



THE DISTRICT COURTS RULES 1948, AMENDMENT NO. 16

KEITH HOLYOAKE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 24th day of March
1980

Present:

THE RIGHT HON. R. D. MULDOON PRESIDING IN COUNCIL

PURSUANT to section 122 of the District Courts Act 1947, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

RULES

1. Title and commencement—(1) These rules may be cited as the District Courts Rules 1948, Amendment No. 16, and shall be read together with and deemed part of the rules heretofore known as the Magistrate's Courts Rules 1948* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of April 1980.

2. Altering Title of principal rules and amending rules—(1) The principal rules may hereafter be cited as the District Courts Rules 1948.

(2) The Title of the principal rules and the Titles of the rules specified in the First Schedule to these rules are hereby consequentially amended, in each case, by omitting the word "Magistrates'", and substituting the word "District".

(3) Every reference in any enactment to any of the said rules is hereby consequentially amended by omitting the word "Magistrates'", and substituting the word "District".

3. Extension of civil jurisdiction—(1) The principal rules are hereby amended—

(a) By omitting from rule 77 (5) (as amended by rule 4 (1) (a) of the District Courts Rules 1948, Amendment No. 12) the expression "exceeds \$3,000", and substituting the expression "exceeds \$12,000":

*S.R. 1948/197 (Reprinted with Amendments Nos. 1 to 12: S.R. 1974/204)
Amendment No. 13: (Revoked: S.R. 1978/212)
Amendment No. 14: S.R. 1977/219
Amendment No. 15: S.R. 1978/212

- (b) By omitting from rule 78 (as amended by rule 4 (1) (b) of the District Courts Rules 1948, Amendment No. 12) the expression "claim \$3,000", and substituting the expression "claim \$12,000":
 - (c) By omitting from rule 170 (as amended by rule 4 (1) (c) of the District Courts Rules 1948, Amendment No. 12) the expression "not exceeding \$3,000", and substituting the expression "not exceeding \$12,000":
 - (d) By omitting from rule 171 (as amended by rule 4 (1) (d) of the District Courts Rules 1948, Amendment No. 12) the expression "\$3,000" wherever it occurs, and substituting in each case the expression "\$12,000":
 - (e) By omitting from rule 265 (as amended by rule 4 (1) (e) of the District Courts Rules 1948, Amendment No. 12), and also from the heading above that rule (as so amended), the expression "exceeds \$3,000", and substituting in each case the expression "exceeds \$12,000":
 - (f) By omitting from rule 271 (4) (as amended by rule 4 (1) (f) of the District Courts Rules 1948, Amendment No. 12) the expression "exceeds \$3,000", and substituting the expression "exceeds \$12,000":
 - (g) By omitting from rule 293 (2) (e) (as amended by rule 4 (1) (g) of the District Courts Rules 1948, Amendment No. 12) the expression "\$3,000", and substituting the expression "\$12,000":
 - (h) By omitting from rule 328 (as amended by rule 4 (1) (h) of the District Courts Rules 1948, Amendment No. 12) the expression "\$3,000", and substituting the expression "\$12,000".
- (2) Rule 4 of the District Courts Rules 1948, Amendment No. 12 is hereby consequentially revoked.

4. Documents that must be sealed—(1) The principal rules are hereby amended by inserting, after rule 9A (as inserted by rule 16 (1) of the District Courts Rules 1948, Amendment No. 1), the following rule:
 "9B. Every document of either of the following classes shall, when issuing out of a Court, be sealed with the seal of the Court:

"(a) Final orders and judgments:

"(b) Documents requiring certification for use in proceedings before another Court or tribunal."

(2) Rule 5 of the principal rules is hereby amended by omitting from the definition of the term "copy" the words "; and includes a copy certified as such by the Registrar under the seal of the Court".

(3) Rule 9 (2) of the principal rules is hereby revoked.

(4) Rule 333 (3) of the principal rules is hereby amended by omitting the words ", and authenticated with the seal of the Court".

5. Notice of intention to defend—(1) Rule 113 of the principal rules is hereby amended by revoking subclause (1) (as substituted by rule 7 (1) of the District Courts Rules 1948, Amendment No. 9), and substituting the following subclause:

"(1) A defendant in an ordinary action who disputes his liability for the whole or part of any claim shall file in the Court office a notice of intention to defend in the form No. 26, together with 2 copies thereof. The Registrar shall, on receipt, sign the 2 copies, return one of them to the defendant, and send the other one to the plaintiff."

(2) The said rule 113 is hereby further amended by omitting the words “served and” wherever they occur in subclauses (1A) and (1B) (as substituted by rule 7 (1) of the District Courts Rules 1948, Amendment No. 9).

(3) The said rule 113 is hereby further amended—

(a) By omitting from subclause (2) the words “serve and” in both places where they occur:

(b) By omitting from that subclause the words “serving or”.

(4) The said rule 113 is hereby further amended by omitting from subclause (4) the words “and filed in the manner and within the time aforesaid”, and substituting the words “on the plaintiff and filed in the Court office within the time limited by subclause (1B) of this rule”.

(5) The said rule 113 is hereby further amended—

(a) By inserting in subclause (5), after the word “file”, the words “in the Court office”:

(b) By inserting in that subclause, after the word “serve”, the words “on the plaintiff”:

(c) By inserting in that subclause, after the words “shall apply”, the words “, with any necessary modifications,”.

6. Defended actions—Rule 113c of the principal rules (as inserted by rule 4 of the District Courts Rules 1948, Amendment No. 9) is hereby amended—

(a) By omitting from subclause (2) the expression “26A”, and substituting the expression “26”:

(b) By omitting from that subclause the expression “26B”, and substituting the expression “26A”:

(c) By omitting from subclause (3) the expression “26B”, and substituting the expression “26A”.

7. Defence, confession, etc., in default actions—(1) The principal rules are hereby amended by revoking rule 124, and substituting the following rule:

“(1) A defendant in a default action who disputes his liability for the whole or any part of a claim may, within 7 days after the service of the summons on him (inclusive of the day of service), or, where service is effected by registered letter, within 21 days after the posting of the letter (exclusive of the day of posting), file in the Court office a notice of intention to defend in the manner and in the appropriate form prescribed by Part X of these rules.

“(2) A defendant in a default action who admits his liability for the whole or any part of a claim, or who wishes to set up a counterclaim, may, within the time limited by subclause (1) of this rule, serve on the plaintiff and file in the Court office a confession or, as the case may require, a statement of such counterclaim in the manner and in the appropriate form prescribed by Part X of these rules.”

8. Judgment by default—Rule 125 of the principal rules is hereby amended by omitting from the proviso the words “and serves on the plaintiff a notice of intention to defend, or a confession, or a counterclaim”, and substituting the words “a notice of intention to defend, or serves on the plaintiff and files in the Court office a confession or a counterclaim”.

9. Forms—(1) The Second Schedule to the principal rules is hereby amended by revoking forms Nos. 26 and 26A (as inserted by rule 6 (1) (b) of the District Courts Rules 1948, Amendment No. 9), and substituting the form No. 26 set out in the Second Schedule to these rules.

(2) The said Second Schedule to the principal rules is hereby further amended by renumbering form No. 26B (as inserted by rule 6 (1) (b) of the District Courts Rules 1948, Amendment No. 9) as form No. 26A.

(3) The said Second Schedule is hereby further amended by omitting from form No. 77, and also from form No. 78, the words “except his personal and family clothing, furniture and household effects, and tools or implements of trade, not exceeding in all \$200 in value”, and substituting in each case the words “except his necessary tools of trade to a value not exceeding \$100 and his necessary household furniture and effects, including the wearing apparel of himself and his family to a value not exceeding \$300”.

SCHEDULES

Rule 2 (2)

FIRST SCHEDULE

RULES OF WHICH THE TITLE IS CHANGED

The Magistrates' Courts Rules 1948, Amendment No. 1:	S.R. 1952/242
The Magistrates' Courts Rules 1948, Amendment No. 2:	S.R. 1956/81
The Magistrates' Courts Rules 1948, Amendment No. 4:	S.R. 1961/22
The Magistrates' Courts Rules 1948, Amendment No. 5:	S.R. 1963/64
The Magistrates' Courts Rules 1948, Amendment No. 6:	S.R. 1965/210
The Magistrates' Courts Rules 1948, Amendment No. 7:	S.R. 1967/46
The Magistrates' Courts Rules 1948, Amendment No. 8:	S.R. 1967/234
The Magistrates' Courts Rules 1948, Amendment No. 9:	S.R. 1968/183
The Magistrates' Courts Rules 1948, Amendment No. 10:	S.R. 1970/60
The Magistrates' Courts Rules 1948, Amendment No. 11:	S.R. 1971/142
The Magistrates' Courts Rules 1948, Amendment No. 12:	S.R. 1973/244
The Magistrates' Courts Rules 1948, Amendment No. 14:	S.R. 1977/219
The Magistrates' Courts Rules 1948, Amendment No. 15:	S.R. 1978/212

SECOND SCHEDULE

Rule 7 (1)

NEW FORM NO. 26 PRESCRIBED

Rules 113 (1), 113c (2)

[D.C. 26]

NOTICE OF INTENTION TO DEFEND

To the Defendant: If you intend to defend an action, fill in this form. You must file 3 copies in the Court office.

If you are not sure on any point, ask your solicitor or a Court Registrar.

(General title—Form 1)

I, the defendant named above, give notice that I intend to defend this action.

(Note: If the grounds for your defence are infancy, or that the time allowed in law for the action to be brought has passed, or discharge in bankruptcy, either say so in this form, or send a separate notice to that effect to the plaintiff and file a copy of that notice in the Court office. If you do not do this, you cannot raise any of these defences later unless the Court gives you permission on special grounds.)

Signature Date

This notice is filed by (Solicitor for) Defendant, whose address for service is at

THIS SECTION IS FOR OFFICIAL USE ONLY

NOTICE OF ADJOURNMENT FOR HEARING

To the above-named plaintiff and defendant.

Take notice that this action has been adjourned. I attach an application for a special fixture for hearing (Form No. 26A).

TO OBTAIN A HEARING

- Fill in the application (Form 26A) and file it in the Court office with the prescribed fees. The application should be signed by both parties.
- The Registrar will set the case down for hearing and will give each party at least 7 days' notice of the date of the hearing. This will be a firm fixture.

Dated

Deputy Registrar.

P. G. MILLEN,
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 make a number of amendments to the Magistrates' Courts Rules 1948, now to be known as the District Courts Rules 1948.

Rule 1 relates to the Title and commencement.

Rule 2 changes the Title of the principal rules, and the amending rules, consequent upon the change of nomenclature enacted by the District Courts Amendment Act 1979.

Rule 3 makes a number of amendments consequential upon the extension in the civil jurisdiction of the Courts effected by the District Courts Amendment Act 1979.

Rule 4 prescribes for the purposes of section 116 (1) of the Act (as substituted by the District Courts Amendment Act 1979) the classes of documents that require to be sealed.

Rule 5 requires the defendant to an action to file in the Court 3 copies of his notice of intention to defend, instead of 1 as at present, but removes the requirement to serve a copy on the plaintiff. This will now be done by the Registrar.

Rule 6 is consequential upon the combining of the present forms Nos. 26 and 26A into one. This is effected by rule 9 (1), and rule 9 (2) is also consequential upon that change.

Rule 7, in effect, makes the same changes in respect of notices of intention to defend in default actions as are made in relation to ordinary actions by rule 5, and rule 8 is consequential upon those changes.

Rule 9 (3) is consequential upon a subsequent amendment to section 85 (a) of the Act, which relates to warrants of distress.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 27 March 1980.

These rules are administered in the Department of Justice.