



District Courts Amendment Rules 2007

Anand Satyanand, Governor-General

Order in Council

At Wellington this 23rd day of July 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 122 of the District Courts Act 1947 and section 42 of the Harassment Act 1997, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and (except for rules 15 to 18) 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 2007.

2 Commencement

These rules come into force on 24 August 2007.

3 Principal rules amended

These rules amend the District Courts Rules 1992.

4 New rule 28 substituted

Rule 28 is revoked and the following rule substituted:

“28 Cover sheet, numbering, and fastening of document

- “(1) The first sheet of a document is the cover sheet, showing the matters specified in rules 29 and 29A.
- “(2) The cover sheet is not numbered, even if the heading is continued on another sheet under rule 29A(2).
- “(3) Each page after the cover sheet must be numbered consecutively, starting with the number 1.
- “(4) All sheets of a document must be securely fastened together.”

5 Description of document

Rule 29(1) is amended by omitting “first page” and substituting “cover sheet”.

6 Format of first page

- (1) The heading to rule 29A is amended by omitting “**first page**” and substituting “**cover sheet**”.
- (2) Rule 29A(1) is amended by omitting “first page” and substituting “cover sheet”.

7 Subscription at foot of first page

- (1) The heading to rule 35 is amended by omitting “**first page**” and substituting “**cover sheet**”.
- (2) Rule 35(1) is amended by omitting “first page” and substituting “cover sheet”.

8 New rules 84 to 88E substituted

Rules 84 to 88 are revoked and the following rules substituted:

“84 Incapacitated person and minor defined

For the purposes of these rules,—

“**incapacitated person** means a person who by reason of physical, intellectual, or mental impairment, whether temporary or permanent, is—

“(a) not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings; or

“(b) unable to give sufficient instructions to issue, defend, or compromise proceedings

“**minor** means a person who has not attained the age of 18 years; and a person is of **full age** if he or she has attained the age of 18 years.

“85 Litigation guardian defined

For the purposes of these rules, **litigation guardian**—

“(a) means—

“(i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor (but only in a proceeding to which the authority extends); or

“(ii) a person who is appointed under rule 88C to conduct a proceeding; and

“(b) has the same meaning as the expression ‘guardian *ad litem*’.

“86 Incapacitated person must be represented by litigation guardian

“(1) An incapacitated person must have a litigation guardian as his or her representative in any proceeding, unless the Court orders otherwise.

“(2) If a person becomes an incapacitated person during a proceeding, a party must not take any step in the proceeding without the permission of the Court until the incapacitated person has a litigation guardian.

“87 Minor must be represented by litigation guardian

“(1) A minor must have a litigation guardian as his or her representative in any proceeding, unless the Court orders otherwise.

“(2) Subclause (1) does not apply to a minor who—

“(a) is required by an enactment to conduct a proceeding without a litigation guardian; or

“(b) is permitted by an enactment to conduct a proceeding without a litigation guardian and elects to do so; or

“(c) is authorised under rule 88 to conduct a proceeding without a litigation guardian.

“88 Minor may apply to conduct proceeding without litigation guardian

“(1) This rule applies to a minor who—

“(a) is not required or permitted by an enactment to conduct a proceeding without a litigation guardian; and

“(b) is not prohibited by an enactment from conducting a proceeding without a litigation guardian.

“(2) A minor who wishes to conduct a proceeding in his or her own name may apply to the Court for authorisation to conduct the proceeding without a litigation guardian.

“(3) On an application under subclause (2), the Court may make an order allowing the minor to conduct the proceeding without a litigation guardian if it is satisfied that—

“(a) the minor is capable of making the decisions required or likely to be required in the proceeding; and

“(b) no reason exists that would make it in the interests of the minor to be represented by a litigation guardian.

“88A Application of rules 88B to 96 to minors

Rules 88B to 96 apply to a minor to whom rule 87(1) applies, and every reference in those rules to an incapacitated person must be read as if it was also a reference to a minor.

“88B Court may set aside any step in proceeding

The Court may set aside a step in a proceeding if an incapacitated person did not have a litigation guardian when that step was taken and the Court considers that the incapacitated person was unfairly prejudiced.

“88C Appointment of litigation guardian

“(1) This rule applies if an incapacitated person does not have a litigation guardian within the meaning of rule 85(a)(i).

“(2) The Court may appoint a litigation guardian if it is satisfied that—

“(a) the person for whom the litigation guardian is to be appointed is an incapacitated person; and

“(b) the litigation guardian—

- “(i) is able fairly and competently to conduct proceedings on behalf of the incapacitated person; and
 - “(ii) does not have interests adverse to those of the incapacitated person; and
 - “(iii) consents to being a litigation guardian.
- “(3) In deciding whether to appoint a litigation guardian, the Court may have regard to any matters it considers appropriate, including the views of the person for whom the litigation guardian is to be appointed.
- “(4) The Court may appoint a litigation guardian under this rule at any time—
- “(a) on its own initiative; or
 - “(b) on the application of any person, including a person seeking to be appointed as litigation guardian.

“88D Application to be served on person for whom litigation guardian to be appointed

- “(1) Unless the Court orders otherwise, an application under rule 88C—
- “(a) may be made *ex parte*; and
 - “(b) must be served on the person for whom the litigation guardian is to be appointed, unless the Court orders otherwise.
- “(2) When the person for whom the litigation guardian is to be appointed is a minor,—
- “(a) subclause (1) does not apply; and
 - “(b) unless the Court directs otherwise, the application must be served instead on—
 - “(i) the minor’s parent or guardian; or
 - “(ii) if there is no parent or guardian, a person of full age who has the care of the minor or with whom the minor lives.

“88E Notification of appointment

- “(1) A litigation guardian within the meaning of rule 85(a)(i) must file a copy of the order or other document that empowers him or her to conduct the proceeding, at the same time as the first document relating to the proceeding is filed.
- “(2) A person appointed under rule 88C as a litigation guardian of a party to a proceeding must give notice of the appointment to

each other party in the proceeding, as soon as practicable after the appointment.”

9 New rule 91 substituted

Rule 91 is revoked and the following rule substituted:

“91 Service of documents

- “(1) A party who knows that an incapacitated person has a litigation guardian must serve any document in a proceeding—
- “(a) on the litigation guardian, unless the litigation guardian has filed an address for service;
 - “(b) if the litigation guardian has filed an address for service, at that address for service.
- “(2) Subclause (3) applies to a party who believes on reasonable grounds that a person is an incapacitated person but does not know if that person has a litigation guardian.
- “(3) The party—
- “(a) may apply to the Court for the appointment of a litigation guardian under rule 88C; and
 - “(b) may apply for directions as to service; and
 - “(c) must serve any documents in the proceeding in accordance with any directions as to service.”

10 New rules 96 to 98 substituted

Rules 96 to 98 are revoked and the following rules substituted:

“96 Retirement, removal, or death of litigation guardian

- “(1) A litigation guardian may not retire without the leave of the Court.
- “(2) Unless the Court orders otherwise, the appointment of a litigation guardian under rule 88C ends if another person is subsequently authorised by or under an enactment to conduct the proceeding in the name of, or on behalf of, the incapacitated person.
- “(3) A litigation guardian may be removed by the Court when it is in the interests of the person he or she represents.
- “(4) In the case of retirement, removal, or death of a litigation guardian, no further step may be taken in the proceeding without the leave of the Court until the incapacitated person is represented by another litigation guardian.

“97 Procedure where person ceases to be incapacitated person

- “(1) The Court must make an order terminating the appointment of a litigation guardian if it is satisfied that the person the litigation guardian represents is no longer an incapacitated person.
- “(2) The Court may make an order at any time—
- “(a) on its own initiative; or
 - “(b) on the application of—
 - “(i) the incapacitated person; or
 - “(ii) the incapacitated person’s litigation guardian; or
 - “(iii) a party.
- “(3) From the date of the order,—
- “(a) all subsequent steps in the proceeding must be carried on by the person formerly represented by the litigation guardian; and
 - “(b) the person formerly represented by the litigation guardian is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not an incapacitated person.

“98 Procedure where minor attains full age

- “(1) A minor who attains full age must file and serve an affidavit confirming that he or she is no longer a minor.
- “(2) Unless the Court orders otherwise, from the date a minor attains full age—
- “(a) the appointment of his or her litigation guardian ends; and
 - “(b) all subsequent steps in the proceeding must be carried on by the former minor; and
 - “(c) that person is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not a minor.”

11 Who may swear affidavit verifying statement in answer to interrogatories

Rule 308(1) is amended by revoking paragraph (b) and substituting the following paragraph:

“(b) by the person’s litigation guardian if the person required to make the statement is—

“(i) a minor, except a minor to whom rule 87(2) applies; or

“(ii) an incapacitated person:”.

12 Who may swear affidavit verifying list of documents

Rule 325(1) is amended by revoking paragraph (b) and substituting the following paragraph:

“(b) by the person’s litigation guardian if the person required to make the list is—

“(i) a minor, except a minor to whom rule 87(2) applies; or

“(ii) an incapacitated person:”.

13 Manner of payment

Rule 355E is amended by revoking subclause (2) and substituting the following subclause:

“(2) Where a minor, except a minor to whom rule 87(2) applies, or an incapacitated person is or may be entitled to an interim payment, or to part of an interim payment, under these rules,—

“(a) acceptance of the interim payment is subject to the approval of the Court; and

“(b) payment out of Court must not be made without the leave of the Court.”

14 Directions as to service

Rule 444(5) is amended by—

(a) inserting “or minors” after “incapacitated persons”; and

(b) omitting “87(3)” and substituting “88C”.

15 Application of rules in other Parts

Rule 461E(1) is amended by omitting “88, 89” and substituting “88B, 98”.

16 New rules 461S and 461SA substituted

Rule 461S is revoked and the following rules are substituted:

“461S Appointment of representative of certain minors

- “(1) This rule applies to a minor who—
- “(a) is under 16 years of age; or
 - “(b) is 16 years of age and elects under section 11(2A) of the Act to make an application for a restraining order by a representative.
- “(2) For the purposes of section 11 of the Act, a representative of a minor to whom this rule applies must be appointed as a litigation guardian of the minor under rule 88C.
- “(3) Rules 88C, 88D, and 92 to 95 apply to the minor and every reference in those rules to an incapacitated person must be read as if it was also a reference to a minor.

“461SA Applications against minors

A minor who is aged 17 or over, or who has been married or in a civil union or de facto relationship, who wishes to defend an application against him or her for a restraining order must defend the application on his or her own behalf, without a litigation guardian.”

17 Appointment of representative of person unable or unwilling to take proceeding

- (1) Rule 461T is amended by omitting “85(3), 86, and 87” and substituting “92 to 96”.
- (2) Rule 461T(b) is amended by omitting “a minor” and substituting “an incapacitated person”.

18 Effect of minor ceasing to be child

- (1) Rule 461U is amended by omitting the heading and substituting the following heading: “**Effect of minor turning 17, marrying, or entering into civil union**”.
- (2) Rule 461U(2) is amended by omitting “child” and substituting “minor”.

19 Form and contents of affidavits

Rule 508(4) is amended by inserting “, except the cover sheet,” after “each page” in each place where it appears.

Rebecca Kitteridge,
for 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 24 August 2007, amend the District Courts Rules 1992. In general terms, the amendments—

- change the name given to the first sheet of all documents presented for filing and how documents must be numbered (*rules 4 to 7 and 19*);
- change the definition of an incapacitated person and a minor and substitute new rules for the conduct of proceedings involving these persons;
- make consequential amendments to rules relating to persons who may swear an affidavit verifying a list of documents or statement in answer to interrogatories and how interim payments must be dealt with in particular cases;
- make consequential amendments to rules relating to applications by and against minors under the Harassment Act 1997.

Rule 4 substitutes *new rule 28*, which relates to the first sheet of a document filed in Court, page numbering, and document fastening. Under existing rules 28, 29, and 29A the first sheet of a document is referred to as the first page and all pages of the document are numbered consecutively. Under the new rule, the first sheet, showing the document's description required by rule 29, and the heading and further information required by rule 29A, will be referred to as the cover sheet. The cover sheet will not be numbered even if the heading continues on another sheet. All subsequent pages will be numbered consecutively, starting at 1.

Rules 5 to 7 and 19 consequentially amend rules 29, 29A, 35, and 508.

Rules 8 to 10 substitute *new rules 84 to 88E, 91, and 96 to 98*, which relate to the conduct of proceedings involving incapacitated persons and minors. These changes reflect a number of recent decisions on capacity to conduct proceedings, including *Masterman-Lister v Brutton and Co* [2003] 3 All ER 162 and *Dalle-Molle (By His Next Friend Public Trustee) v Manos and Anor* [2004] SASC 102, and are consistent with procedural provisions that now apply in England and

a number of Australian States. Equivalent changes are made to the High Court Rules by the High Court Amendment Rules 2007. Key features of the new rules include—

- an incapacitated person is defined by reference to a person's capability to understand issues on which his or her decision would be required as a litigant conducting proceedings or to give sufficient instructions for the purposes of proceedings:
- a minor is defined as a person under 18 years of age:
- separate rules apply to proceedings involving incapacitated persons and those involving minors:
- an incapacitated person must have a litigation guardian as his or her representative in a proceeding, unless the Court orders otherwise:
- a minor must also be represented by a litigation guardian in a proceeding, unless an enactment requires or permits the proceeding to be conducted without a litigation guardian. However, a minor may apply for an order allowing conduct of the proceeding in his or her own name:
- if an incapacitated person does not have a litigation guardian, one may be appointed by the Court, on its own initiative or on the application of any person. This rule, and subsequent rules concerning proceedings where a person is represented by a litigation guardian, apply equally to a minor who does not conduct proceedings in his or her own name:
- if a person becomes incapacitated during a proceeding, no party can take a further step in the proceeding without the Court's permission until the person has a litigation guardian:
- the Court may set aside a step taken in a proceeding if an incapacitated person did not have a litigation guardian when the step was taken and the Court considers that the person was unfairly prejudiced:
- the Court must make an order ending the appointment of a litigation guardian if it is satisfied that a person is no longer an incapacitated person. From that date, the person formerly represented must take all steps in the proceeding and is liable for all costs:
- a minor who turns 18 must file an affidavit confirming that he or she is no longer a minor. From that date, unless the Court orders otherwise, the appointment of the minor's litigation guardian ends, all steps must be carried on by that person, and he or she is liable for all costs.

Rule 11 consequentially amends rule 308, which sets out who may swear an affidavit verifying a statement in answer to interrogatories. A statement by a minor who is not within rule 87(2) or an incapacitated person must be verified by an affidavit made by his or her litigation guardian.

Rule 12 consequentially amends rule 325, which sets out who may swear an affidavit verifying a list of documents. If the person required to make the list is a minor who is not within rule 87(2) or an incapacitated person, the affidavit must be sworn by the person's litigation guardian.

Rule 13 consequentially amends rule 355E, which relates to the manner in which an interim payment ordered to be made to a plaintiff under rules 355C or 355D must be made. *New subclause (2)* provides that in the case of an interim payment to a minor who is not within rule 87(2) or an incapacitated person, acceptance of an interim payment must be approved by the Court and payment out cannot be made without the leave of the Court.

Rule 14 amends rule 444(5), which relates to directions as to service or representation. This is consequential on *new rules 84 to 88E, 91, and 96 to 98*, which treat minors and incapacitated persons separately. The effect of the amendment is to provide that the Court may make an order for the representation of a minor or incapacitated person without the appointment of a litigation guardian under *new rule 88C*.

Rules 15 to 18 amend rules in Part 6A, which regulate practice and procedure of District Courts in proceedings under the Harassment Act 1997 (the Act), to align these with the new rules on incapacitated persons and minors and take account of amendments made to sections 2, 11, and 13 of the Act by the Relationships (Statutory References) Act 2005.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 26 July 2007.

These rules are administered by the Ministry of Justice.
