



## **Family Courts Amendment Rules 2009**

Rt Hon Dame Sian Elias, Administrator of the Government

### **Order in Council**

At Wellington this 29th day of June 2009

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 16A of the Family Courts Act 1980, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following rules.

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## Rules

### 1 Title

These rules are the Family Courts Amendment Rules 2009.

### 2 Commencement

These rules come into force on 3 August 2009.

### 3 Principal rules amended

These rules amend the Family Courts Rules 2002.

### 4 New rule 42 substituted

Rule 42 is revoked and the following rule substituted:

#### “42 Non-compliance with rule 41

- “(1) This rule applies to a person who—
- “(a) is served with an application; and
  - “(b) is permitted to file and serve a notice of defence or notice of intention to appear; and
  - “(c) fails to file and serve a notice of defence or notice of intention to appear within the time specified in or under rule 41.
- “(2) If the person appears on the day of the hearing of the application to oppose or support the application, the Judge must decide whether it is in the interests of justice to allow the person to be heard.
- “(3) In deciding, for the purpose of subclause (2), whether to allow the person to be heard in relation to the application, the Judge must take into account the following matters:
- “(a) any reason given by the person for failing to comply with rule 41; and

- “(b) the effect of the person’s failure to comply with rule 41 on—
  - “(i) the other parties to the proceeding;
  - “(ii) the management of the proceeding.
- “(4) The Judge may—
  - “(a) allow the person to be heard in relation to the application on such terms as the Judge thinks fit; or
  - “(b) decline to allow the person to be heard.
- “(5) If the Judge allows the person to be heard in relation to the application, the Judge may—
  - “(a) either—
    - “(i) proceed with the hearing of the application in accordance with any directions that the Judge thinks fit; or
    - “(ii) adjourn the hearing of the application and give any directions about the adjourned hearing that the Judge thinks fit; and
  - “(b) make an order against the person for costs properly incurred in consequence of his or her failure to comply with rule 41.
- “(6) If the Judge declines to allow the person to be heard, the Judge may proceed with the hearing of the application in accordance with rule 55(2) as if the person had not appeared.”

**5 Procedure if some or all parties do not appear**

Rule 55 is amended by adding the following subclause:

- “(4) Subclause (3) does not apply to a person to whom rule 42 applies.”

**6 Procedure if all parties appear**

Rule 57 is amended by inserting the following subclause after subclause (2):

- “(2A) Subclause (2) does not apply to a person to whom rule 42 applies.”

**7 Witness summons and decision of Court made under section 42 of Act**

- (1) Rule 323 is amended by omitting the heading and substituting the following heading: “**Witness summons calling respondent or associated respondent before Court**”.
- (2) Rule 323(1) is amended by omitting “Court,” in the first place where it appears and substituting “Registrar under section 41A(1)(a) of the Act, or a Judge”.
- (3) Rule 323(2) is amended by omitting “42” and substituting “42A”.

**8 Who must be served with copy of application or interlocutory application under Acts**

- (1) Rule 380(2) is amended by omitting “and, if required, orders for representation”.
- (2) Rule 380(2) is amended by adding “; or” and also by adding the following paragraph:

“(e) the Registrar directs the applicant to do so.”
- (3) Rule 380 is amended by inserting the following subclause after subclause (2):

“(2A) An interlocutory application filed under subclause (2) must also seek such orders for representation as may be required.”

**9 Order for directions as to service or for representation**

- (1) Rule 382 is amended by revoking subclause (1) and substituting the following subclauses:

“(1) On an application being made under rule 380(2) for directions as to service, the Court or Registrar may make any order for service that the Court or Registrar thinks fit.

“(1A) On an application being made under rule 380(2) for orders for representation, the Court may make any order for representation that it thinks fit and, in particular, may make orders regarding the representation of—

  - “(a) a minor; or
  - “(b) an incapacitated person; or
  - “(c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988.”

- (2) Rule 382(2) is amended by omitting “subclause (1)” and substituting “subclause (1A)”.

**10 Failure to file affidavit of assets and liabilities or sufficient affidavit of assets and liabilities**

Rule 400(3) is amended by inserting “or Registrar” after “Judge”.

**11 Power to summon witness**

Rule 402(1) is amended by inserting “or Registrar” after “Judge” in each place where it appears.

**12 Schedule 3 amended**

- (1) Form CS 25 of Schedule 3 is amended by omitting the last paragraph under the heading “**Notice of defence**” and substituting the following paragraphs:

“You should note that if you do not file and serve a notice of defence and accompanying affidavit within that time you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—

“(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or

“(b) decline to allow you to take part.

“You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence and accompanying affidavit within time.

“If you do not file and serve a notice of defence and accompanying affidavit, the case may proceed without further notice to you.”

- (2) Form CS 26 of Schedule 3 is amended by omitting the last paragraph under the heading “**Notice of defence**” and substituting the following paragraphs:

“You should note that if you do not file and serve a notice of defence and accompanying affidavit within that time you may

not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—

“(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or

“(b) decline to allow you to take part.

“You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence and accompanying affidavit within time.

“If you do not file and serve a notice of defence and accompanying affidavit, the case may proceed without further notice to you.”

### **13 Schedule 4 amended**

Form CYPF 5 of Schedule 4 is amended by omitting the third paragraph under the heading “**Notice of intention to appear**” and substituting the following paragraphs:

“You should note that if you do not file and serve a notice of intention to appear within 7 days after receiving service of this notice you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—

“(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or

“(b) decline to allow you to take part.

“You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of intention to appear within time.

“If you do not file and serve a notice of intention to appear, the case may proceed without further notice to you.”

### **14 Schedule 5 amended**

(1) Form DV 9 of Schedule 5 is amended by omitting the third and fourth paragraphs under the heading “**Notice of defence**” and substituting the following paragraphs:

“You should note that if you do not file and serve a notice of defence and an affidavit (if required) at least 5 clear days before the date of the hearing you may not be able to defend

the application. On the day of the hearing of the application, should you appear, the Judge may—

“(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or

“(b) decline to allow you to take part.

“You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence and an affidavit (if required) within time.”

- (2) Form DV 13 of Schedule 5 is amended by omitting “Registrar” in the last place where it appears and substituting “Judge (*or* Registrar)”.

#### **15 Schedule 6 amended**

- (1) Form FP 16 of Schedule 6 is amended by inserting the following paragraphs after the first paragraph under the heading “**Notice of defence**”:

“You should note that if you do not file and serve a notice of defence within that time you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—

“(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or

“(b) decline to allow you to take part.

“You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence within time.”

- (2) Form FP 17 of Schedule 6 is amended by omitting the last paragraph under the heading “**Notice of defence**” and substituting the following paragraphs:

“You should note that if you do not file and serve a notice of defence within that time you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—

“(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or

“(b) decline to allow you to take part.

“You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence within time.

“If you do not file and serve a notice of defence, the case may proceed without further notice to you.”

**16 Schedule 8 amended**

Form P(R) 5 of Schedule 8 is amended by omitting “Registrar” and substituting “Judge (*or* Registrar)”.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on 3 August 2009, amend the Family Courts Rules 2002 (the **principal rules**).

The amendments—

- substitute a *new rule 42* in the principal rules setting out the options available to a Judge where a respondent appears at the hearing of an application without having filed either a notice of defence or notice of intention to appear within the time specified. These options include declining to allow the respondent to be heard and proceeding with the hearing as if the respondent had not appeared:
  - clarify that rules 55(3) and 57(2) of the principal rules are subject to *new rule 42*:
  - give effect to—
    - sections 9 to 11 of the Domestic Violence Amendment Act 2008; and
    - section 4 of the Family Protection Amendment Act 2008:
  - provide that a Registrar (as well as a Judge) may make an order in proceedings under the Property (Relationships) Act 1976 for the attendance and examination by the Court of the respondent as to his or her affidavit of assets and liabilities and may issue a witness summons:
  - insert further information in forms CS 25 and CS 26 of Schedule 3 of the principal rules to take account of *new rule 42*:
  - insert further information in form CYPF 5 of Schedule 4 of the principal rules to take account of *new rule 42*:
  - insert further information in form DV 9 of Schedule 5 of the principal rules to take account of *new rule 42*:
  - insert further information in forms FP 16 and FP 17 of Schedule 6 of the principal rules to take account of *new rule 42*.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 2 July 2009.

These rules are administered by the Ministry of Justice.

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