



# District Courts Amendment Rules (No 2) 2000

Michael Hardie Boys, Governor-General

## Order in Council

At Wellington this 18th day of December 2000

Present:

His Excellency the Governor-General in Council

Pursuant to the District Courts Act 1947, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and, as far as the rules regulate the practice and procedure of District Courts in the exercise of jurisdiction conferred by the District Courts Act 1947, with the concurrence of the Chief District Court Judge and at least 2 of the other members of the Rules Committee established under section 51B of the Judicature Act 1908 (of whom at least 1 is a District Court Judge), makes the following rules.

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**District Courts Amendment Rules  
(No 2) 2000**

2000/282

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**Schedule**

**New form 14 inserted in First Schedule of principal rules**

## Rules

### 1 Title

- (1) These rules are the District Courts Amendment Rules (No 2) 2000.
- (2) In these rules, the District Courts Rules 1992<sup>1</sup> are called “the principal rules”.

<sup>1</sup> SR 1992/109

### 2 Commencement

These rules come into force on 1 March 2001.

### 3 Interpretation

Rule 3(1) of the principal rules is amended by revoking the definition of the term **mentally disordered person**, and substituting the following definition:

“**mentally disordered person** means a person who is mentally disordered within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992”.

### 4 Office hours

Rule 20(1) of the principal rules is amended by omitting the expression “9.30 a.m. to 4 p.m.”, and substituting the expression “8.30 am to 5 pm”.

### 5 New rule 44 substituted

The principal rules are amended by revoking rule 44, and substituting the following rule:

#### “44 Appointment or change of solicitor or representation or address for service

- “(1) Subclauses (2) to (4) apply if—
  - “(a) a party who has acted in person appoints a solicitor to act for that party; or
  - “(b) a party for whom a solicitor has acted wishes to change that party’s solicitor; or
  - “(c) a party for whom a solicitor has acted wishes to act in person.

- “(2) The party must—
- “(a) serve on the Registrar and every other party a notice of the appointment or change of solicitor or representation; and
  - “(b) if the party’s address for service after the appointment or change of solicitor or representation will be different from that which applied before it, also serve a copy of the notice at the address that was, immediately before the appointment or change of solicitor or representation, the party’s address for service.
- “(3) The notice—
- “(a) must be signed by the party personally or by the party’s attorney; and
  - “(b) in the case of a party referred to in subclause (1)(c), must state that party’s intention to act in person; and
  - “(c) must contain, in relation to a new solicitor, the information required by paragraphs (b) to (e) of rule 43(1).
- “(4) The appointment or change of solicitor or representation is effected on the filing of an affidavit proving compliance with subclause (2) and exhibiting and verifying a copy of the notice served.
- “(5) Any party may change that party’s address for service by—
- “(a) filing a notice of the change showing the new address for service; and
  - “(b) serving a copy of the notice on every other party.
- “(6) A change of address for service may be contained in and combined with a notice of appointment or change of solicitor or representation, and, in that case, the filing of the affidavit of compliance under subclause (4) is deemed to be the filing of the notice of change of address for service.
- “(7) Form 3 may be used for notice given under this rule.  
Compare: High Court Rules r 45”.

## **6 Search of Court records generally**

- (1) Rule 69 of the principal rules is amended by revoking subclauses (2) and (3), and substituting the following subclauses:
- “(2) Despite anything in subclauses (4) and (5), but subject to subclause (6), the following persons have the right, without payment of a fee, to search, inspect, and take a copy of the file relating to a proceeding or interlocutory application:

- “(a) a party to the proceeding or interlocutory application; or
  - “(b) the solicitor on the record acting for a party to the proceeding or interlocutory application.
- “(3) Subject to subclauses (4) to (7), a person has the right to search, inspect, and copy a document on a file relating to a proceeding that has been determined.
- “(3A) Subject to subclauses (4) to (7), a person has a right to search, inspect, and copy a document on a file relating to an interlocutory application—
- “(a) if the interlocutory application relates to a proceeding that has been determined; or
  - “(b) if the interlocutory application relates to an intended proceeding and leave to bring the proceeding is refused; or
  - “(c) with the leave of a Judge in any case where the interlocutory application relates to an intended proceeding and the Judge is satisfied that the proceeding has not been commenced within a reasonable time.”
- (2) Rule 69(4) of the principal rules is amended by inserting, after paragraph (f), the following paragraph:
- “(fa) the Mental Health (Compulsory Assessment and Treatment) Act 1992:”.
- (3) Rule 69 of the principal rules is amended by revoking subclause (7), and substituting the following subclause:
- “(7) No person has the right to search, inspect, or copy a file or a document on a file in a proceeding or interlocutory application after the following periods:
- “(a) if there is a sealed judgment or order, the expiration of 6 years from its date:
  - “(b) if there is no sealed judgment or order, the expiration of 6 years from the date of the Judge’s reasons or minute making the order.”

## **7 New rules 151 to 167 substituted**

The principal rules are amended by revoking rules 151 to 167, and substituting the following rules:

**“151 Application of summary judgment procedure**

Except as provided in these rules or by any other enactment, rules 152 to 167 apply to every proceeding other than a proceeding under Part IX.

Compare: High Court Rules r 135

**“152 Judgment if there is no defence or if no cause of action can succeed**

“(1) The Court may give judgment against a defendant if the plaintiff satisfies the Court that the defendant has no defence to a claim in the statement of claim or to a particular part of the claim.

“(2) The Court may give judgment against a plaintiff if the defendant satisfies the Court that none of the causes of action in the plaintiff’s statement of claim can succeed.

Compare: High Court Rules r 136

**“153 Summary judgment on liability**

The Court may give judgment on the issue of liability, and direct a hearing of the issue of amount (at the time and place that it thinks fit), if the party applying for summary judgment satisfies the Court that the only issue to be heard is one as to the amount claimed.

Compare: High Court Rules r 137

**“154 Interlocutory application for summary judgment**

“(1) Application for judgment under rule 152 or rule 153 must be made by interlocutory application.

“(2) An application by a plaintiff must be made at the time the statement of claim is served on the defendant, or later with the leave of the Court.

“(3) An application by a defendant must be made at the time the statement of defence is served on the plaintiff, or later with the leave of the Court.

“(4) The party making the application must file and serve on the other party the following documents:

“(a) if the party is a plaintiff, a notice of proceeding in form 11:

“(b) a notice of interlocutory application in form 20:

- “(c) a statement of claim (if the application is made by the plaintiff):
  - “(d) a statement of defence (if the application is made by the defendant):
  - “(e) a supporting affidavit.
- “(5) That affidavit—
- “(a) must be by or on behalf of the person making the application:
  - “(b) if given by or on behalf of the plaintiff, must verify the allegations in the statement of claim to which it is alleged that the defendant has no defence, and must depose to the deponent’s belief that the defendant has no defence to the allegations and set out the grounds of that belief:
  - “(c) if given by or on behalf of the defendant, must show why none of the causes of action in the plaintiff’s statement of claim can succeed.

Compare: High Court Rules r 138

### “155 Service out of New Zealand

- “(1) If an application under rule 152 or rule 153 is to be served out of New Zealand, the Court must, on the application of the party making the application,—
- “(a) fix the date for hearing of the application under rule 152 or rule 153; and
  - “(b) fix the time within which a party who wishes to oppose the application must file and serve—
    - “(i) the party’s notice of opposition; and
    - “(ii) the affidavit by or on behalf of the party opposing the application in answer to the affidavit by or on behalf of the party making the application; and
    - “(iii) any statement of defence filed in addition to the notice of opposition and the affidavit; and
  - “(c) direct that the necessary modifications be made to the notice of proceeding.
- “(2) Nothing in subclause (1) prevents the date of hearing fixed by the Court being enlarged under rule 158.

Compare: High Court Rules r 138A

**“156 Requirements as to notice of proceeding**

Rule 127 does not apply to a proceeding to which rules 152 to 167 apply.

Compare: High Court Rules 139

**“157 Time for service**

“(1) The documents specified in rule 154(4) must be served on the other party to the proceeding not less than 21 days before the date for hearing the application.

“(2) Despite subclause (1), unless the Court otherwise directs, no part of the Christmas vacation is included in computing the time that is required to elapse between the date of service and the date for hearing.

Compare: High Court Rules r 140

**“158 Enlargement of date of hearing**

The Registrar, on request, may enlarge the date of the hearing whenever the documents specified in rule 154(4) have not been served within the time prescribed by rule 157(1) by—

“(a) striking out the original date of hearing shown in the notice of interlocutory application; and

“(b) inserting a new date; and

“(c) initialling the new date in the margin opposite the alteration.

Compare: High Court Rules r 140A

**“159 Notice of opposition and affidavit in answer**

“(1) A party who intends to oppose an application for judgment under rule 152 or rule 153 must, at least 3 working days before the date for hearing the application, file in the Court and serve on the party making the application—

“(a) a notice of opposition in form 22; and

“(b) an affidavit by or on behalf of the party intending to oppose the application in answer to the affidavit by or on behalf of the party making the application.

“(2) A party who does not comply with subclause (1) will not be heard in opposition to the application without the leave of the Court.



“(3) Rule 267 applies, with all necessary modifications, in relation to a notice of opposition filed under subclause (1)(a).

Compare: High Court Rules r 141

“160 **Statement of defence**

“(1) A defendant who has filed both a notice of opposition and an affidavit under rule 159 may, in addition, file a statement of defence in the office of the Court in which the notice of opposition and the affidavit were filed.

“(2) If a defendant files a statement of defence under subclause (1), the defendant must serve a copy of the statement of defence on the plaintiff.

“(3) A statement of defence filed under subclause (1) must be filed and served at least 3 days before the date for the hearing of the application.

Compare: High Court Rules r 141A

“161 **Affidavits in reply**

“(1) An affidavit may be filed by or on behalf of the party making the application in reply to an affidavit filed by or on behalf of the party opposing the application.

“(2) An affidavit filed under subclause (1)—

“(a) must be limited to new matters in the affidavit of the party opposing the application; and

“(b) must be filed in the Court and served on the party opposing the application not later than 1 pm on the last working day before the date for hearing the application.

Compare: High Court Rules r 141B

“162 **Removal of summary judgment application from District Court to High Court**

“(1) If a summary judgment application is made in a Court, a Judge may, on the application of either party or on his or her own motion, remove into the High Court—

“(a) that summary judgment application; or

“(b) any matter arising in that summary judgment application.

“(2) On any removal under subclause (1), the High Court may—

“(a) determine the application or matter; or

“(b) refer the application or matter back to the Court with any directions that the High Court thinks fit.

“163 **Disposal of application**

“(1) If the Court dismisses an application for judgment under rule 152 or rule 153, the Court must give directions as to the future conduct of the proceeding as may be appropriate.

“(2) If it appears to the Court on an application for judgment under rule 152 or rule 153 that the defendant has a counterclaim that ought to be heard, the Court—

“(a) may give judgment for the amount that appears just on any terms it thinks fit; or

“(b) may dismiss the application and give directions under subclause (1).

Compare: High Court Rules r 142

“164 **Time for filing statement of defence on dismissal of plaintiff’s application**

“(1) The statement of defence in the proceeding, if not already filed, must be filed within 14 days after the date on which any application by a plaintiff for judgment under rule 152 or rule 153 is dismissed.

“(2) This rule is subject to any directions given under rule 163(1).

Compare: High Court Rules r 142A

“165 **Setting aside judgment**

A judgment given against a party who does not appear at the hearing of an application for judgment under rule 152 or rule 153 may be set aside or varied by the Court on any terms that it thinks fit if it appears to the Court that there has been or may have been a miscarriage of justice.

Compare: High Court Rules r 143

“166 **Discontinuance**

“(1) The party making the application may, at any time before an application for judgment under rule 152 or rule 153 is heard, discontinue the application—

“(a) by filing in the office of the Court in which the application is filed a memorandum to that effect; and

“(b) by serving a copy of the memorandum on the other party to the application.

- “(2) If an application for judgment under rule 152 or rule 153 is discontinued, the Court may give directions as to the future conduct of the proceeding.

Compare: High Court Rules r 143A

**“167 Application to counterclaims**

Rules 151 to 166 apply, with all necessary modifications, to counterclaims.

Compare: High Court Rules r 144”.

**8 Personal service on mentally disordered persons**

Rule 230 of the principal rules is amended by omitting the words “(as defined in section 2 of the Mental Health Act 1969)”.

**9 Application for injunction**

Rule 258 of the principal rules is amended by revoking sub-clauses (3) and (4), and substituting the following subclauses:

- “(3) An applicant for an interlocutory injunction must file a signed undertaking that the applicant will abide by any order that the Court may make in respect of damages—

“(a) that are sustained by the other party through the granting of the interim injunction; and

“(b) that the Court decides that the applicant ought to pay.

- “(4) The undertaking must be referred to in the order granting the interlocutory injunction and is part of it.

- “(5) The applicant is deemed to be bound by an undertaking in the terms stated in subclause (3) whether or not one has been signed or filed by the applicant and whether or not it has been referred to in the order.”

**10 Review of orders**

Rule 287(3) of the principal rules is amended by inserting, after the word “filed”, the words “and served”.

**11 Transitional provision relating to review of orders**

Rule 287(3) of the principal rules, as in force immediately before the coming into force of rule 10 of these rules, continues to apply to every application made before the coming into force of rule 10 to vary or rescind an order made or decision given on an interlocutory application.

**12 New rule 308 substituted**

The principal rules are amended by revoking rule 308, and substituting the following rule:

**“308 Who may swear affidavit verifying statement in answer to interrogatories**

“(1) An affidavit verifying a statement of a party in answer to interrogatories may be made as follows:

“(a) by the person required to make the statement:

“(b) subject to rule 94(2), if the person required to make the statement is a minor or a mentally disordered person, or is a person in respect of whom a property order under the Protection of Personal and Property Rights Act 1988 has been made, by the person’s next friend, guardian ad litem, or manager, as the case may be:

“(c) if the person required to make the statement is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 515:

“(d) if the person required to make the statement is the Crown, or an officer of the Crown who sues or is sued in an official capacity or as representing a Government department, by an officer of the Crown.

“(2) Despite subclause (1), if paragraph (c) or paragraph (d) of that subclause applies, and the affidavit is to be filed and served in accordance with an order, the Court may—

“(a) specify by name or otherwise the person to make the affidavit; or

“(b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

Compare: High Court Rules r 286”.

**13 Notice to admit facts**

Rule 313 of the principal rules is amended by revoking subclause (2), and substituting the following subclause:

- “(2) An admission made in compliance with a notice under this rule—
- “(a) may be amended or withdrawn by the party by whom it was made at any time, if the Court so allows and on any terms that the Court thinks just:
  - “(b) must not be used against the party by whom it was made in a proceeding or interlocutory application other than the proceeding or interlocutory application for the purpose of which it was made.”

**14 New rule 325 substituted**

The principal rules are amended by revoking rule 325, and substituting the following rule:

**“325 Who may swear affidavit verifying list of documents**

- “(1) An affidavit verifying a list of documents under a notice or order given or made under any of the provisions of rules 315 to 326 may be made as follows:
- “(a) by the person required to make the list:
  - “(b) subject to rule 94(2), if the person required to make the list is a minor or a mentally disordered person, or is a person in respect of whom a property order under the Protection of Personal and Property Rights Act 1988 has been made, by the person’s next friend, guardian ad litem, or manager, as the case may be:
  - “(c) if the person required to make the list is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 515:
  - “(d) if the person required to make the list is the Crown, or an officer of the Crown who sues or is sued in an official capacity or as representing a Government department, by an officer of the Crown.
- “(2) Despite subclause (1), if paragraph (c) or paragraph (d) of that subclause applies, and the affidavit is to be filed and served in accordance with an order, the Court may—

- “(a) specify by name or otherwise the person to make the affidavit; or
- “(b) specify by description or otherwise the persons from whom the person required to verify the list may choose the person to make the affidavit.

Compare: High Court Rules r 303”.

## **15 Calling of expert witnesses**

Rule 348 of the principal rules is amended by revoking subclause (1), and substituting the following subclause:

- “(1) If a Court expert is appointed in a proceeding or interlocutory application,—
  - “(a) a party may call 1 expert witness to give evidence on the question reported on by the Court expert if the party gives notice of the party’s intention to do so a reasonable time before the hearing; but
  - “(b) no party may call more than 1 expert witness to give evidence on the question reported on by the Court expert without the leave of the Court.”

## **16 Payment out when person entitled under disability**

- (1) Rule 375(1) of the principal rules is amended by revoking paragraph (b), and substituting the following paragraph:
  - “(b) a mentally disordered person; or”.
- (2) Rule 375(2) of the principal rules is amended by omitting the expression “Mental Health Act 1969”, and substituting the expression “Mental Health (Compulsory Assessment and Treatment) Act 1992”.

## **17 New heading and rule 385A inserted**

The principal rules are amended by inserting, after rule 385, the following heading and rule:

### *“Arbitration by consent*

#### **“385A Arbitration by consent**

- “(1) The parties to a proceeding may agree to arbitration of their dispute or any part of it under the Arbitration Act 1996 at any time during the course of the proceeding.

- “(2) If an arbitration agreement entered into during the course of a proceeding relates to all the matters in dispute in the proceeding, the Court must stay the proceeding.
- “(3) If an arbitration agreement entered into during the course of a proceeding relates to some but not all of the matters in dispute in the proceeding, the Court must stay those parts of the proceeding to which the arbitration agreement relates.
- “(4) Subclauses (2) and (3) do not apply if the Court finds that the agreement has no effect or is inoperative or incapable of being performed.

Compare: High Court Rules r 383A”.

## **18 New rule 426A inserted**

The principal rules are amended by inserting, after rule 426, the following rule:

### **“426A Consequences of failure to set down within 12 months after last step in proceeding**

- “(1) If a proceeding has not been set down for hearing and at least 12 months have elapsed since the last step was taken in that proceeding, no further step may be taken in that proceeding without the leave of the Court.
- “(2) Leave must not be given under subclause (1) unless the Court is satisfied that there is a proper issue to be heard in the proceeding.

Compare: High Court Rules r 426A”.

## **19 Directions before setting down**

Rule 433 of the principal rules is amended by adding the following subclause:

- “(8) The Court or the Registrar may, with the consent of the parties, make an order directing the parties to attempt to settle their dispute by any form of mediation or other alternative dispute resolution (to be specified in the order) that the parties have agreed.”

## **20 Directions affecting the hearing**

Rule 434 of the principal rules is amended by adding the following subclause:

“(5) The Court may, with the consent of the parties, make an order directing the parties to attempt to settle their dispute by any form of mediation or other alternative dispute resolution (to be specified in the order) that the parties have agreed.”

## **21 New rule 438 substituted**

The principal rules are amended by revoking rule 438, and substituting the following rule:

### **“438 Judge may assist in negotiations for settlement**

“(1) A Judge may, at any time before the hearing commences, convene a conference in chambers of the parties for the purpose of negotiating for a settlement of the proceeding or of any issue, and may assist in the negotiations; but that Judge must not preside at the hearing of the proceeding unless—

“(a) all parties taking part in the conference consent; or

“(b) the only matter for resolution at the hearing is a question of law.

“(2) A Judge may, at any time during the hearing, with the consent of the parties, convene a conference in chambers of the parties for the purpose of negotiating for a settlement of the proceeding or of any issue; and the Judge must arrange for another Judge to assist in the negotiations unless the parties agree that the hearing Judge should assist, in which case the hearing Judge may do so and continue to preside at the hearing.

Compare: High Court Rules r 442”.

## **22 New rule 452**

The principal rules are amended by revoking rule 452, and substituting the following rule:

### **“452 Application of this Part**

“(1) This Part applies to—

“(a) an application to a Court under any of the following provisions:

“(i) sections 3, 8, 12, 13, and 20 of the Adoption Act 1955:

“(ii) sections 8, 9, 19, and 20 of the Alcoholism and Drug Addiction Act 1966:

“(iii) Arbitration Act 1996:

“(iv) section 72A of the Arms Act 1983:

“(v) Auctioneers Act 1928:



- “(vi) Part IX of the Building Act 1991:
  - “(vii) section 62 of the Civil Aviation Act 1990:
  - “(viii) sections 52, 58(1), and 78(1)(b) of the Crown Minerals Act 1991:
  - “(ix) section 23(3) of the Defamation Act 1992:
  - “(x) sections 95D, 96, 180, and 208 of the Electoral Act 1993:
  - “(xi) Fencing Act 1978:
  - “(xii) section 32 of the Gas Act 1992:
  - “(xiii) section 126 of the Health Act 1956:
  - “(xiv) section 105 of the Land Transport Act 1998:
  - “(xv) section 12 of the Layby Sales Act 1971:
  - “(xvi) section 43 of the Local Elections and Polls Act 1976:
  - “(xvii) section 18(2)(c) of the Marriage Act 1955:
  - “(xviii) Massage Parlours Act 1978:
  - “(xix) section 14(4) of the Mental Health (Compulsory Assessment and Treatment) Act 1992:
  - “(xx) sections 9, 12, and 16 of the Minors’ Contracts Act 1969:
  - “(xxi) Pawnbrokers Act 1908:
  - “(xxii) Proceeds of Crime Act 1991:
  - “(xxiii) sections 126F, 126G, 129C, 143, and 152 of the Property Law Act 1952:
  - “(xxiv) section 66 of the Public Trust Office Act 1957:
  - “(xxv) Secondhand Dealers Act 1963:
  - “(xxvi) Sharebrokers Act 1908:
  - “(xxvii) section 199 of the Summary Proceedings Act 1957:
  - “(xxviii) section 16 of the Tuberculosis Act 1948:
  - “(b) an application under any provision if the relevant enactment expressly provides for the application to be made by originating application:
  - “(c) any other proceeding that the Court, in the interests of justice, permits to be commenced by the filing of an originating application.
- “(2) The provisions of this Part are, in their application to any originating application, subject to the Act under which the application is made and any regulations or rules made under that Act.

- “(3) Despite subclause (1)(a)(iii), a second or subsequent application to the Court under the Arbitration Act 1996 with respect to the same arbitration, whether brought by the plaintiff or the defendant, must be made by interlocutory application in the same proceeding as the first application.

Compare: High Court Rules r 458D”.

### **23 Directions before hearing**

Rule 457 of the principal rules is amended by revoking subclause (1), and substituting the following subclause:

- “(1) At any time before the hearing of an originating application—
- “(a) the Court may, of its own motion, give any directions regarding the proceeding commenced by the filing of the application that the Court thinks fit;
  - “(b) any party may file an interlocutory application for directions regarding the proceeding commenced by the filing of the application.”

### **24 New rule 515 substituted**

The principal rules are amended by revoking rule 515, and substituting the following rule:

#### **“515 Affidavits made on behalf of corporation**

A person may make an affidavit on behalf of a corporation or body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office) if the person—

- “(a) knows the relevant facts; and
- “(b) is authorised to make the affidavit.

Compare: High Court Rules r 517”.

### **25 New rule 530 substituted**

The principal rules are amended by revoking rule 530, and substituting the following rule:

#### **“530 Time and mode of giving judgment**

- “(1) A Judge may give a judgment orally or in writing.
- “(2) Except in the case of a judgment on an ex parte application, a Judge may give a judgment orally only if the affected parties or their counsel have been given a reasonable opportunity to—

- “(a) be present when the judgment is given; or
  - “(b) hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.
- “(3) A judgment is given orally when the Judge pronounces it, with or without reasons.
- “(4) A written judgment is given when the judgment—
- “(a) is signed by the Judge; and
  - “(b) bears a date and time that purport to be the date on which and the time at which the Judge signed the judgment.
- “(5) The date and time referred to in subclause (4)(b) are deemed to be the date on which and the time at which the judgment is given.
- “(6) A judgment, whether given orally or in writing, may be recalled by the Judge at any time before a formal record of it has been drawn up and sealed.
- Compare: High Court Rules r 540”.

## **26 Judgments to be sealed and dated**

Rule 531 of the principal rules is amended by revoking subclauses (3) and (4), and substituting the following subclauses:

- “(3) A judgment may be sealed—
- “(a) in accordance with any direction given by the Judge relating to the sealing of the judgment; or
  - “(b) if no direction is given, at any time after the judgment has been given.
- “(4) A sealed judgment must state—
- “(a) the date on which, in accordance with rule 530, the judgment is given; and
  - “(b) the date on which it is sealed.”

## **27 New rule 533 substituted**

The principal rules are amended by revoking rule 533, and substituting the following rule:

### **“533 When judgment takes effect**

- “(1) Subject to section 79(5) of the Act, a judgment takes effect when it is given.
- “(2) Despite subclause (1), no step may be taken on a judgment before it has been sealed.

- “(3) A party who has a judgment sealed must forthwith serve a sealed copy of the judgment on every other party who has given an address for service.

Compare: High Court Rules r 542”.

## 28 New rule 549 substituted

The principal rules are amended by revoking rule 549, and substituting the following rule:

### “549 Contents of notice of appeal

- “(1) Unless the Court otherwise directs, the notice of appeal must—
- “(a) bear a heading in form 1, referring to the Act under which the appeal is brought and referring to the matter as being in the matter of an appeal from a decision of a tribunal or person (which decision-maker must be named); and
  - “(b) specify the decision or the part of the decision appealed from; and
  - “(c) specify any error of law alleged by the appellant; and
  - “(d) specify any question of law to be resolved; and
  - “(e) specify the grounds of the appeal, which grounds must be specified with reasonable particularity so as to give full advice of the issues involved to—
    - “(i) the Court; and
    - “(ii) the other parties; and
    - “(iii) the tribunal that, or person who, made the decision appealed from; and
  - “(f) specify the relief sought.
- “(2) The grounds of the appeal may be amended by leave of the Court.
- “(3) The notice of appeal must not name as a respondent the tribunal that, or person who, made the decision appealed from.
- “(4) Nothing in subclause (3) limits or affects rule 560(9) (which relates to the entitlement of a decision-maker to be represented and heard).

Compare: High Court Rules r 706”.

## 29 Memorandum (General form)

Form 5 in the First Schedule of the principal rules is amended by omitting from the section headed “*Office hours*” the

expression “9.30 a.m. to 4 p.m.”, and substituting the expression “8.30 am to 5 pm”.

**30 Memorandum to be endorsed on form 4 in proceedings under the Family Protection Act 1955**

Form 6 in the First Schedule of the principal rules is amended by omitting from the section headed “*Office hours*” the expression “9.30 a.m. to 4 p.m.”, and substituting the expression “8.30 am to 5 pm”.

**31 Notice of proceeding when summary judgment sought**

- (1) Form 11 in the First Schedule of the principal rules is amended by revoking the heading, and substituting the heading “Notice of proceeding when summary judgment sought by plaintiff”.
- (2) Form 11 in the First Schedule of the principal rules is amended by omitting from the top of the form the expression “Rule 156”, and substituting the expression “r 154”.
- (3) Form 11 in the First Schedule of the principal rules is amended by omitting from the section headed “*Notice of opposition and affidavit setting out defence*” the expression “3 days”, and substituting the expression “3 working days”.
- (4) Form 11 in the First Schedule of the principal rules is amended by omitting the second paragraph (a) in the section headed “*Notice of opposition and affidavit setting out defence*”, and substituting the following paragraph:

“(a) to file both a notice of opposition and the affidavit and to serve copies of them on the plaintiff; or”.
- (5) Form 11 in the First Schedule of the principal rules is amended by omitting from the section of the memorandum headed “*Office hours*” the expression “9.30 a.m. to 4 p.m.”, and substituting the expression “8.30 am to 5 pm”.
- (6) Form 11 in the First Schedule of the principal rules is amended by inserting, after the section of the memorandum headed “*Office hours*”, the following heading and section:

*“Working days*

- “7 **Working day** means any day of the week other than—
- “(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
  - “(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year.”

**32 Affidavit of service**

The First Schedule of the principal rules is amended by revoking form 14, and substituting the form set out in the Schedule.

**33 Notice to judgment debtor requiring completion of financial statement**

Form 51 in the First Schedule of the principal rules is amended by omitting from paragraph 2 of the notes the expression “9.30 a.m. to 4 p.m.”, and substituting the expression “8.30 am to 5 pm”.

**34 Order for examination of judgment debtor**

Form 53 in the First Schedule of the principal rules is amended by omitting from paragraph 3 of the notes for judgment debtor the expression “9.30 a.m. to 4 p.m.”, and substituting the expression “8.30 am to 5 pm”.

**35 Summons to judgment debtor requiring attendance at hearing of application for periodic detention**

Form 59 in the First Schedule of the principal rules is amended by omitting from paragraph 3 of the notes the expression “9.30 a.m. to 4 p.m.”, and substituting the expression “8.30 am to 5 pm”.

**36 Order for periodic detention**

Form 60 in the First Schedule of the principal rules is amended by omitting from paragraph 3 of the notes the expression “9.30 a.m. to 4 p.m.”, and substituting the expression “8.30 am to 5 pm”.

**37 Summons to person claiming land or other property  
subject to charging order**

Form 67 in the First Schedule of the principal rules is amended by omitting from the section headed "*The following information is to be written in the left hand margin of the form*" the expression "9.30 a.m. to 4 p.m.", and substituting the expression "8.30 am to 5 pm".

**38 Attachment order**

Form 75 in the First Schedule of the principal rules is amended by omitting from paragraph 9 of the notes the expression "9.30 a.m. to 4 p.m.", and substituting the expression "8.30 am to 5 pm".

**39 Garnishee summons to sub-debtor**

Form 86 in the First Schedule of the principal rules is amended by omitting from the section headed "*The following information is printed in the left-hand margin of the form*" the expression "9.30 a.m. to 4 p.m.", and substituting the expression "8.30 am to 5 pm".

**40 Order for delivery (or disclosure of whereabouts) of  
deposit book**

Form 90 in the First Schedule of the principal rules is amended by omitting from the section headed "*The following information is printed in the left-hand margin of the form*" the expression "9.30 a.m. to 4 p.m.", and substituting the expression "8.30 am to 5 pm".

**41 Interpleader summons to execution creditor**

Form 95 in the First Schedule of the principal rules is amended by omitting from the section headed "*The following information is to be written in the left-hand margin of the form*" the expression "9.30 a.m. to 4 p.m.", and substituting the expression "8.30 am to 5 pm".

**42 Interpleader summons to claimant claiming goods or rent under an execution**

Form 96 in the First Schedule of the principal rules is amended by omitting from the section headed "*The following information is to be written in the left-hand margin of the form*" the expression "9.30 a.m. to 4 p.m.", and substituting the expression "8.30 am to 5 pm".

**43 Interpleader summons to execution creditor and bailiff where claimant claims goods and damages**

Form 97 in the First Schedule of the principal rules is amended by omitting from the section headed "*The following information is to be written in the left-hand margin of the form*" the expression "9.30 a.m. to 4 p.m.", and substituting the expression "8.30 am to 5 pm".

**44 Consequential revocations**

The following rules are consequentially revoked:

- (a) rules 6 and 13 and the Schedule of the District Courts Rules 1992, Amendment No 2 (SR 1995/130);
  - (b) rule 9 of the District Courts Rules 1992, Amendment No 3 (SR 1995/319).
-



r 32

**Schedule**  
**New form 14 inserted in First Schedule of**  
**principal rules**

r 218

**Form 14**  
**Affidavit of service**  
(General heading—Form 1 and endorsement)

I, *[full name]*, of *[place of residence]*, *[occupation]*, swear:

1 On            day, the            day of            20    , I served the above-named defendant, *[full name]*, with the following documents:

*[Describe each document served, eg, statement of claim and notice of proceeding. If, under rule 218(2) of the District Courts Rules 1992, a copy of any document served is not to be annexed to the affidavit, the description of the document—*

- (a) must be sufficient to enable the document to be identified; and*
- (b) must include the date of the document (if the document bears a date).]*

2 I served the documents on the above-named defendant at *[place]* in New Zealand by delivering the documents personally to the defendant *[or as the case may be]*.

3 I believe it was the defendant that I served because—

- \**(a) the defendant acknowledged that he/she is the defendant*
- \**(b) I know the defendant*
- \**(c) other [please state]*

\*Delete inapplicable paragraphs

†4 True copies of the documents served are annexed to this affidavit and marked “A” and “B”.

†Delete if inapplicable (see rule 218(2))

Signature of Deponent: .....

Form 14—*continued*

Sworn at                      this                      day of                      20 ,  
before me—

.....  
(Deputy) Registrar.  
A solicitor of the High  
Court of New Zealand.

Marie Shroff,  
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 1 March 2001, amend the District Courts Rules 1992. In general terms, the amendments are to bring the rules up to date with relevant changes made to the High Court Rules since 1992, except where the nature of proceedings involving smaller claims makes a difference between the 2 sets of rules appropriate.

*Rule 3* substitutes a new definition of the term **mentally disordered person** in rule 3(1) of the principal rules.

*Rule 4* amends rule 20(1) of the principal rules by changing the opening hours of District Courts from 9.30 am to 4 pm Monday to Friday to 8.30 am to 5 pm Monday to Friday.

*Rule 5* revokes rule 44 of the principal rules (which relates to appointment or change of solicitor or address for service) and substitutes a new rule. The changes are that, in relation to the appointment or change of solicitor or representation,—

- if the party's address for service after the appointment or change of solicitor or representation will be different from that which applied before, the party must serve a copy of the notice of change at the address that was, immediately before the change, the party's address for service:

- the notice must contain, in relation to a new solicitor, the information required by paragraphs (b) to (e) of rule 43(1):
- the change is effected upon the filing of an affidavit proving compliance with the rule, and exhibiting and verifying a copy of the notice served.

*Rule 6* amends rule 69 of the principal rules (which relates to search of Court records). The amendments—

- include provisions relating to the search of records concerning interlocutory applications:
- insert a reference to proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992 into the list of proceedings in relation to which files and documents cannot be searched.

*Rule 7* revokes rules 151 to 167 of the principal rules (which relate to summary judgment procedure) and substitutes new rules. The main differences between the existing rules and the new rules are as follows:

- except as provided in the principal rules or by any other enactment, the summary judgment rules now apply to every proceeding other than a proceeding under Part IX of the principal rules:
- the summary judgment procedure is now available to defendants:
- existing rule 152 (2) and (3) (relating to specific performance) is not carried forward into the new rules:
- existing rule 154(3) (no application for summary judgment can be based on an allegation of fraud made in the statement of claim) is not carried forward into the new rules:
- existing rule 159 requires a notice of opposition to an application for summary judgment to be filed at least 3 days before the date for hearing the application. The *new rule 159* requires that notice to be filed at least 3 working days before the date for hearing. **Working day** is defined in rule 3(1) of the principal rules:
- existing rule 164 sets the time limit for filing a statement of defence as 30 days after dismissal of a summary judgment application. The *new rule 164* shortens that time limit to 14 days.

*Rule 8* makes a minor drafting amendment to rule 230 of the principal rules (which relates to personal service on mentally disordered persons). The words omitted from the rule are unnecessary given the definition of **mentally disordered person** in rule 3(1) of the principal rules.

*Rule 9* amends rule 258 of the principal rules (which relates to applications for injunctions) to make the form of wording the same as that in the equivalent High Court rule.

*Rule 10* amends rule 287(3) of the principal rules (which relates to review of orders). The amendment provides that an application to vary or rescind an interlocutory order must be both filed and served within the time limits set out in rule 287(3).

*Rule 11* is a transitional provision which provides that the new requirement to serve a copy of an application under rule 287(3) does not apply in relation to applications made before *rule 10* comes into force.

*Rule 12* revokes rule 308 of the principal rules (which relates to who may swear affidavits) and substitutes a new rule. The new rule is consistent with the terms of *new rule 515* of the principal rules on the qualifications of persons who make affidavits on behalf of corporations (see *rule 24* of these rules).

*Rule 13* amends rule 313 of the principal rules (which relates to notice to admit facts) by revoking subclause (2) and substituting a new subclause. The amendment substitutes references to proceeding or interlocutory application for the existing references to cause or matter. This amendment aligns the wording of the subclause with the equivalent High Court rule.

*Rule 14* revokes rule 325 of the principal rules (which relates to who may swear an affidavit verifying a list of documents) and substitutes a new rule. The new rule is consistent with the terms of *new rule 515* of the principal rules on the qualifications of persons who make affidavits on behalf of corporations (see *rule 24* of these rules).

*Rule 15* amends rule 348 of the principal rules (which relates to calling of expert witnesses) by revoking subclause (1) and substituting a new subclause. The amendment substitutes references to proceeding or interlocutory application for the existing references to cause or matter. The amendment aligns the wording of the subclause with the equivalent High Court rule.

*Rule 16* amends rule 375 of the principal rules (which relates to payment out when person entitled under disability). A minor drafting amendment is made to subclause (1). The words omitted from *new paragraph (b)* are unnecessary given the definition of **mentally disordered person** in rule 3(1) of the principal rules. Subclause (2) is amended to substitute a reference to the Mental Health (Compulsory Assessment and Treatment) Act 1992 for the existing reference to the Mental Health Act 1969.

*Rule 17* inserts *new rule 385A* which provides for arbitration by consent during the course of a proceeding. The new rule is in the same terms as rule 383A of the High Court Rules.

*Rule 18* inserts *new rule 426A* into the principal rules. The new rule provides that where a proceeding has not been set down for trial and at least 12 months have elapsed since the last step was taken in that proceeding, no further step may be taken in that proceeding without the leave of the Court. Leave must not be given unless the Court is satisfied that there is a proper issue to be heard in the proceeding. The new rule is in substantially the same terms as rule 426A of the High Court Rules.

*Rule 19* amends rule 433 of the principal rules (which relates to directions before setting down). The amendment provides for mediation or some other form of alternative dispute resolution to be ordered by the Court or Registrar, by consent, before a proceeding is set down for hearing.

*Rule 20* amends rule 434 of the principal rules (which relates to directions affecting the hearing). The amendment provides for mediation or some other form of alternative dispute resolution to be ordered by consent during the course of the hearing.

*Rule 21* revokes rule 438 of the principal rules (which relates to a Judge assisting in negotiations for settlement) and substitutes a new rule. *New rule 438(1)* is similar to the existing rule except that the requirement for the parties to agree to the conference is omitted. *New rule 438(2)* provides for a judicial settlement conference to be held by consent during the hearing.

*Rule 22* revokes rule 452 of the principal rules (which relates to the application of provisions on originating applications) and substitutes a new rule. The new rule sets out the proceedings to which Part VI of the principal rules (originating applications) applies. The approach taken in *new rule 452(1)(a)* of listing provisions is similar to the

approach in rule 458D of the High Court Rules. The following proceedings are proceedings to which Part VI applies:

- an application to the Court under any of the provisions listed in the new rule:
- an application under any provision if the relevant enactment provides for the application to be made by originating application:
- any other proceeding that the Court, in the interests of justice, permits to be commenced by the filing of an originating application.

*Rule 23* amends rule 457 of the principal rules (which relates to directions before the hearing of an originating application). The existing rule 457(1) provides that any party may file an interlocutory application for directions regarding a proceeding commenced by originating application. The new rule provides, in addition to this, that the Court may of its own motion give directions.

*Rule 24* revokes rule 515 of the principal rules (which relates to affidavits made on behalf of corporations) and substitutes a new rule. The new rule allows any person to make an affidavit on behalf of a corporation if the person knows the relevant facts and is authorised to make the affidavit.

*Rule 25* revokes rule 530 of the principal rules (which relates to time and mode of giving judgment) and substitutes a new rule. The new rule is in the same terms as rule 540 of the High Court Rules.

The principal changes made by the new rule are to provide for judgments to be given orally without the necessity for them to be given in open Court and for written judgments to bear the date and time they are signed by the Judge.

*Rule 26* amends rule 531 of the principal rules (which provides for judgments to be sealed and dated). *New subclauses (3) and (4)* are substituted. *New subclause (3)* provides that a judgment may be sealed in accordance with any direction given by the Judge or, if no direction is given, at any time after the judgment is given. *New subclause (4)* provides that a sealed judgment must show both the date on which it is given in accordance with *new rule 530* and the date on which it is sealed.

*Rule 27* revokes rule 533 of the principal rules (which relates to effective date of judgment) and substitutes a new rule. The existing rule 533 states that a judgment takes effect from the day of its date.

The new rule provides that a judgment takes effect when it is given (in terms of *new rule 530*).

*Rule 28* revokes rule 549 of the principal rules (which relates to contents of notice of appeal) and substitutes a new rule. The changes made by the new rule are—

- the notice of appeal must have a heading in form 1 and refer to the Act under which the appeal is brought;
- the notice of appeal must not name the decision-maker as a respondent.

*Rules 29 to 31 and 33 to 43* make consequential changes to forms in the First Schedule of the principal rules.

*Rule 32* substitutes a *new form 14* in the First Schedule of the principal rules. The new form—

- expressly refers to the requirements of rule 218(2) of the principal rules
- provides for the deponent to state his or her reasons for believing that the person served was the defendant.

*Rule 44* effects consequential revocations.

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These rules are administered in the Department for Courts.

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