



DISTRICT COURTS RULES 1992, AMENDMENT NO. 2

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 19th day of June 1995

Present:

THE RIGHT HON. D. C. MCKINNON PRESIDING IN COUNCIL

PURSUANT to the District Courts Act 1947, Her 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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RULES

1. Title and commencement—(1) These rules may be cited as the District Courts Rules 1992, Amendment No. 2, and shall be read together with and deemed part of the District Courts Rules 1992* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of August 1995.

2. Power to amend defects and errors—(1) Rule 11 of the principal rules is hereby amended by revoking subclause (2), and substituting the following subclause:

“(2) The Court may, at any stage of a proceeding, make, either of its own motion or on the application of any party to the proceeding, such amendments to any pleading or the procedure in the proceeding as are necessary for determining the real controversy between the parties.”

(2) Rule 11 (3) of the principal rules is hereby amended by inserting, after the expression “subclause (1)”, the expression “or subclause (2)”.

3. New rules inserted—The principal rules are hereby amended by inserting, after rule 44, the following rules:

“44A. Withdrawal of solicitor who has ceased to act for party—
(1) Where the solicitor on the record for a party to a proceeding has ceased to act for that party, that solicitor may apply to the Court for an order declaring that that solicitor has ceased to be the solicitor on the record for that party in that proceeding and the Court may make an order accordingly.

“(2) It shall not be necessary to make an application under subclause (1) if—

“(a) The party has effected a change of solicitor in accordance with rule 44; or

“(b) The party—

“(i) Has filed a notice stating that the party intends to act in person and showing the party’s new address for service; and

“(ii) Has served on the solicitor on the record and on every other party to the proceeding who has given an address for service a copy of the notice filed under subparagraph (i); and

“(iii) Has filed an affidavit proving compliance with subparagraph (i) and exhibiting and verifying a copy of the notice served.

“(3) Except where paragraph (a) or paragraph (b) of subclause (2) applies, the solicitor on the record for a party to a proceeding shall, for the purposes of that proceeding, be considered to be the solicitor on the record for that party until the final conclusion of the proceeding unless and until the solicitor—

“(a) Obtains an order under subclause (1); and

“(b) Serves on every party to the proceeding who has given an address for service a copy of the order obtained under subclause (1); and

“(c) Files an affidavit proving compliance with paragraph (b).

“(4) Every application under subclause (1) shall be made by interlocutory application and shall be supported by an affidavit giving the grounds of the application.

“(5) Unless the Court otherwise directs, notice of every application under subclause (1), and a copy of the affidavit in support of the application, shall be served on the party for whom the solicitor acted.

“(6) The notice served under subclause (5) on the party for whom the solicitor acted shall inform the party of the effect that rule 44B will have on the party’s address for service if the solicitor obtains an order under subclause (1).

“(7) An order made under subclause (1) shall not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

“**44B. Address for service of party whose solicitor has ceased to act**—Where the solicitor on the record for a party has obtained an order under rule 44A (1) and has complied with paragraphs (b) and (c) of rule 44A (3), then until the party either—

“(a) Appoints another solicitor and complies with rule 44; or

“(b) Being entitled to act in person,—

“(i) Files a notice stating that the party intends to act in person and showing the party’s new address for service; and

“(ii) Serves on the solicitor who obtained the order under rule 44A (1) and on every other party to the proceeding who has given an address for service a copy of the notice filed under subparagraph (i); and

“(iii) Files an affidavit proving compliance with subparagraph (ii) and exhibiting and verifying a copy of the notice served,—

the last known address of the party, or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on the party of any document not required to be served personally, be deemed to be the party’s address for service.”

4. Power to make order for security of costs—Rule 61 (1) (a) of the principal rules is hereby amended by revoking subparagraph (iii), and substituting the following subparagraph:

“(iii) Is, within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be, a subsidiary of a corporation incorporated outside New Zealand; or”.

5. Search of Court records generally—Rule 69 (4) of the principal rules is hereby amended by inserting, after paragraph (j), the following paragraph:

“(ja) The Domestic Protection Act 1982:”.

6. Application of summary judgment procedure—The principal rules are hereby amended by revoking rule 151, and substituting the following rule:

“151. (1) Rules 152 to 167 shall apply to every proceeding other than—

“(a) A proceeding that includes a claim by the plaintiff alleging—

“(i) Defamation; or

“(ii) Malicious prosecution; or

“(iii) False imprisonment; or

“(b) A proceeding under Part V.

“(2) Notwithstanding subclause (1) (b), a proceeding is not excluded from the application of rules 152 to 167 by reason only of the proceeding being—

“(a) A proceeding to which Part V applies by virtue of rule 439; or

“(b) A proceeding to which Part V applies by virtue of paragraph (a) of rule 441.”

7. Filing of amended pleading—Rule 210 of the principal rules is hereby amended by adding the following subclause:

“(9) Nothing in this rule limits the powers conferred on the Court by rule 11.”

8. Personal service on New Zealand corporations—(1) The principal rules are hereby amended by revoking rule 223, and substituting the following rule:

“223. (1) Personal service of a document on a company incorporated under the Companies Act 1955 shall be effected by service in accordance with section 460 of that Act.

“(2) Personal service of a document on a company within the meaning of section 2 of the Companies Act 1993 shall be effected by service in accordance with section 387 of that Act.

“(3) Personal service of a document on a corporation incorporated in New Zealand other than a company incorporated under the Companies Act 1955 or a company within the meaning of section 2 of the Companies Act 1993, as the case may be, may be effected—

“(a) By service in accordance with rule 219 on—

“(i) The mayor, chairman, president, town clerk, managing director, secretary, treasurer, or other similar officer of the corporation; or

“(ii) Any member, officer, or servant of the corporation at the corporation’s head office or principal place of business; or

“(b) By leaving the document at the corporation’s registered office; or

“(c) By serving the document on a member, officer, or servant of the corporation in such manner as the Court directs.

“(4) Subclause (3) is in addition to any provision made by or under any Act for service of a document on a corporation unless the provision so made is expressed to be exclusive of any other mode of service.”

9. Personal service in New Zealand on foreign corporations—(1) The principal rules are hereby amended by revoking rule 224, and substituting the following rule:

“224. (1) Personal service on an overseas company (being a company which is an overseas company within the meaning of section 2 of the Companies Act 1993 and which, under these rules, may be served out of New Zealand) shall be effected in accordance with section 389 of the Companies Act 1993.

“(2) Personal service on a corporation (other than an overseas company within the meaning of section 2 of the Companies Act 1993) that—

“(a) Is incorporated outside New Zealand; and

“(b) Under these rules may be served out of New Zealand; and

“(c) Has a place or places of business in New Zealand—

may be effected in New Zealand by service in accordance with rule 219 on any person appearing to have control of the business of that corporation at the principal or only place of business of that corporation in New Zealand.”

10. Procedure—The principal rules are hereby amended by revoking rule 254, and substituting the following rule:

“254. Where by order of the High Court any proceeding is ordered to be transferred to a District Court, the Registrar shall, at an appropriate

time after receipt of the documents prescribed by section 47 of the Act, appoint a day on which the parties shall attend in Chambers for the giving of directions for the conduct of the proceedings in the District Court.”

11. Certificate of judgment or order—The principal rules are hereby amended by revoking rule 536, and substituting the following rule:

“536. (1) Any party to any proceeding who requires a certificate of any judgment or order shall state in writing whether it is required for the purposes of section 66 or section 69 of the Act or for evidential purposes.

“(2) Where a person applying for a certificate of any judgment or order is not a party to the proceedings in which the judgment or order was given or made, that person shall state in writing, with particulars, the purpose for which the certificate is required and the capacity in which he or she applies for it, and shall satisfy the Registrar that the application may properly be granted. The Registrar may, if the Registrar thinks fit, refer the application to the Judge.

“(3) The certificate of any judgment or order shall be in form 45 and shall be signed by the Registrar and sealed with the seal of the Court.

“(4) There shall be annexed to the certificate a true copy of the judgment or order endorsed ‘This is the judgment (*or* order) marked “A” referred to in the annexed certificate given by my hand and the seal of the Court at this day of 19.....’ The endorsement shall be signed by the Registrar and sealed with the seal of the Court.”

12. Registration of satisfaction—The principal rules are hereby amended by revoking rule 599, and substituting the following rule:

“599. Upon registration with the District Land Registrar or Registrar of Deeds (as the case may be) of—

“(a) A memorandum of satisfaction of the judgment in the proceeding in which the charging order has been issued, or other sufficient evidence of satisfaction; or

“(b) An order of the Court to the effect that the land or mining privilege shall be discharged from the charging order; or

“(c) The consent of the person who registered the charging order to the discharge of the land or mining privilege from the charging order—

the land or mining privilege, as the case may be, shall be discharged from the charging order.”

13. Affidavit of service—The First Schedule to the principal rules is hereby amended by revoking form 14, and substituting the form 14 set out in the Schedule to these rules.

14. Notice of hearing of proceeding transferred from the High Court to a District Court—The First Schedule to the principal rules is hereby amended by revoking form 19.

15. Certificate of judgment or order—(1) Form 45 in the First Schedule to the principal rules is hereby amended by omitting from the first paragraph the words “according to the records of this office,”.

(2) Form 45 in the First Schedule to the principal rules is further amended by omitting from the second paragraph the line “Total sum now due”.

16. Order for periodic detention— Form 60 in the First Schedule to the principal rules is hereby amended by omitting paragraph 3, and substituting the following paragraph:

“3. That the maximum duration of each period of custody shall be 10 hours and the aggregate in any one week shall not exceed 18 hours.”

SCHEDULE

Rule 13

“Form 14

AFFIDAVIT OF SERVICE
(General Heading—Form 1)

I, [Full name], of [Address], [Occupation], swear—

1. I did on _____ day, the _____ day of _____ 19____, serve the above-named defendant, [Full name] with [Insert an appropriate description of the documents served e.g., a statement of claim in the above-mentioned proceeding and a notice of proceeding relating to the above-mentioned proceeding, which notice of proceeding was dated the _____ day of _____ 19____].
2. I effected service of that statement of claim and that notice of proceeding [or as the case may be] on the defendant at _____ in New Zealand, by delivering the same personally to the defendant [or as the case may be].

Signature of Deponent

Sworn at _____ this day of _____ 19____, before me—

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

MARIE SHROFF,
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 August 1995, make various amendments to the District Courts Rules 1992.

Rule 2 revokes subclause (2) of rule 11 of the principal rules (which relates to the power to amend defects and errors), and substitutes a new subclause. The new subclause makes it clear that the Court may, at any stage of a proceeding, make, either of its own motion or on the application of any party to the proceeding, such amendments to any pleading or the procedure in the proceeding as are necessary for determining the real controversy between the parties.

Rule 3 inserts new rules 44A and 44B into the principal rules. The new rules provide for the withdrawal of a solicitor who has ceased to act for a party.

Rule 4 incorporates into rule 61 (1) (a) of the principal rules (which relates to the power to order the giving of security for costs) a reference to the Companies Act 1993.

Rule 5 inserts into rule 69 (4) of the principal rules (which relates to the search of Court records) a reference to the Domestic Protection Act 1982. This amendment corrects an oversight. The effect of the amendment is that no file or document may be searched, inspected, or copied which relates to any proceedings under the Domestic Protection Act 1982.

Rule 6 revokes rule 151 of the principal rules (which relates to the summary judgment procedure), and substitutes a new rule. The new rule—

- (a) No longer excludes from the summary judgment procedure any proceeding against the Crown;
- (b) Makes it clear that proceedings in which the relief claimed is wholly within the equitable jurisdiction of the Court, or any proceedings described in rule 441 (a), are not excluded from the summary judgment procedure;
- (c) Omits, as unnecessary, the paragraphs that ensured that certain other proceedings were not excluded from the summary judgment procedure.

Rule 7 adds a new subclause (9) to rule 210 of the principal rules (which relates to the filing of an amended pleading). The new subclause makes it clear that nothing in rule 210 limits the powers conferred on the Court by rule 11.

Rule 8 revokes rule 223 of the principal rules (which relates to personal service on New Zealand corporations), and substitutes a new rule. The new rule provides the procedures for personal service on a company incorporated under the Companies Act 1955 and on a company within the meaning of section 2 of the Companies Act 1993. For other corporations incorporated in New Zealand service shall be in accordance with rule 219 of the rules in the same way as in the existing rule 223.

Rule 9 revokes rule 224 of the principal rules (which deals with personal service in New Zealand on foreign corporations), and substitutes a new rule. The new rule is the same as the existing rule except that an additional procedure is prescribed for personal service in New Zealand on an overseas company within the meaning of section 2 of the Companies Act 1993.

Rule 10 revokes rule 254 of the principal rules (which relates to the transfer of a proceeding from the High Court to a District Court), and substitutes a new rule. Under the existing rule 254, the Registrar of the District Court must, on receipt of the documents from the High Court, appoint a day for a hearing and notify the parties. Under the new rule, the Registrar is required to appoint a day on which the parties shall attend in Chambers for the giving of directions for the conduct of the proceedings in the District Court. This new procedure is to ensure that proceedings transferred to the District Court are put on a case management track.

Rule 11 revokes rule 536 of the principal rules (which relates to the issue of a certificate of judgment), and substitutes a new rule. The new rule is intended to clarify the procedure to be followed.

Rule 12 revokes rule 599 of the principal rules (which relates to the registration of satisfaction of a charging order), and substitutes a new rule. The difference between the old rule and the new rule is that the new rule provides that land that is subject to a charging order made under rule 594 of the principal rules shall be discharged from that order upon registration of the consent of the person who registered the charging order to the discharge of the land from the charging order.

Rule 13 revokes form 14 in the First Schedule to the principal rules (the form of affidavit of service), and substitutes the form set out in the Schedule to these rules. The new form

removes the need for true copies of the documents served to be annexed to the affidavit of service.

Rule 14 revokes form 19 in the First Schedule to the principal rules (the form of notice of hearing of proceeding transferred from the High Court to a District Court). This form is no longer necessary as a consequence of the new requirements of rule 254.

Rule 15 amends form 45 in the First Schedule to the principal rules (the form of certificate of judgment or order). The amendments are intended to make it clear on the face of the form that the amount shown in the records of the Court may not correctly reflect the amount outstanding under the judgment, for example, if the debt has been partially settled directly between the parties.

Rule 16 amends form 60 in the First Schedule to the principal rules (the form of order for periodic detention). These amendments are necessary as a result of the provisions of section 40 (3) of the Criminal Justice Act 1985 (as inserted by the Criminal Justice Act 1993).

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 22 June 1995.
These rules are administered in the Department of Justice.