



District Courts Amendment Rules (No 2) 2007

Anand Satyanand, Governor-General

Order in Council

At Wellington this 10th day of December 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 122 of the District Courts Act 1947, His 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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Schedule

4

Schedule 1 amended

Rules**1 Title**

These rules are the District Courts Amendment Rules (No 2) 2007.

2 Commencement

These rules come into force on 1 March 2008.

3 Principal rules amended

These rules amend the District Courts Rules 1992.

4 Forms

Rule 7 is amended by adding “, and such information may be added as is required for identification or other official purposes”.

5 Bailiff to execute warrants, etc

Rule 574 is amended by revoking subclause (1) and substituting the following subclause:

“(1) The bailiff must—

“(a) keep and maintain, in an appropriate form, a record of all warrants, writs, and other processes that the bailiff has received for execution or service; and

“(b) include in the record the date that each process was received.”

6 Schedule 1 amended

Schedule 1 is amended by revoking forms 60 and 75 and substituting the forms 60 and 75 set out in the Schedule of these rules.

7 Schedule 2A amended

The item relating to 10.3 of Schedule 2A is amended by inserting “(with or without judgment debtor present)” after “hearing”.

r 6

**Schedule
Schedule 1 amended**

r 584(8)

**Form 60
Order for community work**

No:

In the District Court

at *[place]*Between *[name of judgment creditor]* of *[address]*and *[name of judgment debtor]* of *[address]*

You, *[judgment debtor's full name]*, *[judgment debtor's current occupation]* owe a judgment debt of \$*[total amount covered by this order]* to the judgment creditor, *[full name of judgment creditor]*.

You have not paid this amount.

The Court is satisfied that—

- (a) you are able to pay the judgment debt but refuse to do so; and
- (b) all other methods of enforcing the judgment have been considered or tried and are inappropriate or unsuccessful.

Because of this, on *[date of order]*, a District Court Judge ordered you to do *[hours of community work]* hours of community work for contempt of court.

*You must report to a probation officer in the probation area in which you reside as soon as practicable, and not later than 72 hours, after *[date of order]*.

*The start of your sentence is deferred until *[sentence start date]*. You must report to a probation officer in the probation area in which you reside on that date.

*Delete whichever is inapplicable.

*The probation officer may allow you to complete up to 20% of your sentence as training in basic work and living skills.

*Delete if inapplicable.

If you pay \$*[total amount owing]* to the judgment creditor or the Court before or during your community work sentence, you are no longer required to report for community work. (If you pay the judgment creditor, you must notify the Court.)

Form 60—*continued*

Date:

.....

District Court Judge/Registrar

Order served on judgment debtor at [*time*] am/pm* on [*date*].

*Delete whichever is inapplicable.

.....

Bailiff/Registrar/Court Officer

I, the judgment debtor, have received a copy of this order.

Date:

.....

Judgment debtor

Department of Corrections advised of order on [*date*].

Important information

Community work conditions

- 1 You **must** comply with the following community work conditions:
 - (a) you must report to a probation officer whenever you are directed to do so during your sentence:
 - (b) you must work as directed by a probation officer until you have completed your sentence:
 - (c) if you move to a new residential address, you must advise a probation officer within 72 hours:
 - (d) if the probation officer is not satisfied with the quality of your work, he or she can refuse to count these hours towards your sentence. This means that you could be required to complete further hours of up to 10% of your total sentence:
 - (e) a probation officer may remit up to 10% of your sentence if he or she is satisfied with your compliance with your sentence.

Form 60—*continued***Your sentence**

- 2 The following conditions apply to your sentence:
- (a) you may have to work a maximum of 10 hours in 1 day and a maximum of 40 hours in 1 week:
 - (b) if you are sentenced to 100 hours or less of community work, you must serve your sentence within 6 months of its start date:
 - (c) if you are sentenced to more than 100 hours of community work, you must serve at least 100 hours in every 6-month period from your sentence's start date until all the hours in it are served:
 - *(d) if you fail, without reasonable excuse, to complete training in basic work and living skills, the hours that you spent undertaking that training will not be counted towards your sentence.

*Delete if inapplicable.

Warning: *If you do not comply with these conditions without reasonable excuse, you could be arrested and prosecuted. You could be liable to imprisonment for a term not exceeding 3 months or be liable to a fine not exceeding \$1,000.*

Variation or cancellation of sentence

- 3 Your sentence can be varied or cancelled by the Court following an application from you or a probation officer under section 68 of the Sentencing Act 2002.

Form 75
Attachment order

r 621

No:

In the District Court

at *[place]*Between *[name of judgment creditor]*and *[name of judgment debtor]***To** *[full name of employer]**[full address of employer]*

The Court is satisfied that you are the employer of the judgment debtor, *[full name]* of *[address]*.

The judgment debtor owes \$*[total amount covered by the attachment order]* to the judgment creditor, *[full name of judgment creditor]*. The judgment debtor has not paid this amount.

After examining the judgment debtor's means, the Court has imposed this attachment order on the debtor's salary or wages. This means that, as the employer, you must make the following deductions from the judgment debtor's salary or wages to recover the amount owed to the judgment creditor:

Weekly amount	Number of weeks	Plus final weekly amount	Total
<i>[specify]</i>	<i>[specify]</i>	<i>[specify]</i>	<i>[specify]</i>

- 1 The specified weekly amount becomes due on each *[specify day of the week]*. You must deduct all specified weekly amounts that have become due since the date of the last deduction from each amount of salary or wages that becomes payable to the judgment debtor.
- 2 You must make the first deduction from the next amount of salary or wages.
- 3 You must continue to make deductions until *[date]*,* or until the \$*[total amount covered by the attachment order]* is paid in full,* or until you are advised by the District Court that this attachment order has been varied, suspended, or cancelled.*

*Delete whichever is inapplicable.

Form 75—continued

- 4 All deductions must be paid by the 20th day of the following month to the judgment creditor by payment to the following bank account: [*name and branch of bank to which judgment creditor wishes payments to be made, plus bank account name and number*].
- 5 However, if the deduction of the specified weekly amount and any deductions of a kind described in paragraph 6 have the combined effect of reducing the judgment debtor’s net earnings below the protected earnings rate of \$[*specify protected earnings rate*] per week, you must reduce the amount of the deduction under this order to leave the debtor with the protected earnings rate or, if necessary, cancel the deduction.
- 6 The deductions referred to in paragraph 5 are deductions made—
 - (a) under an attachment order under another Act:
 - (b) under a deduction notice under the Family Proceedings Act 1980:
 - (c) from a benefit under section 86 of the Social Security Act 1964.

Please note that if you have to reduce or cancel the amount of any weekly deductions—

you may need to make more weekly deductions than the number stated above

and

the amount of the final weekly deduction may be different from the amount stated above.

Date:

.....
District Court Judge/Registrar

Notes to employers

- 1 In this attachment order—
 - (a) the term **salary or wages** includes—

Form 75—*continued*

- (i) a retiring allowance, pension, or other payment of a similar nature:
 - (ii) a bonus or incentive payment:
 - (iii) a payment of commission:
 - (iv) a payment in consideration of work performed under a contract for services:
 - (v) all payments of weekly compensation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001 by the Accident Compensation Corporation:
 - (vi) a benefit within the meaning of the Social Security Act 1964; and
- (b) the term **employer** includes a person or organisation making the payments referred to above.
- 2 While this order is in force, you must make deductions from all salary or wages due to the judgment debtor, whether or not they are due under an employment contract entered into before or after this order was made.
- 3 This attachment order has priority over any deduction created by the judgment debtor whether before or after the date of this order. For example, deductions under this order from the judgment debtor's salary or wages must be made before or instead of deductions for insurance premiums or loan repayments.
- 4 Only the following have priority over this attachment order:
- (a) attachment orders and deduction notices under the Family Proceedings Act 1980:
 - (b) attachment orders under the Summary Proceedings Act 1957:
 - (c) deduction notices under the Child Support Act 1991:
 - (d) deduction notices under section 157 of the Tax Administration Act 1994 that relate to student loan debts:
 - (e) in the case of an attachment order against a benefit, any adjustment or deduction to that benefit under section 86 of the Social Security Act 1964.

Form 75—*continued***Please notify the Court immediately if—**

you have to reduce or cancel a deduction

or

the judgment debtor leaves or is dismissed from your employment (notification is required within 7 days).

- 5 You cannot charge a fee for administering this order.
- 6 If you do not make the required deductions and pay them to the judgment creditor, these amounts become a debt due by you to the judgment creditor. The judgment creditor could take court action against you to recover this debt.
- 7 It is an offence under sections 84J and 84K of the District Courts Act 1947 to—
 - (a) fail to comply with this order without reasonable excuse:
 - (b) dismiss the judgment debtor or alter the judgment debtor's position in your business or undertaking to the judgment debtor's prejudice by reason of your receiving this order.
- 8 If you do not understand your obligations under this order, you should consult a lawyer or the Registrar of the Court immediately.

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 1 March 2008, amend the District Courts Rules 1992 (the **principal rules**).

Rule 4 amends rule 7 of the principal rules to allow information that may be required for identification or other official purposes to be added to any forms authorised for use under the principal rules.

Rule 5 replaces rule 574(1) of the principal rules, which currently requires bailiffs to keep, in a book, records of all warrants, writs, and other processes received for execution or service. *New rule 574(1)* continues to require those records to be kept, but the form in which they must be kept is no longer prescribed. The purpose of this amendment is to enable such records to be kept in electronic form.

Rule 6 revokes and substitutes forms 60 and 75 of Schedule 1 of the principal rules.

Rule 7 amends Schedule 2A of the principal rules, which sets out time allocations for solicitors' costs. The item relating to 10.3 of that schedule provides time allocations for each attendance (by a solicitor) at an examination hearing of a judgment debtor. The words "(with or without judgment debtor present)" are added to clarify that solicitors' costs may still be added if the judgment debtor fails to attend.

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

Date of notification in *Gazette*: 13 December 2007.

These rules are administered by the Ministry of Justice.
