

## THE JUDGMENT SUMMONSES RULES 1965

At the Government House at Apia this 6th day of September 1965

HIS HIGHNESS, MALIETOA TANUMAFILI II, HEAD OF STATE

PURSUANT to the Judgment Summonses Act 1965, the Head of State, by this Order, acting on the advice of the Prime Minister and with the concurrence of the Rules Committee, hereby makes the following rules.

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## R U L E S

- 1. Title**—These rules may be cited as the Judgment Summonses Rules 1965. These regulations were notified in the *W.S. Gazette* on 1 December 1969.
- 2. Interpretation**—In these rules, unless the context otherwise requires,—  
 “the Act” means the Judgment Summonses Act 1965;  
 “Court” means the Supreme Court or the Magistrate’s Court having jurisdiction;  
 “Foreign Court” means the Court to which any judgment summons is sent by any other Court;  
 “Home Court” means the Court from which any judgment summons is issued;  
 “Judgment” includes a decree;  
 “Registrar” means the Registrar of the Court having jurisdiction, and includes any Deputy Registrar of that Court.
- 3. Forms**—(1) In these rules a reference to a numbered form is a reference to a form so numbered in the First Schedule to these rules.

(2) Where any form in the First Schedule is prescribed or authorised to be used, such variations may be made therein as the circumstances of any particular case may require.

(3) Every summons, order, warrant, notice or other document issued out of a Court pursuant to these rules under the hand of a Judge, Magistrate, Fa'amasino Fesoasoani or Registrar shall be sealed with the seal of the appropriate Court.

(4) Every document filed, issued or served in the course of proceedings under the Act shall be properly intituled showing the Court in which the proceedings are taken, the distinguishing numbers, and the names and descriptions of the parties. The form No. 1 may be used.

Cf. S.R. 1949/188, rr. 3, 7 (N.Z.); S.R. 1959/18, r. 102 (N.Z.)

**4. Judgment summons book**—The Registrar of every Court of civil jurisdiction shall keep a judgment summons book, which shall be in the form No. 2. There shall be entered in such book the particulars therein required, whether the judgment summons is applied for in respect of a judgment or order of that Court or any other Court.

Cf. S.R. 1949/188, r. 8 (N.Z.)

**5. Application for judgment summons**—(1) Any judgment creditor who desires and is entitled to apply for the issue of a judgment summons shall file in the Court in which the judgment or order is entered an application and supporting affidavit in form No. 3.

(2) The application shall be signed by the judgment creditor or his solicitor or by an agent duly authorized in writing, and the affidavit shall be made by some person conversant with the facts.

(3) An authority authorising an agent to sign an application for the issue of a judgment summons shall be filed with the application, and no fee shall be payable on the filing of any such authority.

(4) Where 2 or more judgment debtors are liable under the same judgment or order, separate and successive judgment summonses may from time to time be issued against any one or more of them. A separate application shall be filed in respect of each judgment debtor against whom it is desired to issue a judgment summons, and fees shall be paid and costs may be allowed in respect of each such application.

Cf. S.R. 1949/188, r. 9 (N.Z.); S.R. 1959/18, r. 101 (N.Z.)

**6. Where judgment against a firm**—(1) Where a person entitled to enforce a judgment or order against a firm desires to issue a judgment summons against any person whom he alleges is liable under the judgment or order, he shall file, with his application in the form No. 3 a supplementary affidavit in the form No. 4, together with a copy of such affidavit which shall be served with the judgment summons upon the person alleged to be liable.

(2) If the person alleged to be liable does not appear on the day fixed for the hearing, he shall be deemed to admit his liability to pay the amount due, but if he appears and denies his liability, the Court may determine the question of liability on the evidence before it or it may order the question of liability to be determined in such manner as it thinks fit.

Cf. S.R. 1949/188, r. 10 (N.Z.)

**7. Application where order for payment by instalments**—Whenever and as often as any money payable by instalments remains unpaid on any judgment or

order of the Court, whether the order for payment by instalments was made at the time of giving or making the judgment or order or at any time subsequent thereto, the judgment creditor may, from time to time, apply in the form No. 3 for the issue of a judgement summons in respect of any instalment or instalments so due.

Cf. S.R. 1949/188, r. 11 (N.Z.)

**8. Issue of judgment summonses**—(1) On receipt of an application under rules 5 to 7 hereof, the Registrar shall issue a judgment summons in form No. 5.

(2) Where the judgment debtor resides more than 30 miles from the Court issuing the judgment summons and there is another Court of equal jurisdiction nearer to his place of residence than the Court of issue, the judgment summons shall call upon the judgment debtor to appear and be examined in the Court having such jurisdiction nearest to his place of residence.

(3) The Registrar issuing a judgment summons for hearing at a foreign Court shall certify on such summons the amount still due on the judgment or order, and every such certificate shall be conclusive as to the amount owing on such judgment or order:

Provided that if the judgment debtor disputes the amount certified to be owing the foreign Court may, if it thinks fit, adjourn the hearing of the judgment summons for such time as will enable the judgment debtor to make any available application for setting aside the judgment or order and a rehearing.

(4) The Registrar issuing a judgment summons for hearing at a foreign Court shall forward to the Registrar of the foreign Court, with the judgment summons, the application and supporting affidavit filed by the judgment creditor, and shall retain a copy thereof in his office.

(5) The Registrar of the foreign Court shall enter on the judgment summons the time and place fixed for the hearing thereof, and then cause the judgment summons to be served.

Cf. S.R. 1949/188, r. 12 (N.Z.); S.R. 1952/243, r. 2 (N.Z.)

**9. Service of judgment summonses**—(1) A judgment summons shall be served either by an officer of a Court or by a member of [the Police Service]:

Provided that any Judge, Magistrate, Fa'amasino Fesoasoani or Registrar may, if he thinks fit, authorise any other person to serve a judgment summons.

(2) A judgment summons shall be served by handing it to the judgment debtor personally or by bringing it to his notice if he refuses to accept it:

Provided that, where the judgment debtor resides in a remote locality or in any other special circumstances, a Judge, Magistrate or Fa'amasino Fesoasoani may authorise the service of a judgment summons by registered letter or by such other means as he thinks fit.

(3) Except as provided in subclause (4) of this rule, a judgment summons shall be served not less than 10 clear days before the day appointed for the hearing.

(4) Where any person applying for a judgment summons states in the application, or in an affidavit, that the judgment debtor is about to remove more than 50 miles from his place of residence or of business, or is keeping out of the way to avoid service, then the judgment summons may be issued and served at any time before the hearing:

Provided that a Judge, Magistrate or Fa'amasino Fesoasoani may set aside the service of a judgment summons under this subclause if he is not satisfied that such statement was correct at the time of the application.

(5) Where fraud is alleged, there shall be served with the judgment summons a copy of the application and supporting affidavit filed by the judgment creditor.

(6) Where the Registrar does not know that the judgment debtor understands the English language, the judgment summons, and any document required to be served therewith, shall be in the Samoan language.

Cf. S.R. 1949/188, r. 13 (N.Z.); S.R. 1959/18, r. 113 (N.Z.)

In subclause (1) the reference to the Police Service was substituted for a reference to the Western Samoa Police Force by s. 3 (3) of the Police Service Act 1977.

**10. Time for service and renewal—**(1) The time within which a judgment summons, or any new judgment summons substituted therefor under rule 11 hereof, may be served shall, unless extended under subclause (2) of this rule, be limited to a period of one year from the issue of the original judgment summons.

(2) Where reasonable efforts have been made to serve any judgment summons or any such new judgment summons, within the said period and service has not been effected, the Registrar, on the request of the judgment creditor, may extend the time for a further period not exceeding one year or for successive periods not exceeding one year in each case, and shall in each such case mark the summons with the word "Renewed" and the date of the renewal, or may issue a new judgment summons bearing the new date of issue.

(3) A request under subclause (2) of this rule may be made either within or after the expiration of any such period of one year.

Cf. S.R. 1952/243, r. 4 (N.Z.)

**11. Substitution of new judgment summons where judgment debtor moves—**(1) Subject to rules 9 and 10 hereof, where the judgment debtor has moved his place of residence or of business since the judgment summons was issued and the judgment summons has not been served, the judgment creditor, upon making a request in writing, may obtain the issue of a new judgment summons for appearance at any other Court.

(2) The request shall state the new address of the judgment debtor, and the distance of that address from the new Court for hearing.

(3) Any such new judgment summons issued under subclause (1) of this rule shall bear the same date as the date of issue of the original summons.

Cf. S.R. 1952/243, r. 4 (N.Z.)

**12. Witnesses—**Any witness may be summoned to give evidence upon the hearing of a judgment summons in the same manner as witnesses are summoned to give evidence upon the hearing of an action, and every witness so summoned shall be entitled to fees, allowances, and expenses as if summoned to give evidence at the hearing of an action.

Cf. S.R. 1949/188, r. 15 (N.Z.)

**13. Evidence by affidavit—**(1) Where the judgment creditor resides or carries on business more than 30 miles from the Court in which the judgment summons is to be heard, evidence by affidavit shall be admissible on his behalf.

(2) If the judgment creditor does not appear at the hearing of the judgment summons, and the Court has received from him an affidavit which is admissible

in evidence under this rule, he shall be deemed to have appeared at the hearing and to have tendered the evidence in the affidavit.

Cf. S.R. 1949/188, r. 16 (N.Z.)

**14. Adjournment for attendance of judgment debtor, judgment creditor, or witness—**(1) Where it appears to the Court that the hearing of a judgment summons cannot fairly proceed owing to the absence of the judgment debtor, the judgment creditor or a witness through illness, accident, or other reasonable cause, the Court may adjourn the hearing, subject to the payment of such costs as it thinks just.

(2) All such costs shall, unless the Court otherwise directs, form part of the costs of the judgment summons for all purposes.

(3) In no case shall an adjournment of a judgment summons be made *sine die*.

Cf. S.R. 1949/188, r. 17 (N.Z.); S.R. 1959/18, r. 105 (N.Z.)

**15. Order on judgment summons—**(1) An order made under section 6 of the Act shall be in form No. 6.

(2) Every such order shall show the date on which it was made, and shall continue in force for one year from that date and no longer:

Provided that, where a direction is given under subclause (3) of this rule that the issue of a warrant of committal be suspended, the order shall remain in force until the expiration of the period within which the judgment debtor would pay the total amount due if he were to pay in the manner directed by the order, and for 3 months thereafter, or for one year, whichever period is the longer.

(3) The Court may direct that the issue of any warrant of committal shall be suspended so long as the judgment debtor pays into Court such sums at such times as the Court orders.

(4) So long as the judgment debtor pays such sums at such times, no warrant of committal shall be issued, but if he fails to pay such sums at such times or any of them, a warrant of committal may be issued for the whole of the amount remaining due under the order as if no direction in suspension had been given.

Cf. S.R. 1949/188, r. 18 (N.Z.); S.R. 1959/18, r. 113 (N.Z.)

**16. Service of order—**(1) Service of a copy of the order shall not be necessary where the order was pronounced in open Court in the presence of the judgment debtor.

(2) On the request of the judgment creditor, the Registrar shall issue a copy of the order for service on the judgment debtor.

(3) Where the Registrar does not know that the judgment debtor understands the English language, the copy of the order served on him shall be in the Samoan language.

(4) Except as provided in subclauses (1) and (5) of this rule, a copy of the order shall be served on the judgment debtor before any warrant of committal is issued.

(5) If a judgment debtor cannot be found, the Court may grant leave to issue a warrant of committal before service of a copy of the order on the judgment debtor:

Provided that a copy of the order shall be served on the judgment debtor at the time of the execution of the warrant.

Cf. S.R. 1949/188, rr. 18, 27 (N.Z.); S.R. 1959/18, r. 113 (N.Z.)

**17. Refusal of order or order for payment by instalments**—If the Court is of opinion that an order of committal should not be made, it may refuse to make such an order, but may instead make an order in form No. 7 for payment of the amount unpaid either at a stated time or by instalments.

Cf. S.R. 1949/188, r. 20 (N.Z.)

**18. Disposal of judgment summons referred to a foreign Court**—(1) Whenever the amount due on a judgment summons issued for hearing in a foreign Court is paid into that Court, the Registrar of that Court shall endorse on the judgment summons the words "Paid into Court" and the amount paid, and shall return the judgment summons to the home Court together with the amount so paid.

(2) Whenever a judgment summons is heard and disposed of by a foreign Court, the Registrar of that Court shall sign and forward to the Registrar of the home Court a certificate in form No. 8, and shall enter particulars of any order made in the foreign Court's civil record book.

(3) The Registrar of the home Court shall enter particulars of any order made in the home Court's civil record book.

(4) The order on a judgment summons shall be drawn up and filed in the home Court, and all subsequent proceedings (other than an application for a rehearing and a rehearing) shall be taken in the home Court.

(5) On the filing of an application for the rehearing of a judgment summons heard in a foreign Court, the Registrar of the foreign Court shall immediately notify the Registrar of the home Court of the filing thereof, and, when the application has been heard, of the result of the application. If a rehearing is granted, the foregoing provisions of this rule shall apply.

(6) Where a judgment summons issued for hearing in a foreign Court has not been served, the judgment creditor may request that it be returned to the home Court. The Registrar of the foreign Court shall thereupon return the summons endorsed with the words "Not served", together with the application and supporting affidavit.

Cf. S.R. 1949/188, r. 21 (N.Z.)

**19. Entry of particulars of decision in home Court**—On the hearing of a judgment summons at a home Court, the Judge, Magistrate or Fa'amasino Fesoasoani shall cause a note or memorandum of his decision or order to be entered in his Court's civil record book.

Cf. S.R. 1949/188, r. 19 (N.Z.)

**20. Second or subsequent judgment summons after refusal to make an order**—(1) Subject to the provisions of subclause (2) of this rule, if the Court has refused to make an order on a judgment summons, the judgment creditor may at any time thereafter apply for a second or subsequent judgment summons.

(2) On hearing of any such second or subsequent judgment summons, the judgment creditor shall not be entitled to examine the judgment debtor as to his means of paying the debt prior to the date of the hearing of the previous judgment summons unless the judgment creditor satisfies the Court that the judgment debtor had prior to the previous hearing sufficient money to pay the debt, and that such fact was unknown to the judgment creditor and that he had no reasonable opportunity of discovering the same prior to such previous hearing.

Cf. S.R. 1949/188, r. 22 (N.Z.)

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**21. Application for rehearing of judgment summons—**(1) Any application made under subsection (1) of section 19 of the Act for a rehearing of a judgment summons shall be in form No. 9.

(2) Every such application shall state the grounds upon which it is made, and if the grounds are, or one of the grounds has reference to, the means of the judgment debtor to pay the judgment debt, the application shall state in detail the amount of the earnings or other means of the judgment debtor, and the amount of his average weekly or monthly expenses for the maintenance of himself and his family since the date of the judgment.

(3) Every such application shall be supported by an affidavit by the person making the same and shall be served on the judgment creditor and filed in the Court at least 3 clear days before the date appointed for the hearing thereof.

Cf. S.R. 1949/188, r. 23 (N.Z.)

**22. Stay of proceedings on application for rehearing—**(1) If an application for a rehearing of a judgment summons is made after a warrant of committal has been issued, and the Court decides to grant the application the warrant of committal shall thereupon be suspended.

(2) If a rehearing has been granted, the Registrar shall give notice of such rehearing in the form No. 10 to the bailiff or constable or gaoler (as the case may require) as described in the warrant of committal.

(3) If upon receipt of such notice by the bailiff or constable the judgment debtor has not been arrested, no further steps shall be taken to execute the warrant, and it shall be returned immediately to the Court.

(4) If upon receipt of such notice by the bailiff or constable or gaoler the judgment debtor has been arrested and is held in custody under that warrant and no other, the bailiff or constable or gaoler in whose custody the judgment debtor is shall release the judgment debtor and shall return the warrant to the Court endorsed with the place, date, and time of arrest, the date and time of receipt of the notice and the place, date, and time of release.

Cf. S.R. 1949/188, r. 24 (N.Z.)

**23. Rehearing—**(1) If on the rehearing of a judgment summons the Court makes an order cancelling or varying the original order, such original order and any warrant of committal issued thereunder shall cease to have effect, and the new order shall be the order of the Court.

(2) If the Court refuses to cancel or vary the original order and no warrant of committal has been issued, then such order shall continue in full effect as if no rehearing had been applied for and there had been no stay of proceedings.

(3) If the Court refuses to cancel or vary the original order and a warrant of committal has been issued but no arrest of the judgment debtor has been made thereunder, the warrant shall have the same effect as if it had not been suspended, and the Registrar shall forthwith reissue the warrant for execution.

(4) If the Court refuses to cancel or vary the original order and a warrant of committal has been issued and the judgment debtor has been arrested thereunder and released under rule 22, the Registrar shall forthwith reissue the warrant for execution and shall annex thereto a direction in the form No. 11.

(5) Upon the reissue of a warrant of committal under the last preceding subclause of this rule, the judgment debtor shall be rearrested and the warrant shall take effect in all respects as if it had not been suspended, save that it shall take effect only for the unexpired term of imprisonment named therein. A judgment debtor who at the time of the receipt by the bailiff or constable or

gaoler of the notice given under rule 22 hereof is at the same time in custody under another warrant shall be deemed for the purposes of these rules to have been released at the time of the receipt by such bailiff or constable or gaoler (as the case may be) of the said notice as aforesaid.

Cf. S.R. 1949/188, r. 26 (N.Z.)

**24. Warrant of committal**—(1) Where a judgment creditor desires the issue of a warrant of committal, he shall file an application in form No. 12.

(2) With his application for the issue of a warrant of committal, the judgment creditor shall pay to the Registrar such sum as in the opinion of the Registrar will be sufficient to pay the expenses of the execution of the warrant.

(3) A warrant of committal may be issued by the Registrar, and shall be in form No. 13.

(4) Particulars of all warrants of committal shall be entered in a warrant book kept by the Court of issue.

(5) The Registrar shall hand or forward the warrant of committal to the bailiff or a constable for execution with a receipt form attached thereto for use in case money is tendered to the bailiff or constable to save execution.

(6) Subject to rule 28 hereof, neither the bailiff nor the constable nor the Registrar, shall accept any instruction by a judgment creditor to hold over the execution of any warrant of committal.

(7) The Court may from time to time direct that the execution of any warrant of committal be held over for a specified period, and may at any time revoke any such direction.

Cf. S.R. 1949/188, r. 27 (N.Z.)

**25. Expiry of warrant**—A warrant of committal shall expire with the order on which it is founded:

Provided that any person arrested under a warrant of committal before the expiry of the warrant shall not be released from his liability to serve the full sentence imposed by the order by reason only that after his arrest the order and warrant have expired by effluxion of time.

Cf. S.R. 1949/188, r. 28 (N.Z.)

**26. Payment before debtor lodged in prison**—Where payment is made after the issue of a warrant of committal and before the judgment debtor is lodged in prison, the following provisions shall apply:

(a) If the payment is made to the Registrar of the Court issuing or executing the warrant, the Registrar shall notify the bailiff or constable of such payment, who shall endorse a note of the payment on the warrant and where the money is paid to the Registrar of a Court other than the Court issuing the warrant, the money shall be transmitted to the Registrar of the Court issuing the warrant;

(b) If the payment is made to the bailiff, he shall endorse a memorandum of the payment on the warrant, give the debtor a receipt on the form attached thereto, and pay the money into Court;

(c) If the judgment debtor pays the amount endorsed on the warrant as that on the payment of which he may be discharged, the bailiff shall discharge the debtor.

Cf. S.R. 1949/188, r. 30 (N.Z.)

**27. Payment after debtor lodged in prison**—(1) Where after the judgment debtor has been lodged in prison payment is made of the amount entered on



the warrant of committal as that on payment of which the judgment debtor is to be discharged, the following provisions shall apply:

- (a) Where payment is made into the Court which made the order of committal, the Registrar shall sign a certificate in the form No. 14 and send it by post or otherwise to the gaoler of the prison in whose custody the judgment debtor is;
- (b) Where the payment is made into a Court to which the warrant has been forwarded for execution, the Registrar of that Court shall sign a certificate in the form No. 14, and shall send such certificate by post or otherwise to the gaoler, and shall send a copy of such certificate, together with the amount paid, to the home Court;
- (c) Where payment is made to the gaoler of the amount, or where the gaoler receives a certificate in the form No. 14, he shall release the judgment debtor if he be in custody under that warrant and no other. The gaoler shall pay any such amount so paid to him into the nearest Court for transmission, if necessary, to the home Court.

(2) Where after the judgment debtor has been lodged in prison payment is made to the Registrar of the Court issuing or executing the warrant of part of the amount entered on the warrant as that on payment of which he is to be discharged, the Registrar shall notify the gaoler of the payment. Where the gaoler receives such notice from the Registrar or where payment of part of such amount is made to him, the gaoler shall deduct the amount of the payment from the amount entered on the warrant as that on payment of which the judgment debtor is to be discharged. Any money so paid other than to the Registrar of the Court issuing the warrant shall be forwarded to that Registrar.

Cf. S.R. 1949/188, r. 31 (N.Z.)

**28. Discharge of debtor on request of judgment creditor—**(1) Upon the judgment creditor lodging with the Registrar a written request for the discharge of the judgment debtor from custody, the Registrar shall send to the gaoler a certificate in the form No. 15.

(2) On receipt of a certificate in the form No. 15, the gaoler shall release the judgment debtor if he be in custody under the warrant in respect of which the certificate is issued and no other.

Cf. S.R. 1949/188, r. 32 (N.Z.)

**29. Discharge on bankruptcy—**(1) The affidavit referred to in section 56 of the Bankruptcy Act 1908 (N.Z.) may be in the form No. 16.

(2) Compliance with that section 56 with the use of such an affidavit shall be sufficient to satisfy the Court in terms of section 14 or section 18 of the Act.

(3) If such an affidavit is filed in a foreign Court, the Registrar thereof shall immediately forward the affidavit to the home Court.

(4) The certificate of the Registrar referred to in subsection (3) of that section 56 may be in the form No. 17.

Cf. S.R. 1952/243, r. 6 (N.Z.)

**30. Court fees—**The Court fees to be taken under these rules shall be the appropriate fees set out in the Second Schedule to these rules, and all such fees shall be prepaid.

Cf. S.R. 1956/82, r. 5 (N.Z.)

**31. Costs—**(1) When the Court refuses to make an order on a judgment summons, or makes an order altering the terms of the original judgment or

order, or orders payment by instalments, or when a judgment summons is struck out, the judgment creditor shall not be entitled to add the costs of the judgment summons to the judgment or order unless the Court hearing the judgment summons allows such costs.

(2) Subject to subclause (1) of this rule, whenever an order is made on a judgment summons the costs of obtaining the same shall be added to the judgment or order, and shall form part thereof for all purposes, unless the Court otherwise orders.

(3) The costs of a judgment summons shall include—

(a) The Court fees payable under rule 30 hereof;

(b) Fees, allowances and expenses payable to witnesses and interpreters; and

(c) Solicitors' costs in accordance with the Third Schedule to these rules.

Cf. S.R. 1949/188, r. 35 (N.Z.)

**32. Costs of execution**—All costs incurred by a judgment creditor in endeavouring to enforce a judgment or order of any Court by execution against the goods of a judgment debtor or other process shall be deemed to be due pursuant to such judgment or order under section 6 of the Act.

Cf. S.R. 1949/188, r. 36, (N.Z.)

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## SCHEDULES

In these Schedules the references to decimal currency were substituted for references to money in the former currency by s. 5 (2) of the Decimal Currency Act 1966, and the references to a Solicitor of the Supreme Court of Western Samoa were substituted for references to a Solicitor of the Supreme Court of New Zealand by s. 51 (2) of the Law Practitioners Act 1976.

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### FIRST SCHEDULE

#### FORMS

Rule 3 (4)

#### Form 1

#### GENERAL FORM OF TITLE OF PROCEEDINGS

In the ..... Court

Held at .....

Claim No. ....

J.S. No. ....

In the matter of the Judgment Sum-  
monses Act 1965

BETWEEN

A.B. of (Address and Occupation)

Judgment Creditor

AND

C.D. of (Address and Occupation)

Judgment Debtor

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## JUDGMENT SUMMONS BOOK

..... Court at .....					
Date:	No. of Claim:	No. of Judgment Summons:	Judgment Creditor:	Judgment Debtor:	Date of Hearing (or Foreign Court to which sent):

## APPLICATION FOR A JUDGMENT SUMMONS AND AFFIDAVIT IN SUPPORT

(General title—Form 1)

I, ....., of ..... make oath and say as follows:

1. That on the ..... day of ..... 19 ....., (I), the above named judgment creditor, obtained a (1) judgment in the ..... Court at ..... against the abovenamed judgment debtor for the sum of \$..... (including costs).

(2) 2. That the said (1) judgment was removed into this Court on the ..... day of ..... 19 .....

(2) 3. That on the ..... day of ..... 19 ..... the judgment debtor was ordered to pay the amount of the (1) judgment by instalments of .....

4. That subsequent costs have been incurred amounting to \$.....

(3) 5. That the judgment debtor (has not paid any part of the debt) (has paid the sum of \$..... towards the debt) and there is now due and owing the sum of \$..... or that the judgment debtor has made default in the payment of instalments due up to and including the ..... day of ..... 19 ..... and there is now due and owing in respect of such instalments the sum of \$.....

(2) 6. That on the ..... day of ..... 19 ..... the ..... Court at ..... refused to make an order of committal against the judgment debtor in these proceedings.

(4) 7. That I am duly authorised by the judgment creditor to make this affidavit on his behalf.

Sworn at ..... this ..... day of ..... 19 ..... before me. .... Deponent

..... Registrar,  
Solicitor of the Supreme Court of  
Western Samoa (or other person au-  
thorised to take affidavits by section  
14 of the Oaths, Affidavits and Decla-  
ration Act 1963).

I apply for the issue of a judgment summons against the judgment debtor (or against ....., one of the abovenamed judgment debtors).

(5) I request that the judgment summons be heard at the ..... Court at

.....(Solicitor for) Judgment Creditor.

- NOTES: (1) If a decree or order amend accordingly.  
 (2) Delete if inapplicable.  
 (3) Delete which ever statement is inapplicable.  
 (4) Add where judgment creditor does not make affidavit.  
 (5) Delete if to be heard in home Court.

Rule 6

Form 4

SUPPLEMENTARY AFFIDAVIT FOR LEAVE TO ISSUE  
 JUDGMENT SUMMONS ON JUDGMENT OR ORDER AGAINST  
 A FIRM OR PERSON CARRYING ON BUSINESS IN A NAME  
 OTHER THAN HIS OWN

(General title — Form 1)

I ..... of ..... make oath and say:

1. That on the ..... day of ..... 19..... (1) the abovenamed judgment creditor, obtained a (1) judgment in the ..... Court at ..... against the abovenamed judgment debtor (2) for the sum of ..... (including costs), and there is now owing under the (1) judgment (or order) the sum of \$.....

2. That I allege that ..... of ..... is liable as a partner in the said firm (or as the person carrying on business in the said firm name) to pay the sum payable under the said judgment, and I make this allegation on the following grounds:

(a) That the said ..... has admitted before the Court in the proceedings in which the said (1) judgment was obtained that he was a partner in the said firm (or the person carrying on business in the said firm name) at the time when the cause of action arose; or

(b) That the said ..... has been adjudged in the proceedings in which the (1) judgment was obtained to be liable as a partner in the said firm (or as the person carrying on business in the said firm name); or

(c) That the said ..... was individually served as a partner in the said firm (or as the person carrying on business in the said firm name) with the summons in the proceedings in which the (1) judgment was obtained, and did not appear at the hearing, or .....

(d) (3).

(4) 3. That I am duly authorised by the judgment creditor to make this affidavit on his behalf.

Sworn at ..... this ..... day of ..... 19....., before me: Deponent

Registrar,

Solicitor of the Supreme Court of Western Samoa (or other person authorised to take affidavits by section 14 of the Oaths, Affidavits and Declarations Act 1963).

- NOTES: (1) If a decree or order, amend accordingly.  
 (2) State firm name in which defendants were sued.  
 (3) State any other grounds.  
 (4) Add where judgment creditor does not make affidavit.

Form 5

JUDGMENT SUMMONS

(General title — Form 1)

To the abovenamed Judgment Debtor (or to ....., one of the abovenamed Judgment Debtors).

YOU are hereby summoned to attend at the ..... Court at ..... on ..... day, the ..... day of 19....., at the hour of ..... in the ..... noon (1) (or at such time as the Registrar of that Court shall enter in his summons) to show cause why you should not be committed to prison for failing to pay the amount due upon the judgment (or order) obtained against you by the abovenamed judgment creditor (1) (in the ..... Court at .....) on the ..... day of ....., 19.....

Full particulars of the amount due under the judgment (or order) and of the subsequent costs thereon are shown hereunder:

Amount of judgment and costs .....	\$ .....
Costs of subsequent processes .....	.....
Paid on account .....	\$ .....
(2) Amount of instalments not yet due .....	.....
Costs of judgment summons .....	.....
Total amount for which this summons is issued .....	.....

(1) (I certify that the sum of \$..... is due and owing on this judgment. Dated at ....., this ..... day of ..... 19.....

.....  
Registrar (1) of Court of issue.)

(1) (I appoint ..... day, the ..... day of ..... 19....., at the hour of ..... in the ..... noon as the time, and the Magistrate's Court at ..... as the place for the hearing of this summons.

.....  
Registrar of Court of hearing.)

**INSTRUCTIONS TO JUDGMENT DEBTOR**

1. (1) The purpose of this summons is to bring you before the Court for examination on oath as to whether, after providing for the reasonable maintenance of yourself and your family, you have not since the date of the judgment (or order) had sufficient money to pay the debt (2) (you have not since the date of the order to pay the debt by instalments had sufficient money to pay the instalment(s) due); and as to the other matters mentioned in clause 2 of these Instructions.

2. An order for your imprisonment for non-payment of the debt (2) (the instalments due) may be made:

- (a) If you do not attend as required by the summons and do not allege sufficient cause for not attending;
- (b) If, after attending, you refuse to be sworn or to disclose particulars;
  - (3) (i) As to the mode in which the liability the subject of the judgment (or order) was incurred;
  - (ii) As to the disposal you may have made of any property;
  - (iii) As to your estate and effects, and as to the property and means you have had or have now of paying, satisfying, and discharging the sum of money due; and
  - (iv) As to your intention to leave Western Samoa without paying such money as is still unsatisfied, with intent to evade payment;
- (c) If you do not make answer touching any of the things above referred to;
- (d) If the Court is satisfied, on oral testimony or by affidavit, or by both—
  - (3) (i) That you contracted the liability which was the subject of the judgment (or order) by fraud;
  - (ii) That you have made or caused to be made any gift, delivery, or transfer of any property, or charged, removed, or concealed the same, with intent to defraud the person entitled to such money as aforesaid, or with intent to defeat any execution issued upon such judgment (or order);
  - (iii) That you have or have had since the date of the judgment (or order) sufficient means and ability (after providing for the reasonable maintenance of yourself and your family) to pay the sum so recovered against you and so due and unsatisfied (2) (or the instalments due up to the date of this summons) (4) (or that since the date on which the Court refused to make an order on the judgment summons previously issued against you in these proceedings you have had sufficient means and ability to pay the debt);
  - or
  - (iv) That you are about to leave Western Samoa without paying the money still unsatisfied, with intent to evade payment.

3. Further costs may be added to this debt if payment is not made before the date of hearing.

4. If you do nothing, the Court may make an order against you in your absence.

5. Cheques are not accepted for payment into Court.

6. This summons was issued by ....., of .....solicitor for the judgment creditor.

- NOTES: (1) Where judgment summons to be heard in a foreign Magistrate's Court.  
 (2) Where order was made for payment of debt by instalments.  
 (3) To be included only if fraud is alleged.  
 (4) Where a previous judgment summons was heard and order refused.

The following information is to appear on the form:

The office of the Court is open to the public from .....to ..... on Mondays to Fridays only.

If you are in doubt, consult a solicitor or the Registrar immediately.

## ORDER ON A JUDGMENT SUMMONS

(General title — Form 1)

UPON reading the application for the issue of a judgment summons herein and the affidavit in support thereof, and upon hearing ..... a solicitor for the judgment creditor (1) (and ....., solicitor for the judgment debtor) (1) (and the judgment debtor having failed to attend as required by such judgment summons or to allege sufficient cause for not attending) (1) (and the Court being satisfied) (1) (that the judgment debtor after providing for the reasonable maintenance of himself and his family has since the date of the judgment (or order) had sufficient money to pay the debt) (1) (or that the judgment debtor has since the date of the order to pay the debt by instalments had sufficient money to pay the instalment(s) so due) (1) (or that (2) .....)) and the judgment debtor having shown no cause why he should not be committed to prison,

It is ordered by ....., sitting at ..... (1) that unless the judgment debtor shall pay into the ..... Court at ..... forthwith (1) (or on or before the ..... day of ....., 19.....) (1) (or by instalments of \$..... on the day of each ..... commencing on the ..... day of ....., 19.....) the sum stated below, as that upon payment of which he is to be discharged or shall file an affidavit that he has been adjudicated bankrupt and that the debt stated below is or was provable in the bankruptcy he shall be committed to the ..... Prison at ....., known as the ....., for .....

(1) (Provided that the issue of the warrant of committal hereon shall be suspended so long as the judgment debtor pays into the ..... Court at ..... the sum of \$..... every ..... the first payment to be made on the ..... day of ....., 19....., and subsequent payments on the ..... day of every .....: And provided that if the judgment debtor neglects or fails to make the payments as aforesaid, or any of them, the said warrant may issue forthwith as if no direction of suspension had been given).

Dated at ....., this ..... day of ....., 19.....

Registrar.

\$

Amount of judgment or order remain-  
ing due .....

Costs of judgment summons .....

Total sum upon payment of which the  
judgment debtor will be discharged .....

NOTES: (1) Delete whichever is inapplicable.

(2) Here set out grounds proved and upon which the Court has made order.  
If fraud is proved, briefly set out particulars of finding.

## Form 7

ORDER ON A JUDGMENT SUMMONS FOR PAYMENT OF  
DEBT BY INSTALMENTS

(General title — Form 1)

UPON reading the application for the issue of a judgment summons herein and the affidavit in support thereof, and upon hearing ....., solicitor for the judgment creditor and ....., solicitor for the judgment debtor,

It is ordered by ....., sitting at ....., that the judgment debtor do pay the amount shown hereunder, and the costs of the judgment summons, to the Registrar of the ..... Court at ..... by instalments of ....., to be made on the ..... day of each ....., the first payment to be made on the ..... day of ....., 19....., and the judgment dated the ..... day of ....., 19....., in this action wherein the judgment creditor was plaintiff and the judgment debtor was defendant is hereby varied accordingly.

Dated at ....., this ..... day of ....., 19.....

Registrar.

§

Amount of the judgment (or order)  
remaining due .....

Costs of judgment summons and its  
hearing .....

Total sum due .....

## Form 8

CERTIFICATE OF ORDER ON A JUDGMENT SUMMONS  
HEARD IN A FOREIGN COURT

(General title — Form 1)

I HEREBY certify:

1. That the judgment summons herein was heard on the ..... day of ....., 19.....
  2. That the judgment creditor was represented by.....
  3. That the judgment debtor (1) appeared in person (or by his solicitor, ..... ) (failed to attend in answer to the judgment summons).
  4. (1) That the Court was satisfied that the judgment debtor after providing for the reasonable maintenance of himself and his family has since the date of the (1) judgment (or order) had sufficient money to pay the debt (1) (the instalments due) (or as the case may be).
  5. That the following is a minute of the order made by the Court .....
- Dated at ....., this ..... day of ....., 19.....

Registrar of Foreign Court

NOTE: (1) Delete whichever is inapplicable.



Form 9

APPLICATION FOR REHEARING, INCLUDING AFFIDAVIT  
IN SUPPORT

(General title — Form 1)

I, \_\_\_\_\_, of \_\_\_\_\_ (occupation), the abovenamed judgment debtor, do hereby apply for a rehearing of the above entitled judgment summons heard in the \_\_\_\_\_ Court at \_\_\_\_\_ on the day of \_\_\_\_\_ 19\_\_\_\_, on the following grounds (1):

- 1 .....
- 2 .....
- 3 .....

and I the above named judgment debtor make oath and say that the facts set forth above are true and correct in every particular.

Sworn at \_\_\_\_\_ day of \_\_\_\_\_ (Judgment Debtor)  
this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_ before me:

Registrar,  
Solicitor of the Supreme Court of  
Western Samoa (or other person au-  
thorised to take affidavits by section 14  
of the Oaths, Affidavits and Declara-  
tions Act 1963).

I appoint \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon as the time and the \_\_\_\_\_ Court at  
\_\_\_\_\_ as the place for the hearing of the above application.

Registrar.

NOTE: (1) State specifically the grounds, and if grounds have reference to the means of the judgment debtor to pay debt, set out in detail his earnings and expenses since date of judgment.

Rule 22

Form 10

NOTICE OF REHEARING AND FOR RELEASE OF JUDGMENT  
DEBTOR

(General title — Form 1)

To a bailiff of the \_\_\_\_\_ Court at \_\_\_\_\_, or to a constable at \_\_\_\_\_ and to the gaoler of the prison at \_\_\_\_\_, known as \_\_\_\_\_. The abovenamed judgment debtor having applied for a rehearing of the judgment summons upon which the warrant of committal No \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, was issued, and the Court having granted a rehearing you are hereby required immediately upon receipt of this notice:

1. If the judgment debtor has not been arrested, to take no further steps to execute the warrant, and to return it into Court; or
2. If the judgment debtor has been arrested, and if the judgment debtor is held in custody under the said warrant and no other to release the judgment debtor and to return the warrant into Court endorsed with

the place, date and time of the arrest, the date and time of receipt of this notice, and the place, date, and time of release.

Dated at this day of 19

.....  
Registrar

Rule 23

Form 11

**DIRECTION FOR REARREST OF JUDGMENT DEBTOR**

(General title — Form 1)

To a bailiff of the Court at , or to a constable at , and to the gaoler of the prison at , known as

WHEREAS pursuant to the annexed warrant of committal No , dated the day of 19 , the above named judgment debtor was arrested on the date and time of arrest endorsed on the said warrant:

AND WHEREAS under rule 22 of the Judgment Summonses Rules 1965, the said judgment debtor was released from custody on the date and time of release endorsed on the said warrant pending the rehearing of the judgment summons upon which the order recited in the said warrant was made:

AND WHEREAS on the said rehearing the Court refused to cancel or vary the said order:

NOW THEREFORE, this is to command and direct you the said (bailiff) (constable) and others to rearrest the said judgment debtor under the said warrant and deliver him to the gaoler of the prison at known as , and you the said gaoler to receive the said judgment debtor and him safely keep in the said prison for days, being the unexpired term of imprisonment named in the said warrant, unless he shall sooner pay the sum stated in the said warrant as that upon the payment of which he is to be discharged or be otherwise discharged by due course of law.

Dated at this day of 19

.....  
Registrar.

(This direction is to be attached to the warrant)

Rule 24

Form 12

**APPLICATION FOR WARRANT OF COMMITTAL**

(General title — Form 1)

I REQUEST that the order of the Court at , dated the day of 19 , be enforced by the issue of a warrant of committal against , of , the abovenamed judgment debtor, for the sum of \$ , being the unpaid portion (as per subjoined statement) of the sum (viz., \$ , including costs), which the said judgment debtor was ordered to pay to me.

\$ \$

Amount of order, including costs .....  
Subsequent costs .....  
Amount paid in part satisfaction of above order .....



Form 14

CERTIFICATE AS TO PAYMENT BY A JUDGMENT DEBTOR

(General title — Form 1)

I HEREBY certify that the abovenamed judgment debtor, who was committed to your custody by virtue of a warrant of committal issued out of this Court (or of the Court at ) bearing date the day of 19 , has paid the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof, and that the judgment debtor may, in respect of such order, be forthwith discharged out of your custody if he be in your custody under the above-mentioned warrant and no other.

Dated at this day of 19

.....  
Registrar.

To the Gaoler of the prison at known as

Rule 28

Form 15

CERTIFICATE DIRECTING DISCHARGE OF JUDGMENT DEBTOR AT THE REQUEST OF JUDGMENT CREDITOR

(General title — Form 1)

THE judgment creditor having lodged a written request for the discharge of the judgment debtor who was committed to your custody by virtue of a warrant dated the day of 19 I hereby direct that the said judgment debtor be discharged if he be in your custody under that warrant and no other.

Dated at this day of 19

.....  
Registrar.

To the Gaoler of the prison at known as

Rule 29

Form 16

AFFIDAVIT AS TO BANKRUPTCY

(General title — Form 1)

I, of make oath and say:

1. That I am the judgment debtor in these proceedings.
2. That on the day of 19 I was adjudicated a bankrupt by the Supreme Court of Western Samoa at Apia, and annexed hereto is a certificate to that effect signed by the Registrar of that Court.
3. That the debt with which these proceedings are concerned was provable in the said bankruptcy.

.....  
Judgment Debtor

28

Sworn at this day of 19  
before me:

.....  
Registrar,  
Solicitor of the Supreme Court of Western  
Samoa (or other person authorised to take  
affidavits by section 14 of the Oaths, Af-  
fidavits and Declarations Act 1963).

Rule 29

Form 17

## CERTIFICATE FOR DISCHARGE OF JUDGMENT DEBTOR

(General title—Form 1)

I HEREBY certify that the abovenamed judgment debtor, who was committed to your custody by virtue of a warrant of committal issued out of this Court on the day of 19, has filed the affidavit referred to in section 56 of the Bankruptcy Act 1908 (New Zealand); and I direct that the judgment debtor be forthwith discharged out of your custody if he is in your custody under the abovementioned warrant and no other.

Dated at ..... this ..... day of ..... 19.....

Registrar

To the Gaoler of the ..... prison at.....

## SECOND SCHEDULE

Rule 30

## COURT FEES

	Up to \$10	Up to \$20	Up to \$40	Up to \$100	Up to \$200	\$200
1. Filing (on amount owing under judgment):	\$	\$	\$	\$	\$	\$
(a) Application for judgment summons; or						
(b) Application for any warrant of committal (in addition to the amounts payable under Item 2).	1	1.50	3.50	3	2.50	4

2. For expenses of execution of any warrant of committal the actual expenses incurred by the bailiff or constable including the costs of conveyance and lodging in prison of the person arrested.

## THIRD SCHEDULE

## SCALE OF SOLICITOR'S COSTS

	On Amount unpaid up to:				Over
	\$20	\$40	\$100	\$500	\$500
	\$	\$	\$	\$	\$
1. Preparation of application and filing	2.10	3.15	3.15	4.20	6.30
2. Appearance on behalf of judgment creditor or judgment debtor	1.05	2.10	4.20	5.25	6.30

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.....

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