



High Court Rules 2016 (Commercial Panel) Amendment Rules 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 7th day of August 2017

Present:

Her Excellency the Governor-General in Council

These rules are made under section 148 of the Senior Courts Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee continued under section 155 of that Act (of whom at least 1 was a Judge of the High Court).

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal rules	2
4 New Part 29 inserted	2
Part 29	
Commercial panel	
29.1 Interpretation	2
29.2 Procedure for assignment of panel Judge	3
29.3 Cancellation of assignment	4
29.4 Heading of documents	4
29.5 Registry for filing and registry for hearings	4
29.6 Application of other rules	4

Rules

1 Title

These rules are the High Court Rules 2016 (Commercial Panel) Amendment Rules 2017.

2 Commencement

These rules come into force on 1 September 2017.

3 Principal rules

These rules amend the High Court Rules 2016 (the **principal rules**).

4 New Part 29 inserted

After Part 28, insert:

Part 29 Commercial panel

29.1 Interpretation

(1) In this Part, unless the context otherwise requires,—

commercial panel means the commercial panel of the High Court established by section 19(1) of the Senior Courts Act 2016

defendant means a party against whom a proceeding is brought

panel Judge means a High Court Judge assigned to the commercial panel by the Chief High Court Judge in accordance with section 19(4) of the Senior Courts Act 2016

plaintiff means a party commencing a proceeding

proceeding means a proceeding commenced by a statement of claim or an originating application that is one of the types of proceedings specified in the Senior Courts (High Court Commercial Panel) Order 2017 in accordance with section 19(2)(b) of the Senior Courts Act 2016.

(2) In this Part,—

(a) every reference to a plaintiff must be read as including a reference to an applicant in respect of an originating application and every reference to a statement of claim must be read as including a reference to an originating application; and

(b) every reference to a defendant must be read as including a reference to a respondent in respect of an originating application and every reference to a statement of defence must be read as including a reference to a notice of opposition to an originating application.

29.2 Procedure for assignment of panel Judge

Plaintiff nominating proceeding for assignment

- (1) A plaintiff may, on commencing a proceeding, nominate that the proceeding be dealt with by a panel Judge.
- (2) A plaintiff makes a nomination under this rule by—
 - (a) filing and serving, with the statement of claim, a memorandum setting out the grounds for the nomination; and
 - (b) endorsing the words “Commercial Panel” on the first page of the statement of claim, opposite the number of the proceeding (or, if that number is yet to be allocated, the position where that number is to appear in accordance with form G 1 in Schedule 1 of the High Court Rules 2016).
- (3) A defendant who is served with a memorandum under this rule must, on filing a statement of defence, file and serve a memorandum stating—
 - (a) whether the defendant consents to or opposes a panel Judge dealing with the proceeding; and
 - (b) if the defendant opposes a panel Judge dealing with the proceeding, the defendant’s grounds for opposing.

Defendant nominating proceeding for assignment

- (4) A defendant may, on filing a statement of defence in a proceeding, nominate that a panel Judge deal with the proceeding if the plaintiff has not filed and served a memorandum under subclause (2).
- (5) A defendant nominates that a panel Judge deal with the proceeding by filing and serving a memorandum setting out the grounds for the nomination and endorsing the first page of the statement of defence in the same manner as provided in subclause (2).
- (6) A plaintiff must, not later than 5 working days after service of the defendant’s memorandum, file and serve a memorandum stating—
 - (a) whether the plaintiff consents to or opposes a panel Judge dealing with the proceeding; and
 - (b) if the plaintiff opposes a panel Judge dealing with the proceeding, the plaintiff’s grounds for opposing.

Procedure for decision

- (7) The Registrar must refer a memorandum filed under this rule to the Chief High Court Judge to decide whether to assign a panel Judge to the proceeding.
- (8) The Chief High Court Judge may convene a hearing on the matter or may make a decision on the papers.

29.3 Cancellation of assignment

- (1) The Chief High Court Judge may, at any time, on the application of a party to the proceeding or on the Chief High Court Judge's own initiative, cancel the assignment of a panel Judge to a proceeding.
- (2) The Chief High Court Judge, on cancelling an assignment, must give directions as to the future conduct of the proceeding.

29.4 Heading of documents

If a panel Judge is assigned to a proceeding, the heading of every document filed or issued in the proceeding must show the words "Commercial Panel" in the place specified in rule 29.2(2)(b).

29.5 Registry for filing and registry for hearings

- (1) A panel Judge may undertake case management of proceedings assigned to the Judge (in the Judge's capacity as a panel Judge) in the registry of the court in which the Judge is based.
- (2) A panel Judge may give any directions that the Judge thinks necessary to minimise any difficulties caused to a party as a result of the distance of the party from the registry of the court at which the panel Judge is based.
- (3) In a proceeding to which a panel Judge is assigned,—
 - (a) all documents must be filed in the registry of the court in which the proceeding was originally filed; and
 - (b) the substantive hearing of the proceeding must be held in the registry of the court in which the proceeding was originally filed, unless the panel Judge directs otherwise.

29.6 Application of other rules

Other Parts of these rules, including rules relating to case management, apply to proceedings that a panel Judge deals with under this Part—

- (a) subject to any directions of the panel Judge; and
- (b) except to the extent that the rules are modified by or are inconsistent with the Act or this Part.

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 come into force on 1 September 2017, the date specified in the Senior Courts (High Court Commercial Panel) Order 2017 (the **Order in Council**) for the commercial panel of the High Court (the **commercial panel**) to start operating.

The commercial panel of the High Court is established by section 19 of the Senior Courts Act 2016 and enables a party to one of the types of commercial proceedings specified in the Order in Council to nominate that a Judge on the commercial panel (a **panel Judge**) deal with the proceeding. The Chief High Court Judge may, at the Judge's discretion, assign a panel Judge to the proceeding.

These rules insert *new Part 29* into the High Court Rules 2016. That Part comprises the rules of procedure required for the commercial panel to start operating.

The rules provide for the following:

- the procedure for nominating that a panel Judge deal with a proceeding, including—
 - information that a party to a proceeding must provide in order for the Chief High Court Judge to decide whether to assign a panel Judge:
 - information that any other party to the proceeding who wishes to oppose the assignment of a panel Judge must provide for the Chief High Court Judge's consideration:
- the procedure concerning the Chief High Court Judge's decision about whether to assign a panel Judge or, in a case where a panel Judge is assigned, whether to exercise the Chief High Court Judge's power to cancel the assignment:
- a requirement for documents filed or issued in a proceeding to be headed in a manner that shows that it is a commercial panel proceeding:
- the registry of the court in which documents in a proceeding must be filed if a panel Judge is assigned to the proceeding:
- the registry of the court in which hearings in the proceeding are to be held:
- the application of rules in other Parts of the High Court Rules 2016 to a proceeding under *new Part 29*.

The rules apply to a proceeding commenced by an originating application in the same manner as they apply to a proceeding commenced by a statement of claim.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 10 August 2017.

These rules are administered by the Ministry of Justice.