



District Courts Amendment Rules 2006

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 10th day of April 2006

Present:

Her Excellency the Governor-General in Council

Pursuant to section 122 of the District Courts Act 1947, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Chief District Court Judge and 2 other members of the Rules Committee established under section 51B of the Judicature Act 1908 (of whom at least 1 was a District Court Judge) makes the following rules.

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Rules

1 Title

These rules are the District Courts Amendment Rules 2006.

2 Commencement

These rules come into force on 1 June 2006.

3 Principal rules amended

These rules amend the District Courts Rules 1992.

4 Interpretation

Rule 3 is amended by revoking subclause (4) and substituting the following subclause:

- “(4) In a judgment, order, direction, or other document forming part of a proceeding or of an interlocutory application, unless the context otherwise requires,—

“**month** means a calendar month

“**working day** has the same meaning as in subclause (1) or as in rule 461ZN.”

5 New heading and rules 68A and 68B inserted

The following heading and rules are inserted after rule 68:

“Speaking in Maori

“68A Speaking in Maori

- “(1) This rule applies to a person entitled under section 4(1) of the Maori Language Act 1987 to speak Maori in a proceeding or at the hearing of an interlocutory application.
- “(2) If a person to whom this rule applies wishes to speak Maori in a proceeding or at the hearing of an interlocutory application, that person, or, if the person is a witness, the party intending to call that person, must file and serve on every other party to the proceeding a notice of his or her intention to speak Maori.
- “(3) The notice must state that the person intends to speak Maori at—
 - “(a) all conferences and hearings; or
 - “(b) all conferences and hearings held after a specified conference or hearing; or
 - “(c) a specified conference or hearing.
- “(4) The notice must be in form 3A.
- “(5) The notice must be filed and served—
 - “(a) if the person intends to speak Maori at all conferences and hearings, not less than 10 working days before the first conference or hearing; or
 - “(b) if the person intends to speak Maori at conferences and hearings held after a particular conference or hearing, not less than 10 working days before the first conference or hearing at which the person intends to speak Maori; or
 - “(c) if the person intends to speak Maori at a particular conference or hearing, not less than 10 working days before the conference or hearing.

“68B Failure to give notice

A failure to comply with rule 68A does not prevent a person speaking Maori at a conference or hearing, but—

- “(a) the Court may adjourn the conference or hearing to enable the Registrar to arrange for a person who holds a certificate of competency under section 15(2)(a) or (c) of the Maori Language Act 1987 or some other person

competent to interpret Maori to be available at the adjourned conference or hearing:

“(b) the Court may treat the failure to comply as a relevant consideration in an award of costs.”

6 New form 3A inserted in Schedule 1 of principal rules

Schedule 1 of the principal rules is amended by inserting the form set out in Schedule 1 of these rules after form 3.

7 New rule 266 substituted

Rule 266 is revoked and the following rule substituted:

“266 Notice of opposition to application

“(1) A respondent who intends to oppose an application must file and serve on every other party a notice of opposition to the application within the earlier of—

“(a) 10 working days after being served with the application; or

“(b) 3 working days before the date for the hearing.

“(2) The notice of opposition must be in form 22.

“(3) The notice of opposition must—

“(a) state the respondent’s intention to oppose the application and the grounds of opposition; and

“(b) contain a reference to any particular provision of an enactment or principle of law or judicial decision on which the respondent relies.”

8 Rule 267 revoked

Rule 267 is revoked.

9 New rule 281A inserted

The following rule is inserted after rule 281:

“281A Synopsis of argument

“(1) This rule applies to a defended interlocutory application unless or to the extent that the Court directs otherwise.

“(2) The applicant must file and serve a synopsis of argument (**synopsis**) on every other party,—

“(a) if the respondent has filed a notice of opposition under rule 266(1)(a), at least 3 working days before the hearing of the interlocutory application; or

- “(b) if the respondent has filed a notice of opposition under rule 266(1)(b), at least 2 working days before the hearing of the interlocutory application.
- “(3) The applicant’s synopsis must—
- “(a) identify the general nature of the case;
 - “(b) include a chronology of the material facts;
 - “(c) outline the applicant’s principal submissions;
 - “(d) be accompanied by or have annexed to it—
 - “(i) an indexed and paginated set of relevant documents; and
 - “(ii) a list of authorities.
- “(4) The material required to be included in the applicant’s synopsis under subclause (3)(a), (b), and (c) must not exceed 10 pages.
- “(5) The respondent must, at least 1 working day before the hearing, file and serve a synopsis on every other party.
- “(6) The respondent’s synopsis must—
- “(a) identify any material facts that are not referred to in the applicant’s synopsis;
 - “(b) state any facts that are disputed;
 - “(c) outline the respondent’s principal submissions;
 - “(d) be accompanied by or have annexed to it—
 - “(i) an indexed and paginated set of any relevant documents not referred to in the applicant’s synopsis; and
 - “(ii) a list of any authorities not included in the applicant’s synopsis.
- “(7) The material required to be included in the respondent’s synopsis under subclause (6)(a), (b), and (c) must not exceed 10 pages.”

10 New rule 283 substituted

Rule 283 is revoked and the following rule substituted:

“283 Failure to appear

- “(1) If a party is neither present nor represented at the hearing of an application, the Court may—
- “(a) determine the application in the party’s absence in any manner that appears just; or
 - “(b) adjourn the application; or
 - “(c) strike out the application.

- “(2) If an order determining an application is made in the absence of a party, the Court may, if it thinks it just to do so, recall the order at any time before a formal record of it has been drawn up and sealed.
- “(3) The Court may, in any manner that the Court thinks just, reinstate an application that has been struck out for non-appearance.
- “(4) The Court may make a determination referred to in subclause (2) or subclause (3) on its own initiative or on the application of a party.
- “(5) Notice of an application under subclause (4) must be filed and served,—
 - “(a) if it is made by a party who was present or represented at the hearing, within 5 working days after the hearing;
 - “(b) if it is made by a party who was neither present nor represented, within 5 working days after receipt by the party of notice of the decision given at the hearing.”

11 New rule 510 substituted

Rule 510 is revoked and the following rule substituted:

“510 Affidavit in language other than English

- “(1) An affidavit in a language other than English (**non-English-language affidavit**) may be filed in a proceeding.
- “(2) The non-English-language affidavit must be accompanied by an affidavit by an interpreter to which is exhibited—
 - “(a) a copy of the non-English-language affidavit; and
 - “(b) the interpreter’s translation of the non-English-language affidavit.”

12 Form 5 amended

The headings above clauses 8, 9, and 12 and clauses 8 to 13 of form 5 in Schedule 1 of the principal rules are revoked.

13 New Schedule 2 substituted

Schedule 2 of the principal rules is revoked and the schedule set out in Schedule 2 of these rules substituted.

14 Transitional provision relating to costs

- (1) Costs in a proceeding commenced after the coming into force of these rules must be determined in accordance with the principal rules as amended by these rules.
- (2) Costs in a proceeding commenced before the coming into force of these rules must be determined,—
 - (a) in the case of a step in the proceeding taken before the coming into force of these rules, in accordance with the principal rules as in force immediately before the coming into force of these rules:
 - (b) in the case of a step in the proceeding taken after the coming into force of these rules, in accordance with the principal rules as amended by these rules.
- (3) For the purposes of subclause (2), a step in a proceeding described in column 1 of Schedule 3 of these rules is taken on the date appearing opposite that step in column 2 of that schedule.

Schedule 1
New form 3A inserted in Schedule 1 of
principal rules

r 6

Form 3A
 Notice of intention to speak Maori
 (General heading as in form 1)

r 68A(4)

Take notice that, [**full name*] of [*address*] intends to speak Maori at—

†all conferences and hearings relating to the above proceeding

†all conferences and hearings relating to the above proceeding held after [*specify particular conference or hearing after which the person wishes to speak Maori*]

†the conference/†hearing relating to the above proceeding to be held at [*specify details of the particular conference or hearing at which the person wishes to speak Maori*].

*Insert name of party, counsel, or witness intending to speak Maori.

†Delete if inapplicable.

Dated at this day of..... 20.....

Form 3A—*continued*

.....
 Signature of person intending to speak
 Maori or party (or solicitor)

To the Registrar of the District Court at [*place*]
and

To [*names of parties to be served*]

Notes

- 1 The Maori Language Act 1987 entitles certain persons to speak Maori in legal proceedings. They include the parties to the proceedings, witnesses, counsel and, with the leave of the Court, other persons.
- 2 If a person intends to speak Maori at all conferences and hearings relating to a proceeding or application, the person, or if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the first conference or hearing, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.
- 3 If a person intends to speak Maori at all conferences and hearings after a particular conference or hearing, the person, or if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the first conference or hearing at which the person intends to speak Maori, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.
- 4 If a person intends to speak Maori at a particular conference or hearing, the person, or if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the conference or hearing, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.
- 5 Failure to give notice of intention to speak Maori does not prevent a person speaking Maori at a conference or hearing, but the Court may—
 - (a) adjourn the conference or hearing to enable the Registrar to arrange for an interpreter to be available at the adjourned conference or hearing; and

Form 3A—*continued*

- (b) treat the failure to give notice as a relevant consideration in an award of costs.
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r 13

Schedule 2
New Schedule 2 substituted in principal rules

r 47A

Schedule 2
Appropriate daily recovery rates

(Note: The following are the appropriate daily recovery rates for the categories of proceedings referred to in rule 47.)

Category of proceedings referred to in rule 47	Appropriate daily recovery rate
Category 1 proceedings	\$860 per day
Category 2 proceedings	\$1,280 per day
Category 3 proceedings	\$1,900 per day

Schedule 3

r 14

Dates on which steps taken for purposes of rule 14(3)

Step in proceeding	Date on which step taken
1 A step that requires the filing of a document or a number of documents	The date on which the document or the first of the documents is filed
2 Appearance in Court or in Chambers for each day or part of a day	The date of the actual appearance
3 Production of documents for inspection	The date on which the list of those documents is filed
4 Inspection of documents	The date on which the list of those documents is filed
5 Preparation for hearing	The first day of the hearing or, if the hearing does not eventuate, the date set down for hearing

Diane Morcom,
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 amend the District Courts Rules 1992 (the **principal rules**). The rules come into force on 1 June 2006.

Rule 4 amends rule 3 of the principal rules to make it clear that the term **working day** when used in a judgment, order, direction, or other document means a working day as defined in rule 3 (the general interpretation rule) or rule 461ZN (which relates to proceedings under the Local Government Act 2002) of the principal rules rather than as the term is defined in the Interpretation Act 1999. This change brings the principal rules into line with the Court of Appeal (Civil) Rules 2005. A corresponding amendment is made to the High Court Rules by the High Court Amendment Rules 2006.

Rule 5 inserts in the principal rules *new rules 68A* and *68B* relating to the use of Maori in legal proceedings. Section 4(1) of the Maori Language Act 1987 entitles parties, counsel, witnesses, and with the leave of the Court, other persons to speak Maori in legal proceedings. Section 4(5) provides for the making of rules of court relating

to the giving of notice of intention to speak Maori and for regulating matters of procedure generally when Maori is, or is to be, spoken.

Notice must be given of intention to speak Maori at conferences and hearings and must be filed and served at least 10 working days before the relevant conference or hearing (*new rule 68A*). Failure to give notice will not prevent a person speaking Maori, but the Court may adjourn the conference or hearing to enable an interpreter to be available and may take the failure to give notice into account in making an award of costs (*new rule 68B*). Corresponding rules are inserted in the High Court Rules by the High Court Amendment Rules 2006.

Rule 6 inserts a *new form 3A* in Schedule 1 of the principal rules for giving notice of intention to speak Maori in legal proceedings.

Rule 7 replaces rule 266 of the principal rules relating to notice of opposition to interlocutory applications. The *new rule 266* is the same as rule 244 of the High Court Rules. Under the current rule 266, a respondent who wishes to oppose an interlocutory application must file a notice of opposition not later than 1pm on the day before the hearing. Later filing requires leave. Under the *new rule 266*, a respondent must file notice of opposition within 10 working days after service of the application or 3 working days before the hearing, whichever is earlier.

Rule 8 revokes rule 267 of the principal rules. Rule 267 relates to the content of notices of opposition to interlocutory applications, the substance of which is incorporated in *new rule 266*.

Rule 9 inserts a *new rule 281A* in the principal rules. The new rule applies to defended interlocutory applications and requires both the applicant and respondent to each file and serve on all parties before the hearing a synopsis of argument. A corresponding rule is inserted in the High Court Rules by the High Court Amendment Rules 2006.

Rule 10 substitutes a *new rule 283* in the principal rules, which deals with the situation where a party fails to appear at the hearing of an interlocutory application. Under the current rule, the Court is expressly authorised to strike out an application if the applicant fails to appear. However, it is unclear whether the Court may strike out the application if the respondent fails to appear. It is also unclear whether the Court may recall a determination to strike out an application. The *new rule 283* makes it clear that the Court may strike out an application if the respondent or the applicant fails to appear and,

further, that the Court may recall an order to strike out the application. The new rule also prescribes a period of 5 working days in which applications for reinstatement or recall must be made. Time runs from the making of the order to strike out or, if the applicant was neither present nor represented when that order was made, from the day on which the applicant is notified of the decision given at the hearing.

Rule 11 replaces rule 510 of the principal rules, which relates to affidavits in a foreign language, with a new rule. The *new rule 510* makes 2 changes. First, “foreign language” is replaced with “language other than English”. Second, the new rule reflects the operation of the rule in practice and the commentary in *McGechan on Procedure* on the corresponding rule 512 of the High Court Rules. If an affidavit in a language other than English (**non-English affidavit**) is filed, the non-English affidavit must be accompanied by an affidavit by an interpreter to which is exhibited both a copy of the non-English affidavit and the interpreter’s translation of that non-English affidavit. A corresponding rule change is made to rule 512 of the High Court Rules by the High Court Amendment Rules 2006.

Rule 12 amends form 5 in Schedule 1 of the principal rules. Form 5 is the form of the memorandum that must be attached to a notice of proceeding. The rule omits clauses 8 to 13 relating to payment and admission of the plaintiff’s claim. The omission of these clauses results from the revocation by rule 5 of the District Courts Amendment Rules (No 2) 2004 of rules 356 to 377 relating to payments into Court and admissions of relief.

Rule 13 replaces Schedule 2 of the principal rules with a new schedule. Schedule 2 sets out the daily recovery rates for the purposes of costs awards. The *new Schedule 2* increases those rates for each of the 3 categories of proceeding. Under the principal rules, awards of costs are determined on the basis of applying the appropriate daily recovery rate for the particular category of proceeding to the time allocated for each step in the proceeding specified in Schedule 2A of the principal rules.

Rule 14 is a transitional rule relating to the recovery of costs. The rule provides that the changes to costs made by these rules apply to proceedings commenced after these rules take effect. In the case of proceedings commenced before these rules take effect—

- the previous provisions will apply to steps taken in the proceedings before these rules take effect:

- the new provisions will apply to steps taken in the proceedings after these rules take effect.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 13 April 2006.

These rules are administered in the Ministry of Justice.
