undertaking sufficient to account for all property which may be received by virtue of such guardianship.

3. *Appointment of guardian.* On a petition and evidence satisfying the requirements of this section, the probate court may appoint the petitioner or a person nominated by him as ancillary guardian of the property of the nonresident incompetent, with the powers, authority, responsibilities, and compensation of a guardian under sections 16.91, 16.92, 16.93, and 16.94 of this title, and such additional powers and responsibilities as the court may find necessary to protect the interests of the nonresident incompetent.<sup>302</sup>

#### **§ 16.96. Restoration to legal capacity and discharge of guardian of property.**

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<sup>299</sup> *Prior legislation:* L. 1963-64, ch. III (6:1692); 1956 Code 6:91, 112, 1160, 1190, 1191, 1192; 18:512(h), 530(h), 531(h); Rev. Stat. §§ 72, 1393, 1396; OBB 82, Legal Principles and Rules, t II, ch. XXIII, §§21, 22, 2 Hub. 1582.

<sup>300</sup> *Prior legislation:* L. 1963-64, ch. III (6:1693).

<sup>301</sup> *Prior legislation:* L. 1963-64, ch. III (6:1694).

<sup>302</sup> *Prior legislation:* L. 1963-64, ch. III (6:1695).

1. *Filing of petition.* Any person who has been adjudicated incompetent, or any other person on his behalf, may file in the probate court of the county where the person who has been adjudicated incompetent resides a petition to restore him to legal capacity and discharge the guardian of his property.

2. *Contents of petition.* The petition shall contain:

- (a) A statement of the facts on which the petition is based;
- (b) The names and addresses of witnesses by whom the facts may be proved;
- (c) The names and addresses of the adjudicated incompetent, the guardian of his property, his spouse, his nearest known next of kin, heirs at law and distributees, and the person with whom he resides or the superintendent of an institution wherein he is hospitalized or otherwise located;
- (d) The name of the court which rendered the adjudication of incompetency and the date of that adjudication;
- (e) A request for restoration of the adjudicated incompetent to legal capacity and discharge of the guardian of his property; and
- (f) A statement of reasons why the request should be granted.

3. *Hearing on petition.* Upon the filing of the petition, the clerk of the probate court shall immediately present it to the judge of the court who shall set it down for hearing on a date not sooner than five days nor more than 30 days after the filing thereof.

4. *Notice of hearing.* The order setting the hearing on the petition shall direct that reasonable notice thereof be served on the petitioner and on the persons specified in paragraph 2(c) of this section. The court shall direct such further notice of the hearing as may be proper.

5. *Compulsory attendance of incompetent.* In the discretion of the court, the order setting the hearing on the petition may direct that a writ be issued to the sheriff of the county or to the superintendent of the institution wherein the incompetent is hospitalized or otherwise located, or to the person having custody or control of the incompetent commanding him to bring the incompetent before the court at the time and place set for the hearing on the petition.

6. *Return of service.* All notices and writs shall be returned to the office of the clerk who issued them at or before the time set for the hearing on the petition with the time and manner of service thereof endorsed thereupon.

7. *Procedure for hearing.* Procedure for the hearing on the petition shall be the same as provided in section 16.91 of this subchapter on the petition for adjudication of incompetency and appointment of a guardian, including the right of the incompetent to a jury trial.

8. *Determination and order.* In accordance with the verdict of the jury, or upon the hearing without a jury, the probate court shall:



- (a) Order that the adjudication of incompetency be vacated and annulled; that the incompetent be restored to full legal capacity; and that the guardian of the property be discharged on such terms and conditions as the court finds equitable; or
- (b) On a finding that the incompetent remains incapable of managing his property, dismiss the petition and order that thereafter no petition shall be filed on behalf of the same incompetent under this section without leave of court.<sup>303</sup>

#### **§ 16.97. Costs of proceedings.**

1. *When person hospitalized, committed to custody, or adjudicated incompetent.* When any person is hospitalized, committed to custody, or adjudicated incompetent in proceedings under this subchapter, the court shall assess the costs of such proceedings against such person or his estate. If such person is indigent or otherwise unable to defray such costs, they shall be defrayed by the Republic.
2. *On dismissal of petition.* On the dismissal of a petition in any proceedings under this subchapter, the costs of such proceedings shall be assessed against the petitioner or his estate.
3. *Fees.* Fees for jury service, witnesses, and for service and execution of process shall be the same as for similar services in civil proceedings.<sup>304</sup>

#### **§ 16.98. Support of mentally disabled persons in Government institutions.**

A person hospitalized in a Government institution as mentally disabled shall not be a public charge unless his estate or relatives legally responsible for his support are financially unable to bear the necessary expense. The Government may sue to recover from the estate of such person, or if the estate is insufficient, from such responsible relatives, amounts expended by the institution for the support of the mentally incompetent person.<sup>305</sup>

#### **§ 16.99. Receipt for person hospitalized and his personal property.**

Upon the hospitalization of any person or the giving over of any person to the custody of other persons pursuant to provisions of this subchapter, the chief administrator of the institution wherein such person is hospitalized or the person or persons taking custody of such person shall file with the clerk of the court which entered the order of hospitalization or custody a receipt for each item of his personal property received with such person.<sup>306</sup>

#### **§ 16.100. Representation by counsel.**

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<sup>303</sup> *Prior legislation:* L. 1963-64, ch. III (6:1696); 1956 Code 6:1191, 1192; 18:512(h), 530(h), 531(h); Rev. Stat. §§ 72, 1396; OBB 82, Legal Principles and Rules, t. II, ch. XXIII, §§ 21, 22, 2 Hub. 1582.

<sup>304</sup> *Prior legislation:* L. 1963-64, ch. III (6:1697).

<sup>305</sup> *Prior legislation:* L. 1963-64, ch. III (6:1698); 1956 Code 33:32; Rev. Stat. § 73.

<sup>306</sup> *Prior legislation:* L. 1963-64, ch. III (6:1699).

1. *Duty of court.* At or prior to any hearing under this subchapter, except in proceedings under section 16.94 thereof, it shall be the duty of the court to require and effectuate proper and adequate representation by counsel for any allegedly mentally disabled or allegedly incompetent party to such proceedings. The court shall inform such party of his right to counsel; ask whether he desires counsel of his choice to be summoned or desires counsel to be appointed by the court; and summon or appoint such counsel as required. If the court determines that any allegedly mentally disabled or allegedly incompetent party is indigent, the court shall appoint as his counsel the County Defense Counsel, if available. If the County Defense Counsel is unavailable, the court shall appoint a licensed counsellor at law.

2. *Rights of counsel.* Counsel summoned, appointed, or retained under this section shall be allowed time for adequate preparation and shall not be prevented from conferring with the allegedly mentally disabled or allegedly incompetent party at reasonable times or from making reasonable investigation of matters in issue and presenting relevant evidence.

3. *Counsel fees.* Upon the filing with the court of a statement under oath of legal services rendered by counsel appointed for an indigent party under paragraph 1 of this section, the court shall allow as counsel fees, and order the treasurer of the Republic to pay to the appointed counsel, a reasonable fee stated in the order, not to exceed \$75 if no jury, or \$150 where there is a jury trial.<sup>307</sup>

#### **§ 16.101. Appeals.**

Appeals from final orders, decrees, and judgments made and entered in proceedings under this subchapter may be taken by any party, including any allegedly mentally disabled or allegedly incompetent party, in the same manner as in other civil cases.<sup>308</sup>

## **PART II**

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### ***Trial Procedure***

#### ***Chapter 21. GENERAL PROVISIONS RELATING TO TRIALS***

§ 21.1. Sequence of trial.

§ 21.2. Adjournment of trial in justice's and magistrate's court.

§ 21.3. Exceptions.

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<sup>307</sup> *Prior legislation:* L. 1963-64, ch. III (6:1700).

<sup>308</sup> *Prior legislation:* L. 1963-64, ch. III (6:1701); 1956 Code 6:1191; Rev. Stat. § 1396.

§ 21.4. Employment of interpreters.

§ 21.5. Adjournment of trial to obtain witnesses.

§ 21.6. Witnesses to be sworn.

#### **§ 21.1. Sequence of trial.**

The court may determine the sequence in which the issues in a case shall be tried.<sup>309</sup>

#### **§ 21.2. Adjournment of trial in justice's and magistrate's court.**

A party to a case for which a date for trial has been fixed in a justice's or magistrate's court is entitled to an adjournment of not more than a week upon a reasonable application on the return date or upon joinder of issue; provided that no more than two adjournments shall be granted.<sup>310</sup>

#### **§ 21.3. Exceptions.**

An exception shall be noted by a party at the time the court makes any order, decision, ruling, or comment to which he objects. Failure to note an exception to any such action shall prevent assigning it as error on review by the appellate court. The party who excepts is entitled to have his exception noted in the minutes of the court.<sup>311</sup>

#### **§ 21.4. Employment of interpreters.**

Whenever an action is between parties one or more of whom does not understand or speak English and whenever it is necessary to examine as a witness any person who does not understand or speak English, the court shall appoint an interpreter to interpret the testimony by or for such person. Before undertaking his duties, the interpreter shall swear or affirm that he will faithfully perform them.<sup>312</sup>

#### **§ 21.5. Adjournment of trial to obtain witnesses.**

No postponement of a trial shall be allowed to obtain witnesses unless it is shown to the satisfaction of the court that (a) proper and due diligence has been employed to secure their attendance, and (b) their testimony will be material, relevant, and competent.<sup>313</sup>

#### **§ 21.6. Witnesses to be sworn.**

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<sup>309</sup> *Prior legislation:* L. 1963-64, ch. III (6:2101); 1956 Code 6:620; Rev. Stat. §639; OBB 44, 45, Legal Principles and Rules, t. II, ch. V, § 2; ch. VI, § 2, 2 Hub. 1540, 1541.

<sup>310</sup> *Prior legislation:* L. 1963-64, ch. III (6:2102); 1956 Code 6:595; Rev. Stat. § 637; J. P. Code § 24.

<sup>311</sup> *Prior legislation:* L. 1963-64, ch. III (6:2103); 1956 Code 6:624; Rev. Stat. §390.

<sup>312</sup> *Prior legislation:* L. 1963-64, ch. III (6:2104); 1956 Code 6:760; Rev. Stat. §§ 383, 384, 641, 642; J. P. Code §§28, 29; OBB 61, Legal Principles and Rules, t. II, ch. XIII, § 3,2 Hub. 1559.

<sup>313</sup> *Prior legislation:* L. 1963-64, ch. III (6:2105); 1956 Code 6:749.

Every person called as a witness shall swear or affirm that he will testify truthfully before being allowed to give evidence in any action.<sup>314</sup>

## **Chapter 22. TRIAL BY JURY**

- § 22.1. Right to trial by jury.
- § 22.2. Alternate jurors.
- § 22.3. Selection of jurors.
- § 22.4. Summoning jurors.
- § 22.5. Voir dire examination.
- § 22.6. Challenges.
- § 22.7. Oath of jurors.
- § 22.8. Conduct and maintenance of jury during trial.
- § 22.9. Instructions to jury.
- § 22.10. Summary of evidence by the judge.
- § 22.11. Verdicts.
- § 22.12. Report of verdict; polling the jury; entry of verdict.
- § 22.13. Unanimous verdict required; new trial on disagreement.
- § 22.14. Special juries.

### **§ 22.1. Right to trial by jury.**

1. *Right preserved.* The right to trial by jury as declared by Chapter III, Article 20(a) of the Constitution or as given by statute shall be preserved inviolate.

2. *Demand.* Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. A party may not withdraw a demand for trial by jury without the consent of all other parties.

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<sup>314</sup> *Prior legislation:* L. 1963-64, ch. III (6:2106); 1956 Code 6:750; Rev. Stat. §§387, 643; J. P. Code §30; OBB 61, Legal Principles and Rules, t. II, ch. XIII, § 1, 2 Hub. 1560.

3. *Specification of issues.* In his demand a party may specify the issues which he wishes tried by jury; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within ten days after service of the demand may serve a demand for trial by jury of any other or all of the issues in the action so triable.

4. *Waiver.* The failure of a party to serve a demand for trial by jury of an issue as required by this section and to file it as required by section 8.2 constitutes a waiver by him of trial by jury of such issue unless such a demand has been served by another party. If a demand for trial by jury has been made under this section a party nevertheless waives his right to trial by jury by:

- (a) Failing to appear at the trial;
- (b) Filing a written waiver with the clerk; or
- (c) Orally consenting in open court to trial without a jury.

A party shall not be deemed to have waived the right to trial by jury of the issues of fact arising upon a claim by joining it with another claim with respect to which there is no right to trial by jury, or of issues of fact arising upon a counterclaim by interposing it in an action in which there is no right to trial by jury.

5. *Relief for failure to make demand.* Notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.

6. *Issues triable by a jury revealed at trial.* When it appears in the course of a trial by the court that the relief required, even though not originally demanded by a party, entitles the adverse party to a trial by jury of certain issues of fact, the court shall give the adverse party an opportunity to demand a jury trial of such issues. Failure to make such a demand within the time limited by the court shall be deemed a waiver of the right to trial by jury. Upon such demand, the court shall order a jury trial of any issues of fact which are required to be tried by jury.<sup>315</sup>

## **§ 22.2. Alternate jurors.**

In addition to the regular panel three jurors shall be called and empanelled to sit as alternate jurors. Such jurors shall be drawn at the same time, from the same source, in the same manner, and have the same qualifications and shall be subject to the same examination and challenges as the regular jurors. They shall be seated with and treated in the same manner as the regular jurors, except that an alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict. If, before the final submission of the case, a regular juror dies, or becomes ill, or for any other reason becomes unable to perform or is disqualified from performing his duty, the court may order him to be discharged and draw the name of an alternate, who shall

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<sup>315</sup> *Prior legislation:* L. 1963-64, ch. III (6:2201); 1956 Code 6:590, 591; Rev. Stat. §§ 354, 355, 374; OBB 46, Legal Principles and Rules, t. II, ch. VII, §3, 2 Hub. 1542; OBB 113, Judiciary Act, art I, §5; 1828 Code, Digest, art. XIII, 2 Hub. 1272, 1282, 1824 Digest, 13th, 2 Hub. 1286.

replace the discharged juror in the jury box, and be treated as if he had been selected as one of the regular jurors.<sup>316</sup>

### **§ 22.3. Selection of jurors.**

The appropriate official of each commonwealth district, municipal district, city, and township shall submit quarterly to the clerk of the Circuit Court of the judicial district in which such official performs his duties a list of names of a number of persons whom he believes to be qualified to serve as jurors in his judicial district, to be nonexempt, and to be intelligent, honest, fair-minded, of good reputation, and capable of rendering satisfactory service. The clerk of the Circuit Court shall select from the list submitted to him the names of forty-two persons to compose a venire of grand and petit jurors for the following term of court. The names selected by the clerk shall be those of persons from the various commonwealth districts, cities, municipal districts, and townships in the judicial district in proportion to the number of inhabitants as nearly as can be estimated. Such persons shall be summoned to attend at the opening day of the term in accordance with the provisions of section 22.4. On the opening day of court, the judge of the Circuit Court shall designate fifteen of the forty-two persons composing the venire to serve as grand jurors. Before the trial of each civil case during the term, the names of each of the remaining twenty-seven persons composing the venire shall be written on a separate piece of paper of the same size and appearance as all of the other pieces. Each piece shall be folded to conceal the name thereon and shall be placed in a box, which the sheriff shall shake in order to mix the slips of paper as well as possible. The names shall be drawn by the sheriff in the presence of the court. The persons whose names are drawn shall be subject to examination and challenge as provided in sections 22.5 and 22.6. The twelve persons whose names are first drawn and who are found acceptable shall serve as jurors and the three persons whose names are next drawn and who are found acceptable shall serve as alternates. The judge shall appoint the foreman. If the panel is exhausted before sufficient jurors have been selected, the sheriff, on direction of the court, shall summon a sufficient number of qualified persons as talesmen from the bystanders.<sup>317</sup>

### **§ 22.4. Summoning jurors.**

The forty-two persons composing the venire of grand and petit jurors shall be summoned to attend court on the opening day of the term. The summons shall be served by the sheriff ten days previous to the opening day by delivering a copy thereof to the person named therein or by mailing a copy to the person at his last known address by registered mail. If service is by mail, the addressee's receipt shall be attached to the return.<sup>318</sup>

### **§ 22.5. Voir dire examination.**

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<sup>316</sup> Prior legislation: L. 1963-64, ch. III (6:2202); 1956 Code 6:530, 18:300; L. 1952-53, ch. X.

<sup>317</sup> *Prior legislation:* L. 1963-64, ch. III (6-.2203); 1956 Code 6:531, 532; L. 1952-53, ch. X; L. 1948-49, ch. XXXI, §§ 1, 2; L. 1933-34, ch. X, § 7; Rev. Stat. §§ 358, 379; L. 1912-13, 13, § 1; L. 1900-01, 21 (2nd); OBB 49, Legal Principles and Rules, t. 11, ch. IX, §§ 2, 13, 2 Hub. 1545.

<sup>318</sup> *Prior legislation:* L. 1963-64, ch. III (6:2204); 1956 Code 6:531; L. 1948-49, ch. XXXI, § 2; Rev. Stat. § 358; OBB 49, Legal Principles and Rules, t. H, ch. IX, § 13, 2 Hub. 1545.

The court may conduct the examination of prospective jurors or may permit the parties or their attorneys to do so. If the court conducts the examination, it shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.<sup>319</sup>

#### **§ 22.6. Challenges.**

1. *Generally.* An objection to the qualifications of a juror must be made by a challenge. A challenge may be made either to the entire panel on the ground that it was illegally drawn or to an individual juror.
2. *Challenges for cause or favor.* A party may challenge a juror on the ground that he is disqualified under the Judiciary Law or by reason of any interest or bias. The fact that a juror is in the employ of a party to the action, or, if a party to the action is a corporation, that he is a shareholder therein, shall constitute a ground for a challenge to the favor as to such juror.
3. *Waiver on ground of disqualification.* Failure by a party to challenge the panel or to challenge a juror under paragraph 2 of this section shall be deemed a waiver of the right to object and shall foreclose the right to move for a new trial on such grounds; provided that a party may be entitled to a new trial if he shows that a juror made false answers to material questions concerning his qualifications.
4. *Rulings upon challenges.* A challenge to a juror or to the panel must be heard and determined by the court subject to the right of the objecting party to save his objection.
5. *Peremptory challenges.* Each party shall be entitled to four peremptory challenges.<sup>320</sup>

#### **§ 22.7. Oath of jurors.**

Immediately after the selection of the jury and before the commencement of the trial, all the jurors composing the jury, including the alternates, shall take the following oath faithfully to try the cause and render a verdict according to the law and the evidence:

"You and each of you do solemnly swear that you will well and faithfully try the cause now before this court and a true verdict render according to the law and the evidence, so help you God."

Any juror who has conscientious scruples against taking an oath may instead give his solemn affirmation. In an appropriate case a juror may be sworn according to native customary law.<sup>321</sup>

#### **§ 22.8. Conduct and maintenance of jury during trial.**

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<sup>319</sup> *Prior legislation:* L. 1963-64, ch. III (6:2205); 1956 Code 6:532.

<sup>320</sup> *Prior legislation:* L. I ch. III (6:2206); 1956 Code 6:533; Rev. Stat. §360; OBB 49, Legal Principles and Rules, t. II, ch. IX §§ 2, 6, 7, 8, 2 Hub. 1545.

<sup>321</sup> *Prior legislation:* L. 1963-64, ch. III (6:2207); 1956 Code 6:535; Rev. Stat. §§381, 382; OBB 49,61, Legal Principles and Rules, ch. IX §5; ch. XIII, §§2-14,2 Hub. 1545, 1559.

All the regular jurors comprising a jury shall be kept together from the time it is sworn or affirmed until it renders a verdict and is discharged; and the alternate jurors shall be kept with the jury until they are discharged as provided in section 22.2, provided that when a mixed jury is not engaged in hearing evidence or in deliberation, a room shall be provided for the female jurors separate from that for the male jurors. No juror, either regular or alternate, shall communicate with any person other than the constable or bailiff sworn to attend them. The judge at the trial may, however, dispense with any of these requirements.<sup>322</sup>

#### **§ 22.9. Instructions to jury.**

1. *Prior to retirement of jury.* At the close of the evidence or at any earlier time during the trial any party may request in writing that the court instruct the jury on the law as set forth in his requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall in such instance instruct the jury in writing after the arguments are completed. The court shall instruct the jury on every issue of law arising out of the facts even though no requests to charge thereon have been submitted by counsel. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

2. *After retirement of the jury.* The jury may at any time during deliberations ask the court for instructions on any point, and the court shall, if the request is proper, give the jury such instructions.<sup>323</sup>

#### **§ 22.10. Summary of evidence by the judge.**

At the time of instructing the jury, the judge may sum up the evidence and instruct the jury that they are to determine the weight of the evidence and the credit to be given to the witnesses.<sup>324</sup>

#### **§ 22.11. Verdicts.**

1. *In general.* A general verdict is one in which the jury finds in favor of one or more parties. A special verdict is one in which the jury finds the facts only, leaving the court to determine which party is entitled to judgment thereon. In every case the court shall direct the jury to return a general verdict unless in his opinion the facts adduced in evidence justify the return of a special verdict.

2. *Procedure in connection with special verdicts.* When the court requires a jury to return a special verdict, the court shall submit to the jury written questions susceptible of categorical or other brief answer or written forms of the several findings which might properly be made, or it may use any other appropriate method of submitting the issues and requiring written findings thereon. The court shall give sufficient instruction to enable the jury to

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<sup>322</sup> *Prior legislation:* L. 1963-64, ch. III (6:2208); 1956 Code 6:536; L. 1948-49, ch. XXXI, §§ 3, 4; Rev. Stat. § 393; OBB 49, Legal Principles and Rules, t. II, ch. IX, § 10, 2 Hub. 1545.

<sup>323</sup> *Prior legislation:* L. 1963-64, ch. III (6:2209); 1956 Code 6:627, 628, 654; Rev. Stat. §§ 377, 392; OBB 46, Legal Principles and Rules, t. II, ch. VII, §§ 12, 13, 2 Hub. 1542.

<sup>324</sup> *Prior legislation:* L. 1963-64, ch. III (6:2210); 1956 Code 6:627; Rev. Stat. §392.



make its findings upon each issue. If the court omits any issue of fact raised by the pleadings or evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without demand, the court may make an express finding or shall be deemed to have made a finding in accordance with the judgment.<sup>325</sup>

**§ 22.12. Report of verdict; polling the jury; entry of verdict.**

The foreman of the jury shall deliver its verdict. On demand of a party at any time before the jury is discharged, the jury shall be polled to determine whether all the jurors subscribe to the verdict. On rendition of the verdict, the clerk shall make an entry in his minutes specifying the time and place of the trial, the names of the jurors and witnesses, the general verdict if such a verdict was rendered, the questions or answers or other written findings constituting a special verdict, and the direction, if any, which the court gives with respect to subsequent proceedings.<sup>326</sup>

**§ 22.13. Unanimous verdict required; new trial on disagreement.**

The consent of all jurors is necessary to a verdict. If, after the jury has been kept together a reasonable time, the court is satisfied that there is no prospect that the jurors will agree on a verdict, the court shall discharge the jury and direct a new trial before another jury.<sup>327</sup>

**§ 22.14. Special juries.**

After the conclusion of a term of a Circuit Court when civil cases remain to be tried, a Circuit Court may in its discretion, at the request of either party, order a special jury empaneled to try any civil case. The jury shall be selected in the same manner as other trial juries. Immediately after final judgment has been rendered in such a case the clerk of the court shall calculate the jury fee, including the costs of selecting and empaneling the jury, compensation of jurors, and other incidental expenses in connection with the jury. The party who requested the special jury shall pay the per diem juror's fees in advance; but when costs are assessed, the losing party must pay such fee to the sheriff within three days or execution shall issue.<sup>328</sup>

## ***Chapter 23. TRIAL BY THE COURT***

§ 23.1. Issues to be decided by the court.

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<sup>325</sup> *Prior legislation:* L. 1963-64, ch. III (6:2211); 1956 Code 6:651, 652; L. 1933-34, ch. X, Rev. Stat. §§ 394, 395.

<sup>326</sup> *Prior legislation:* L. 1933-34, ch. III (6:2212); 1956 Code 6:657; OBB 49, Legal Principles and Rules, t. II, ch. IX, § 4, 2 Hub. 1545.

<sup>327</sup> *Prior legislation:* L. 1963-64, ch. III (6:2213); 1956 Code 6:655; Rev. Stat. § 356; OBB 49, Legal Principles and Rules, t. II, ch. IX, §§ I, 11, 12, 2 Hub. 1545.

<sup>328</sup> *Prior legislation:* L. 1963-64, ch. III (6:2214); 1956 Code 6:537; L. 1938, ch. XXII, §2; L. 1933-34, ch. X, § 2; L. 1931-32, ch. XVI.

- § 23.2. Advisory jury.
- § 23.3. Decision of the court.
- § 23.4. Time for decision by court.

**§ 23.1. Issues to be decided by the court.**

The court shall decide any issue not required to be tried by a jury unless it is referred to a referee to determine pursuant to chapter 24.<sup>329</sup>

**§ 23.2. Advisory jury.**

Upon the motion of any party or on the courts own initiative, the court may submit any issue of fact required to be decided by the court to an advisory jury. An order under this section shall specify the issues to be submitted. The court may confirm or reject in whole or in part the verdict of any advisory jury, may make new findings with or without taking additional testimony, or may order a new hearing.<sup>330</sup>

**§ 23.3. Decision of the court.**

1. *Requests for findings.* In actions tried upon the facts without a jury or with an advisory jury, the court, before rendering its decision, shall afford the parties an opportunity to submit requests for findings of fact. Each request shall be numbered and so phrased that the court may conveniently pass upon it. Requests for findings are not necessary, however, for purposes of review by the appellate court.

2. *Form of decision.* In actions tried upon facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct entry of the appropriate judgment. If an opinion or memorandum of decision is filed it will be sufficient if the findings of fact and conclusions of law appear therein. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court.<sup>331</sup>

**§ 23.4. Time for decision by court.**

The decision of the court shall be rendered within fifteen days after the cause or matter is finally submitted to the court.<sup>332</sup>

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<sup>329</sup> *Prior legislation:* L. 1963-64, ch. III (6:2301); 1956 Code 6:592; Rev. Stat. § 373; OBB 46, Legal Principles and Rules, t. II, ch. VII, §§ 1, 7, 2 Hub. 1542.

<sup>330</sup> *Prior legislation:* L. 1963-64, ch. III (6:2302).

<sup>331</sup> *Prior legislation:* L. 1963-64, ch. III (6:2303); 1956 Code 6:659.

<sup>332</sup> *Prior legislation:* L. 1963-64, ch. III (6:2304).

## **Chapter 24. TRIAL BY REFEREE**

- § 24.1. Order of reference.
- § 24.2. Reference on consent of parties.
- § 24.3. Qualifications of referees.
- § 24.4. Meetings.
- § 24.5. Witnesses.
- § 24.6. Conduct of trial; powers of the referee.
- § 24.7. Report by referee.
- § 24.8. Fees.

### **§ 24.1. Order of reference.**

In an action pending before a Circuit Court, the court may appoint, on motion of any party or on its own initiative, a referee to take evidence, make findings, and determine specific issues, to report issues, to perform particular acts, or only to receive and report evidence. The order of reference may fix the time and place for beginning and closing the hearings and for the filing of the referee's report. A reference to a referee shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, a reference shall be made only to determine matters of account or upon a showing that some exceptional condition requires it.<sup>333</sup>

### **§ 24.2. Reference on consent of parties.**

The parties may consent that any or all issues be referred to a referee for determination. Such consent shall be evidenced by a stipulation filed with the clerk. The stipulation may name the referee or the referee may be designated by the court, except that in matrimonial actions only the court may designate the referee. After filing of the stipulation the court shall enter an order of reference, but in a matrimonial action, the entry of such an order shall be within the discretion of the court.<sup>334</sup>

### **§ 24.3. Qualifications of referees.**

Except by consent of the parties, no person shall be designated as referee unless he is an attorney admitted to practice in the Republic and in good standing. No person shall serve as referee in an action to which he is a party or in which he is interested. No person shall serve as referee who holds the position of judge, clerk of court, or

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<sup>333</sup> *Prior legislation:* L. 1963-64, ch. III (6:2401); 1956 Code 6:622; Rev. Stat § 1387(7); OBB 65, Legal Principles and Rules, t. II, ch. XV, § 12, 2 Hub. 1563.

<sup>334</sup> *Prior legislation:* L. 1963-64, ch. III (6:2402).

stenographer, or of secretary or clerk to a judge, or who is a partner or clerk of an attorney for any party to the action, or who occupies the same office with such attorney.<sup>335</sup>

#### **§ 24.4. Meetings.**

Upon the entry of an order of reference, the clerk shall send a copy of the order to the referee. Unless the order of reference otherwise provides, the referee shall forthwith notify the parties of a time and place for the first hearing to be held within ten days after the date of the order or shall notify the court that he declines to serve. If a party fails to appear at the time and place appointed, the referee may proceed ex parte, or, in his discretion, adjourn the proceedings to a future day giving notice to the absent party of the adjournment. It is the duty of the referee to proceed with all reasonable diligence. Either party, on notice to the parties and the referee, may apply to the court for an order requiring the referee to speed the proceedings and to make his report.<sup>336</sup>

#### **§ 24.5. Witnesses.**

The parties may procure the attendance of witnesses before the referee by the issuance and service of subpoenas as provided in sections 14.2 and 14.3. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in section 14.6.<sup>337</sup>

#### **§ 24.6. Conduct of trial; powers of the referee.**

A referee authorized to take testimony or to make findings shall conduct the trial in the same manner as a court trying an issue without a jury. Subject to the specifications and limitations stated in the order, the referee has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference. He has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them on oath. A record of the evidence offered and excluded shall be made in the same manner and subject to the same limitations as in a court sitting without a jury. When matters of accounting are in issue before the referee, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by an accountant who is called as a witness.<sup>338</sup>

#### **§ 24.7. Report by referee.**

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<sup>335</sup> *Prior legislation:* L. 1963-64, ch. III (6:2403).

<sup>336</sup> *Prior legislation:* L. 1963-64, ch. III (6:2404).

<sup>337</sup> *Prior legislation:* L. 1963-64, ch. III (6:2405).

<sup>338</sup> *Prior legislation:* L. 1963-64, ch. III (6:2406).

1. *Contents and filing.* The referee shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith send a notice of the filing to all parties.

2. *Effect of report in non-jury actions.* In an action to be tried without a jury, the court shall accept the referee's findings of fact, insofar as they are based upon oral testimony, unless clearly erroneous. Within five days after being served with notice of filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by notice and motion as prescribed in chapter 10. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommend it with instructions.

3. *Effect of report in jury actions.* In an action to be tried by a jury, the referee shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and shall constitute prima facie proof of the facts stated. The findings may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report. The parties may not introduce evidence not introduced at the hearing before the referee unless good cause for failure to introduce such evidence is shown.

4. *Effect of report when parties consented to reference.* The effect of a referee's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a referee's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

5. *Submission of draft report to counsel.* Before filing his report a referee may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.<sup>339</sup>

#### **§ 24.8. Fees.**

The compensation to be allowed to a referee shall be fixed by the court, and shall be taxed as costs unless the court orders otherwise. The referee shall not retain his report as security for his compensation, but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the referee is entitled to a writ of execution against the delinquent party.<sup>340</sup>

## **Chapter 25. EVIDENCE**

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<sup>339</sup> *Prior legislation:* L. 1963-64, ch. III (6:2407); 1956 Code 6:622; Rev. Stat. § 1387(7); OBB 65, Legal Principles and Rules, t. H, ch. XV, § 12, 2 Hub. 1563.

<sup>340</sup> *Prior legislation:* L. 1963-64, ch. III (6:2408).

- § 25.1. Judicial notice of law.
- § 25.2. Judicial notice of historical facts.
- § 25.3. Presumptions.
- § 25.4. Relevance.
- § 25.5. Burden of proof.
- § 25.6. Best evidence.
- § 25.7. Hearsay evidence.
- § 25.8. Admissions.
- § 25.9. Parole evidence.
- § 25.10. Proof of official record.
- § 25.11. Admissibility and conclusiveness of judgments.
- § 25.12. Foreign judgments.
- § 25.13. Proof of jurisdiction of court.
- § 25.14. Will as evidence.
- § 25.15. Letters testamentary and of administration as evidence.
- § 25.16. Deeds and other writings as evidence.
- § 25.17. Proof of authenticity of documents.
- § 25.18. Competency of witnesses.
- § 25.19. Impeachment of credibility of witness.
- § 25.20. Witness compelled to answer.
- § 25.21. Opinion testimony.
- § 25.22. Leading questions.
- § 25.23. Scope of cross-examination.
- § 25.24. Refreshing memory.

**§ 25.1. Judicial notice of law.**

1. *Public law of Liberia.* Every court of the Republic of Liberia shall without request take judicial notice of the Constitution and of the public statutes and common law of the Republic.

2. *Private law of Liberia and foreign law.* Every court may take judicial notice without request of private acts and resolutions of the Liberian Legislature; ordinances and regulations of officers, agencies, or governmental subdivisions of Liberia; and the laws of foreign countries or their political subdivisions. If the court does not take

judicial notice of any such law, it shall be an issue to be decided by the court, but the party relying on such law shall give each adverse party notice of his intention to rely on it. Notice shall be given in his pleadings, or at or before the pretrial conference, or at least ten days before trial when there is no pretrial conference; but the court may require other notice. Whether a law is judicially noticed or proof is taken, every matter specified in this paragraph shall be determined by the judge or referee and included with his conclusions of law or charged to the jury. Such findings or charge shall be subject to review on appeal as a finding or charge on a matter of law.<sup>341</sup>

### **§ 25.2. Judicial notice of historical facts.**

The judge shall of his own motion take judicial notice of public historical facts that are so well known as not to be the subject of reasonable dispute.<sup>342</sup>

### **§ 25.3. Presumptions.**

1. *Life and death.* When a person is shown to have existed, continuing existence is presumed unless the contrary is proved or is to be reasonably inferred from the circumstances. Death shall be presumed from a continuous unexplained absence of seven years during which the absentee has not been heard of or from by those who, if he had been alive, would naturally have heard of or from him; provided, however, that the presumption does not arise when there exist circumstances or facts which reasonably account for his not being heard of or when his absence and failure to communicate are reasonably explained without assuming his death or when diligent inquiry as to whether he is alive or dead has not been made.

2. *Legitimacy.* Whenever it is established in an action that a child was conceived by a woman while she was the lawful wife of a specified man, the party asserting the illegitimacy of the child has the burden of producing evidence and the burden of persuading the trier of fact beyond reasonable doubt that the man was not the father of the child.

3. *Marriage.* Persons who live together as husband and wife and hold themselves out as such are presumed to be married.

4. *Sales in shops.* If an article is sold in an office or shop where such articles are usually sold, the person for whose account the business of such office or shop is carried on shall be presumed to have sold such article.

5. *Ownership.* The possession of property raises a presumption of ownership thereof.<sup>343</sup>

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<sup>341</sup> *Prior legislation:* L. 1963-64, ch. III (6:2501); 1956 Code 6:721, 723(2); Rev. Stat. §§ 1375, 1376; J. P. Code §W, 86; OBB 51, 54, Legal Principles and Rules, t. II, ch. X, § 23; ch. XI, § 9, 2 Hub. 1548, 1550.

<sup>342</sup> *Prior legislation:* L. 1963-64, ch. III (6:2502); 1956 Code 6:681; Rev. Stat. § 1369; J. P. Code §83; OBB 51, Legal Principles and Rules, t. II, ch. X, § 22, 2 Hub. 1548.

<sup>343</sup> *Prior legislation:* L. 1963-64, ch. III (6:2503); 1956 Code 6:682; Rev. Stat. §§ 1364, 1365, 1370, 1371; OBB 51, Legal Principles and Rules, t. II, ch. X, §§4-6, 24, 26, 2 Hub. 1548.

#### § 25.4. Relevance.

All evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages.<sup>344</sup>

#### § 25.5. Burden of proof.

1. *Party having burden.* The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party.

2. *Quantum of evidence.* It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence.<sup>345</sup>

#### § 25.6. Best evidence.

1. *In general.* The best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence.

2. *Copies of writings.* A copy of a writing is not admissible as evidence unless the original is proved to be lost or destroyed or to be in the possession of the opposite party who has received notice to produce it or unless it is a copy of some public record or document proved as provided in section 25.10 of this chapter.

3. *Evidence of writing in possession of adversary.* A party may not introduce in evidence a copy of a writing the original of which is in the possession of his adversary or testify concerning the contents of such original until he shall have served on the adversary reasonable notice to produce it and the adversary shall have neglected or refused to comply with the notice.<sup>346</sup>

#### § 25.7. Hearsay evidence.

1. *General rule.* Hearsay evidence is not admissible except to the extent and under the circumstances stated in paragraphs 2, 3, and 5 of this section and as otherwise established by law.

2. *Family history.* Declarations of deceased persons concerning family history of which they, from their situations, were likely to have knowledge, such as marriages, births, deaths, and pedigrees, may be received in evidence.

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<sup>344</sup> *Prior legislation:* L. 1963-64, ch. III (6:2504); 1956 Code 6:698; OBB 51, Legal Principles and Rules, t. II, ch. X, § 27, 2 Hub. 1548.

<sup>345</sup> *Prior legislation:* L. I ch. III (6:2505); 1956 Code 6:683, 684; Rev. Stat. § 1364; J. P. Code §§77, 78; OBB 51, Legal Principles and Rules, t. II, ch. X, §§ 1, 3, 7, 2 Hub. 1548.

<sup>346</sup> *Prior legislation:* Par. 1: L. 1963-64, ch. III (6:2506(1)); 1956 Code 6:685; Rev. Stat. § 1355; J. P. Code § 78; OBB 51, Legal Principles and Rules, t. II, ch. X, §9, 2 Hub. 1548. Par. 3: L. 1963-64, ch. III (6:2507(3)); 1956 Code 6:734-737; Rev. Stat. §§ 1373, 1381; J. P. Code §§91, 92; OBB 54, Legal Principles and Rules, t. 11, ch. XI, §§ 4, 27, 29-31, 2 Hub. 1550.



3. *Entries in the regular course of business.* Any writing or recording, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible in evidence in proof of said act, transaction, occurrence, or event, if the judge shall find that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term "business" shall include a business, profession, occupation, and calling of every kind.

4. *Proof of fact that statement was made.* Statements made out of court and offered in evidence through a witness or a writing not to establish the truth of the matter stated but to establish the fact that the statement was made, is not to be excluded as hearsay under paragraph 1 of this section.

5. *General reputation.* A person's character or that he has held or holds a public office in which he has publicly acted may be established by evidence of general reputation.<sup>347</sup>

#### **§ 25.8. Admissions.**

1. *Admissibility in general.* All admissions made by a party himself or by his agent acting within the scope of his authority are admissible. Every agent for the conduct of a cause shall have authority to make admissions in that cause. The admissions of every other agent in any matter under his control as agent shall be admissible.

2. *Joint interest.* When several parties have a joint interest and such interest has been proved, the admission of one is the admission of all; but the joint interest may not be proved by the admission of one or more against those not joining in such admission.

3. *Admissions of privy in title.* The admissions of a deceased person concerning his right in property made while the interest of such property continued shall have the same effect when introduced against a party deriving title to such property when rights in the property are in dispute as if made by such party.<sup>348</sup>

#### **§ 25.9. Parol evidence.**

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<sup>347</sup> *Prior legislation:* Par. 1: L. 1963-64 ch. III (6:2507(1) ); 1956 Code 6:687; Rev. Stat. § 1366; J. P. Code §79; OBB 51, Legal Principles and Rules, t. II, ch. X, §10, 2 Hub. 1548. Par. 2: L. 1963-64, ch. III (6:2507(2)); 1956 Code 6:688; Rev. Stat. §1366; J. P. Code §79; OBB 51, Legal Principles and Rules, t. II, ch. X, §§ 11, 12, 2 Hub. 1548. Par. 3: L. 1963-64, ch. III (6:2507(3)); 1956 Code 6:690; Rev. Stat. § 1380; J. P. Code §90; OBB 54, Legal Principles and Rules, t. II, ch. XI, § 26,2 Hub. 1550. Par. 4: L. 1963-64, ch. III (6:2507(4)); 1956 Code 6:696; Rev. Stat. § 1368; OBB 51, Legal Principles and Rules, t II ch. X, §20, 2 Hub. 1548. Par. 5: L. 1963-64, ch. III (6:2507(5)); 1956 Code 6:697; OBB 51, Legal Principles and Rules, t. II, ch. X, § 12,2 Hub. 1548.

<sup>348</sup> *Prior legislation:* Par. 1: L. 1963-64, ch. III (6:2508(1)); 1956 Code 6:691; Rev. Stat. § 1367; J. P. Code § 82; OBB 51, Legal Principles and Rules, t. II, ch. X, §§ 13-16,2 Hub. 1548. Par. 2: L. 1963-64, ch. III (6:2508(2)); 1956 Code 6:592; Rev. Stat. § 1367; J. P. Code §82; OBB 51, Legal Principles and Rules, t. II, ch. X, § 17, 2 Hub. 1548. Par. 3: L. 1963-64, ch. III (6:2508(3)); 1956 Code 6:689; Rev. Stat. §§1367, 1368; J. P. Code § 82; OBB 51, Legal Principles and Rules, t. II, ch. X, § 21, 2 Hub. 1548.

When any agreement or disposition of property has been reduced to the form of a document or series of documents, no evidence may be received of the terms of such agreement or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible; nor may the contents of any such document be contradicted, altered, added to, or varied by oral evidence; provided that any of the following matters may be proved:

- (a) Fraud, intimidation, illegality, want of execution, want of capacity of any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law, or any other matter which, if proved, would produce any effect upon the validity of any document, or of any party to it;
- (b) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them;
- (c) The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such agreement or disposition of property;
- (d) The existence of any distinct subsequent oral agreement to rescind or modify any such agreement or disposition of property, provided that such agreement is not invalid under the statute of frauds, or otherwise;
- (e) Any usage or custom by which incidents not expressly mentioned in any agreement are annexed to agreements of that description; unless the annexing of such incident to such agreement would be inconsistent with its express terms;
- (f) Oral evidence of a documentary memorandum if such memorandum was not intended to have legal effect as an agreement or disposition of property;
- (g) Oral evidence of the existence of a legal relation, even though such relation was created by a document, when the fact to be proved is the existence of the relation, and not the terms on which it was established or is carried on.<sup>349</sup>

#### **§ 25.10. Proof of official record.**

*1. Authentication of copy.* An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. If the office in which the record is kept is within the Republic of Liberia, the certificate may be made by a clerk of a court of record of the political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, a consul general, consul, vice consul,

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<sup>349</sup> *Prior legislation:* L. 1963-64, ch. III (6:2509); 1956 Code 6:741743; Rev. Stat. § 1383; J. P. Code §93; OBB 54, Legal Principles and Rules, t. II, ch. XI, §§ 38,39, 2 Hub. 1550.

or consular agent or by any officer in the foreign service of Liberia stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office; or, if there is no Liberian diplomatic representative in such foreign country, the required certificate may be issued by a notary public of that country.

2. *Proof of lack of record.* A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as provided in paragraph 1, is admissible as evidence that the records of his office contain no such record or entry.

3. *Other proof.* This section does not prevent the proof of official record of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.<sup>350</sup>

#### **§ 25.11. Admissibility and conclusiveness of judgments.**

1. *Against whom admissible.* Judgments shall be admissible in evidence, subject to the other provisions of this section, against all parties thereto and against those claiming under them. They shall not generally be admissible against any other persons except for the purpose of showing their own existence. When a judgment has been rendered against any party in consequence of any act or omission of another person, such judgment shall be evidence to prove its own existence and the amount of damages sustained in an action by the original party defendant against such other person.

2. *Admissibility of verdict or judgment separately.* A verdict on which no judgment has been given shall not be admissible; a judgment shall be admissible although not founded on a verdict.<sup>351</sup>

#### **§ 25.12. Foreign judgments.**

A foreign judgment in a case in which the defendant did not appear although a party thereto shall not be admissible against him; but if any person appeared on his behalf in the case, the foreign judgment shall be admissible unless he shows that the appearance was without his authority. A judgment of a foreign prize court is not conclusive of any act whatsoever, but is some evidence.<sup>352</sup>

#### **§ 25.13. Proof of jurisdiction of court.**

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<sup>350</sup> *Prior legislation:* L. 1963-64, ch. III (6:2510); 1956 Code 6:722-725; Rev. Stat. §§ 1373, 1376; J. P. Code §§ 81, 86; OBB 54, Legal Principles and Rules, t. II, ch. XI, §§2, 3, 10, 2 Hub. 1550.

<sup>351</sup> *Prior legislation:* L. 1963-64, ch. III (6:2511); 1956 Code 6:727, 728; Rev. Stat. §§ 1376,1377; J. P. Code §87; OBB 54, Legal Principles and Rules, t. II, ch. XI, §§ 12-15, 1921, 2 Hub. 1550.

<sup>352</sup> *Prior legislation:* L. 1963-64, ch. III (6:2512); 1956 Code 6:729; Rev. Stat. § 1376; OBB 54, Legal Principles and Rules, t II, ch. XI, §§ 16-18, 2 Hub. 1550.

In all cases in which the judgment of a court of limited jurisdiction or of a foreign court is sought to be introduced in evidence, the jurisdiction of such court must be proved to extend to the case in which the judgment was given.<sup>353</sup>

#### **§ 25.14. Will as evidence.**

A will regularly admitted to probate by a court having jurisdiction to do so is admissible against all mankind except in a proceeding to set aside such will or the probate thereof.<sup>354</sup>

#### **§ 25.15. Letters testamentary and of administration as evidence.**

Letters testamentary and of administration may be introduced in evidence in all cases until they have been regularly revoked.<sup>355</sup>

#### **§ 25.16. Deeds and other writings as evidence.**

Deeds and other writings shall be admissible against all parties to them and shall also be evidence against all mankind of the transfer of all titles or rights transferred by them.<sup>356</sup>

#### **§ 25.17. Proof of authenticity of documents.**

1. *Proof of handwriting.* Handwriting may be proved by the oath of a person acquainted with the handwriting of the person whose it is alleged to be either from having seen him write or from having corresponded or transacted business with him; or it may be proved by comparison with undoubted writings of the person proved not to have been written after the dispute arose or under suspicious circumstances.

2. *Examination of party to prove his handwriting.* Either party may examine the other under oath before or at the trial to determine whether any relevant document or signature is in his handwriting. If a party whose signature on a document the other party seeks to prove, refuses or neglects to answer an interrogation on this matter, except in pursuance of his constitutional right not to be compelled to give evidence against himself, it shall be considered an admission that it is his handwriting.

3. *Proof of signature of subscribing party.* If any party shall deny that the handwriting is his and if the document has the name of a subscribing witness annexed to it, such witness shall be produced or his absence accounted for by showing his death or removal beyond the process of the court or other fact rendering his attendance

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<sup>353</sup> *Prior legislation:* L. 1963-64, ch. III (6:2513); 1956 Code 6:730; Rev. Stat. § 1376; OBB 54, Legal Principles and Rules, t II, ch. XI, § 22, 2 Hub. 1550.

<sup>354</sup> *Prior legislation:* L. 1963-64, ch. III (6:2514); 1956 Code 6:731; Rev. Stat. §1378; J. P. Code §88; OBB 54, Legal Principles and Rules, t. II, ch. XI, § 23, 2 Hub. 1550.

<sup>355</sup> *Prior legislation:* L. 1963-64, ch. III (6:2515); 1956 Code 6:732; Rev. Stat. §1378; J. P. Code §88; OBB 54, Legal Principles and Rules, t. II, ch. XI, §24, 2 Hub. 1550.

<sup>356</sup> *Prior legislation:* L. 1963-64, ch. III (6:2516); 1956 Code 6:733; Rev. Stat. § 1379; J. P. Code §89; OBB 54, Legal Principles and Rules, t. II, ch. XI, § 25, 2 Hub. 1550.

impracticable. In such a case if the witness cannot be produced, it shall be necessary to prove both his handwriting and that of the party.

4. *Proof of authenticity of document under which other party claim.* It shall be unnecessary for a party to prove that a document which he seeks to introduce was executed by the other party if the latter claims under it.

5. *Ancient documents.* It shall be unnecessary to prove the execution of a document more than thirty years old which is proved to have been found in the possession of a person who may reasonably be supposed to have possession of it if it is genuine and which is attended by no circumstances tending to throw suspicion on it.<sup>357</sup>

#### **§ 25.18. Competency of witnesses.**

1. *General rule.* Every witness shall be considered competent who cannot clearly be shown to be incompetent under the provisions of this section.

2. *Incompetency through defect of understanding.* A person is disqualified to be a witness if the judge finds that the proposed person is incapable of understanding the duty of a witness to tell the truth. The incompetency of a witness by reason of defect of understanding must be proved by examination before the court. It shall be the duty of the court to examine all children under twelve years of age before administering the oath or affirmation to them.

3. *Incompetency because of marital or family relation.* A husband or wife shall not testify against his or her spouse in any action; provided, however, that this provision shall not apply to actions between husband and wife. A child under twelve years of age shall not testify against his parents or any person with whom he resides except when the child's interest is involved.<sup>358</sup>

#### **§ 25.19. Impeachment of credibility of witness.**

1. *Methods of impeachment.* The credibility of a witness may be impeached by attacking his general character, by showing his conviction of particular crimes, or by showing that he has contradicted himself either in or out of court.

2. *Corroboration by witness impeached.* When there is an attempt to impeach the credibility of a witness, his former statements may be given in evidence to corroborate his testimony.

3. *Impeaching own witness.* Except as to a hostile witness or as otherwise provided by law, a party may not impeach the credibility of his own witness although he may contradict him by the testimony of other witnesses or by documentary evidence. However, a party may request the court to declare his own witness hostile if his

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<sup>357</sup> *Prior legislation:* L. 1963-64, ch. III (6:2517); 1956 Code 6:738,740; Rev. Stat. §§ 1374, 1381, 1382; J. P. Code §§ 91, 94; OBB 54, Legal Principles and Rules, t. II, ch. XI, §§5, 6, 28, 33-36, 2 Hub. 1550.

<sup>358</sup> *Prior legislation:* L. 1963-64, ch. III (6:2518); 1956 Code 6:751, 752, 755; Rev. Stat. §361; L. 1907-08, 31, §§ 1, 2; OBB 57, Legal Principles and Rules, t. II, ch. XII, §§ 4-7, 1015, 17, 18, 20, 21, 2 Hub. 1555.

testimony is contrary to his earlier statements, inherently impossible, irresponsible, or hostile, or shows that he is biased against such party; if the court grants his request, he may then interrogate such witness as if he had been called as a witness for the other party.<sup>359</sup>

#### **§ 25.20. Witness compelled to answer.**

A witness may be compelled to answer every question which is asked him at the trial or at the time of taking a deposition unless he claims his constitutional right not to be compelled to give evidence against himself or a special exemption granted by law or unless he is the confidential agent of one of the parties in the case and the question is one which the party himself could not be compelled to answer and about which the witness has no knowledge except that derived from the confidential communication of the party. A witness who refuses to answer without excuse shall be deemed guilty of contempt of court.<sup>360</sup>

#### **§ 25.21. Opinion testimony.**

A witness shall testify or depose to such facts as are within his own knowledge and recollection. He may testify to his opinion only in the following cases:

- (a) If the witness is not testifying as an expert, and the judge finds that his opinion (1) may be rationally based on the perception of the witness, and (2) is helpful to a clear understanding of his testimony or to the determination of the fact in issue;
- (b) If the witness is testifying as an expert, and the judge finds that his opinion (1) is based on facts or data perceived by or personally known or made known to the witness at the hearing and (2) within the scope of the special knowledge, skill, experience, or training possessed by the witness.<sup>361</sup>

#### **§ 25.22. Leading questions.**

Except as to a hostile witness as such a witness is defined by section 25.19(3), leading questions, that is, those which indicate what answer is desired, shall not be asked on direct examination, but they may be asked on cross-examination. A witness shall not be asked irrelevant or hypothetical questions for the mere purpose of entrapping him.<sup>362</sup>

#### **§25.23. Scope of cross-examination.**

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<sup>359</sup> *Prior legislation:* L. 1963-64, ch. III (6:2519); 1956 Code 6:756, 757; OBB 57, Legal Principles and Rules, t. II, ch. XII, §§35-38, 2 Hub. 1555.

<sup>360</sup> *Prior legislation:* L. 1963-64, ch. III (6:2520); 1956 Code 6:763; Rev. Stat. §§ 362, 365; L. 1907-08, 31, § 3; J. P. Code §95 (5); OBB 57, Legal Principles and Rules, t. II, ch. XII, §22, 2 Hub. 1555.

<sup>361</sup> *Prior legislation:* L. 1963-64, ch. III (6:2521); 1956 Code 6:764; Rev. Stat. §369; J. P. Code § 95; OBB 57, Legal Principles and Rules, t. II, ch. III, §§30, 32, 2 Hub. 1555.

<sup>362</sup> *Prior legislation:* L. 1963-64, ch. III (6:2522); 1956 Code 6:765; Rev. Stat. § 367; J. P. Code §95; OBB 57, Legal Principles and Rules, t. II, ch. XII, §§ 29, 33, 2 Hub. 1555.

Except as otherwise provided by law, a witness may be cross-examined as to all matters touching the cause or likely to discredit him.<sup>363</sup>

**§ 25.24. Refreshing memory.**

A witness may refresh his memory by reference to any written memorandum, document, book, record, paper, or object. The adverse party may thereupon examine such memorandum, document, book, record, paper, or object, and offer it in evidence.<sup>364</sup>

## **Chapter 26. TRIAL AND POST-TRIAL MOTIONS**

§ 26.1. Common law practices abolished.

§ 26.2. Motion for judgment during trial.

§ 26.3. Motion for continuance or new trial during trial.

§ 26.4. Post-trial motion for new trial.

**§ 26.1. Common law practices abolished.**

The demurrer to the evidence, involuntary nonsuits because of insufficient evidence, and motions for *judgment non obstante veredicto*, in arrest of judgment, or for a venire de novo are hereby abolished. The relief heretofore granted through such practices shall henceforth be sought by motion as prescribed in this chapter.<sup>365</sup>

**§ 26.2. Motion for judgment during trial.**

After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. If the court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline to

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<sup>363</sup> *Prior legislation:* L. 1963-64, ch. III (6:2523); 1956 Code 6:765; J. P. Code § 95; OBB 57, Legal Principles and Rules, t. II, ch. XII, §34, 2 Hub. 1555.

<sup>364</sup> *Prior legislation:* L. 1963-64, ch. III (6:2524); 1956 Code 6:766; Rev. Stat. § 368; J. P. Code §95; OBB 57, Legal Principles and Rules, t II, ch. XII, § 31, 2 Hub. 1555.

<sup>365</sup> *Prior legislation:* L. 1963-64, ch. III (6:2601).

render any judgment until the close of all the evidence. In such a case if the court renders judgment on the merits, the court shall make findings as provided in section 23.3(2).<sup>366</sup>

**§ 26.3. Motion for continuance or new trial during trial.**

At any time during the trial, the court, on motion of any party, may order a continuance or a new trial in the interest of justice on such terms as may be prescribed.<sup>367</sup>

**§ 26.4. Post-trial motion for new trial.**

After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice. A motion under this section shall be made within four days after verdict. No extension of time shall be granted for making a motion under this section.<sup>368</sup>

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<sup>366</sup> *Prior legislation:* L. 1963-64, ch. III (6:2602); 1956 Code 6:623.

<sup>367</sup> *Prior legislation:* L. 1963-64, ch. III (6:2603).

<sup>368</sup> *Prior legislation:* L. 1963-64, ch. III (6:2604); 1956 Code 6:820-823; Rev. Stat. §§ 397-399; OBB 46, Legal Principles and Rules, t II, ch. VII, §§ 16-19, 2 Hub. 1542.



## PART III

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### *Judgments: Enforcement of Judgments and Orders*

#### **Chapter 41. JUDGMENTS IN GENERAL**

- § 41.1. Definitions.
- § 41.2. Rendition and entry of judgment.
- § 41.3. Recording of judgments.
- § 41.4. Alphabetical notation of judgments.
- § 41.5. Filing document of authority to enforce judgment.
- § 41.6. Correction of judgment or order.
- § 41.7. Relief from judgment.
- § 41.8. Satisfaction of judgment.

##### **§ 41.1. Definitions.**

As used in this part, the terms defined shall have the following meanings:

- (a) A money judgment is an interlocutory or final judgment or any part thereof, for a sum of money or directing the payment of a sum of money.
- (b) A judgment creditor is a person in whose favor a money judgment is entered or a person who becomes entitled to enforce it.
- (c) A judgment debtor is a person against whom a money judgment is entered.
- (d) A garnishee is a person who owes a debt to a judgment debtor, or a person other than the judgment debtor who has property in his possession or custody in which the judgment debtor has an interest.
- (e) Real property includes chattels real.
- (f) Except where the context indicates to the contrary, the term sheriff as used in this chapter shall be deemed to include the ministerial officer of a court other than the Circuit Court when the provision wherein it is used is applied to such a court.<sup>369</sup>

##### **§ 41.2. Rendition and entry of judgment.**

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<sup>369</sup> *Prior legislation:* L. 1963-64, ch. III (6:4101).

1. *Time and manner of rendition.* All judgments shall be announced in open court. The judgment in a jury case shall not be announced until four days after verdict.

2. *What constitutes entry.* A judgment is entered when it is announced by the judge in open court.<sup>370</sup>

### **§ 41.3. Recording of judgments.**

The clerk of court shall keep a book in which he shall record all judgments. The judgment of a magistrate or justice of the peace shall be written on the back of the writ of summons under the summary of the defendants answer.<sup>371</sup>

### **§ 41.4. Alphabetical notation of judgments.**

The clerk of a court in which a money judgment or a judgment affecting the title to real property is rendered shall, in addition to recording the judgment as required by section 41.3, make a notation thereof in a book reserved for such notations under the surname of the judgment debtor alphabetically arranged in relation to the names of other judgment debtors and consisting of the following data:

- (a) The name and last known address of the judgment debtor, and his trade or profession if stated in the judgment;
- (b) The name and last known address of the judgment creditor;
- (c) The sum recovered or directed to be paid in figures;
- (d) The date and time of filing;
- (e) The name and address of the attorney for the judgment creditor.<sup>372</sup>

### **§ 41.5. Filing document of authority to enforce judgment.**

A person other than the party recovering a judgment who becomes entitled to enforce it shall file in the office of the clerk of the court where it was entered a copy of the instrument on which his authority is based, acknowledged in the form required to entitle a deed to be recorded, or, if his authority is based on a court order, a certified copy of the order. Upon such filing the clerk shall make an entry of the name and address of the person on the notation of the judgment made in accordance with the requirements of section 41.4.<sup>373</sup>

### **§ 41.6. Correction of judgment or order.**

A judgment or order shall not be stayed, impaired, or affected by any mistake, defect, or irregularity in the papers or procedures in the action not affecting a substantial right of the party. Such a mistake, defect, or

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<sup>370</sup> *Prior legislation:* L. 1963-64, ch. III (6:4102); 1956 Code 6:880; Rev. Stat. § 410; OBB 69, Legal Principles and Rule, t. II, ch. XVII, § 1, 2 Hub. 1568.

<sup>371</sup> *Prior legislation:* L. 1963-64, ch. III (6:4103); 1956 Code 6:911; Rev. Stat. §§ 636, 655; J. P. Code §§ 23, 42; OBB 113, Judiciary, art. I, §2; 1841 Digest, pt. I, Judiciary Act § 2, 2 Hub. 1465.

<sup>372</sup> *Prior legislation:* L. 1963-64, ch. III (6:4104).

<sup>373</sup> *Prior legislation:* L. 1963-64, ch. III (6:4105).

irregularity may be corrected on order of the court in which the case was tried, but in the period after the appeal has been docketed and prior to remission of the mandate of the appellate court to the trial court, the corrections may be made only with leave of the appellate court.<sup>374</sup>

#### **§ 41.7. Relief from judgment.**

1. *Common law writs to secure relief from judgment abolished.* Writs of *coram nobis*, *coram vobis*, *audita querela*, and bills of review and bills in the nature of a bill of review are abolished for use in civil proceedings, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in this section or by an independent action.

2. *Grounds.* On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title;
- (c) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (d) Voidness of the judgment; or
- (e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or in-equitableness in allowing prospective application to the judgment.

3. *Time for motion.* A motion under this section shall be made within a reasonable time after judgment is entered.

4. *Effect of motion.* A motion under this section does not affect the finality of a judgment or suspend its operation. This section does not limit the power of a court to entertain an independent action to relieve a party from a judgment or to grant relief to a defendant under section

5. *Restitution.* Where a judgment is set aside, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal.<sup>375</sup>

#### **§ 41.8. Satisfaction of judgment.**

When a person entitled to enforce a judgment receives satisfaction or partial satisfaction thereof, he shall execute and deliver to the judgment debtor an acknowledgment that the judgment has been satisfied or partially satisfied, as the case may be. Such acknowledgment shall be certified by a notary. The judgment debtor

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<sup>374</sup> *Prior legislation:* L. 1963-64, ch. III (6:4106); 1956 Code 6:890(1); Rev. Stat. § 411; OBB 33, Legal Principles and Rules, t. II, ch. II, § 47, 2 Hub. 1527.

<sup>375</sup> *Prior legislation:* L. 1963-64, ch. III (6:4107); 1956 Code 6:890(2), 990.

may file the certificate in the office of the clerk of the court which rendered the judgment. The clerk shall note the satisfaction of the judgment in the book required to be kept under the provisions of section 41.4.<sup>376</sup>

## Chapter 42. DEFAULT JUDGMENTS

- § 42.1. Right of plaintiff.
- § 42.2. Procedure before the court
- § 42.3. Actions against infants or incompetents.
- § 42.4. Default not entered within one year.
- § 42.5. Place of application to court.
- § 42.6. Proof.
- § 42.7. Notice.
- § 42.8. Annulment and divorce.
- § 42.9. Application of section.

### § 42.1. Right of plaintiff.

If a defendant has failed to appear, plead, or proceed to trial, or if the court orders a default for any other failure to proceed, the plaintiff may seek a default judgment against him.<sup>377</sup>

### § 42.2. Procedure before the court.

If the plaintiff's claim in an action in which the defendant has defaulted is for a sum certain or for a sum which by computation can be made certain, the court, upon submission of the proof required by section 42.6, shall direct entry for the amount demanded in the complaint plus costs and interest. If the plaintiff's claim is not for a sum certain or for a sum which by computation can be made certain, the court, upon submission of the proof required by section 42.6, shall determine if the plaintiff is entitled to judgment. If the court deems it necessary or proper, it may conduct a hearing to determine the truth of any of the plaintiff's averments and if it is necessary to determine the amount of damages, the court shall refer the question to a jury or referee, whose decision shall be binding. A defendant who has appeared is entitled to be heard at the hearing on the amount of damages. Except in an action for an annulment or divorce, no finding of fact in writing shall be necessary to the rendition of a judgment on default. The judgment shall not exceed in amount or differ in type from that

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<sup>376</sup> *Prior legislation:* L. 1963-64, ch. III (6:4108); 1956 Code 6:902; Rev. Stat. §§ 415, 658; J. P. Code §45.

<sup>377</sup> *Prior legislation:* L. 1963-64, ch. III (6:4201); 1956 Code 6:844, 910; Rev. Stat. §§403, 634; J. P. Code §21; OBB 67, Legal Principles and Rules, t. II, ch. XVI, § 3, 2 Hub. 1565.

demanded in the complaint. In an action to recover real property, a hearing is mandatory, and any question of fact shall be tried by jury.<sup>378</sup>

### **§ 42.3. Actions against infants or incompetents.**

No judgment by default shall be entered against an infant or incompetent person unless such person is represented in the action by a guardian, committee, or other such representative who has appeared therein.<sup>379</sup>

### **§ 42.4. Default not entered within one year.**

If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dis-miss the complaint as abandoned upon its own motion or on application by the defendant or on plaintiff's application for entry of judgment, un-less sufficient cause is shown why the complaint should not be dismissed. An application by defendant under this section does not constitute an appearance in the action.<sup>380</sup>

### **§ 42.5. Place of application to court.**

An application to the court under this chapter may be made at any place at which the action is triable.<sup>381</sup>

### **§ 42.6. Proof.**

On an application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default, and the amount due.<sup>382</sup>

### **§ 42.7. Notice.**

1. *When required.* Notice is not required when the claim is for a sum certain or for a sum which can by computation be made certain. If the plaintiff's claim is not for a sum certain or for a sum which can by computation be made certain and if the defendant has appeared, or if more than one year has elapsed since the default, the defendant is entitled to at least five days' notice of the time and place of the application for judgment. Where notice to a defendant who has not appeared is required by this section, such notice may be dispensed with upon good cause shown.

2. *Demand for notice of reference to jury or referee.* A defendant who has not appeared may serve on the plaintiff's attorney at any time before the application for judgment a written demand of notice of the execution

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<sup>378</sup> *Prior legislation:* L. 1963-64, ch. III (6:4202); 1956 Code 6:845, 847; Rev. Stat. §§ 282, 408; OBB 33, Legal Principles and Rules, t II, ch. II, § 7, 2 Hub. 1527.

<sup>379</sup> *Prior legislation:* L. 1963-64, ch. III (6:4203).

<sup>380</sup> *Prior legislation:* L. 1963-64, ch. III (6:4204).

<sup>381</sup> *Prior legislation:* L. 1963-64, ch. III (6:4205).

<sup>382</sup> *Prior legislation:* L. 1963-64, ch. III (6:4206); 1956 Code 6:840; Rev. Stat. § 408; OBB 33, Legal Principles and Rules, t. II, ch. II, §10, 2 Hub. 1527.

of any reference to a jury or referee, which may be granted on the application for judgment. Such a demand does not constitute an appearance in the action. Thereupon at least five days' notice of the time and place of execution of the reference shall be given to the defendant by service on the person whose name is subscribed to the demand, in the manner prescribed for service of a paper on an attorney in an action.<sup>383</sup>

#### **§ 42.8. Annulment and divorce.**

The court shall deny an application for judgment by default in an action for annulment or divorce if the allegations of the complaint are not proved or if on consideration of the proof submitted by the plaintiff or of any papers submitted by the defendant before default or if on a hearing conducted to determine the truth of plaintiff's allegations as authorized by section 42.2, it appears that the divorce is barred under the Domestic Relations Law or if there exists any other defense to the action.<sup>384</sup>

#### **§ 42.9. Application of section.**

The provisions of this chapter shall apply whether the judgment by default is sought by a plaintiff or counterclaimant.<sup>385</sup>

## ***Chapter 43. DECLARATORY JUDGMENTS***

- § 43.1. Power of courts to render declaratory judgments.
- § 43.2. Construction of writings and statutes.
- § 43.3. Adjudication of rights.
- § 43.4. Enumeration not exclusive.
- § 43.5. Declaratory judgment to terminate controversy.
- § 43.6. Other adequate remedy.
- § 43.7. Review allowed.
- § 43.8. Supplemental relief.
- § 43.9. Jury trial.
- § 43.10. Construction.

#### **§ 43.1. Power of courts to render declaratory judgments.**

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection

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<sup>383</sup> *Prior legislation:* L. 1963-64, ch. III (6:4207).

<sup>384</sup> *Prior legislation:* L. 1963-64, ch. III (6:4208).

<sup>385</sup> *Prior legislation:* L. 1963-64, ch. III (6:4209); 1956 Code 6:846.

on the ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary.<sup>386</sup>

#### **§ 43.2. Construction of writings and statutes.**

Any person interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.<sup>387</sup>

#### **§ 43.3. Adjudication of rights.**

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

- (a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or
- (b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.<sup>388</sup>

#### **§ 43.4. Enumeration not exclusive.**

The enumeration in sections 43.2 and 43.3 does not limit or restrict the exercise of the general powers conferred in section 43.1 in any proceeding where declaratory relief is sought, in which a judgment will terminate the controversy or remove the uncertainty.<sup>389</sup>

#### **§ 43.5. Declaratory judgment to terminate controversy.**

The court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding.<sup>390</sup>

#### **§ 43.6. Other adequate remedy.**

The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.<sup>391</sup>

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<sup>386</sup> *Prior legislation:* L. 1963-64, ch. III (6:4301).

<sup>387</sup> *Prior legislation:* L. 1963-64, ch. III (6:4302).

<sup>388</sup> *Prior legislation:* L. 1963-64, ch. III (6:4303).

<sup>389</sup> *Prior legislation:* L. 1963-64, ch. III (6:4304).

<sup>390</sup> *Prior legislation:* L. 1963-64, ch. III (6:4305).

#### **§ 43.7. Review allowed.**

All judgments under this chapter may be reviewed in the same way as other judgments.<sup>392</sup>

#### **§ 43.8. Supplemental relief.**

Further relief based on a declaratory judgment may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment to show cause why further relief should not be granted forthwith.<sup>393</sup>

#### **§ 43.9. Jury trial.**

When a proceeding under this chapter involves the determination of an issue of fact, the right to trial by jury may be demanded under the circumstances and in the manner provided in chapter 22 of this title.<sup>394</sup>

#### **§ 43.10. Construction.**

This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.<sup>395</sup>

## ***Chapter 44. ENFORCEMENT OF JUDGMENTS AND ORDERS***

### **Subchapter A. Enforcement Generally**

§ 44.1. Imprisonment for nonpayment of money judgments.

§ 44.2. Modification or protective order.

### **Subchapter B. Enforcement by Execution and Its Adjuncts**

§ 44.21. Applicability of subchapter.

§ 44.22. Deferred payment of money judgments.

§ 44.23. Kind of property against which money judgment may be enforced.

§ 44.24. Lien upon real property; priorities.

§ 44.25. Priorities upon personal property.

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<sup>391</sup> *Prior legislation:* L. 1963-64, ch. III (6:4306).

<sup>392</sup> *Prior legislation:* L. 1963-64, ch. III (6:4307).

<sup>393</sup> *Prior legislation:* L. 1963-64, ch. III (6:4308).

<sup>394</sup> *Prior legislation:* L. 1963-64, ch. III (6:4309).

<sup>395</sup> *Prior legislation:* L. 1963-64, ch. III (6:4310).



- § 44.26. Release of lien or levy upon appeal.
- § 44.27. Personal property exempt from application to money judgments.
- § 44.28. Real property exempt from the application to satisfaction of money judgments.
- § 44.29. Enforcement involving the Republic.
- § 44.30. Enforcement after death of judgment debtor.
- § 44.31. Court where enforcement proceeding may be instituted.
- § 44.32. Restraining notice.
- § 44.33. Compelling disclosure to aid enforcement.
- § 44.34. Installment payment order.
- § 44.35. Payment order to garnishee.
- § 44.36. Proper garnishee for particular property or debt.
- § 44.37. Discharge of garnishee's obligation.
- § 44.38. Receivers.
- § 44.39. Executions.
- § 44.40. Levy upon personal property.
- § 44.41. Sale of personal property.
- § 44.42. Levy upon real property.
- § 44.43. Sale of real property.
- § 44.44. Disposition of proceeds of sale.
- § 44.45. Failure of title to property sold.
- § 44.46. Proceeding to determine adverse claims.
- § 44.47. Arrest of judgment debtor.
- § 44.48. Acts constituting contempt.

**Subchapter C. Enforcement of Judgments by Means Other than Execution**

- § 44.71. Methods of enforcement.
- § 44.72. Enforcement through receivership.
- § 44.73. Enforcement through contempt proceedings.

***Subchapter A. ENFORCEMENT GENERALLY***

#### **§ 44.1. Imprisonment for nonpayment of money judgments.**

A person shall not be arrested or imprisoned for disobedience of any money judgment or order requiring the payment of money except for those money judgments enforceable by punishment for contempt under section 44.71(3) or by imprisonment under section 44.71(2) if execution is not satisfied.<sup>396</sup>

#### **§ 44.2. Modification or protective order.**

The court may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure.<sup>397</sup>

### **Subchapter B. ENFORCEMENT BY EXECUTION AND ITS ADJUNCTS**

#### **§ 44.21. Applicability of subchapter.**

A money judgment or order directing the payment of money or any part of such judgment or order, including an order to pay costs, may be enforced as prescribed in this subchapter except that money judgments of the kind specified in section 44.71(2) and (3) may be enforced as therein prescribed.<sup>398</sup>

#### **§ 44.22. Deferred payment of money judgments.**

A person against whom a judgment or order is enforceable under this subchapter may apply to the court at any time after judgment is entered and before judgment is satisfied for leave to pay the money due under the judgment in installments. The court shall grant the application if (a) it is satisfied that the applicant has no assets available for immediate payment; (b) the applicant pays twenty-five percent of the amount due on the judgment immediately; and (c) the applicant files a bond to the effect that he will faithfully comply with the order of the court to pay the judgment within the time specified and that he will pay interest on the unpaid balance at the rate of six percent per year. The order granting the application shall provide for payments of the remainder of the judgment in accordance with the following schedule:

On all sums up to \$100	2 months
On all sums from \$100-\$499.99	4 months
On all sums from \$500-\$999.99	6 months
On all sums of \$1000 or more	1 year

The sums above mentioned shall include costs. Enforcement proceedings shall not be instituted for payment of any part of a judgment not due under the terms of an order granted pursuant to this section.<sup>399</sup>

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<sup>396</sup> *Prior legislation:* L. 1971-72, An act to repeal an act to amend the Civil Procedure Law with respect to actions of debt; L. 1963-64, ch. XXII; L. 1963-64, ch. III (6:4401); 1956 Code 6:970, 971; L. 1939-40, ch. XII; L. 1935-36, ch. XXIII, §7; Rev. Stat. §419; OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 11, 2 Hub. 1574; 1828 Code, Ord. No. V, §3, 2 Hub. 1271, 1305.

<sup>397</sup> *Prior legislation:* L. 1963-64, ch. III (6:4402).

<sup>398</sup> *Prior legislation:* L. 1963-64, ch. III (6:4421).

#### **§ 44.23. Kind of property against which money judgment may be enforced.**

1. *Generally.* A judgment or order to which this subchapter is applicable may be enforced against any property which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested, unless it is exempt from application to the satisfaction of the judgment. A money judgment entered upon a joint liability of two or more persons may be enforced against individual property of those persons summoned and joint property of such persons with any other persons against whom the judgment is entered.

2. *Debts owing judgment debtor.* A judgment or order to which this subchapter is applicable may be enforced against any debt which is due or past due or which is yet to become due to the judgment debtor, certainly or upon demand of the judgment debtor, whether it was incurred within or without the Republic of Liberia, to or from a resident or nonresident, unless it is exempt from application to the satisfaction of the judgment. A debt may consist of a claim which could be assigned or transferred accruing within or without the Republic.<sup>400</sup>

#### **§ 44.24. Lien upon real property; priorities.**

No transfer of an interest of the judgment debtor in real property against which property a judgment or order may be enforced under this subchapter is effective against the judgment creditor for ten years from the time of the entry of the judgment except

- (a) A transfer in satisfaction of a mortgage given to secure the payment of a purchase price of the judgment debtor's interest in the property; or
- (b) A transfer to a purchaser for value at a judicial sale; or
- (c) When the judgment was entered against a party after his death; or
- (d) When the judgment debtor is the Republic of Liberia, or an officer or agency thereof, or a municipal corporation.<sup>401</sup>

#### **§ 44.25. Priorities upon personal property.**

After a money judgment has been entered, no transfer of a debt owed to the judgment debtor or of an interest of the judgment debtor in personal property, against which debt or property the judgment may be enforced, is effective against the judgment creditor except

- (a) A transfer to a bona fide purchaser for value;
- (b) When the judgment was entered against a party after his death; or

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<sup>399</sup> *Prior legislation:* L. 1963-64, ch. III (6:4422); 1956 Code 6:901; Rev. Stat. §§413, 657; L. 1923-24, ch. V; J. P. Code, § 44; L. 1904-05, 18 (2nd), § 1; L. 1886-87, 9, § 4; L. 1879-80, 9, § 4; OBB 113, Judiciary, art. I, §2; 1841 Digest, pt. I, Judiciary Act, § 2, 2 Hub. 1464; Acts 1841, Act supplementary to Judiciary Act, §§7, 8, 2 Hub. 1421.

<sup>400</sup> *Prior legislation:* L. 1963-64, ch. III (6:4423); L. 1959-.60, ch. III (6:930, 931-A, 931-B, 931-C, 931-D, 933, 934); 1956 Code 6:930; Rev. Stat. §§ 416, 660; J. P. Code §47; OBB 67, Legal Principles and Rules, t. II, ch. XVIII, §2,2 Hub. 1570.

<sup>401</sup> *Prior legislation:* L. 1963-64, ch. III (6:44-94); L. 1959-60, ch. XLVII (6:900); 1956 Code 6:900; Rev. Stat. § 414.

- (c) When the judgment debtor is the Republic of Liberia or an officer or agency thereof or a municipal corporation.<sup>402</sup>

**§ 44.26. Release of lien or levy upon appeal.**

Upon motion of the judgment debtor, upon notice to the judgment creditor and the sureties upon the appeal bond, the court may order that the lien of a money judgment be released as to all or specified real or personal property.<sup>403</sup>

**§ 44.27. Personal property exempt from application to money judgments.**

1. *Tangible property.* The following personal property owned by a judgment debtor is exempt from application to the satisfaction of a money judgment except where the judgment is for the purchase price of the exempt asset.

- (a) All necessary household furniture and utensils to the value of one hundred dollars;
- (b) The family Bible, family pictures, and any books not exceeding in value fifty dollars kept and used as part of the family or judgment debtor's library;
- (c) All food and provisions necessary for the support of the judgment debtor or his family for thirty days;
- (d) Wearing apparel of the judgment debtor to the value of two hundred dollars;
- (e) A wedding ring of the judgment debtor;
- (f) Work tools and implements, including those of a mechanic, farm machinery, farm animals, and professional instruments, not exceeding in value five hundred dollars, together with the necessary food for farm animals for thirty days; provided, however, that the articles specified in this clause are necessary to the carrying on of the judgment debtor's profession or calling.

On application of the judgment creditor, the court may allow execution upon any specific personal property or class of personal property herein listed as exempt.

2. *Income exemptions.* The following personal property is exempt from application to the satisfaction of a money judgment, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his dependents:

- (a) Ninety percent of the income or other payments from a trust for the judgment debtor where the trust has been created by a person other than the judgment debtor;
- (b) Ninety percent of the earnings of the judgment debtor for his personal services rendered within sixty days before, and at any time after, an income execution is delivered to the sheriff or a motion is made to secure the application of the judgment debtor's earnings to the satisfaction of the judgment;

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<sup>402</sup> *Prior legislation:* L. 1963-64, ch. III (6:4425); L. 1959-M, ch. III, §§ 1, 2 (6:932-A, 932-B).

<sup>403</sup> *Prior legislation:* L. 1963-64, ch. III (6:4426).

- (c) Payments pursuant to an award in a matrimonial action for the support of a wife, where the wife is the judgment debtor, or for the support of a child, where the child is the judgment debtor. Where the award was made by a court of Liberia, determination of the extent to which the amount of the award is unnecessary shall be made by that court.<sup>404</sup>

**§ 44.28. Real property exempt from the application to satisfaction of money judgments.**

1. *Exemption of homestead.* The homestead of any family, comprising one town lot or one acre of farmland upon which the house is located, together with all appurtenances and out dwellings of the same, shall be exempt from application to the satisfaction of a money judgment unless the judgment was recovered wholly for a debt contracted before the designation of the property as required by paragraph 2 hereof or wholly for the purchase money thereof. But no property designated as an exempt homestead shall be exempt from sale for nonpayment of taxes or assessments.

2. *Designation of exempt homestead.* In order for the exemption provided by paragraph 1 of this section to apply, the householder shall have probated a notice, formally executed and acknowledged, designating as a homestead the property to be exempt from application to the satisfaction of a money judgment. Such notice shall be probated in the office of the Probate Clerk of the county where the property is located. After probate, the notice shall be registered in the office of the Registrar of Deeds.

3. *Homestead exemption after owner's death.* The homestead exemption continues after the death of the person in whose favor the property was exempted for the benefit of the surviving spouse and surviving children named by him in the exemption until the death of the last remaining child so named.

4. *Suspension of occupation as affecting homestead.* The homestead exemption ceases if the property ceases to be occupied as a residence by a person for whose benefit it may so continue, except where the suspension of occupation is for a period not exceeding one year, and occurs in consequence of injury to, or destruction of, the dwelling house upon the premises.

5. *Exemption of burying ground.* Land, set apart as a family or private burying ground and designated as herein prescribed, is exempt from application to the satisfaction of a money judgment, upon the following conditions:

- (a) A portion of it must be used as a burying ground;
- (b) It must not exceed one-fourth of an acre;
- (c) It must not contain at the time of its designation or at any time thereafter any building or structure except one or more vaults or other places of deposit for the dead or mortuary monuments. In order for the exemption provided by this paragraph to apply, the owner shall have probated a notice, formally executed and acknowledged, stating that the property designated has been set apart as a burying

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<sup>404</sup> *Prior legislation:* L. 1963-64, ch. III (6:4427); 1956 Code 6:963; Rev. Stat. §§417, 1395(9); OBB 75, Legal Principles and Rules, t II, ch. XIX, §§ 19,20, 2 Hub. 1574; 1828 Code, Ord.. No. V, 2 Hub. 1272,1305.

ground. Such notice shall be probated in the office of the probate clerk of the county where the property is located. After probate, the notice shall be registered in the office of the Registrar of Deeds.

6. *Cancellation of exemption of real property.* The owner of real property exempted as provided in this section may subscribe a notice at any time and personally acknowledge the execution thereof, to the effect that he cancels all exemptions from application of the property, or a particular part thereof, fully described, to the satisfaction of a money judgment. The cancellation takes effect when such a notice is recorded as prescribed in this section for recording a notice to effect the exemption so cancelled.

7. *Rights in homestead prior to effective date of statute.* Any rights or estates in a property designated as a homestead under this section which were created or accrued on the death of the owner before the effective date of this section shall in no way be altered or affected by this enactment.<sup>405</sup>

#### **§ 44.29. Enforcement involving the Republic.**

None of the procedures for the enforcement of money judgments is applicable to a judgment against the Republic, its agencies, officers sued in their official capacities, or any authorities wholly owned by the Government. All procedures for the enforcement of money judgments against other judgment debtors are applicable to the Republic, its agencies, officers, authorities, and subdivisions as a garnishee, except where otherwise prescribed by law, and except that an order in such a procedure shall only provide for the payment of money not claimed by the Republic and no judgment shall be entered against the Republic, or any officer, agency or subdivision thereof, in such a procedure. If final judgment is entered against the Republic, the clerk of the court shall deliver to the plaintiff a certified copy thereof. When such copy of the judgment is presented to the President, he shall endorse thereon an order to the Minister of Finance directing payment of the amount named therein. Such payment shall be made forthwith.<sup>406</sup>

#### **§ 44.30. Enforcement after death of judgment debtor.**

Except where otherwise prescribed by law, after death of a judgment debtor, an execution upon a money judgment shall not be levied upon any debt owed to him or any property in which he had an interest, nor shall any other enforcement procedure be undertaken with respect to such debt or property, except upon leave of the probate court which granted letters testamentary or letters of administration upon the estate. If such letters have not been granted within six months after the death, leave to issue such an execution or undertake such enforcement procedure may thereafter be granted, upon motion of the judgment creditor upon such notice as

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<sup>405</sup> *Prior legislation:* L. 1963-64, ch. III (6:4428); 1956 Code 6:960, 961; Rev. Stat. §§ 417, 1095-1097; L. 1, 7 (2nd); L. 1888-89, 10 (2nd); Acts 1846, Act securing to farmers a certain portion of land, 2 Hub. 1660; 1828 Code, Ord.. No. V, 2 Hub. 1272, 1305.

<sup>406</sup> *Prior legislation:* L. 1963-64, ch. III (6:4429).

the court may require, by any court from which the execution could issue or in which the enforcement procedure could be commenced.<sup>407</sup>

**§ 44.31. Court where enforcement proceeding may be instituted.**

1. *Special proceeding authorized by this chapter.* A special proceeding authorized by this chapter to enforce a judgment entered in a court of record or not of record in Liberia shall be instituted either in the county in which the respondent resides or is regularly employed or has his regular place of business, or, if there is no such county, then in any county in which the judgment was rendered.

2. *Notices, subpoenas, and motions.* A notice or subpoena authorized by this chapter may be issued from, and a motion authorized by this chapter may be made in, the court in which the judgment sought to be enforced was entered. The papers shall be captioned with the title of the action in which the judgment was rendered.<sup>408</sup>

**§ 44.32. Restraining notice.**

1. *Issuance; service.* On application by a judgment creditor, a court which rendered a judgment may issue a restraining order directed to any person whom the judgment creditor believes to be in possession or custody of property of the judgment debtor or owing a debt to the judgment debtor. Such order shall be served personally in the same manner as a summons. It shall specify all of the parties to the action, the date of judgment, the court in which it was entered, the amount of the judgment and the amount then due thereon, and it shall contain the order of restraint authorized in paragraph 2 and state that disobedience is punishable as a contempt of court.

2. *Effect of restraint; duration.* A judgment debtor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer, or interference with any property in which he has an interest, except upon direction of the sheriff or pursuant to an order of the court, until the judgment is satisfied or vacated or expires. A restraining notice served upon a person other than the judgment debtor is effective only if, at the time of service, he owes a debt to the judgment debtor or if he is in the possession or custody of property in which he knows or has reason to believe the judgment debtor has an interest or if the judgment creditor has stated in the notice that a specified debt is owed to the judgment debtor by the person served or that the judgment debtor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor, shall be subject to the notice.

Such a person is forbidden to make or suffer any sale, assignment, or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the court, until the expiration of six months after the

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<sup>407</sup> *Prior legislation:* L. 1963-64, ch. III (6:4430).

<sup>408</sup> *Prior legislation:* L. 1963-64, ch. III (6:4431).

notice is served upon him, or until the judgment is satisfied or vacated or expires, whichever event first occurs. A judgment creditor who has specified personal property or a debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor, for any damage sustained by reason of the restraint.

If a garnishee served with a restraining notice which does not specify any personal property or debt withholds the payment of money belonging or owed to the judgment debtor in an amount equal to twice the amount due on the judgment, the restraining notice is not effective as to other property or money.

3. *Subsequent notice.* The judgment creditor may apply for another restraining order to restrain a third party as to whom a previous one has been issued and expired or is about to expire. The need for such an order shall be examined by the court and the application granted in its discretion.<sup>409</sup>

#### **§ 44.33. Compelling disclosure to aid enforcement.**

1. *Compelling disclosure authorized.* At any time before a judgment is satisfied or vacated or expires, the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment by serving upon any person a subpoena conforming to the requirements of paragraph 2.

2. *Form of subpoena; service.* The subpoena served to compel disclosure under this section shall specify all of the parties to the action, the date of the judgment, the court in which it was entered, the amount of the judgment and the amount then due thereon, and shall state that false swearing or failure to comply with the subpoena is punishable as a contempt of court. Any or all of the following kinds of subpoenas may be served:

- (a) A subpoena requiring attendance for the taking of a deposition at a time and place named therein;
- (b) A subpoena duces tecum requiring the production of books and papers for examination at a time and place named therein;
- (c) An information subpoena, accompanied by a copy and original of written questions and a prepaid, addressed return envelope.

Service of an information subpoena may be made by registered mail return receipt requested. Answers shall be made in writing under oath by the person upon whom served if an individual, or by an officer, director, agent, or employee having the information, if a corporation, partnership, or sole proprietorship. Each question shall be answered separately and fully and each answer shall refer to the question to which it responds. Answers shall be returned together with the original of the questions within seven days after receipt.

3. *Fees.* A judgment debtor served with a subpoena under this section shall not be entitled to any fee. Any other person served with a subpoena requiring attendance or the production of books and papers shall be paid or tendered in advance mileage or authorized traveling expenses and a witness fee. Any other person served with an information subpoena shall be paid in advance the sum of fifty cents.

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<sup>409</sup> *Prior legislation:* L. 1963-64, ch. III (6:4432); L. 1959-60, ch. LXIV (6:979-E).



4. *Notice of time of disclosure; person before whom taken.* A deposition on oral or written questions or an examination of books and papers may proceed before any person authorized by section 13.7 upon not less than ten days' notice to the person subpoenaed unless the court orders shorter notice.

5. *Conduct of examination.* The examination shall be conducted in accordance with the provisions of section 13.8(1), except that a deponent having objections to the proceedings or to the conduct of the examination may refuse to answer, and the taking of the deposition shall proceed or be adjourned as the judgment creditor may elect. The judgment creditor may then proceed to compel the question to be answered in accordance with the procedure provided by section 13.71.

6. *Physical preparation of the deposition.* The procedure prescribed by section 13.8(4) and (5) shall be followed in preparing the deposition. The officer who takes the deposition shall then file it in the court where the judgment was rendered.

7. *Subsequent examination.* Leave of court is required to compel a judgment debtor to appear for the taking of his deposition or to compel the production by him of books and papers within one year after the conclusion of a previous examination of him with respect to the same judgment.<sup>410</sup>

#### **§ 44.34. Installment payment order.**

1. *Proceeding against judgment debtor.* Upon motion of the judgment creditor after notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source or is attempting to impede the judgment creditor by rendering services without compensation, the court shall order that the judgment debtor make specified installment payments to the judgment creditor. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him in satisfaction of other judgments and wage assignments, the amount due on the judgment, the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered.

2. *Order against third person.* An installment order granted under paragraph 1 shall provide that after a default of the judgment debtor, the order may be served, together with an affidavit of the attorney for the judgment creditor specifying the amount due on the judgment, upon any person from whom the judgment debtor is receiving or will receive money, in the same manner as a summons or by registered mail, return receipt requested. Service upon such person shall not relieve the judgment debtor of his default. A person served with an installment order shall withhold from money then or thereafter due to the judgment debtor, as they become due, the installments specified in the order, and pay them over to the judgment creditor. If such person shall fail

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<sup>410</sup> *Prior legislation:* L. 1963-64, ch. III (6:4434); L. 1959-60, ch. LXIV (6:975-979-Q).

to so pay the judgment creditor, he may be punished for a contempt of court, and the judgment creditor may maintain an action against him for the accrued installments.

3. *Duration of installment order against third person.* If for ninety consecutive days, no money shall become due to the judgment debtor from a person served with an installment order, the order shall thereafter be ineffective.<sup>411</sup>

#### **§ 44.35. Payment order to garnishee.**

1. *To pay or deliver money or property.* Upon a special proceeding commenced by the judgment creditor against a person in possession or custody of money or other personal property capable of delivery in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall order such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession.

2. *To pay debts owed to judgment debtor.* Upon a special proceeding instituted by the judgment creditor against any person who it is shown is or will become indebted to the judgment debtor, the court shall order such person to pay to the judgment creditor the debt upon maturity or so much of it as is sufficient to satisfy the judgment, or it may direct that a judgment be entered against such person in favor of the judgment creditor. Costs of the proceeding shall not be awarded against a person who did not dispute the indebtedness.

3. *Notice of proceeding to judgment debtor.* Notice of a special proceeding under paragraph 1 or 2 shall be served on the judgment debtor in the same manner as a summons or by registered mail, return receipt requested.

4. *Intervention by judgment debtor and adverse claimants.* The court may permit the judgment debtor to intervene in a special proceeding instituted under paragraph 1 or 2. It may also permit any adverse claimant to intervene in such a proceeding and determine his rights in accordance with section 44.46.

5. *Documents to effect payment or delivery.* The court may order any person to execute and deliver any document necessary to effect payment or delivery.<sup>412</sup>

#### **§ 44.36. Proper garnishee for particular property or debt.**

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<sup>411</sup> *Prior legislation:* L. 1963-6.4, ch. III (6:4434); L. 1959-60, ch. LXIV (6:979-H).

<sup>412</sup> *Prior legislation:* L. 1963-64, ch. III (6:4435); L. 1959-60, ch. LXIII (6:931-B, 931D).

1. *Rights not represented by negotiable instrument or stock certificate.* Where property consists of a right or share in the stock of an association or corporation, or interests .or profits therein, for which a certificate or stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association on behalf of the association, shall be the garnishee.

2. *Right in decedent's estate or trust fund.* Where property consists- of a right or interest to or in a decedents estate or any other property or fund held or controlled by a fiduciary, the executor or trustee under the will, administrator, or other fiduciary shall be the garnishee.

3. *Interest in a partnership.* Where property consists of an interest in a partnership, any partner other than the judgment debtor, on behalf of the partnership, shall be the garnishee.

4. *Property evidenced by negotiable instrument, negotiable document, or stock certificate.* Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document, or certificate shall be treated as property capable of delivery, and the person holding it shall be the garnishee.<sup>413</sup>

#### **§ 44.37. Discharge of garnishee's obligation.**

A person who, pursuant to an execution or order, pays or delivers to the judgment creditor or a sheriff or receiver money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt he owes, is discharged from his obligation to the judgment debtor to the extent of the payment or delivery.<sup>414</sup>

#### **§ 44.38. Receivers.**

1. *Appointment.* Upon motion of a judgment creditor, upon such notice as the court may require, the court may appoint a receiver who may be authorized to administer, collect, improve, lease, repair, or sell any real or personal property in which the judgment debtor has an interest or to do any other acts designed to satisfy the judgment. As far as practicable, the court shall require that notice be given to the judgment debtor and to any other judgment creditors of the judgment debtor. The order of appointment shall specify the property to be received, the duties of the receiver and the manner in which they are to be performed. A receiver shall have no power to employ counsel unless expressly so authorized by order of the court. A receiver shall be entitled to necessary expenses and to such commissions, not exceeding five percent of the sums received and disbursed by him, as the court which appointed him allows, but if a judgment creditor is appointed receiver, he shall not be entitled to compensation. If a receiver has been appointed, a court making an order directing payment or delivery of property shall direct that payment or delivery be made to the receiver rather than to a sheriff. Sections 7.82, 7.83, 7.84, and 7.85 are applicable to receivers appointed under this section.

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<sup>413</sup> *Prior legislation:* L. 1963-64, ch. III (6:4436).

<sup>414</sup> *Prior legislation:* L. 1963-64, ch. III (6:4437).

2. *Extension of receivership.* Where a receiver has been appointed, the court, upon motion of a judgment creditor, upon such notice as it may require, shall extend the receivership to his judgment.<sup>415</sup>

#### **§ 44.39. Executions.**

1. *Form.* An execution shall specify the date of the judgment, the court in which it was entered, the amount of the judgment, and the amount due thereon. Where one or more persons against whom the judgment was recovered are not judgment debtors, or are deceased, the execution shall also specify each judgment debtor not deceased and direct that only property in which such judgment debtor has an interest, or debts owed to him, be levied upon or sold thereunder. Where the judgment was recovered for all or part of a mortgage debt, the execution shall also describe the mortgaged property, specify the book and page where the mortgage is recorded, and direct that no part of the mortgaged property be levied upon or sold thereunder.

2. *Issuance.* After a judgment is entered unless a stay of execution takes effect under section 51.20 or immediately after payment is due on such judgment or part thereof under section 44.22, and before a judgment is satisfied or vacated or the time limited for commencing an action upon the judgment expires, an execution may be issued by the clerk of the court in the county in which the judgment was first entered to the sheriff of the county where judgment was rendered directing him to levy upon the real and personal property of the judgment debtor. If a levy on real property is to be made under an execution issued by a court not of record, the execution shall be directed to the sheriff and not to a constable.

3. *Return.* An execution shall be returned to the clerk of the court from which it was issued within sixty days after issuance, except that in the case of an execution issued by a court not of record and directed under paragraph 2 to a sheriff, the execution shall be returned to the clerk of the Circuit Court of the county wherein the execution was issued. The sheriff shall attach to the execution on its return to the court a schedule of the property on which he has levied together with an itemized appraisal of its value.

4. *Entry of alphabetical notation on return of execution.* A sheriff shall return an execution to the clerk of the court from which the execution issued, endorsing thereon whether it is returned unsatisfied or wholly or partially satisfied, and the clerk shall make an appropriate entry in the book required to be kept under section 41.4. The sheriff shall also deliver to the person making the payment, upon request, a certified copy of the execution and of the return of satisfaction or partial satisfaction.<sup>416</sup>

#### **§ 44.40. Levy upon personal property.**

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<sup>415</sup> *Prior legislation:* L. 1963-64, ch. III (6:4438).

<sup>416</sup> *Prior legislation:* Par. 1: L. 1963-64; ch. III (6:4439(1)). Par. 2: L. 1963-64, ch. III (6:4439(2)); L. 1959-60, ch. LXIII, § 1 (6:930); ch. XLIX (6:932); 1956 Code 6:930-932; L. 1935-36, ch. XXIII, § 1; Rev. Stat. §§ 416, 659, 660; J. P. Code §§ 46, 47; OBB 113, Judiciary Act, art. 1, § 2; OBB 67, Legal Principles and Rules, t. II, ch. XVIII, §§ 1, 2, 2 Hub. 1570. Par. 3: L. 1963-64, ch. III (6:4439(3)); L. 1959-60, ch. LXIII, § 3 (6:933); 1956 Code 6:933; Rev. Stat. §§ 418, 662; J. P. Code § 49; OBB 67, Legal Principles and Rules, t. II, ch. XVIII, §§ 3., 4, 2 Hub. 1570. Par. 4: L. 1963-64, ch. III (6:4439(4)).

1. *Levy by service of notice.* The sheriff shall levy upon any interest of the judgment debtor in personal property not capable of delivery, or upon any debt owed to the judgment debtor, by serving a copy of the execution personally upon the garnishee, in the same manner as a summons, except that such service shall not be made by delivering a copy to a person authorized to receive summons solely by a designation filed pursuant to law. The garnishee shall forthwith transfer such interest or pay such debt to the sheriff.

2. *Levy by seizure.* The sheriff shall levy upon any interest of the judgment debtor in personal property capable of delivery by taking the property into his custody without interfering with lawful possession of pledgees and lessees. The sheriff shall forthwith serve a copy of the execution in the manner prescribed by paragraph 1 upon the person from whose possession or custody the property was taken.<sup>417</sup>

#### **§ 44.41. Sale of personal property.**

1. *Public auction.* The interest of the judgment debtor in personal property obtained by a sheriff pursuant to execution or order, other than legal tender of the Republic of Liberia, shall be sold by the sheriff to the highest bidder at public auction at such time and place and as a unit or in such lots or combinations thereof, as in his judgment will bring the highest price, but no sale may be made to that sheriff or his deputy. The property shall be present and within the view of those attending the sale unless otherwise ordered by the court.

2. *Public notice.* A printed notice of the time and place of the sale shall be posted at least ten days before the sale in three public places in the town or city in which the sale is to be held. An omission to so post notice, or the defacing or removal of a posted notice, does not affect the title of a purchaser without notice of the omission or offense.

3. *Order for immediate sale or disposition.* The court may direct immediate sale or other disposition of perishable property with or without notice if the urgency of the case requires.<sup>418</sup>

#### **§ 44.42. Levy upon real property.**

The sheriff shall levy on real property, pursuant to an execution other than one issued upon a judgment for any part of a mortgage debt upon the property, by posting notice of the execution in a prominent place on the property and also on the door of the courthouse of the circuit where the property is located and in two other prominent public places in the circuit. The sheriff shall also file a notice of the execution with reference to such real property in the office of the clerk of the probate court of the county where the property is located. The filing of such a notice shall have the same effect as the filing of a notice of pendency.<sup>419</sup>

#### **§ 44.43. Sale of real property.**

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<sup>417</sup> *Prior legislation:* L. 1963-64, ch. III (6:4440); L. 1959-60, ch. LXIII, § 4 (6:934); 1956 Code 6:934; L. 1935-36, ch. XXII, § 2; Rev. Stat. §§ 418, 661; J. P. Code § 48; OBB 113, Judiciary Act, art. I, § 2; OBB 67, Legal Principles and Rules, t. 11, ch. XVIII, §§ 3, 4, 2 Hub. 1570; 1828 Code, Ord.. No. 5, 2 Hub. 1271, 1305.

<sup>418</sup> *Prior legislation:* L. 1963-64, ch. III (6:4441); L. 1959-60, ch. LXIII, § 4 (6:933); 1956 Code 6:933.

<sup>419</sup> *Prior legislation:* L. 1963-64, ch. III (6:4442).

1. *Time and manner of sale.* At least eight weeks and not more than nine weeks after the delivery of an execution to the sheriff, unless the time is extended by order, the interest of the judgment debtor in real property which has been levied upon thereunder or which was subject to the lien of the judgment at the time of such delivery shall be sold by the sheriff pursuant to the execution at public auction to the highest bidder at such time and place within the county where the real property is situated and as a unit or in such parcels, or combination thereof, as in his judgment will bring the highest price, but no sale may be made to that sheriff or to his deputy. If the property is situated in more than one county, it may be sold in a county in which any part is situated, unless the court orders otherwise. Nothing contained in this section shall be deemed to authorize a constable to sell real property on an execution sale.

2. *Sale of mortgaged property.* Real property which is mortgaged shall not be sold pursuant to an execution issued upon a judgment recovered for all or part of the mortgage debt.

3. *Notice of sale.* A printed notice of the time and place of the sale containing a description of the property to be sold shall be posted at least eight weeks before the sale in three public places in the city or township in which the property is located, and, if the sale is to be held in another city or township, in three public places therein. Every judgment creditor having a judgment which was a lien for at least twenty days prior to the time fixed for the sale upon the real property to be sold shall be served with a copy of the notice personally or by registered mail, return receipt requested, at the address shown upon the judgment docket, at least ten days prior to the time fixed for the sale. If a newspaper is published in the county in which the property is located, a copy of the notice shall be published therein at least once in each two-week period during the eight successive weeks preceding the time fixed for the sale. An omission to give any notice required by this paragraph, or the defacing or removal of a notice posted pursuant hereto, does not affect the title of a purchaser without notice of the omission or offense.

4. *Conveyance; proof of notice.* Within ten days after the sale, the sheriff shall execute and deliver to the purchaser proofs of publication, service, and posting of the notice of sale, and a deed which shall convey the right, title, and interest sold. Such proofs may be filed and recorded in the office of the Registrar of Deeds of the county where the property is located.<sup>420</sup>

#### **§ 44.44. Disposition of proceeds of sale.**

After deduction and payment of fees and expenses, the sheriff making a sale pursuant to an execution or order shall distribute the proceeds pro rata to the judgment creditors who have delivered executions against the judgment debtor to the sheriff before the sale, which executions have not been returned. If the property sold had been levied upon pursuant to an order of attachment, the attachment creditor shall share in the proceeds

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<sup>420</sup> *Prior legislation:* L. 1963-64, ch. III (6:4443); L. 1959-60, ch. LXIII, § 4 (6:933); 1956 Code 6:933.

and his priority shall be determined from the date of the levy. Any excess shall be paid over to the judgment debtor.<sup>421</sup>

**§ 44.45. Failure of title to property sold.**

The purchaser of property sold by a sheriff pursuant to execution may recover the purchase money from the judgment creditors who received the proceeds if the property is recovered from such purchaser in consequence of an irregularity in the sale or a vacating, reversal, or setting aside of the judgment upon which the execution was based. If a judgment for the purchase money is so recovered against a judgment creditor in consequence of an irregularity in the sale, such judgment creditor may enforce his judgment as if no levy or sale had been made, and, for that purpose, he may move without notice for an order restoring any lien or priority or amending any official notation affected by the sale.<sup>422</sup>

**§ 44.46. Proceeding to determine adverse claims.**

Prior to the application of property by a sheriff or receiver to the satisfaction of a judgment, any interested person may institute a special proceeding against the judgment creditor to determine the rights of adverse claimants to the property, by serving a notice of petition upon the sheriff or receiver and upon the judgment creditor in the same manner as a summons. The proceeding may be instituted in the county where the property was levied upon, or in a county specified in section 44.31. The court may void the levy, direct the disposition of the property, or direct that damages be awarded. Where there appear to be disputed questions of fact, the court shall order a trial, indicating the person who shall have possession of the property pending a decision and the bond, if any, which such person shall give. If the court determines that the adverse claim was fraudulent, it may require the claimant to pay the judgment creditor the reasonable expenses incurred in the proceeding, including reasonable attorney's fees, and any other damages suffered by reason of the claim.<sup>423</sup>

**§ 44.47. Arrest of judgment debtor.**

Upon motion of the judgment creditor without notice, where it is shown that the judgment debtor is about to depart from the Republic or keeps himself concealed therein, and that there is reason to believe that he has in his possession or control property in which he has an interest, the court may issue a warrant directed to the sheriff of any county in which the judgment debtor may be located. The warrant shall command the sheriff to arrest the judgment debtor forthwith and bring him before the court. The sheriff shall serve a copy of the warrant and the papers upon which it was based upon the judgment debtor when he makes the arrest. When the judgment debtor is brought before the court, the court may order that he give a bond, in a sum to be fixed

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<sup>421</sup> *Prior legislation:* L. 1963-64, ch. III (6:4444); L. 1959-60, ch. LXIII, §2 (6:931D(4)); 1956 Code 6:935; L. 1935-36, ch. XXIII, § 3.

<sup>422</sup> *Prior legislation:* L. 1963-64, ch. III (6:4445).

<sup>423</sup> *Prior legislation:* L. 1963-64, ch. III (6:4446); 1956 Code 6:937; L. 1935-36, ch. XXIII, § 4.

by the court, that he will attend before the court for examination and that he will obey the terms of any restraining notice contained in the order.<sup>424</sup>

**§ 44.48. Acts constituting contempt.**

Failure of any person to comply with a subpoena, payment order, or restraining notice issued pursuant to this chapter, false swearing upon an examination or in answering written questions, and willful defacing or removal of a posted notice of sale before the time fixed for the sale shall each be punishable as a contempt of court.<sup>425</sup>

## ***Subchapter C. ENFORCEMENT OF JUDGMENTS BY MEANS OTHER THAN EXECUTION***

**§ 44.71. Methods of enforcement.**

*1. Judgments awarding possession of real or personal property.* A judgment or order or a part thereof, awarding possession of real property or a chattel, may be enforced by execution, which shall particularly describe the property and designate the party to whom the judgment or order awards its possession. The execution shall comply with the provisions of section 44.39, except that it shall direct the sheriff to deliver the possession of the property to the party designated. In an action to recover a chattel, where the judgment awards possession of the chattel and in the alternative its value, the executive shall also direct the sheriff, if the chattel cannot be found in his county, to levy upon real and personal property.

*2. Judgments enforceable by imprisonment if execution not satisfied.* Judgments in any of the following actions shall be enforceable by execution, but if the judgment debtor cannot or will not pay the full amount of the judgment together with interest and costs, the sheriff shall arrest him and the court shall order him imprisoned for a period sufficiently long to liquidate the full amount of the judgment, interest, and costs at the rate of twenty-five dollars per month:

- (a) Adultery;
- (b) Seduction of wife or child;
- (c) Illegally taking away or harboring a wife or child or ward under twenty-one years of age;
- (d) Enticing an incompetent away from his legally appointed trustee or guardian; or
- (e) Injury to the reputation when the words spoken or written are actionable per se.

*3. Money judgments enforceable by contempt.* Any of the following money judgments may be enforced by contempt proceedings:

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<sup>424</sup> *Prior legislation:* L. 1963-64, ch. III (6:4447); L. 1959-60, ch. LXIV (6:979-B(1)).

<sup>425</sup> *Prior legislation:* L. 1963-64, ch. III (6:4448).



- (a) Against a trustee or a person acting in a fiduciary relationship for the payment of a sum of money for a default or dereliction of his duty; or
- (b) For the support of a wife, child, or other dependent.

4. *Other judgments.* Any interlocutory or final judgment or order, or any part thereof, not enforceable under section 44.21 or paragraph 1, 2, or 3 of this section may be enforced by one of the following methods:

- (a) Directing the act to be done at the cost of the disobedient party by the ministerial officer of the court or by some other person appointed by the court; and the act when so done shall have the same effect as if done by the disobedient party; or
- (b) On application of the party entitled to performance, appointment of a receiver of property of the disobedient party under section 44.72 to compel compliance with the judgment; or
- (c) On judgment of a court of record, if real property is within the county, entering a judgment divesting the title of any party and vesting it in another person in lieu of directing a conveyance thereof; and such judgment when probated in the office of the clerk of the probate court and recorded in the office of the Registrar of Deeds shall have the effect of a conveyance executed in due form of law; or
- (d) Adjudging the disobedient party in contempt and punishing him as provided in section 44.73.<sup>426</sup>

#### **§ 44.72. Enforcement through receivership.**

A court, before and after judgment, may appoint a receiver of property of the person against whom judgment was rendered, to carry the judgment into effect or to dispose of or administer the property according to its directions. Unless the court otherwise orders, such a receivership shall be subject to the provisions of subchapter E of chapter 7 insofar as they are applicable.<sup>427</sup>

#### **§ 44.73. Enforcement through contempt proceedings.**

1. *Procedure.* A court having jurisdiction to punish for an act of civil contempt, upon being satisfied by affidavit of the commission of the offense, shall issue an order requiring the accused to show cause before it at a time and place therein specified, why he should not be punished for the alleged offense. The order to show cause shall be served upon the accused in the manner of service of summons and the subsequent proceedings thereupon shall be taken in the action, as upon a motion made therein. If it is determined at the hearing on the order that the accused has committed the offense charged, and that it defeated, impaired, impeded, or prejudiced the rights or remedies of a party to the action, the court shall make a final order directing that he be punished by fine or imprisonment or both. Such order may be enforced, if necessary, by arrest of the accused under a warrant of arrest.

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<sup>426</sup> *Prior legislation:* Par. 1: L. 1963-64, ch. III (6:4471(1)); 1956 Code 6:972, 980, 981; OBB 71, Legal Principles and Rules, t. II, ch. XVIII, §§ 14, 16, 2 Hub. 1570. Par. 2: L. 1963-64, ch. III (6:4471(2)); 1956 Code 6:970, 971; L. 1939-40, ch. XII, §§ 1, 2; L. 1963-64, ch. XXIII, § 7; OBB 77, Legal Principles and Rules, t. II, ch. XIX § 11, 2 Hub. 1574. Par. 3: L. 1963-64, ch. III (6:4471(3)). Par. 4: L. 1963-64, ch. III (6:4471(4)); 1956 Code 6:981.

<sup>427</sup> *Prior legislation:* L. 1963-64, ch. III (6:4472).

2. *Limitation of imprisonment and fine.* If the contempt consisted of an omission to perform an act which is yet within the power of the offender to perform, he may be imprisoned only until he has performed it. If the act is no longer in his power to perform, the offender may be imprisoned for a reasonable time not exceeding six months, unless otherwise provided by statute. The order and the warrant of commitment shall specify the duration of the imprisonment. If a fine is imposed, it shall not exceed an amount which will reasonably indemnify the complainant for any loss he may have suffered including costs of the contempt proceeding, or, in the absence of a showing of loss, the fine shall not exceed two hundred fifty dollars and the costs of the contempt proceeding. The fine shall be paid to the complainant.<sup>428</sup>

## ***Chapter 45. COSTS AND INTEREST***

### **Subchapter A. Costs Generally**

§ 45.1. Costs in an action; general rule.

§ 45.2. Penalty for bringing action in a higher court.

§ 45.3. Costs upon appeal.

§ 45.4. Costs against or in favor of the Republic.

§ 45.5. Taxation of costs.

§ 45.6. Enforcement of payment of costs.

### **Subchapter B. Interest**

§ 45.61. Interest to verdict, report, or decision.

§ 45.62. Interest upon money judgment.

§ 45.63. Rate of interest.

## ***Subchapter A. COSTS GENERALLY***

### **§ 45.1. Costs in an action; general rule.**

The party in whose favor a judgment is entered is entitled to costs in the action, unless otherwise provided by statute or rule or unless the court determines that so to allow costs would not be equitable under all of the circumstances.<sup>429</sup>

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<sup>428</sup> *Prior legislation:* L. 1963-64, ch. III (6:4473).

<sup>429</sup> *Prior legislation:* L. 1963-64, ch. III (6:4501); 1956 Code 6:863; 1841 Acts, Act to supplement Judiciary Act, § 6, 1421.

#### **§ 45.2. Penalty for bringing action in a higher court.**

Whenever an action is brought in a Circuit Court which could have been brought in a justice's or magistrate's court, the plaintiff shall not be entitled to costs.<sup>430</sup>

#### **§ 45.3. Costs upon appeal.**

The party in whose favor an appeal is decided in whole or in part is entitled to costs in the action, unless otherwise provided by statute, rule, or order of the appellate court.<sup>431</sup>

#### **§ 45.4. Costs against or in favor of the Republic.**

Costs shall not be imposed against or in favor of the Republic of Liberia, its officers sued or suing in their official capacities, its agencies, or any authorities wholly owned by the Government.<sup>432</sup>

#### **§ 45.5. Taxation of costs.**

After final judgment, the clerk of court shall prepare a bill of costs which he shall transmit to the attorneys for all the parties. The judge shall approve the bill of costs agreed upon by the attorneys, or, if they cannot agree, he shall settle the disputed items and approve the bill as settled.<sup>433</sup>

#### **§ 45.6. Enforcement of payment of costs.**

Execution may be issued by the court in an amount to cover the costs in addition to the amount of the judgment. Other means available to the judgment creditor under chapter 44 to enforce a money judgment may be employed to secure payment of costs.<sup>434</sup>

### ***Subchapter B. INTEREST***

#### **§ 45.61. Interest to verdict, report, or decision.**

1. *Actions in which recoverable.* Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property.

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<sup>430</sup> *Prior legislation:* L. 1963-64, ch. III (6:4502); 1956 Code 6:864; Rev. Stat. § 1189(4); OBB 113, Judiciary, art. I, § 7.

<sup>431</sup> *Prior legislation:* L. 1963-64, ch. III (6:4503).

<sup>432</sup> *Prior legislation:* L. 1963-64, ch. III (6:4504); 1956 Code 6:863, 1064; Rev. Stat. § 433; L. 1893-94, 10 (2nd), § 3.

<sup>433</sup> *Prior legislation:* L. 1963-64, ch. III (6:4505).

<sup>434</sup> *Prior legislation:* L. 1963-64, ch. III (6:4506).

2. *Date from which computed.* Interest shall be computed from the earliest ascertainable date the claim existed, except that interest upon damages incurred thereafter shall be computed from the date incurred.

3. *Decision as to when claim arose.* If the date when a claim arose is in issue in a jury action, the jury may render a special verdict on such issue; but if no such verdict is rendered, a general verdict in favor of a party shall be deemed to include a finding in favor of that party with regard to the issue as to when the claim arose.<sup>435</sup>

**§ 45.62. Interest upon money judgment.**

Every money judgment shall bear interest from the date of its entry.<sup>436</sup>

**§ 45.63. Rate of interest**

Interest shall be at the rate of six percent per annum, except where otherwise prescribed by statute or by agreement between the parties.<sup>437</sup>

## PART IV

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### *Appellate Procedure*

#### **Chapter 51. APPEALS FROM COURTS OF RECORD**

- § 51.1. Application of chapter.
- § 51.2. Judgments subject to review.
- § 51.3. Parties.
- § 51.4. Requirements for completion of an appeal.
- § 51.5. Prerequisites to appeal.
- § 51.6. Announcement of taking of the appeal.
- § 51.7. Filing of the bill of exceptions.

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<sup>435</sup> *Prior legislation:* L. 1963-64, ch. III (6:4561).

<sup>436</sup> *Prior legislation:* L. 1963-64 ch. III (6:4562); 1956 Code 6:862; Rev. Stat. § 862; OBB, Legal Principles and Rules, t II ch. XVII, §§18-20, 2 Hub. 1568.

<sup>437</sup> *Prior legislation:* L. 1963-64, ch. III (6:4563); 1956 Code 6:862; Rev. Stat. § 412; OBB 69, Legal Principles and Rules, t. II, ch. XVII, §§ 19, 20, 2 Hub. 1568.

- § 51.8. Appeal bond.
- § 51.9. Notice of completion of appeal.
- § 51.10. Tolling of time for acts required to complete appeal.
- § 51.11. Record on appeal.
- § 51.12. Correction or modification of the record.
- § 51.13. Order to inspect original papers and exhibits.
- § 51.14. Briefs.
- § 51.15. Scope of review.
- § 51.16. Dismissal of appeal for failure to proceed.
- § 51.17. Disposition of appeal.
- § 51.18. Restitution.
- § 51.19. Entry of order; remittitur and further proceedings.
- § 51.20. Effect of appeal as a stay.

#### **§ 51.1. Application of chapter.**

This chapter shall be applicable to appeals from judgments of all courts of record.<sup>438</sup>

#### **§ 51.2. Judgments subject to review.**

Every person against whom any final judgment is rendered shall have the right to appeal from the judgment of the court except from that of the Supreme Court. The decision of the Supreme Court shall be absolute and final.<sup>439</sup>

#### **§ 51.3. Parties.**

An aggrieved party or a person substituted for him may appeal from any appealable judgment. He shall be designated as the appellant and the adverse party as the appellee. Any two or more parties interested jointly or severally in a judgment may join in an appeal therefrom; or any one or more of them may appeal separately.<sup>440</sup>

#### **§ 51.4. Requirements for completion of an appeal.**

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<sup>438</sup> *Prior legislation:* L. 1963-64, ch. III (6:5101).

<sup>439</sup> *Prior legislation:* L. 1963-64, ch. III (6:5102); 1956 Code 6:1000; Rev. Stat. §§ 423, 432, 669; J. P. Code § 60; L. 1893-94, 10 (2nd), §2; L. 1878-79, 19, §2; OBB 77, Legal Principles and Rules, t. II, ch. XX, §I, 2 Hub. 1578.

<sup>440</sup> *Prior legislation:* L.1963-64, ch. III (6:5103); 1956 Code 6:1002; Rev. Stat. § 423; OBB, Legal Principles and Rules, t. II, ch. XX, § 7, 2 Hub. 1578.

The following acts shall be necessary for the completion of an appeal:

- (a) Announcement of the taking of the appeal;
- (b) Filing of the bill of exceptions;
- (c) Filing of an appeal bond;
- (d) Service and filing of notice of completion of the appeal.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal.<sup>441</sup>

#### **§ 51.5. Prerequisites to appeal.**

Before announcing the taking of an appeal, a party in a jury case shall move for a new trial after a verdict, and, in any case, shall except to the judgment.<sup>442</sup>

#### **§ 51.6. Announcement of taking of the appeal.**

An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose.<sup>443</sup>

#### **§ 51.7. Filing of the bill of exceptions.**

A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court.<sup>444</sup>

#### **§ 51.8. Appeal bond.**

Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Notice of the filing shall be served on opposing counsel. A failure to file a sufficient appeal bond within the specified time shall be a ground for

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<sup>441</sup> *Prior legislation:* L. 1963-64, ch. III (6:5104); 1956 Code 6:1011-1013; Rev. Stat. §§425, 426; L. 1893-94, 10 (2nd), § 1; L. 1878-79, 19, § 2; OBB 113, Judiciary Act, art. 1, § 2; OBB 77, Legal Principles and Rules, t. II, ch. XX, §§ 3, 4, 8, 2 Hub. 1578.

<sup>442</sup> *Prior legislation:* L. 1963-64, ch. III (6:5105); 1956 Code 6:1011.

<sup>443</sup> *Prior legislation:* L. 1963-64, ch. III (6:5106); 1956 Code 6:1011.

<sup>444</sup> *Prior legislation:* L. 1963-64, ch. III (6:5107); 1956 Code 6:1012; Rev. Stat. § 425; OBB 77, Legal Principles and Rules, t. 11, ch. XX, §§ 3, 4, 2 Hub. 1578.

dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action.<sup>445</sup>

#### **§ 51.9. Notice of completion of appeal.**

After the filing of the bill of exceptions and the filing of the appeal bond as required by sections 51.7 and 51.8, the clerk of the trial court on application of the appellant shall issue a notice of the completion of the appeal a copy of which shall be served by the appellant on the appellee. The original of such notice shall be filed in the office of the clerk of the trial court.<sup>446</sup>

#### **§ 51.10. Tolling of time for acts required to complete appeal.**

If, after an appeal is announced, the counsel for the appellant dies or becomes physically or mentally incapacitated or is disbarred or suspended before the expiration of the time for filing of a bill of exceptions or an appeal bond, the time for the doing of such act shall commence to run anew from the date of the death, incapacitation, disbarment, or suspension of such counsel. A bill of exceptions or appeal bond shall not be filed by a new attorney of record within the extended time allowed by this section until he has applied for and received permission of the court.<sup>447</sup>

#### **§ 51.11. Record on appeal.**

The clerk of the court from which the appeal is taken shall make up a record containing certified copies of all the writs, returns, notices, pledges, motions, applications, certificates, minutes, verdicts, decisions, rulings, orders, opinions, judgments, bills of exceptions, and all other proceedings in the case. He shall transmit this record with a copy of the appeal bond to the appellate court within ninety days after rendition of judgment. The clerk of the appellate court shall docket the record forthwith and forward a receipt to the clerk who transmitted it.<sup>448</sup>

#### **§ 51.12. Correction or modification of the record.**

If any material matter is, by error, accident, or design, omitted from the record on appeal or misstated therein, the party affected thereby or the parties by stipulation may apply to the appellate court to have the error or misstatement corrected; or the appellate court may act on its own initiative. When necessary, the appellate court shall issue a mandate to the trial court requiring the judge thereof to have the record completed and to return it forthwith or to transmit to the appellate court a certified supplementary record.<sup>449</sup>

#### **§ 51.13. Order to inspect original papers and exhibits.**

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<sup>445</sup> *Prior legislation:* L. 1963-64, ch. III (6:5108); 1956 Code 6:1010, 1013, 1014; Rev. Stat. §§424-426; L. 1893-94, 10 (2nd), § 1; L. 1878-79, 19, § 2; OBB 113, Judiciary Act, art. 1, § 2; OBB 77, Legal Principles and Rules, t. II, ch. XX, § §6, 8, 2 Hub. 1578.

<sup>446</sup> *Prior legislation:* L. 1963-64, ch. III (6:5109).

<sup>447</sup> *Prior legislation:* L. 1963-64, ch. III (6:5110).

<sup>448</sup> *Prior legislation:* L. 1963-64, ch. III (6:5111); 1956 Code 6:1015; Rev. Stat. § 428; L. 1893-94, 10 (2nd), § 1; OBB 77, Legal Principles and Rules, t. II, ch. XX, § 5, 2 Hub. 1577.

<sup>449</sup> *Prior legislation:* L. 1963 64, ch. III (6:5112); 1956 Code 6:1018; Rev. Stat. § 429; L. 1893-94, 10 (2nd), § 3.

Whenever the appellate court is of the opinion that it should inspect the original papers or exhibits instead of copies, it shall make an appropriate order therefor and for the safekeeping, transportation, and return of such originals in such manner as it deems proper.<sup>450</sup>

#### **§ 51.14. Briefs.**

Immediately upon the assignment of a case for argument, six copies of briefs on both sides shall be filed in the office of the clerk of the Supreme Court. One copy shall be kept there with the record of the case and the others shall be distributed among the justices. Counsel for each party shall serve a copy of his brief on counsel for opposing parties at the call of the case or before. The briefs shall contain a statement of the issue and the points to be argued with supporting legal authorities. Sufficient quotations from the latter shall be included to give the Court a clear understanding of the purport of the authority cited. References to evidence shall include a statement of the folio or page where it appears in the record.<sup>451</sup>

#### **§ 51.15. Scope of review.**

1. *Points of law first raised in appellate court.* The appellate court shall not consider points of law not raised in the court below and argued in the briefs, except that it may in any case, in the interest of justice, base its decision on a plain error apparent in the record.

2. *No additional evidence.* An appellate court shall examine a case upon the record only and shall hear no additional evidence.<sup>452</sup>

#### **§ 51.16. Dismissal of appeal for failure to proceed.**

An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute.<sup>453</sup>

#### **§ 51.17. Disposition of appeal.**

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<sup>450</sup> *Prior legislation:* L. 1963-64, ch. III (6:5113); 1956 Code 6:1019.

<sup>451</sup> *Prior legislation:* L. 1963-64, ch. III (6:5114).

<sup>452</sup> *Prior legislation:* L. 1963-64, ch. III (6:5115); 1956 Code 6:1060; Rev. Stat. §§431, 432; OBB 77, Legal Principles and Rules, t. II, ch. XX, § 10, 2 Hub. 1578.

<sup>453</sup> *Prior legislation:* L. 1963-64, ch. III (6:5116); 1956 Code 6:1020; L. 1942-43, ch. I, §1; L. 1938, ch. HI, § 1; L. 1935-36, ch. VII; Rev. Stat. § 430; L. 1893-94,.10 (2nd), § 2.



A court to which an appeal is taken may reverse, affirm, or modify, wholly or in part, any judgment before it, as to any party. The court shall render a final determination or, where necessary or proper, remand to the lower court for further proceedings.<sup>454</sup>

#### **§ 51.18. Restitution.**

A court reversing or modifying a final judgment or affirming such a reversal or modification may order restitution of property or rights lost by the judgment, except that where the title of a purchaser in good faith and for value would be affected, the court may order the value or the purchase price restored or deposited in court.<sup>455</sup>

#### **§ 51.19. Entry of order; remittitur and further proceedings.**

1. *Entry of order in appellate court.* An order of a court to which an appeal is taken shall be entered in the office of the clerk of that court.

2. *Remittitur and further proceedings.* A copy of the order of the court to which an appeal is taken determining the appeal, to be known as the mandate, shall be remitted to the clerk of the lower court. The entry of such copy shall be authority for any further proceedings in the trial court and it shall be the duty of the trial court to carry out the mandate of the appellate court. Any judgment directed by the mandate of the appellate court shall be entered by the clerk of the trial court.<sup>456</sup>

#### **§ 51.20. Effect of appeal as a stay.**

On announcement of an appeal by a defendant, no execution shall issue on a judgment against him nor shall any proceedings be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary injunction, such preliminary injunction shall be in force pending decision on the appeal.<sup>457</sup>

## ***Chapter 52. APPEALS FROM COURTS NOT OF RECORD***

- § 52.1. Applicability of provisions of chapter 51.
- § 52.2. Announcement of taking of an appeal from a court not of record.
- § 52.3. Filing of bond.
- § 52.4. Transmission of papers to appellate court.

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<sup>454</sup> *Prior legislation:* L. 1963-64, ch. III (6:5117); 1956 Code 6:1061, 1062; Rev. Stat. § 432; OBB 77, Legal Principles and Rules, t. II, ch. XX, §§ 11, 13, 2 Hub. 1578.

<sup>455</sup> *Prior legislation:* L. 1963-64, ch. III (6:5118).

<sup>456</sup> *Prior legislation:* L. 1963-64, ch. III (6:5119).

<sup>457</sup> *Prior legislation:* L. 1963-64, ch. III (6:5120); 1956 Code 6:991; Rev. Stat. § 422.

§ 52.5. Trial de novo in appellate court.

**§ 52.1. Applicability of provisions of chapter 51.**

The provisions of sections 51.3, 51.5, 51.10, 51-15, 51.17, 51.18, 51.19, and 51.20 shall apply to appeals from judgments of magistrates and justices of the peace. References in those sections to the "trial court" shall, when the section is applied to appeals from the judgment of a magistrate or justice of the peace, be deemed to mean the court of the magistrate or justice of the peace. References in those sections to the clerk of the trial court shall, when the section is applied to appeals from judgments of magistrates or justices of the peace, be deemed to mean the magistrate or justice of the peace or his clerk if he has one.<sup>458</sup>

**§ 52.2. Announcement of taking of an appeal from a court not of record.**

An appeal shall be taken at the time of rendition of the judgment by oral announcement before the magistrate or justice of the peace.<sup>459</sup>

**§ 52.3. Filing of bond.**

Within fifteen days after announcement of the taking of an appeal, the appellant shall secure the approval of the magistrate or justice of the peace who tried the case to an appeal bond and shall file it with the court. Notice of the filing shall be served upon the opposing counsel. The bond shall be in an amount to be fixed by the court and shall be conditioned on compliance with the final judgment together with costs, interest, and damages for delay. Failure to furnish a bond as required by this section shall be ground for dismissal; provided, however, that an insufficient bond may be made sufficient at any time before the trial court loses jurisdiction of the action.<sup>460</sup>

**§ 52.4. Transmission of papers to appellate court.**

The magistrate or justice of the peace from whose judgment an appeal is taken, shall, within fifteen days after announcement of the appeal, transmit to the appellate court and file with the clerk thereof the complete file of papers in the case, including the copy of the summons, the return showing service, any documents introduced in evidence on the trial, the judgment, and the appeal bond.<sup>461</sup>

**§ 52.5. Trial de novo in appellate court.**

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<sup>458</sup> *Prior legislation:* L. 1963-64, ch. III (6:5201).

<sup>459</sup> *Prior legislation:* L. 1963-64, ch. III (6:5202).

<sup>460</sup> *Prior legislation:* L. 1963-64, ch. III (6:5203); 1956 Code 6:1042; Rev. Stat. § 671; J. P. Code § 62.

<sup>461</sup> *Prior legislation:* L. 1963-64, ch. III (6:5204); 1956 Code 6:1040; Rev. Stat. § 670; J. P. Code § 6; L. 1862-63, 3, §§ 3, 4.

The hearing upon an appeal from a judgment of a magistrate or a justice of the peace shall be a trial de novo, except that issues of law may be determined on oral argument without the introduction of evidence.<sup>462</sup>

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<sup>462</sup> *Prior legislation:* L. 1963-64, ch. III (6:5205); 1956 Code 6:1063; OBB 113, Judiciary, art. I, §§ 5, 8.

## PART V

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### *Special Matters*

#### **Chapter 61. ACTION TO RECOVER A CHATTEL**

- § 61.1. When action may be brought.
- § 61.2. Title in third person as defense.
- § 61.3. Alternative methods of proceeding.
- § 61.4. Order to replevy.
- § 61.5. Seizure of chattel by sheriff; service.
- § 61.6. Disposition of chattel by sheriff.
- § 61.7. Reclaiming of chattel by defendant.
- § 61.8. Intervention.
- § 61.9. Seizing or reclaiming fewer than all chattels.
- § 61.10. Sale of perishable property.
- § 61.11. Liability of sheriff.
- § 61.12. Sheriffs return.
- § 61.13. Judgment.
- § 61.14. Unique chattel.
- § 61.15. Action on bond.

##### **§ 61.1. When action may be brought.**

An action may be brought pursuant to the provisions of this chapter to recover a chattel wrongfully detained, whether or not wrongfully taken, and damages for wrongful taking and detention.<sup>463</sup>

##### **§ 61.2. Title in third person as defense.**

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<sup>463</sup> *Prior legislation:* L. 1963-64, ch. III (6;6101); 1956 Code 6:1101; Rev. Stat. § 346.

That title to the chattel sought to be recovered is in a third person who is not privy to the defendant is not a defense to the action.<sup>464</sup>

### **§ 61.3. Alternative methods of proceeding.**

A plaintiff in an action to recover a chattel may proceed in the manner prescribed in this chapter to replevy the chattel prior to judgment, or he may proceed without replevy of the chattel and, if judgment is rendered in his favor, secure possession through its enforcement.<sup>465</sup>

### **§ 61.4. Order to replevy.**

1. *Issuance.* In an action to recover a chattel, the plaintiff may cause the chattel to be taken from the possession or custody of the defendant at the time of service of the summons or after service of summons and before judgment by securing from the court without notice an order to replevy. Before granting such an order, the court shall require the plaintiff to submit an affidavit and furnish a bond complying with the requirements of this section. The order shall direct the clerk of the court to issue a writ of replevin to the sheriff directing him to seize the chattel described in the affidavit.

2. *Affidavit.* The affidavit shall clearly identify the chattel to be seized and shall state:

- (a) The particular place where the chattel may be found;
- (b) That the plaintiff is entitled to possession by virtue of facts set forth;
- (c) That the chattel is wrongfully held by the defendant named;
- (d) Whether an action to recover the chattel has been commenced, and if so, the defendants served, and whether they are in default; and if they have appeared, where papers may be served upon them; and
- (e) The value of each chattel or class of chattels claimed, and the aggregate value of all chattels claimed;
- (f) That the property has not been taken for a tax assessment or fine pursuant to statute or seized under an execution or attachment or, if so seized, that it is exempt from such seizure.

3. *Bond.* The bond shall be executed by sufficient surety, acceptable to the court. The condition of the bond shall be that the surety is bound in a specified amount, not less than twice the value of the chattel stated in the plaintiff's affidavit, for the return of the chattel to any person to whom possession is awarded by the judgment, and for payment of any sum awarded by the judgment against the person giving the bond.<sup>466</sup>

### **§ 61.5. Seizure of chattel by sheriff; service.**

On granting of the order to replevy, the sheriff shall without delay seize the chattel described in the affidavit and shall serve upon the person from whose possession it is seized a copy of the writ to replevy. Unless the court

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<sup>464</sup> *Prior legislation:* L. 1963-64, ch. III (6:6102).

<sup>465</sup> *Prior legislation:* L. 1963-64, ch. III (6:6103).

<sup>466</sup> *Prior legislation:* L. 1963-64, ch. III (6:6104); 1956 Code 6:1102; Rev. Stat. § 348; OBB 33, Legal Principles and Rules, t. II, ch. II, 42, 2 Hub. 1527.

orders otherwise, the affidavit, bond, and copy of the writ to replevy shall be personally served by the sheriff on each defendant not in default in the same manner as a summons. If a defendant has appeared, he shall be served in the manner provided for service of papers generally.<sup>467</sup>

#### **§ 61.6. Disposition of chattel by sheriff.**

Unless the court orders otherwise, the sheriff shall retain custody of a replevied chattel for ten days after seizure. At the end of that period, if there has not been served on the sheriff either a notice of exception to plaintiff's sureties, or papers required under section 61.7 to reclaim the chattel, he shall make a return to the court stating that fact and his seizure of the chattel. The court shall then order the chattel delivered to the plaintiff. If the defendant excepts to plaintiff's sureties, and such sureties fail to justify, the court shall order the sheriff to deliver possession of the chattel to the person from whom it was seized.<sup>468</sup>

#### **§ 61.7. Reclaiming of chattel by defendant.**

A chattel may be reclaimed by any person claiming the right to its possession by service upon the sheriff and upon all parties to the action of a notice that the reclaiming party requires a return of all or part of the chattels replevied; a bond in an amount not less than twice the value of the chattel reclaimed with sureties acceptable to the court; and an affidavit stating that the reclaiming party is entitled to possession by virtue of facts set forth. The sheriff shall retain custody of the chattel for ten days after such papers have been served upon him. At the expiration of such period, if there has not been served on the sheriff a notice of exception to sureties on the bond, the sheriff shall make a return to the court stating that fact. The court shall then order the chattel delivered to the person serving the notice of reclamation. If the plaintiff excepts to the sureties on the bond given by the reclaiming party and such sureties fail to justify, the court shall order the sheriff to deliver possession of the chattel to the plaintiff.<sup>469</sup>

#### **§ 61.8. Intervention.**

Service upon the sheriff or the plaintiff of a notice of reclamation or exception to surety by a person not a party to the action makes such a person a party to the action. Plaintiff shall serve a copy of the complaint upon such person within ten days after he becomes a party. The procedure prescribed by this section shall be in lieu of a motion for intervention required under section 5.63.<sup>470</sup>

#### **§ 61.9. Seizing or reclaiming fewer than all chattels.**

Where the seizing of two or more chattels is required by the plaintiff, the sheriff shall seize those chattels which can be found. Fewer than all of the seized chattels may be reclaimed. The statement of the value of the chattels

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<sup>467</sup> *Prior legislation:* L. 1963-64, ch. III (6:6105); 1956 Code 6:1103; Rev. Stat. § 349; OBB 33, Legal Principles and Rules, t. II, ch. II, § 44, 2 Hub. 1527.

<sup>468</sup> *Prior legislation:* L. 1963-64, ch. III (6:6106); 1956 Code 6:1105; Rev. Stat. § 351.

<sup>469</sup> *Prior legislation:* L. 1963-64, ch. III (6:6107); 1956 Code 6:1105; Rev. Stat. § 351.

<sup>470</sup> *Prior legislation:* L. 1963-64, ch. III (6:6108).

in the affidavit of the plaintiff shall be taken as the basis for fixing the amount of the bond by the defendant on reclaiming the chattel.<sup>471</sup>

#### **§ 61.10. Sale of perishable property.**

Upon motion with such notice as the court may require, the court may order the sheriff to sell perishable property which has been seized. The court shall prescribe the time and place of the sale, and the manner and time in which notice thereof shall be given. Unless the court orders other-wise, the sheriff, after deducting the necessary expenses, shall hold the proceeds pending determination of the action.<sup>472</sup>

#### **§ 61.11. Liability of sheriff.**

A sheriff is liable for damages caused by his unauthorized delivery or detention of a chattel seized under the provisions of this chapter.<sup>473</sup>

#### **§ 61.12. Sheriff's return.**

The sheriff shall file with the clerk a return within two days after he has delivered a chattel; it shall include all papers delivered or served on him and a statement of all action taken by him.<sup>474</sup>

#### **§ 61.13. Judgment.**

1. *Generally.* Damages for wrongful taking or detention or for injury to or depreciation of a chattel may be awarded to a party. Except as provided in paragraph 2, judgment shall award possession of each chattel to the prevailing party, or, if the action is discontinued or dismissed, to the person from whom it was seized; and where the person awarded possession is not in possession when judgment is entered, it shall, if the chattel cannot be found, award the value of each chattel at the time of trial, decreased by the value of the interest of an unsuccessful party.

2. *When value of chattel should not be awarded* A judgment in favor of the defendant where the chattel is in possession of the plaintiff at the time it is rendered, shall not award the value of the chattel where

- (a) The plaintiff is the owner of the chattel but it was rightfully distrained doing damage, and the value of the chattel is greater than the damages sustained by the defendant; or
- (b) The plaintiff is the owner of the chattel, but the defendant had a special property therein, the value of which is less than the value of the chattel.

An execution shall direct the sheriff to deliver possession of the chattel to the defendant unless the party in possession pays the sum awarded to the defendant with interest and sheriffs fees, and, in case the chattel

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<sup>471</sup> *Prior legislation:* L. 1963-64, ch. III (6:6109).

<sup>472</sup> *Prior legislation:* L. 1963-64, ch. III (6:6110).

<sup>473</sup> *Prior legislation:* L. 1963-64, ch. III (6:6111).

<sup>474</sup> *Prior legislation:* L. 1963-64, ch. III (6:6112); 1956 Code 6:1103.

cannot be found within his county, then to satisfy that sum from the property of the party against whom the judgment is entered. If the chattel is in possession of the defendant, it may remain in his possession until the amount awarded is paid.<sup>475</sup>

#### **§ 61.14. Unique chattel.**

1. *Injunction, temporary restraining order.* Where the chattel is unique, the court may grant a preliminary injunction or temporary restraining order that the chattel shall not be removed from the Republic, transferred, sold, pledged, assigned, or otherwise disposed of, until further order of the court.

2. *Judgment enforceable by contempt.* Where the chattel sought to be recovered is unique, the court may, in addition to granting a judgment under section 61.13, order a party in possession to deliver the chattel to the party entitled to such possession. Disobedience of such a judgment may be punished as a contempt of court.<sup>476</sup>

#### **§ 61.15. Action on bond.**

An action on a bond given under the provisions of this chapter cannot be maintained after final judgment until the return, wholly or partly unsatisfied, of an execution on the judgment for delivery of possession of the chattel or for payment of a sum of money in lieu of the chattel.<sup>477</sup>

## **Chapter 62. ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY**

### **Subchapter A. Ejectment**

§ 62.1. When ejectment may be brought.

§ 62.2. When prior notice to vacate necessary.

§ 62.3. Claim for damages.

### **Subchapter B. Summary Proceeding to Recover Possession of Real Property**

§ 62.21. Right to maintain summary proceeding to recover real property.

§ 62.22. Rent due and damages.

§ 62.23. Writ of possession.

§ 62.24. Stay.

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<sup>475</sup> *Prior legislation:* L. 1963-64, ch. III (6:6113).

<sup>476</sup> *Prior legislation:* L. 1963-64, ch. III (6:6114).

<sup>477</sup> *Prior legislation:* L. 1963-64, ch. III (6:6115).



## ***Subchapter A. EJECTMENT***

### **§ 62.1. When ejectment may be brought.**

Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to real property as well as the right to possession thereof is disputed. A widow may recover her dower in ejectment.<sup>478</sup>

### **§ 62.2. When prior notice to vacate necessary.**

A person rightfully entitled to the possession of real property may bring an action of ejectment without prior notice to vacate when:

- (a) There is unlawful dispossession, ouster, trespass, or tortuous entry by a tenant at sufferance only or by a mere occupant without color of right or title after the expiration of the term of a lease or of rightful or permissive possession; or
- (b) There is a wrongful entry or possession of a mere trespasser or intruder.

An action of ejectment may be brought against a tenant at will who remains in possession after notice to vacate.<sup>479</sup>

### **§ 62.3. Claim for damages.**

In a complaint in an action of ejectment, the plaintiff may demand damages for wrongful detention of the real property as well as delivery of possession.<sup>480</sup>

## ***Subchapter B. SUMMARY PROCEEDING TO RECOVER POSSESSION OF REAL PROPERTY***

### **§ 62.21. Right to maintain summary proceeding to recover real property.**

Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a Circuit Court or a court of a justice of the peace or a magistrate. The court of a justice of the peace or magistrate

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<sup>478</sup> *Prior legislation:* L. 1963-64, ch. III (6:6202); 1956 Code 6:1120, 1121; L. 1945-46, ch. VIII, §§1, 2; Rev. Stat. §§257, 1391; OBB 30, Legal Principles and Rules, t. II, ch. I, §13, 2 Hub. 1524.

<sup>479</sup> *Prior legislation:* L. 1963-64, ch. III (6:6203); 1956 Code 6:1121; L. 1945-46, ch. VIII, § 2.

<sup>480</sup> *Prior legislation:* L. 1963-64, ch. III (6:6204); 1956 Code 6:1126; OBB 67, Legal Principles and Rules, t. II, ch. XVI, §§ 14, 15, 2 Hub. 1565.

shall have jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars.<sup>481</sup>

#### **§ 62.22. Rent due and damages.**

The relief granted by the court may include a judgment for rent due and for damages for wrongful entry on or withholding of the property which is the subject of the action if the citation contains a notice that a demand for such a judgment has been made.<sup>482</sup>

#### **§ 62.23. Writ of possession.**

Upon rendering a final judgment for petitioner, the court shall issue a writ of possession directed to the sheriff of the county in which property is situated, describing the property and commanding the officer to remove all persons and to put the petitioner into full possession. The officer to whom the writ is directed and delivered shall execute it between the hours of sunrise and sunset.<sup>483</sup>

#### **§ 62.24. Stay.**

If an appeal is taken from a judgment of a court not of record in favor of a plaintiff in a proceeding under this subchapter, the issuance and execution of a writ of possession shall be stayed pending rendition of final judgment; but the taking of an appeal from the judgment of a Circuit Court in favor of a plaintiff shall in no case arising under this subchapter operate as a stay of enforcement proceedings. A plaintiff in whose favor judgment is rendered in a proceeding under this subchapter may secure the issuance and execution of a writ of possession immediately if no appeal is taken.<sup>484</sup>

## ***Chapter 63. BONDS AND SECURITY***

- § 63.1. Security for bonds.
- § 63.2. Legally qualified sureties.
- § 63.3. Approval by court; filing; service.
- § 63.4. Waiver of bond.
- § 63.5. Exception to surety; allowance where no exception taken.
- § 63.6. Justification of surety.
- § 63.7. Liability of surety.

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<sup>481</sup> *Prior legislation:* L. 1963-64, ch. III (6:6221); 1956 Code 6:1123; L. 1945-46, ch. VIII, §§ 2, 3.

<sup>482</sup> *Prior legislation:* L. 1963-64, ch. III (6:6222).

<sup>483</sup> *Prior legislation:* L. 1963-64, ch. III (6-.6223); 1956 Code 6:1125; Rev. Stat. § 1391.

<sup>484</sup> *Prior legislation:* L. 1963-64, ch. III (6:6224); 1956 Code 6:1127; L. 1945-46, ch. VIII, § 5.

§ 63.8. Bond by Republic, municipal corporation, or public officer.

§ 63.9. Motion for new or additional bond.

### **§ 63.1. Security for bonds.**

Except as otherwise provided by statute, any bond given under this title shall be secured by one or more of the following:

- (a) Cash to the value of the bond; or cash deposited in the bank to the value of the bond as evidenced by a bank certificate;
- (b) Unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond;
- (c) Valuables to the amount of the bond which are easily converted into cash; or
- (d) Sureties who meet the requirements of section 63.2.

The sheriff receiving cash, a bank certificate, stocks or other negotiable securities, or valuables shall deposit it or them in the government depository or a reliable bank, and secure a receipt therefor showing the amount deposited and the purpose of the deposit and containing a statement that the deposit will be released only upon the written order of a judge of the court.<sup>485</sup>

### **§ 63.2. Legally qualified sureties.**

1. *Who may be sureties.* Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements of this section or an insurance company authorized to execute surety bonds within the Republic.

2. *Lien on real property as security.* A bond upon which natural persons are sureties shall be secured by one or more pieces of real property located in the Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances. Such a bond shall create a lien on the real property when the party in whose favor the bond is given has it recorded in the docket for surety bond liens in the office of the clerk of the Circuit Court in the county where the property is located. Each bond shall be recorded therein by an entry showing the following:

- (a) The names of the sureties in alphabetical order;
- (b) The amount of the bond;
- (c) A description of the real property offered as security thereunder, sufficiently identified to clearly establish the lien of the bond;
- (d) The date of such recording;

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<sup>485</sup> *Prior legislation:* L. 1963-64, ch. III (6:6301); 1956 Code 6:462, 468; L. 1939-40, ch. XVIII.

(e) The title of the action, proceeding, or estate.

3. *Affidavit of sureties.* The bond shall be accompanied by an affidavit of the sureties containing the following:
- (a) A statement that one of them is the owner or that both combined are the owners of the real property offered as security;
  - (b) A description of the property, sufficiently identified to establish the lien of the bond;
  - (c) A statement of the total amount of the liens, unpaid taxes, and other encumbrances against each property offered; and
  - (d) A statement of the assessed value of each property offered.

A duplicate original of the affidavit required by this section shall be filed in the office where the bond is recorded.

4. *Certificate of Ministry of Finance official.* The bond shall also be accompanied by a certificate of a duly authorized official of the Ministry of Finance that the property is owned by the surety or sureties claiming title to it in the affidavit and that it is of the assessed value therein stated, but such a certificate shall not be a prerequisite to approval by the judge.

5. *Release of lien.* When the condition of a bond has been fulfilled, a certificate to that effect shall be issued by the clerk of the court where the bond is filed. Such certificate shall be filed in the office of the clerk of the Circuit Court where the lien on the real property has been recorded to show that the lien has been released.<sup>486</sup>

#### **§ 63.3. Approval by court; filing; service.**

A bond shall become effective when approved by the court. Approval may be granted when the party furnishing the bond presents prima facie evidence to show that the sureties are qualified or that the security offered on the bond is adequate, genuine, and as represented by such party. An approved bond shall be filed with the clerk of the court in which the action is pending. A notice of the filing of the bond shall be served on the adverse party.<sup>487</sup>

#### **§ 63.4. Waiver of bond.**

Unless the court orders otherwise, a bond may be waived by the written consent of the parties.<sup>488</sup>

#### **§ 63.5. Exception to surety; allowance where no exception taken.**

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<sup>486</sup> *Prior legislation:* L. 1963-64, ch. III (6:6302); 1956 Code 463; Rev. Stat. § 315.

<sup>487</sup> *Prior legislation:* L. 1963-64, ch. III (6:6303); 1956 Code 6:462; L. 1939-40, ch. XVIII, § 2.

<sup>488</sup> *Prior legislation:* L. 1963-64, ch. III (6:6304).

1. *Exceptions.* A party may except to the sufficiency of a surety by written notice of exceptions served upon the adverse party within three days after receipt of the notice of filing of the bond. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs.

2. *Allowance where no exception taken.* Where no exception to sureties is taken within three days or where exceptions taken are set aside, the bond is allowed.<sup>489</sup>

#### **§ 63.6. Justification of surety.**

1. *Motion to justify.* Within three days after service of notice of exception, the surety excepted to or the person on whose behalf the bond was given shall move to justify, upon notice to the adverse party. The surety shall be present upon the hearing of such motion to be examined under oath. If the court finds the surety sufficient, it shall make an appropriate endorsement on the bond.

2. *Failure to justify.* If a motion to justify is not made within three days after the notice of exception is served, or if the judge finds a surety insufficient, he shall require another surety or sureties in place of any who have not justified. Any surety who has not justified shall remain liable until another surety signs the bond and the bond is allowed.<sup>490</sup>

#### **§ 63.7. Liability of surety.**

Where two or more persons are surety on a bond, they shall be jointly and severally liable. The amount recoverable from a surety shall not exceed the amount specified in the bond except that interest in addition to this amount shall be awarded from the time of default by the surety. The remedy against a surety on a bond shall be an action of damages for breach of contract.<sup>491</sup>

#### **§ 63.8. Bond by Republic, municipal corporation, or public officer.**

Any provision of statute or rule of court authorizing or requiring a bond to be given by a party shall, unless the contrary is clearly expressed, be construed as excluding the Republic, or a domestic municipal corporation, or a public officer or agency in behalf of the Republic or of such a corporation.<sup>492</sup>

#### **§ 63.9. Motion for new or additional bond.**

Upon motion of any interested person, upon notice to the parties and the sureties, the court may order a new or additional bond, a justification or re-justification of sureties, or new or additional sureties. Unless otherwise

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<sup>489</sup> *Prior legislation:* L. 1963-64, ch. III (6:6305); 1956 Code 6:464; Rev. Stat. § 316.

<sup>490</sup> *Prior legislation:* L. 1963-64, ch. III (6:6306); 1956 Code 6:464; Rev. Stat. § 316.

<sup>491</sup> *Prior legislation:* L. 1963-64, ch. III (6:6307); 1956 Code 6:465; Rev. Stat. § 320; OBB 40, Legal Principles and Rules, t. II, ch. III, §§ 5,7, 2 Hub. 1535.

<sup>492</sup> *Prior legislation:* L. 1963-64, ch. III (6:6308).

provided by order of court, a surety on the original bond shall remain liable until such order is complied with, but the original bond shall be otherwise without effect.<sup>493</sup>

## ***Chapter 64. ARBITRATION***

- § 64.1. Validity, enforceability, and irrevocability of arbitration agreements.
- § 64.2. Proceedings to compel or stay arbitration proceedings.
- § 64.3. Appointment of arbitrators.
- § 64.4. Majority action by the arbitrators.
- § 64.5. The hearing.
- § 64.6. Oaths, witnesses, subpoenas, depositions.
- § 64.7. The award.
- § 64.8. Modification, correction, or clarification of award by arbitrators.
- § 64.9. Fees and expenses of arbitration.
- § 64.10. Confirmation of award.
- § 64.11. Vacating an award.
- § 64.12. Modification or correction of award by the court.
- § 64.13. Judgment or decree on award.
- § 64.14. Papers to be filed for judgment; effect thereof.
- § 64.15. Applications to the court.
- § 64.16. Court; jurisdiction.
- § 64.17. Venue.
- § 64.18. Appeals.

### **§ 64.1. Validity, enforceability, and irrevocability of arbitration agreements.**

A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract.<sup>494</sup>

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<sup>493</sup> *Prior legislation*; L. 1963-64, ch. III (6:6309).

**§ 64.2. Proceedings to compel or stay arbitration proceedings.**

*1. Proceedings to compel arbitration; grounds, form of hearing.* A party making application to the court may obtain an order directing the parties to arbitrate by showing:

- (a) The existence of an agreement described in section 64.1; and
- (b) That he is a party to such an agreement; and
- (c) The referability of the controversy to arbitration; and
- (d) The refusal of another party to the agreement to arbitrate such controversy.

Where such issues are raised, the court shall proceed forthwith and summarily to hear and determine the issues raised upon the affidavits submitted in support of and in opposition to the application, except that the court may proceed to try the issues, with or without a jury, where it deems such procedure necessary, and shall order arbitration if the issues are found for the moving party.

*2. Proceedings to stay arbitration; grounds, form of hearing, time limitation.* On application the court may stay an arbitration proceeding commenced or threatened on a showing by an applicant adversely affected thereby that:

- (a) There is no agreement as described in section 64.1; or
- (b) He is not a party to the agreement; or
- (c) The controversy is not referable to arbitration; or
- (d) The adverse party is not a party to the agreement; or
- (e) The right to proceed to arbitration has been waived by the adverse party; or
- (f) The agreement has been revoked by either party.

Where such issues are raised, the court shall proceed forthwith and summarily to hear and determine the issues raised upon the affidavits submitted in support of and in opposition to the application, except that the court may proceed to try the issues raised, with or without a jury, where it deems such procedure necessary. If the determination is made in favor of the adverse party the court may order the parties to arbitrate.

*3. Waiver of objections to arbitration.* The failure to assert any of the grounds enumerated in paragraph two of this section whenever the arbitration proceeding is before the court on any application under this chapter shall constitute a waiver of such grounds.

*4. Stay of action or proceeding involving an issue referable to arbitration.* Any action or proceeding involving an issue referable to arbitration shall be stayed if an order for arbitration or an application therefor has been made under paragraphs one and two of this section or, if the issue is severable, the stay may be only with respect

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<sup>494</sup> *Prior legislation.* L. 1963-64, ch. III (6:6401); 1956 Code 6:1270, 1300; Rev. Stat. §1387 (1st par.), (6); OBB 65, Legal Principles and Rules, t. II, ch. XV, §§ 1, 16, 2 Hub. 1563.

thereto. Where the application is made in such action or proceeding, the order for arbitration shall include such stay.

5. *Statute of limitations.* If at the time that a demand for arbitration was made or notice of arbitration proceedings was served, the claim sought to be arbitrated would have been barred by limitation of time had it been asserted in an action or proceeding, a party may assert the limitation as a bar to the arbitration on an application to the court as provided in paragraphs one and two of this section. The failure to assert such bar on such application shall not preclude its assertion before the arbitrators who may, in their sole discretion, apply or not apply the bar. Except as provided in section 64.11 (1) (c), such exercise of discretion by the arbitrators shall not be subject to review by a court on an application to confirm, vacate, modify, or correct the award.<sup>495</sup>

### **§ 64.3. Appointment of arbitrators.**

Where the parties have named the arbitrators in their agreement the hearing shall be before such arbitrators. If the agreement provides a method for the appointment of arbitrators such methods shall be followed. If the agreement does not so provide, the party to the agreement who seeks arbitration and the party against whom arbitration is sought may agree on a method of appointing arbitrators and that method shall be followed. The court, on application of a party to the arbitration agreement showing the refusal of another party thereto to appoint arbitrators in the manner agreed upon, shall appoint them in such manner. If the method of appointment, or the designation of the arbitrators, is not specified in the agreement and cannot be agreed upon by the parties, the court, on application of a party to the arbitration agreement, is empowered to appoint an arbitrator or arbitrators with qualifications commensurate with the nature of the controversy, except on rehearing under section 64.11(3) where the court shall appoint an arbitrator or arbitrators with qualifications approximating as nearly as possible those of the original arbitrator or arbitrators. Where an arbitrator fails or is unable to act, his successor shall be appointed in the same manner as the original appointment, and if the parties cannot agree on a successor to be so appointed, the court, on application of a party to the arbitration agreement, is empowered to appoint an arbitrator with qualifications commensurate with the nature of the controversy.<sup>496</sup>

### **§ 64.4. Majority action by the arbitrators.**

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the arbitration agreement.<sup>497</sup>

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<sup>495</sup> *Prior legislation:* L. 1963-64, ch. III (6:6402); 1956 Code 6:1280; Rev. Stat. § 1387 (1st par.); OBB 65, Legal Principles and Rules, t. II, ch. XV, § 1, 2 Hub. 1563.

<sup>496</sup> *Prior legislation:* L. 1963-64, ch. III (6:6403); 1956 Code 6:1280 (2nd sent.); Rev. Stat. § 1387 (1st par., 2nd sent.); OBB 65, Legal Principles and Rules, t. II, ch. XV, § 2, 2 Hub. 1563.

<sup>497</sup> *Prior legislation:* L. 1963-64, ch. III (6:6404); 1956 Code 6:1280 (last sent.); Rev. Stat. § 1387 (1st par., 2nd sent.) (1, last sent.) (6, 1st sent.); OBB 65, Legal Principles and Rules, t. II, ch. XV, §§ 5, 16, 2 Hub. 1563.



#### § 64.5. The hearing.

Unless otherwise provided by the agreement the conduct of the proceedings before the arbitrators shall be as follows:

- (a) *Time and place of hearing.* The arbitrators shall appoint a time and place for the bearing and notify the parties personally or by registered mail not less than fifteen days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time upon their own motion and shall do so upon the motion of any party to the arbitration proceedings for good cause shown, provided that no adjournment shall extend beyond the date set in the agreement for the making of the award unless the parties consent to a later date. If the arbitrators fail to proceed promptly with the hearing and determination of the controversy, application may be made to the court by any party to the proceeding for an order directing the arbitrators to proceed promptly.
- (b) *Evidence.* The parties are entitled to be heard, to present evidence and to cross-examine witnesses.
- (c) *Hearing upon default.* The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of another party, duly notified, to appear at the hearings.
- (d) *Award by confession.* An award by confession may be made at any time before an award is otherwise made. The award by confession shall be based upon a statement, verified by the oath of the parties, containing authorization to make the award, and if a sum of money is to be awarded, the amount of the sum or the method of ascertaining it, and the facts constituting liability. The award by confession may be made at any time within three months after the statement is verified. The award may be made by the arbitrators or by the agency named in the agreement to appoint the arbitrators.
- (e) *Representation by attorney.* A party has the right to be represented by an attorney at any proceeding or hearing under this chapter, and may claim such right at any time as to any part of the arbitrators' hearing that has not taken place.
- (f) *Determination by majority of arbitrators.* The hearing shall be conducted by all of the arbitrators, but a majority may determine any question and may render an award.<sup>498</sup>

#### § 64.6. Oaths, witnesses, subpoenas, depositions.

1. *Oaths, witnesses, and subpoenas.* The arbitrators shall have the power to administer oaths and may request the clerk of the appropriate Circuit Court to issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided in chapter 14 of this title.

2. *Depositions.* On application of a party, the arbitrators, in the manner and upon the terms designated by them, may permit a deposition to be taken of a witness who cannot be subpoenaed or is unable to attend the hearing, for use as evidence. Chapter 13 of this title shall regulate the procedure for securing such deposition.<sup>499</sup>

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<sup>498</sup> *Prior Legislation:* Par. 6: L. 1963-64, ch. III (6:6405(6) ); 1956 Code 6:1280 (last sent.), 1282; Rev. Stat. §1387 (1ST par., 2nd sent.) (1, last sent.) (2, 1st sent.); OBB 65, Legal Principles and Rules, t. II, ch. XV, § 5, 2 Hub. 1563.

#### **§ 64.7. The award.**

1. *Form and content of the award.* Except as provided in section 64.5(4) the award shall be in writing and signed by the arbitrators joining in the award. It shall include a determination of all the issues submitted to the arbitrators the decision of which is necessary in order to determine the controversy.

2. *Time within which the award must be made.* An award shall be made within the time fixed by the agreement or, if not so fixed, within fifteen days from the date of the final submission of the controversy to the arbitrators, unless on application of a party, the court orders a shorter or longer limitation. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.<sup>500</sup>

#### **§ 64.8. Modification, correction, or clarification of award by arbitrators.**

1. *Scope.* On application of a party to the arbitrators or, if an application to the court is pending under sections 64.10, 64.11, or 64.12, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 64.12 or may amend the award for the purpose of clarifying it.

2. *Applications; method and time limitation.* The application to the arbitrators by a party shall be made within five days after service of a signed copy of the award on the applicant. Written notice of the application shall be given by the arbitrators forthwith to the other parties to the arbitration. Objections to the application must be in writing and served on the arbitrators and the other parties to the arbitration within five days after receipt of notice of the application.

3. *Time, form, and service of modified, corrected, or clarified award.* The arbitrators, without a rehearing, shall either deny the application or modify, correct or clarify the award, and must do so within five days after written objection to the application has been served upon them, or within another five days after the time for serving such objections has expired. The denial, correction, modification, or clarification shall be in writing and signed by the arbitrators joining therein. It shall be served by the arbitrators on each party to the arbitration personally, or by registered mail, unless otherwise provided in the agreement. The award so corrected, modified, or clarified is subject to the provisions of sections 64.10, 64.11, and 64.12.

4. *Exclusive jurisdiction of arbitrators and court to hear applications to modify, correct, or clarify award.* Unless there is a pending proceeding in court as described in paragraph 1 of this section, whenever an application to the arbitrators is pending under this section all subsequent proceedings under sections 64.10, 64.11, or 64.12

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<sup>499</sup> *Prior legislation:* L. 1963-64, ch. III (6:6406); 1956 Code 6:1281; Rev. Stat. § 1387(1); OBB 65, Legal Principles and Rules, t. II, ch. XV, § 3, 2 Hub. 1563.

<sup>500</sup> *Prior legislation:* Par. 1: L. 1963-64, ch. III (6:6407(1)); 1956 Code 6:1282; Rev. Stat. § 1387(2); OBB 65, Legal Principles and Rules, t. II, ch. XV, §§ 5, 6, 2 Hub. 1563.

are stayed until the determination by the arbitrators of the application under this section. Whenever an application to the court is pending under sections 64.10, 64.11, or 64.12, and no prior application has been made to the arbitrators under this section, no application may be made to the arbitrators under this section.<sup>501</sup>

#### **§ 64.9. Fees and expenses of arbitration.**

Unless the arbitration agreement otherwise provides, or the parties to the arbitration otherwise agree prior to the commencement of the arbitration hearing, the arbitrators' fees and fees for the attendance of witnesses, together with other expenses incurred in the conduct of the arbitration not including attorneys' fees, shall be allowed and paid as provided in the award. The court, on application, may reduce or disallow any fee or expense it finds excessive or allocate it as justice requires.<sup>502</sup>

#### **§ 64.10. Confirmation of award.**

Upon written motion of a party, the court shall confirm an award unless, within the time limitations hereinafter imposed, grounds are urged for vacating, modifying, or correcting the award, or reasons are assigned for clarifying it, in which case the court shall proceed as provided in sections 64.11 and 64.12.<sup>503</sup>

#### **§ 64.11. Vacating an award.**

1. *Grounds for vacating.* Upon written motion of a party the court shall vacate an award where:

- (a) The award was procured by corruption, fraud, or other undue means; or
- (b) There was partiality in an arbitrator appointed as a neutral, except where the award was by confession; or there was corruption or misconduct in any of the arbitrators; or
- (c) An arbitrator or the agency or person making the award exceeded his powers or rendered an award contrary to public policy; or
- (d) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to the provisions of sections 64.5 or 64.6.

The fact that the relief granted in the award was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm an award.

2. *Time for application.* An application under this section shall be made within thirty days after delivery of a copy of the award to the applicant except that if the application is predicated upon fraud, or corruption, or other undue means, it shall be made within thirty days after such grounds are known or should have been known.

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<sup>501</sup> *Prior legislation:* L. 1963-64, ch. III (6:6408).

<sup>502</sup> *Prior legislation:* L. 1963-64, ch. III (6:6409); 1956 Code 6:1281 (last sent.); Rev. Stat. § 1387 (1, 4th sent.); OBB 65, Legal Principles and Rules, t. II, ch. XV, § 4, 2 Hub. 1563.

<sup>503</sup> *Prior legislation:* L. 1963-64, ch. III (6:6410); 1956 Code 6:1285; Rev. Stat. § 1387 (3, 4th sent.); OBB 65, Legal Principles and Rules, t. 11, ch. XV, § 14, 2 Hub. 1563.

3. *Rehearing.* Upon vacating an award, the court shall order a rehearing and determination of all or any of the issues except where the award was vacated upon the ground that the dispute was not referable to arbitration. In vacating the award upon grounds urged under subparagraph 1(b) of this section the rehearing shall be before new arbitrators appointed in accordance with section 64.3. A rehearing shall be conducted in the same manner and upon the same time limitation for a hearing under this chapter.

4. *Confirmation of award on denial of application to vacate.* If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.<sup>504</sup>

#### **§ 64.12. Modification or correction of award by the court.**

1. *Time limitation and grounds for application.* Upon application made within thirty days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- (a) There was an evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to in the award; or
- (b) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (c) The award is imperfect as a matter of form not affecting the merits of the controversy.

2. *Confirmation of award on granting or denying application.* If the application is granted, the court shall modify or correct the award so as to effect its intent and shall confirm the award so modified or corrected. Otherwise the court shall confirm the award as made.

3. *Joining of applications to vacate, modify, and correct.* An application to modify or correct may be joined in the alternative with an application to vacate the award.<sup>505</sup>

#### **§ 64.13. Judgment or decree on award.**

Upon the confirmation of an award, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced as any other such judgment.<sup>506</sup>

#### **§ 64.14. Papers to be filed for judgment; effect thereof.**

1. *Papers to be filed.* On entry of judgment the following papers and documents shall be filed with the clerk:

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<sup>504</sup> *Prior legislation:* L. 1963-64, ch. III (6:6411); 1956 Code 6:1283, 1284,1285; Rev. Stat. § 1387 (3), (4); OBB 65, Legal Principles and Rules, t. II, ch. XV, §§ 9, 10, 11, 2 Hub. 1563.

<sup>505</sup> *Prior legislation:* L. 1963-64, ch. III (6:6412).

<sup>506</sup> *Prior legislation:* L. 1963-64, ch. III (6:6413); 1956 Code 6:1286, 1301; Rev. Stat. §1387(5), (6, 3rd and 4th sents.); OBB 65, Legal Principles and Rules, t. II, ch. XV, §§ 6, 7, 15, 17, 18, 19, 2 Hub. 1563.

- (a) The agreement to arbitrate or a copy thereof, and each written extension of the time within which to make the award as provided in section 64.7(2); and
- (b) The statement required by section 64.5(4) where the award was by confession; and
- (c) A copy of the award; and
- (d) A copy of the order or orders confirming, modifying, or correcting the award and the papers upon which the same were based; and
- (e) A copy of the judgment.

2. *Effect of filing.* The judgment shall be filed and have the same effect as if rendered in a civil action.<sup>507</sup>

#### **§ 64.15. Applications to the court.**

All applications to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided in chapter 10 of this title or by rule of court for the making and hearing of motions in actions or special proceedings. A special proceeding shall be used to bring before a court the first application arising out of an arbitral controversy unless under section 64.17 a motion is required to be made in a pending action in a Circuit Court in which an arbitral controversy is involved.<sup>508</sup>

#### **§ 64.16. Court; jurisdiction.**

The term "court" as used in this chapter means the Circuit Court. The making of an agreement described in section 64.1 providing for arbitration in this Republic confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder.<sup>509</sup>

#### **§ 64.17. Venue.**

A first application shall be made to the Circuit Court of the county in which the agreement provides the arbitration hearing shall be held, or, if the hearing has been held, then in the county in which it was held. Otherwise, if there is an action pending in a Circuit Court in which an arbitral controversy is involved, the first application shall be made in the pending action; if there is no such action pending in a Circuit Court the first application shall be made in the Circuit Court of the county in which one of the parties has a permanent residence or has a regular place of business or, if he has no such residence or regular place of business in the Republic, to the Circuit Court of any county of the Republic. All subsequent applications shall be made to the court hearing the first application unless the court otherwise directs.<sup>510</sup>

#### **§ 64.18. Appeals.**

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<sup>507</sup> *Prior legislation:* Par. 2: L. 1963-64, ch. III (6:6-414 (2) ); 1956 Code 6:1286; Rev. Stat. § 1387(5); OBB 65, Legal Principles and Rules, t. II, ch. XV, § 6, 2 Hub. 1563.

<sup>508</sup> *Prior legislation:* L. 1963-64, ch. III (6:6415).

<sup>509</sup> *Prior legislation:* L. 1963-64, ch. III (6:6416).

<sup>510</sup> *Prior legislation:* L. 1963-64, ch. III (6:6417).

1. *Appealable orders and appeals from judgments.* An appeal may be taken from:

- (a) An order denying application to compel arbitration made under section 64.2(1); or
- (b) An order granting an application to stay arbitration made under section 64.2(2); or
- (c) An order denying confirmation of an award made under section 64.10; or
- (d) An order vacating an award made without directing a rehearing under section 64.11(3); or
- (e) A judgment entered pursuant to the provisions of this chapter.

2. *Provisions governing appeals.* The appeal shall be governed by the provisions of Part IV of this title.<sup>511</sup>

## ***Chapter 65. SUITS BY OR AGAINST INDIGENT PERSONS***

§ 65.1. Motion for permission to proceed as indigent person.

§ 65.2. Privileges of indigent persons.

§ 65.3. Distribution of recovery in favor of indigent person.

### **§ 65.1. Motion for permission to proceed as indigent person.**

Upon motion of any person, the court in which an action is pending or will be brought, or to which an appeal has been or will be taken, may grant permission to proceed as an indigent person. The moving party shall file his affidavit setting forth the amount and sources of his income and listing his property with its value; that he is unable to pay the costs, fees, and expenses necessary to prosecute or defend the action or to maintain or respond to the appeal; the nature of the action; sufficient other facts so that the merits of his contentions can be ascertained; and whether any other person is beneficially interested in any recovery sought and, if so, whether every such person is unable to pay such costs, fees, and expenses. An executor, administrator, or other representative may move for permission on behalf of a deceased, infant, or incompetent indigent person. If an action has already been commenced, notice of the motion shall be served on all parties.<sup>512</sup>

### **§ 65.2. Privileges of indigent persons.**

1. *Attorney.* The court in its order permitting a person to proceed as an indigent person shall assign an attorney.

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<sup>511</sup> *Prior legislation:* L. 1963-64, ch. III (6.6418).

<sup>512</sup> *Prior legislation:* L. 1963-64, ch. III (6:6501).

2. *Transcript of record on appeal.* A stenographic transcript for purposes of appeal may be furnished an indigent person without fee by order of the court before whom the action was tried.

3. *Costs and fees.* An indigent person shall not be liable for the payment of any costs or fees unless a recovery is had in his favor, in which event the court may direct him to pay out of the recovery all or part of the costs and fees, a reasonable sum for the services of his attorney, and any sum expended by the Government under paragraph 2.<sup>513</sup>

#### **§ 65.3. Distribution of recovery in favor of indigent person.**

Any recovery had in favor of an indigent person shall be paid to the clerk of the court in which the order permitting the person to proceed as an indigent person was entered, to await distribution pursuant to court order.<sup>514</sup>

## ***Chapter 66. CLAIMS BEFORE PERMANENT CLAIMS COMMISSION***

- § 66.1. Registration of claims; time limit.
- § 66.2. How claims shall be registered.
- § 66.3. Government departments to furnish records.
- § 66.4. Evidence.
- § 66.5. Neglect or refusal to be examined regarding claim.
- § 66.6. Decision as bar to further claim.

#### **§ 66.1. Registration of claims; time limit.**

All claims which by provision of the Executive Law are subject to the jurisdiction of the Permanent Claims Commission (hereinafter referred to as the "Commission") shall be filed and registered with such Commission within three years after the date when the claim arose or when the cause of action accrued. Any such claim not so filed and registered within the specified time shall be null and void, and prosecution thereof against the Liberian Government shall be forever barred.<sup>515</sup>

#### **§ 66.2. How claims shall be registered.**

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<sup>513</sup> *Prior legislation:* L. 1963-64, ch. III (6:6502).

<sup>514</sup> *Prior legislation:* L. 1963-64, ch. III (6:6503).

<sup>515</sup> *Prior legislation:* L. 1963-64, ch. III (6:6601); 1956 Code 6:1170; L. 1929, ch. XII, art. 4; Rev. Stat. §1401; OBB 209, art. 1.

Any claim against the Government which is believed to be within the jurisdiction of the Commission shall be addressed to the Minister of Finance as Chairman of the Commission with a request for its registration with the Commission. At its next session the Commission shall determine whether the claim is within its jurisdiction; if it finds in the affirmative, the claim shall be registered and the claimant notified accordingly.<sup>516</sup>

### **§ 66.3. Government departments to furnish records.**

Whenever required by the Commission in its investigation and examination of claims, the heads of government ministries or agencies are directed to forward to the Commission the records of any claim pending in their official files and to supply relevant papers, books, and documents or certified copies thereof.<sup>517</sup>

### **§ 66.4. Evidence.**

Oral evidence in regard to the validity of claims which is introduced before the Commission shall be reduced to writing. In the admission of evidence the Commission shall be governed by existing statutes and the usual rules of evidence; it shall be the sole judge in regard to the admissibility of evidence.<sup>518</sup>

### **§ 66.5. Neglect or refusal to be examined regarding claim.**

If a claimant neglects to attend for examination regarding his claim or refuses to be examined concerning it, the Commission may in its discretion decline to take further action thereon or may declare that the claim is disproved for lack of evidence. The latter decision shall forever bar the claimant from further prosecuting such claim against the Republic of Liberia.<sup>519</sup>

### **§ 66.6. Decision as bar to further claim.**

Any final decision against the claimant on any claim prosecuted before the Commission shall forever bar any other claim or demand against the Republic of Liberia arising out of transactions or occurrences constituting the subject matter of the claim decided by the Commission.<sup>520</sup>

## ***Chapter 67. PROCEDURE FOR CHANGING THE NAME OF AN INDIVIDUAL***

- § 67.1. Petition for change of name.
- § 67.2. Contents of petition.
- § 67.3. Notice of petition for infant.

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<sup>516</sup> *Prior legislation:* L. 1963-64, ch. III (6:6602); 1956 Code 6:1171; L. 1929, ch. XII, art. 9.

<sup>517</sup> *Prior legislation:* L. 1963-64, ch. III (6:6603); 1956 Code 6:1172; L. 1929, ch. XII, § II, art. 6.

<sup>518</sup> *Prior legislation:* L. 1963-64, ch. III (6:6604); 1956 Code 6:1173; L. 1929, ch. XII, art. 7; § II, art. 7.

<sup>519</sup> *Prior legislation:* L. 1963-64, ch. III (6:6605); 1956 Code 6:1174; L. 1929, ch. XII, art. 7.

<sup>520</sup> *Prior legislation:* L. 1963-64, ch. III (6:6606); 1956 Code 6:1175; L. 1929, ch. XII, art. 5(b).



§ 67.4. Order.

§ 67.5. Procedure exclusive.

**§ 67.1. Petition for change of name.**

A petition by an individual for leave to assume another name may be made to the Circuit Court of the county in which he resides. The petition to change the name of an infant may be made by the infant through either of his parents or his general guardian or his guardian *ad litem*.<sup>521</sup>

**§ 67.2. Contents of petition.**

The petition shall be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and shall specify the grounds of the application, the name, date and place of birth if such are known, and the age and residence of the individual whose name is proposed to be changed and the name which he proposes to assume. The petition shall also specify whether or not the petitioner has been convicted of a crime or adjudicated insolvent or bankrupt, and whether there are any judgments or liens of record against the petitioner or actions on proceedings pending to which the petitioner is a party. If so, the petitioner shall give descriptive details in connection therewith sufficient to readily identify the matter referred to.<sup>522</sup>

**§ 67.3. Notice of petition for infant.**

If the petitioner is to change the name of an infant, notice of the time when and place where the petition will be presented shall be served, in like manner as a notice of motion upon an attorney in an action, upon (a) both parents of the infant, if they are living, unless the petition is made by one of the parents, in which case notice shall be served upon the other if he or she is living, and (b) the general guardian or guardian *ad litem* of the infant, if one has been appointed. If any of the persons required to be given notice by this section resides without Liberia, then the notice required by this section shall be sent by registered mail to the last known address of the person to be served. If it appears to the satisfaction of the court that a person required to be given notice by this section cannot be located with due diligence within Liberia, and that such person has no known address without Liberia, then the court may dispense with notice or require notice to be given to such persons and in such manner as the court thinks proper.<sup>523</sup>

**§ 67.4. Order.**

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<sup>521</sup> *Prior legislation:* L. 1971-72, An act to amend the Civil Procedure Law to provide a procedure for changing the name of an individual.

<sup>522</sup> *Prior legislation:* L. 1971 -72, An act to amend the Civil Procedure Law to provide a procedure for changing the name of an individual.

<sup>523</sup> *Prior legislation:* L. 1971-72, An act to amend the Civil Procedure Law to provide a procedure for changing the name of an individual.

If the court to which the petition is presented is satisfied that the petition is true and that there is no reasonable objection to the change of name proposed, and, if the petition is to change the name of an infant, that the interests of the infant will be substantially promoted by the change, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than seven days after entry of the order. The order shall further recite the date and place of birth of the applicant if known, and shall specify the number of his birth certificate or that no birth certificate is available. The court shall direct the order to be entered and the papers on which it was granted to be filed within ten days thereafter in the office of the Registrar of Deeds of the county in which the petitioner resides. Such order shall also direct the publication, within 20 days after its entry, of a copy thereof in a designated newspaper at least twice.<sup>524</sup>

**§ 67.5. Procedure exclusive.**

The procedure provided by this section is the exclusive method by which an individual may officially change his name, except that an alien may change his name on becoming naturalized as provided by the Aliens and Nationality Law.<sup>525</sup>

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<sup>524</sup> *Prior legislation:* L. 1971-72, An act to amend the Civil Procedure Law to provide a procedure for changing the name of an individual.

<sup>525</sup> *Prior legislation:* L. 1971-72, An act to amend the Civil Procedure Law to provide a procedure for changing the name of an individual.

# APPENDIX I

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## *Pleading Forms*

### **Form 1. COMPLAINT ON A PROMISSORY NOTE**

[First] Judicial Circuit, [Montserratado County]

[A. B.], Plaintiff )

v. ) Complaint

Civil Action, File No. [0001]

[C. D.], Defendant )

1. Defendant on or about [June 1, 1960], executed and delivered to plaintiff a promissory note for valuable consideration in the following words and figures: *[here set out the note verbatim]*; a copy of which is hereto annexed as exhibit A; whereby defendant promised to pay plaintiff or order on [June 1, 1961], the sum of [ten thousand dollars] with interest thereon at the rate of [six] percent per annum.
2. Defendant owes to plaintiff the amount of said note and interest. Wherefore plaintiff demands judgment against defendant for the sum of [ten thousand dollars], interest, and costs.

Signed: \_\_\_\_\_

Attorney for Plaintiff

[Verification]

Address: \_\_\_\_\_

### **Form 2. COMPLAINT ON AN ACCOUNT**

Caption as in Form 1.

1. Defendant owes plaintiff [ten thousand dollars] according to the account hereto annexed as exhibit A.

Wherefore [etc., as in Form 1].

### **Form 3. COMPLAINT IN ACTION FOR BREACH OF CONTRACT**

[Caption as in Form 1]

1. On [June 1, 1960], plaintiff and defendant for a valuable consideration entered into a contract in writing, a copy of which is attached hereto as [exhibit A], wherein defendant agreed [*here set out terms of agreement*].
2. Plaintiff has duly performed all the conditions of such contract on his part.<sup>526</sup>
3. Defendant has failed and neglected to perform the conditions of the contract on his part in that he has failed to pay to plaintiff the sum of [three thousand dollars] due to plaintiff under the contract on [July 1, 1960], although plaintiff has demanded payment thereof.
4. Wherefore [etc., as in Form 1].

### **Form 4. COMPLAINT FOR GOODS SOLD AND DELIVERED<sup>527</sup>**

[Caption as in Form 1]

1. Defendant owes plaintiff [ten thousand dollars] for goods sold and delivered by plaintiff to defendant between [June 1, 1960], and [December 1, 1960].

Wherefore [etc., as in Form 1].

### **Form 5. COMPLAINT FOR MONEY LENT**

[Caption as in Form 1]

1. Defendant owes plaintiff [ten thousand dollars] for money lent by plaintiff to defendant on [June 1, 1960].

Wherefore [etc., as in Form 1].

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<sup>526</sup> Performance of conditions precedent may be alleged generally. See §9.5(3). a

<sup>527</sup> This form may be used where the action is for an agreed price or for the reasonable value of goods.

### **Form 6. COMPLAINT FOR MONEY PAID BY MISTAKE**

[Caption as in Form 1]

1. Defendant owes plaintiff [one thousand dollars] for money paid by mistake on [June 1, 1960], under the following circumstances.<sup>528</sup>
2. [On June 1, 1960, plaintiff and defendant entered into an agreement in writing whereby the defendant agreed to sell and the plaintiff agreed to buy 129 lots owned by the defendant as shown on blue print sketch attached to and made a part of the said agreement, on which sketch the property was designated as lots numbers 1 to and including 129. The price provided for in the said agreement was one thousand dollars for each of the said numbered lots.]
3. In violation of the agreement entered into as aforesaid, and without the knowledge and consent of the plaintiff, the defendant conveyed lot 129 to some other person.
4. [On July 1, 1960, defendant conveyed to the plaintiff by deed 128 of the lots shown on the map. Defendant at the time of such closing, gave to plaintiff a statement of what purported to be the amount due to him, in which statement there was a charge for 129 lots at the rate of one thousand dollars per lot. The plaintiff, relying on the truth of said statement, paid to the defendant the amount specified.]
5. The plaintiff paid [for 129 lots] under a mistake of fact. Defendant was entitled to payment [for only 128 lots, the number actually conveyed to plaintiff].
6. The plaintiff immediately upon discovering his error notified the defendant thereof and demanded of the defendant repayment of the sum of [one thousand dollars] which defendant has not paid.

Wherefore [etc., as in Form 1].

### **Form 7. COMPLAINT FOR MONEY HAD AND RECEIVED**

[Caption as in Form 1]

1. Defendant owes plaintiff [ten thousand dollars] for money had and received from [G. H.] on [June 1, 1960], to be paid by defendant to plaintiff.

Wherefore [etc., as in Form 1].

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<sup>528</sup> Mistake shall be stated with particularity. See §9.5(2).

### **Form 8. COMPLAINT FOR NEGLIGENCE**

[Caption as in Form 1]

1. On [June 1, 1960], in [a public highway called Ashmun Street], in [Monrovia], defendant negligently [drove a motor vehicle against plaintiff who was then crossing said highway].
2. As a result plaintiff was [thrown down and had his leg broken] and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical treatment and hospitalization in the sum of [one thousand dollars].

Wherefore [etc., as in Form 1].

### **Form 9. COMPLAINT IN ACTION FOR DAMAGES FOR ASSAULT AND BATTERY**

[Caption as in Form 1]

1. On [June 1, 1960], the defendant willfully and maliciously [assaulted and shot the plaintiff in the foot with a gun].
2. As a result plaintiff was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical treatment and hospitalization in the sum of [one thousand dollars].

Wherefore [etc., as in Form 1].

### **Form 10. COMPLAINT IN ACTION FOR LIBEL WHERE STATEMENT IS NOT LIBELOUS PER SE**

[Caption as in Form 1]

1. At all times mentioned herein defendant was and still is the publisher [of a daily newspaper] of general circulation, published in the [City of Monrovia] and known as [name of publication].
2. On [June 1, 1960], defendant maliciously published in the said [newspaper] concerning the plaintiff the following matter: *[here set forth matter alleged to be libelous]*.
3. The matter so published is untrue and defamatory.

4. Prior to the publication of said libelous matter concerning the plaintiff, [he was about to enter into an agreement with C. D. whereby C. D. was to employ plaintiff and would have employed him as clerk at a salary of \$40 per month to commence on June 5, 1960], had not this libelous matter been published. As a result of such publication [C. D. refused to employ plaintiff and up to the present time plaintiff has been unable to obtain other employment] and has otherwise been greatly injured in his credit and reputation and suffered great pain and mental anguish, to plaintiffs damage in the sum of [ten thousand dollars].

Wherefore [etc., as in Form 1].

### **Form 11. COMPLAINT IN ACTION FOR FALSE IMPRISONMENT**

[Caption as in Form 1]

1. [At all the times hereinafter mentioned the defendant was and still is the owner and in control of the store known as *(here give details of name and place).*]

2. [On June 1, 1960, plaintiff was lawfully in defendant's store as a customer for the purpose of purchasing goods and was conducting himself in a proper manner.]

3. At such time and without any just cause an employee of defendant, acting as agent and in behalf of defendant within the scope of his authority, seized plaintiff and charged him with having stolen goods from defendant. Plaintiff was forced by such employee to go into a room in the rear of defendant's store, was there detained for about one hour, and was forced to submit to a search of his person by employees of the defendant.]

4. Plaintiff had not [stolen any goods from defendant] and was not guilty of any crime whatever.

5. As a result of the foregoing, plaintiff was deprived of his liberty for about [one hour] and was greatly humiliated and subjected to great mental and bodily distress, all to his damage in the sum of [one thousand dollars].

Wherefore [etc., as in Form 1].

### **Form 12. COMPLAINT FOR DAMAGES FOR FRAUD**

[Caption as in Form 1]

1. [On June 1, 1960, defendant and plaintiff were negotiating concerning the purchase by plaintiff of certain real property owned by defendant, more particularly described as follows: *(here set forth detailed description).*]
2. At the time above mentioned defendant falsely and fraudulently represented to plaintiff [that the said land contained valuable deposits of iron; that with an investment in equipment of no more than \$ \_\_\_\_ plaintiff would be able to realize at least \$ \_\_\_\_ a year from the mining of said iron; that the land was worth \$ \_\_\_\_ and that the defendant was willing to sell it only because he was in need of cash].
3. The representations so made by the defendant were false and fraudulent, and in truth [the said land contains only negligible deposits of iron, insufficient to yield any profit over the cost of extracting them. The said land is unfit for agricultural or any other profitable use and is worth no more than \$ \_\_\_\_.
4. The said representations were known by the defendant to be false when made and were made with intent to deceive plaintiff and to induce plaintiff to purchase the said property.
5. Plaintiff at the time the representations were made believed them and in reliance thereon was induced to [purchase the said land from defendant for a consideration of \$ \_\_\_\_]
6. By reason of the facts set forth above plaintiff has been damaged in the sum of \$ \_\_\_\_.

Wherefore [etc., as in Form 1].

### **Form 13. COMPLAINT IN ACTION FOR CONVERSION**

[Caption as in Form 1]

1. On or about [June 1, 1960], defendant converted to his own use [ten bonds of the Jones Company *(here insert brief identification as by number and issue)*] of the value of [ten thousand dollars], the property of plaintiff.

Wherefore [etc., as in Form 1].

### **Form 14. COMPLAINT IN ACTION FOR TRESPASS**

[Caption as in Form 1]



1. Plaintiff is the owner of a certain [tract of land] in [Montserrado County], more particularly described as follows: *(here set forth description)*.

2. The defendant entered upon plaintiffs [tract of land] during the [month of June, 1960], without plaintiff's knowledge or consent, [cut and destroyed a large quantity of timber on such tract, and removed it therefrom] to plaintiff's damage in the sum of [one thousand dollars].

Wherefore [etc., as in Form 1].

### **Form 15. COMPLAINT IN ACTION OF EJECTMENT AND MESNE PROFITS**

[Caption as in Form 1]

1. On [June 1, 1960], plaintiff owned and possessed a certain [tract of land] in [Montserrado County], more particularly described as follows: *[here set forth description]*.

2. The defendant, on said day, wrongfully entered [on said land], and dispossessed the plaintiff, and still keeps him out of possession, depriving him of the rents and profits, to plaintiff's damage in the sum of [one thousand dollars].

Wherefore [etc., as in Form 1].

### **Form 16. COMPLAINT IN ACTION FOR DAMAGES AND TO ENJOIN NUISANCE**

[Caption as in Form 1]

1. [The plaintiffs are residents of the village of Johnstown, Montserrado County, and own real estate consisting of parcels or plots of land with houses and other buildings erected thereon. Plaintiffs properties are located on Green Street in said village, which is a residential street and section in said village.]

2. [The defendant owns, occupies and uses a tract of land located in said village and in a westerly direction from the homes of the plaintiffs. Upon such land of the defendant is erected a sawmill, which is operated by defendant in sawing lumber.]

3. [For use in its mill, defendant has erected and maintains a smoke stack which emits a large quantity of smoke, soot, and partially burned cinders. The prevailing winds in the vicinity of said property carry upon plaintiffs' land

and buildings and into their homes such smoke, soot, and cinders, to the great damage and discomfort of plaintiffs and their families.]

4. This manner [of operation of its mill] which the defendant threatens to continue, is and has been a continuing nuisance, and the enjoyment of plaintiffs' property is greatly interfered with, and its rental value greatly depreciated, to the damage of each plaintiff in the sum of [ten thousand dollars].

5. The plaintiffs have repeatedly requested the defendant to discontinue and abate said nuisance, but it has refused to do so, and the same has continued for [five] years past.

Wherefore, plaintiffs demand judgment:

1. That the defendant be forever enjoined and restrained from continuing the said nuisance and from [casting or permitting to be cast upon plaintiffs' premises said smoke, soot, and cinders].
2. That the plaintiffs each recover damages in the sum of [ten thousand dollars] and costs.

[Signature of Attorneys and verification as in Form 1.]

### ***Form 17. COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT***

[Caption as in Form 1]

1. On or about [June 1, 1960], plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed as [exhibit A].
2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance [of the land], but defendant refused to accept the tender and refused to make the conveyance.
3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of [one thousand dollars], and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of [ten thousand dollars].

[Signature of attorneys and verification as in Form 1]

**Form 18. ANSWER CONTAINING DENIALS**

[First] Judicial Circuit, [Montserratado County]

[A. B.], Plaintiff )

v. ) Answer

Civil Action, File No. [000]

[C. D.], Defendant )

1. Defendant denies all the allegations contained in [paragraph 1] of the plaintiff's complaint.
2. Defendant admits that he [employed Jones as manager of his business] and denies every other allegation contained in [paragraph 2] of plaintiff's complaint.
3. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of allegations contained in [paragraph 3] of the complaint.

Wherefore defendant demands judgment and that he have his costs and disbursements in the action.

Signed: \_\_\_\_\_

Attorney for Defendant

[Verification]

Address: \_\_\_\_\_

**Form 19. DEFENSE OF ACCORD AND SATISFACTION**

After the making of the contract and the alleged breach thereof, on [June 1, 1960], defendant delivered to plaintiff and plaintiff accepted and received from defendant [five hundred dollars] in full satisfaction of the damages mentioned in the complaint and of all the damages sustained by plaintiff by reason of the acts therein alleged.

**Form 20. DEFENSE OF ASSUMPTION OF RISK**

Plaintiff had knowledge of and assumed the risks incident to his employment as set forth in the complaint. The injuries alleged by plaintiff were caused by and arose out of such risks.

***Form 21. DEFENSE OF CONTRIBUTORY NEGLIGENCE***

Plaintiff was guilty of negligence which was a contributing cause of the accident in that plaintiff was negligently [operating his automobile at the time it collided with defendant's automobile].

***Form 22. DEFENSE OF PAYMENT***

Prior to the commencement of this action, on [June 1, 1960], defendant duly discharged the alleged claim of the plaintiff set forth in the complaint herein by payment to plaintiff of the full sum of [five hundred dollars].

***Form 23. DEFENSE OF RES JUDICATA***

On [June 1, 1960], in an action in the [Third] Judicial Circuit of [Sinoe County] by the plaintiff against the defendant for the same claim as set forth in plaintiff's complaint herein, plaintiff recovered a judgment against defendant upon the same claim for [five hundred dollars].

***Form 24. DEFENSE OF ANOTHER ACTION PENDING***

On [June 1, 1960], plaintiff commenced an action in the Circuit Court of the [Third] Judicial Circuit of [Sinoe County] against defendant on the same claim as that set forth in the complaint herein. The parties to such action are the same as the parties to this action and such action is now pending and undisposed of.

***Form 25. REPLY TO ANSWER***

[First] Judicial Circuit, [Montserrado County]

[A. B.], Plaintiff )

v. ) Reply to Answer

Civil Action, File No. [000]

[C. D.], Defendant )

Plaintiff, replying to defendant's answer,

1. Denies all the allegations contained in [paragraphs 1 and 2] of the defendant's answer;
2. Alleges that plaintiff refused the tender of payment alleged by defendant in [paragraph 3] of the answer because [five hundred dollars] was due to plaintiff and defendant tendered only [four hundred and fifty dollars] in full payment of the amount due under the contract.

Wherefore plaintiff demands judgment as prayed for in the complaint.

Signed: \_\_\_\_\_

Attorney for Plaintiff

[Verification]

Address: \_\_\_\_\_

## APPENDIX II

### **Form 1. SUMMONS ON. SERVICE BY PUBLICATION**

Circuit Court of the [Second Judicial Circuit, Grand Bassa County].

[Albert Doe], Plaintiff, against [Charles Roe], Defendant-SUMMONS-Action [to recover for debt, or to recover a chattel, or to annul a marriage, or to recover damages for negligence, or other object of action].

To the above named defendant: YOU ARE HEREBY SUMMONED to answer the complaint in this action or to appear within ten days after the service of this summons, exclusive of the day of service; and in case of your failure to answer or appear, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: [June 2, 1961].

[Fred Welton], Attorney for Plaintiff, [Office and Post Office Address, Broad Street Monrovia].

To: [Charles Roe]. The foregoing summons is served upon you by publication, pursuant to an order of Hon. [Henry Ashton], Judge of the Circuit Court of the Republic of Liberia, dated [May 26, 1961], and filed with the complaint in the office of the Clerk of the Circuit Court of [Grand Bassa County], at [Buchanan].

[Fred Welton], Attorney for Plaintiff