



THE DISTRICT COURTS RULES 1948, AMENDMENT NO. 19

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 15th day of December 1986

Present:

THE HON. M. K. MOORE PRESIDING IN COUNCIL

PURSUANT to 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.

ANALYSIS

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| <ul style="list-style-type: none"> 1. Title and commencement 2. Address for service 3. Filing by consent 4. When default action may be brought 5. Proof of service through a document exchange 6. Default summonses 7. Service through a document exchange 8. Proof by affidavit where one party does not appear | <ul style="list-style-type: none"> 9. Examination of witnesses out of Court 10. Security for costs on appeal 11. Release on bail pending hearing of application for discharge from custody 12. Goods and services tax on solicitors' costs 13. Court's overriding discretion as to costs 14. Forms 15. New scale of solicitors' costs substituted Schedules |
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RULES

1. **Title and commencement**—(1) These rules may be cited as the District Courts Rules 1948, Amendment No. 19, and shall be read together

with and deemed part of the District Courts Rules 1948* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of February 1987.

2. Address for service—Rule 5 of the principal rules is hereby amended by revoking the definition of the term “address for service”, and substituting the following definition:

“‘Address for service’ means the address of a place in New Zealand where any document may be left for the party giving the address, which address—

“(a) Shall identify the place by reference to its location in a street or road; and

“(b) Shall not be that of a Post Office box, a document exchange, or a rural delivery:”.

3. Filing by consent—(1) The principal rules are hereby amended by revoking rule 34 (as amended by rule 2 of the District Courts Rules 1948, Amendment No. 12), and substituting the following rule:

“34. Notwithstanding anything contained in the foregoing provisions of this Part, any proceedings may be commenced in any Court with the written consent of the defendant given after the cause of action arose and filed with the proceedings.”

(2) Rule 2 of the District Courts Rules 1948, Amendment No. 12† is hereby consequentially revoked.

4. When default action may be brought—(1) The principal rules are hereby amended by revoking rule 73 (as amended by rule 5 of the District Courts Rules 1948, Amendment No. 1, rule 5 of the District Courts Rules 1948, Amendment No. 2, and rule 2 of the District Courts Rules 1948, Amendment No. 15), and substituting the following rule:

“73. (1) A default action may, subject to subclause (2) of this rule, be brought to recover any debt or liquidated demand.

“(2) No default action shall be brought—

“(a) Against an infant or a mentally disordered person; or

“(b) Against the Crown; or

“(c) By an assignee of a debt or other thing in action; or

“(d) To recover any interest (other than interest recoverable pursuant to an instrument).

“(3) Where a default action is brought and the sum sought to be recovered includes interest payable pursuant to any credit contract—

“(a) The statement of claim shall be a separate document filed pursuant to rule 74 (1) of these rules; and

“(b) There shall be annexed to the statement of claim—

“(i) A copy of the credit contract; or

“(ii) In the case of a controlled credit contract, the disclosure documents required by the Credit Contracts Act 1981 to be given or sent to the debtor; and

“(c) The statement of claim shall be signed by the plaintiff or the plaintiff’s solicitor.

“(4) In the case of a controlled credit contract (other than a revolving credit contract), the statement of claim shall include a statement of the finance rate last disclosed to the defendant pursuant to the Credit Contracts Act 1981.

“(5) In the case of a revolving credit contract the statement of claim shall,—

“(a) Where the debt was incurred during not more than one billing period, include a statement of the finance rate applicable during that billing period:

“(b) Where the debt was incurred over more than one billing period, include a statement of the finance rate applicable during each of those billing periods.

“(6) Where a default action is brought and the sum sought to be recovered includes interest, the Registrar may, in the Registrar’s discretion, notwithstanding that the defendant does not file a notice of intention to defend, set the action down for hearing. In any such case the Registrar shall give to the plaintiff and the defendant not less than 7 days’ notice, in form No. 28, of the day fixed for the hearing, and thereafter the action shall be continued in all respects as an ordinary action.

“(7) In this rule the terms ‘credit contract’, ‘controlled credit contract’, ‘revolving credit contract’, and ‘finance rate’ shall have the same meanings as in the Credit Contracts Act 1981.”

(2) The following rules are hereby consequentially revoked:

(a) Rule 5 of the District Courts Rules 1948, Amendment No. 1*:

(b) Rule 5 of the District Courts Rules 1948, Amendment No. 2†:

(c) The District Courts Rules 1948, Amendment No. 15‡.

5. Proof of service through a document exchange—Rule 93 of the principal rules (as substituted by rule 3 of the District Courts Rules 1948, Amendment No. 9) is hereby amended by inserting, after subclause (2), the following subclause:

“(2A) Where service is effected through a document exchange in accordance with rule 110 (c) of these rules then, unless the contrary is shown, service shall be deemed to have been effected on the next working day after the day upon which the document was left in accordance with rule 110 (c) of these rules.”

6. Default summonses—(1) The principal rules are hereby amended by revoking rule 108 (as amended by rule 19 of the District Courts Rules 1948, Amendment No. 1), and substituting the following rule:

“108. (1) Subject to the provisions of any Act and of these rules, service of a summons in a default action shall be personal service in accordance with rule 85 of these rules.

“(2) Notwithstanding subclause (1) of this rule, any summons in a default action may be served by leaving it for the defendant at the defendant’s place of abode with any person who is normally resident with the defendant at that place and who appears to be over the age of 18 years.

“(3) Where a summons in a default action has not been served in accordance with these rules, but the Registrar receives from the defendant a defence or a confession or a counterclaim, the action may proceed as if the summons had been duly served.”

(2) Rule 19 of the District Courts Rules 1948, Amendment No. 1* is hereby consequentially revoked.

7. Service through a document exchange—(1) Rule 110 of the principal rules is hereby amended by adding, after paragraph (b), the following paragraph:

“(c) Where an address for service given by a party in accordance with these rules is the office of a solicitor, and that solicitor has an exchange box in a document exchange, by leaving the document, addressed to that solicitor, in that exchange box.”

(2) Rule 110 (b) of the principal rules is hereby consequentially amended by adding the expression “; or”.

8. Proof by affidavit where one party does not appear—The principal rules are hereby amended by revoking rule 190, and substituting the following rule:

“190. (1) If at the hearing of any action or matter any party does not appear, any other party to that action or matter may adduce evidence by affidavit in support of that other party’s case or in opposition to the case of the party not appearing without the notice required by rule 192 of these rules having been given.

“(2) Where an affidavit is tendered in evidence pursuant to subclause (1) of this rule, the Judge may order that the deponent appear for examination or cross-examination by any other party who does appear at the hearing or may refuse leave to have the affidavit read or may give such directions as to service or otherwise as the Judge thinks fit.”

9. Examination of witnesses out of Court—Rule 198 of the principal rules is hereby amended by inserting, after subclause (8), the following subclauses:

“(8A) Notwithstanding the provisions of subclause (8) of this rule but subject to subclause (8B) of this rule, where any witness attends at an examination pursuant to the provisions of this rule the examining Registrar may, if the parties to the proceedings agree, permit the witness to give evidence by affidavit instead of, or in addition to, being examined on oath by the examining Registrar.

“(8B) Nothing in subclause (8A) of this rule shall prevent the witness being cross-examined and re-examined on the facts deposed to in the affidavit or on any other matter on which the witness could have been cross-examined or re-examined at the hearing of an action.”

10. Security for costs on appeal—Rule 234 (1) of the principal rules (as substituted by rule 15 (1) of the District Courts Rules 1948, Amendment No. 12) is hereby amended by omitting the expression “\$50”, and substituting the expression “\$200”.

11. Release on bail pending hearing of application for discharge from custody—The principal rules are hereby amended by inserting, after rule 263, the following rule:

“263A. (1) Where any person in custody under a warrant intends to make an application for discharge from custody pursuant to rule 263 (1) of these rules, that person may, at the time when the affidavit specifying the grounds on which that person applies for discharge is filed, apply to the Judge to be released on bail pending the hearing of the application for discharge from custody.

“(2) An application made pursuant to subclause (1) of this rule shall be served on the party (if any) at whose instance the warrant of committal was issued, at the same time as the affidavit specifying the grounds on which the applicant applies for discharge is served.

“(3) The order for release on bail pending the hearing of the application for discharge from custody may be made subject to such conditions as the Judge may impose.”

12. Goods and services tax on solicitors' costs—Rule 316 of the principal rules is hereby amended by inserting, after subclause (3), the following subclause:

“(3A) Where—

“(a) The costs on any judgment or order carrying costs include solicitors' costs; and

“(b) Goods and services tax is chargeable under the Goods and Services Tax Act 1985 on the supply of the services in respect of which the solicitors' costs are calculated,—

the costs on that judgment or order shall include, in addition to those solicitors' costs, an amount calculated on those solicitors' costs at the same rate as the rate of tax specified in section 8 (1) of the Goods and Services Tax Act 1985 as the rate at which goods and services tax shall be charged in accordance with that Act on the supply in New Zealand of goods and services.”

13. Court's overriding discretion as to costs—(1) The principal rules are hereby amended by inserting, after rule 319, the following rule:

“319A. (1) Except as expressly provided in any Act, all matters relating to the costs of, or incidental to, any proceedings or any step therein shall be in the discretion of the Court.

“(2) Without limiting the generality of subclause (1) of this rule, the Court may—

“(a) Refuse costs to a successful party, or order a successful party to pay costs to an unsuccessful party:

“(b) Direct by whom the costs of a successful defendant shall be paid as between the plaintiff and an unsuccessful defendant:

“(c) Fix a sum as costs notwithstanding that the sum is greater or less than the sum named in the Fifth Schedule to these rules.

“(3) Rules 320 to 328 of these rules shall apply subject to the discretion conferred by subclause (1) of this rule.”

(2) Rules 316 (4), 322 (3), 323 (2), and 329 of the principal rules are hereby revoked.

14. Forms—(1) The Second Schedule to the principal rules is hereby amended by revoking form No. 23, and substituting the form No. 23 set out in the First Schedule to these rules.

(2) The said Second Schedule is hereby further amended by omitting from form No. 71 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 the words “except the judgment debtor’s necessary tools of trade to a value not exceeding \$500 and the judgment debtor’s necessary household furniture and effects, including the wearing apparel of the judgment debtor and the judgment debtor’s family to a value not exceeding \$2,000”.

(3) The said Second Schedule is hereby further amended by omitting from form No. 77 (as amended by rule 9 (3) of the District Courts Rules 1948, Amendment No. 16), and also from form No. 78 (as amended by rule 9 (3) of the District Courts Rules 1948, Amendment No. 16), 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”, and substituting in each case the words “except the judgment debtor’s necessary tools of trade to a value not exceeding \$500 and the judgment debtor’s necessary household furniture and effects, including the wearing apparel of the judgment debtor and the judgment debtor’s family to a value not exceeding \$2,000”.

(4) The following provisions are hereby consequentially revoked:

(a) Rule 20 of the District Courts Rules 1948, Amendment No. 1*:

(b) So much of the Second Schedule to the District Courts Rules 1948, Amendment No. 9† as relates to form No. 23 in the principal rules:

(c) Rule 9 (3) of the District Courts Rules 1948, Amendment No. 16‡.

15. New scale of solicitors’ costs substituted—(1) The principal rules are hereby amended by revoking the Fifth Schedule (as substituted by rule 4 (1) of the District Courts Rules 1948, Amendment No. 14), and substituting the new Fifth Schedule set out in the Second Schedule to these rules.

(2) The new Fifth Schedule substituted by this rule shall apply in respect of any proceedings commenced on or after the date of the coming into force of these rules.

(3) In respect of any proceedings commenced before the date of the coming into force of these rules, the new Fifth Schedule substituted by this rule shall apply in respect of any step in the proceedings taken on or after that date.

(4) The District Courts Rules 1948, Amendment No. 14§ are hereby consequentially amended by revoking subclauses (1) to (3) of rule 4 and the Schedule.

*S.R. 1952/242

†S.R. 1968/183

‡S.R. 1980/55

§S.R. 1977/219

SCHEDULES

R. 14 (1)

FIRST SCHEDULE

NEW FORM NO. 23 PRESCRIBED

R. 93 (1)]

[D.C. 23

AFFIDAVIT OF SERVICE

I,....., of, [Occupation], do swear that I served with a summons (originating application, or as the case may be), a copy of which is within written (or is hereunto annexed) marked "A" (together with a copy of the statement of claim (or as the case may be) which is hereunto annexed marked "B"), by delivering the same to him personally at, on the day of 19....

(or, in the case of a default summons, by leaving the same for him at his place of abode at, with, being a person who normally resides with the defendant at that place (or who stated that he normally resides with the defendant at that place) and who appeared to be over the age of 18 years)

(or by sending the same to the said by registered letter (numbered) addressed to him at his last known or usual place of abode—namely,, on the day of 19....)

(or by delivering the same at, on the day of 19...., to, a solicitor who represented that he was authorised to accept service on behalf of the said, and who at the time of such delivery signed a memorandum endorsed hereon (or annexed hereto) that he accepted service thereof on behalf of the said

(or, in the case of any document other than a summons or an originating application, by leaving the same on the day of 19...., in an exchange box at the document exchange at [Address], which exchange box was that of, the solicitor to whom the document was addressed and the solicitor whose address had been given by the party to be served as the party's address for service)

(or by delivering the same at, on the day of 19...., to, who stated that he was a partner in the firm of (or who carries on) (or who stated that he carried on) business in the name of the firm of

(or by leaving the same on the day of 19...., at, the registered office of, with, the managing director (or as the case may be) of the said company (or as the case may be)

(or, as the case may be, setting out the mode of service, and annexing extracts from newspapers, etc., where service by advertisement has been authorised).

Signature of Deponent:

Sworn at, this day of 19...., before me—

.....

Registrar.

Justice of the Peace.

Solicitor of High Court.

SECOND SCHEDULE

R. 15 (1)

NEW FIFTH SCHEDULE TO THE PRINCIPAL RULES

"FIFTH SCHEDULE

R. 316 (3)

SCALE OF SOLICITORS' COSTS

A. In Actions for a Sum of Money Only

	Amount not Exceeding \$500	Amount Exceeding \$500 but not Exceeding \$3,000	Amount Exceeding \$3,000 but not Exceeding \$8,000	Amount Exceeding \$8,000
	\$	\$	\$	\$
1. Preparing statement of claim in action that can be brought as default action	30	50	70	90
2. Preparing statement of claim in action that cannot be brought as default action	40	100	170	250
3. For each additional defendant	10	20	20	20
4. Preparing statement of defence with counterclaim	40	100	170	250
5. Preparing statement of defence without counterclaim ..	40	70	140	220
6. Entering judgment by default under rule 125 or in any other case where no appearance is necessary	30	30	40	60
7. Entering judgment where appearance is necessary but where no witness is called	30	50	80	120
8. Appearance in undefended case to obtain judgment where a witness is called or evidence is adduced by affidavit	50	70	120	160
9. Appearance in Court to conduct defended action	70	150	8%	8% up to \$12,000 and 3% on the excess
10. Second and each subsequent day of hearing, if certified for, not exceeding ..	70	150	3%	3%

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO THE PRINCIPAL RULES—*continued*

“FIFTH SCHEDULE—*continued*”

SCALE OF SOLICITORS’ COSTS—*continued*

	Amount not Exceeding \$500	Amount Exceeding \$500 but not Exceeding \$3,000	Amount Exceeding \$3,000 but not Exceeding \$8,000	Amount Exceeding \$8,000
	\$	\$	\$	\$
11. Extra counsel, if certified for, each per day, not exceeding	nil	nil	200	300
12. Preparing for trial (in the discretion of the Court)	50	150	3%	3%

B. In Proceedings (Other than Interlocutory Applications) Where There is a Claim Other than for a Sum of Money

13. Preparing statement of claim or other document by which the proceedings are commenced (together with all supporting documentation)	Not exceeding \$250.
14. For each additional defendant or respondent	Not exceeding \$50.
15. Preparing statement of defence (with or without counterclaim) or other documents in reply	Not exceeding \$250.
16. Appearance in an undefended action or other uncontested proceeding	\$30 to \$160.
17. Appearance at the hearing of a defended action or other contested proceeding	\$150 to \$960.
18. Second and each subsequent day of hearing, if certified for	\$150 to \$360.
19. Extra counsel, if certified for, each per day	Not exceeding \$300.
20. Preparing for trial (in the discretion of the Court)	\$150 to \$360.

SECOND SCHEDULE—*continued*NEW FIFTH SCHEDULE TO THE PRINCIPAL RULES—*continued*“FIFTH SCHEDULE—*continued*”SCALE OF SOLICITORS’ COSTS—*continued**C. In Interlocutory Proceedings*

21. Subject to the provisions of rule 143 (1) (h) and except where specifically provided, preparing all documents in connection with and appearance in all interlocutory proceedings (other than garnishee proceedings) including the taking of evidence, inquiries before the Registrar, producing documents, inspecting documents, preparing notices to answer interrogatories and applications for order to answer and providing for answers to interrogatories
- Not exceeding \$70 per hour.

D. Enforcement Proceedings

- | | \$ |
|--------------------------------------------------------------------------------------------------------|-----|
| 22. Issuing garnishee proceedings | 50 |
| 23. Appearance to obtain an order on garnishee proceedings, where sub-debtor does not dispute the debt | 50 |
| 24. Preparing application for warrant of execution or warrant of committal | 30 |
| 25. Preparing application for examination of judgment debtor | 30 |
| 26. Appearance at examination of judgment debtor | 60 |
| 27. Preparing application for judgment summons and affidavit in support | 30 |
| 28. Appearance in Court on behalf of judgment creditor or judgment debtor | 40” |

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, which come into force on 1 February 1987, amend the District Courts Rules 1948.

Rule 2 revokes the definition of the term "address for service", and substitutes a new definition. It is expressly provided in the new definition that the address of a Post Office box, document exchange, or rural delivery may not be used as an address for service.

Rule 3 overcomes a minor omission in the reprint of the principal rules.

Rule 4 revokes rule 73 of the principal rules (which relates to default actions), and substitutes a new rule. Under the new rule a default action may be brought to recover interest payable pursuant to an instrument. Under the old rule, as amended in 1956, a default action could be brought to recover interest payable pursuant to an instrument only if the rate of interest under the instrument did not exceed 15 percent per annum.

Rule 5 provides that where service is effected through a document exchange in accordance with rule 110 (c) (as set out in rule 7 of these rules) then, unless the contrary is shown, service shall be deemed to have been effected on the next working day after the day upon which the document was left in the exchange box.

Rule 6 revokes rule 108 of the principal rules (which relates to the service of a summons in a default action), and substitutes a new rule. Under subclause (2) of the new rule such a summons may be served by leaving it for the defendant at the defendant's place of abode with any person who is normally resident with the defendant at that place and who appears to be over the age of 18 years.

Under the corresponding provision of the old rule the person with whom the summons was left had to be a member of the defendant's family (as defined in the rule).

Rule 7 enables any document (other than a summons or originating application) to be served, where no other mode of service is prescribed, by leaving the document in an exchange box in a document exchange. This method of service can only be used where an address for service is given by a party and the address is that of a solicitor with an exchange box in a document exchange. Rule 93 (2A) of the principal rules (as inserted by rule 5 of these rules) deals with the time when service is deemed to have been effected.

Rule 8 revokes rule 190 of the principal rules (which relates to proof by affidavit in undefended actions), and substitutes a new rule. The new rule provides that where one party does not appear at the hearing of any action or matter any other party may adduce evidence by affidavit, subject to the conditions set out in subclause (2) of the rule.

Rule 9 amends rule 198 of the principal rules (which relates to the examination of witnesses out of Court). The effect of the amendments is that, if the parties agree, the Registrar may permit the witness to give evidence by affidavit. This does not limit the right to cross-examine or re-examine the witness.

Rule 10 increases from \$50 to \$200 the amount of the security for costs for appeal which the appellant is required to give pursuant to section 73 (2) of the District Courts Act 1947.

Rule 11 inserts a new rule 263A (relating to release on bail pending hearing of application for discharge from custody) into the principal rules. The new rule provides that where a person in custody under a warrant intends to apply for discharge from custody pursuant to rule 263 (1) of the principal rules, that person may, at the time when the affidavit specifying the grounds upon which that person applies for discharge is filed, apply to a District Court Judge to be released on bail pending the hearing of the application for discharge from custody.

Rule 12 provides that where the costs on any judgment or order include solicitors' costs and GST is chargeable on the supply of the services in respect of which solicitors' costs are calculated, then the costs shall be increased by an amount calculated on the amount of solicitors' costs included in the costs on the judgment or order at the same rate as the rate of GST.

Rule 13 inserts a new rule 319A into the principal rules. The new rule (which is based on rule 46 of the High Court Rules) gives the District Court an overriding discretion as to the costs which it may allow or which it may order any party to any proceedings to pay.

Rule 14 (1) prescribes a new form No. 23. The new form is required as a consequence of amendments to the principal rules made by these rules.

Rule 14 (2) and (3) makes amendments to forms Nos. 71, 77, and 78 as a consequence of amendments made to section 85 of the District Courts Act 1947 by section 3 (1) of the District Courts Amendment Act 1986.

Rule 15 prescribes a new and increased scale of solicitors' costs.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 18 December 1986.

These rules are administered in the Department of Justice.