



Family Court (Emergency) Amendment Rules 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 2nd day of June 2020

Present:

Her Excellency the Governor-General in Council

These rules are made under section 16A of the Family Court Act 1980 on the advice and with the consent of the Executive Council.

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Rules

1 Title

These rules are the Family Court (Emergency) Amendment Rules 2020.

2 Commencement

These rules come into force on the day after the date of their notification in the *Gazette*.

3 Principal rules

These rules amend the Family Court Rules 2002 (the **principal rules**).

4 Rule 8 amended (Interpretation)

In rule 8(1), insert in their appropriate alphabetical order:

electronic address means any personal identifier on any electronic messaging system to which a document in electronic form may be directed for the attention of a particular user of that system and includes, without limitation,—

- (a) an email address;
- (b) a fax number;
- (c) a remotely accessible location in a file directory on a computer hard drive or server (including an Internet-based server)

emergency means a disruption that arises from—

- (a) a state of emergency declared under section 66(1) or 68(1) of the Civil Defence Emergency Management Act 2002;
- (b) an epidemic notice given under section 5(1) of the Epidemic Preparedness Act 2006

5 Rule 12 amended (Powers of Registrars under rules)

After rule 12(4), insert:

- (5) In the event that there is an emergency in the area in which a court office is situated and an order made by a Registrar or Judge in that office is to be transmitted electronically, a Registrar of the office, or any other office, may sign the order electronically if the electronic signature—

- (a) adequately identifies the Registrar; and
- (b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.

6 Rule 76 amended (Ways documents may be presented for filing)

- (1) After rule 76(2), insert:

- (2A) If there is an emergency in the area in which a court office is situated and a Registrar is satisfied that presenting a document for filing at the court office in either of the ways specified in subclause (1) would cause, or risk causing, disruption to the orderly and safe dispatch of court business, the Registrar may require that the document be presented for filing in the court office by sending it to an electronic system used by the court.
- (2) After rule 76(3), insert:
- (4) If a document has been presented for filing in accordance with subclause (2A), a Registrar may require the document to be subsequently presented for filing in either of the ways specified in subclause (1).

7 New rule 107A inserted (Personal service during emergency)

After rule 107, insert:

107A Personal service during emergency

- (1) Despite rule 107, personal service of a document may be effected during an emergency by transmitting a copy of the document to an electronic address of the recipient.
- (2) The electronic address must be known by the person effecting service to be an electronic address regularly used by the recipient.
- (3) In this rule, **recipient**—
- (a) means the person to be served; and
 - (b) includes the person's representative referred to in rule 107(3)(a), (4), or (5).

8 New rule 127A inserted (Proof of personal service by electronic transmission during emergency)

After rule 127, insert:

127A Proof of personal service by electronic transmission during emergency

Despite rule 127, if during an emergency personal service of a document is effected by electronic transmission under rule 107A, service of the document is treated as being effected on the recipient at the time the document was sent, and in proving service it is sufficient to prove that—

- (a) the document was properly addressed to the recipient's electronic address; and
- (b) at the time of service, the recipient regularly used that electronic address; and
- (c) the document was sent to that address.

9 New rule 162A inserted (Unsigned affidavit)

After rule 162, insert:

162A Unsigned affidavit

- (1) This rule applies despite rule 168.
- (2) An affidavit that does not comply with rule 158(1)(c) or 159(1)(c) may be filed in proceedings during an emergency if—
 - (a) compliance with those rules during the emergency would—
 - (i) cause an unacceptable delay in the determination of the proceedings having regard to the nature and urgency of the proceedings; or
 - (ii) endanger the health or wellbeing of any person; and
 - (b) the affidavit includes a statement by the person making the affidavit (the **deponent**) that the matters stated in the affidavit are to the best of their knowledge true and correct.
- (3) However, an affidavit filed under subclause (2) may only be read and used in proceedings if—
 - (a) a Judge is satisfied as to either of the matters in subclause (2)(a); and
 - (b) the affidavit includes a statement referred to in subclause (2)(b).
- (4) If the deponent is represented by a lawyer, the lawyer must, when filing the affidavit, file a memorandum—
 - (a) that confirms—
 - (i) the affidavit is the same as the affidavit the deponent would have signed had there not been an emergency; and
 - (ii) the lawyer has advised the deponent that they must sign and file the affidavit as soon as circumstances reasonably permit; and
 - (b) that includes an undertaking that, as soon as circumstances reasonably permit,—
 - (i) the deponent will sign the affidavit; and
 - (ii) the affidavit will then be filed.
- (5) If the deponent is not represented by a lawyer, the affidavit must state at the end that the deponent will sign and file the affidavit as soon as circumstances reasonably permit.
- (6) In this rule, **proceedings** includes interlocutory proceedings.

10 Rule 198 amended (Judgments to be sealed and dated)

After rule 198(3), insert:

- (4) In the event that there is an emergency in the area in which a court office is situated and a judgment given in that office is to be transmitted electronically, a Registrar of the office, or any other office, may seal the judgment electronically if the electronic seal—
 - (a) adequately identifies the Registrar; and

- (b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the seal is required.

11 Rule 416C amended (Overview of proceedings)

Replace rule 416C(4) with:

- (4) There are 5 kinds of conferences. Except as provided in rule 416U(2) (which is subject to rule 416U(6)), none of the conferences are mandatory. No more than 1 of each kind of conference should normally be convened in the course of proceedings, except case management conferences (which are only available for complex cases).

12 Rule 416U amended (Without notice track)

After rule 416U(5), insert:

- (6) Subclause (2) does not apply if there is an emergency and the Judge does not consider it appropriate in the circumstances to hold a directions conference.

Michael Webster,
Clerk of the Executive Council.

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 the day after the date of their notification in the *Gazette*, amend the Family Court Rules 2002 (the **principal rules**).

The purpose of these rules is to facilitate the continuation of Family Court business during the outbreak of COVID-19 or any other emergency.

These rules amend the principal rules to insert definitions of electronic address and emergency, and to provide that during an emergency—

- documents may be electronically filed:
- personal service of documents may be effected by transmitting them to an electronic address that the person effecting service knows to be regularly used by the person being served:
- unsworn affidavits may be filed and used in proceedings:
- Registrars may electronically sign orders and seal judgements:
- Judges have a discretion whether to hold a directions conference in proceedings filed without notice under the Care of Children Act 2004.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 4 June 2020.
These rules are administered by the Ministry of Justice.