



## THE HIGH COURT AMENDMENT RULES 1985

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PAUL REEVES, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 16th day of December  
1985

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Judicature Act 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council and with the concurrence of the Right Honourable the Chief Justice and at least two of the other members of the Rules Committee (of whom at least one was a Judge of the High Court), hereby makes the following rules.

#### ANALYSIS

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## RULES

**1. Title and commencement**—(1) These rules may be cited as the High Court Amendment Rules 1985, and shall be read together with and deemed part of the High Court Rules from time to time set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the High Court Rules).

(2) These rules shall come into force on the 1st day of January 1986.

**2. Consent instead of leave of Court**—Rule 10 (2) (a) of the High Court Rules is hereby amended by omitting the word “Seal”, and substituting the words “Make and seal”.

**3. Carbon copies**—The High Court Rules are hereby amended by revoking rule 34, and substituting the following rule:

“34. Carbon copies shall not be filed as original documents; but such copies, if clear and legible, may be used as exhibits to affidavits.”

**4. Heading on judgment and certain orders**—The High Court Rules are hereby amended by inserting, after rule 36, the following rule:

“36A. The heading of every judgment and of every order (being an order that is required to be registered under any enactment) shall be the same as the heading on the statement of claim.”

**5. Heading on other documents and on backing**—Rule 37 (1) of the High Court Rules is hereby amended by omitting the words “(other than a document to which rule 36 applies), and the backing of all documents shall”, and substituting the words “(other than a document to which rule 36 or rule 36A applies), and the backing of all documents may”.

**6. Date of hearing**—The High Court Rules are hereby amended by revoking rule 238, and substituting the following rule:

“238. (1) The date shown on the notice of application as the date for the hearing of the application shall be that allocated by the Registrar when the notice of the application is filed.

(2) Subject to subclause (3), the Registrar shall enter the application on the Chambers list for that date without any further request.

“(3) Every interlocutory application for judgment under rule 136 or rule 137 shall be heard in open Court.

“(4) The Registrar shall keep a ready list for interlocutory applications that the Court has directed shall be heard in open Court or that are required by subclause (3) to be heard in open Court.

“(5) When an interlocutory application first comes before a Judge in Chambers, it shall be the duty of counsel to be ready to advise the Judge of the likely time needed for the hearing of the application.

“(6) Before the hearing of the application (including an application under rule 136 or rule 137), a Judge in Chambers may make such orders as he thinks fit, including orders as to the date and place of hearing and the time within which any party may file affidavits.

“(7) The Judge may exercise the powers conferred by subclause (6) when directing that an interlocutory application be heard in open Court or at any time and whether upon formal application or otherwise.”

**7. Notice of opposition to application**—Rule 243 of the High Court Rules is hereby amended by inserting, after the words “in opposition thereto”, the words “without the leave of the Court”.

**8. Notices of application filed in absence of Judge**—Rule 255 (1) of the High Court Rules is hereby amended by omitting the word “shall”, and substituting the words “may, in his discretion”.

**9. Where no appearance necessary**—Rule 257 of the High Court Rules is hereby amended by revoking subclause (3), and substituting the following subclauses:

“(3) An application in respect of which no appearance is required may be disposed of at any time notwithstanding that the date for hearing shown in the notice of application may not have arrived, and the Registrar shall, as soon as possible after such disposal, give notice of the result thereof to—

“(a) The applicant or the applicant’s solicitors; and

“(b) Any party who has consented in writing to the application or that party’s solicitor; and

“(c) Any party who has filed written submissions under subclause (1) (c) or that party’s solicitor.

“(4) Where an application has been forwarded to another registry for disposal under rule 255, notice under subclause (3) shall be given by the Registrar in whose registry the application was filed.”

**10. When drawing up order unnecessary**—Rule 268 (g) of the High Court Rules is hereby amended by omitting the words “doing or”.

**11. Additional jurisdiction of certain Registrars**—Rule 271 (c)(ii) of the High Court Rules is hereby revoked.

**12. Court may convene conference of parties**—Rule 441 of the High Court Rules is hereby amended by omitting the expression “rule 438” in both places where it appears, and substituting in each case the expression “rule 437 or rule 438”.

**13. Judge may assist in negotiations for settlement**—The High Court Rules are hereby amended by revoking rule 442, and substituting the following rule:

“442. At the request of all the parties to a proceeding, a Judge may, at any time before the trial 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 such negotiations; but that Judge shall not preside at the trial of the proceeding unless—

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

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

**14. New rules inserted**—The High Court Rules are hereby amended by inserting, after rule 448, the following rules:

**“448A. Application of this Part to proceedings under Chattels Transfer Act 1924**—(1) This Part applies to every proceeding in which the relief claimed is solely under section 13 of the Chattels Transfer Act 1924.

“(2) The Registrars (not being Deputy Registrars) for the time being exercising their office at the registries of Auckland, Hamilton, Rotorua, Palmerston North, Wellington, Christchurch, and Dunedin shall have the jurisdiction and powers of the Court in Chambers conferred by section 13 (1) of the Chattels Transfer Act 1924, but only in respect of the extension of time for the registration of an instrument or of an affidavit of renewal of an instrument.

“(3) The provisions of rules 272 to 275 shall apply to the exercise of the jurisdiction conferred by subclause (2).

**“448B. Application of this Part to certain proceedings under the Land Transfer Act 1952 in relation to caveats**—This Part applies to every proceeding in which the relief is claimed solely under any of the provisions of sections 140, 143, 144, 145, and 148 of the Land Transfer Act 1952 (all of which provisions relate to caveats).

**15. Evidence**—Rule 455 of the High Court Rules is hereby amended by adding, as subclause (2), the following subclause:

“(2) Subject to any direction by the Court in any particular case, nothing in subclause (1) applies in respect of—

“(a) A proceeding under the Law Reform (Testamentary Promises) Act 1949;

“(b) A proceeding in which relief by way of specific performance is sought.”

**16. Duplicate judgments**—The High Court Rules are hereby amended by inserting, after rule 541, the following rule:

“541A. Duplicates of any judgment, enfacéd with the word “duplicate”, may be issued to any party.”

**17. Leave to issue charging order**—Rule 567 of the High Court Rules is hereby amended by omitting the words “his creditors, or the party applying”, and substituting the words “either his creditors or the party applying or both”.

**18. Advertising of notice of sale**—The High Court Rules are hereby amended by repealing rule 596, and substituting the following rule:

“596. (1) Notice of the time and place of every intended sale shall be given by advertisement in such newspaper or newspapers as the officer deems sufficient.

“(2) The notice shall be first published,—

“(a) In any case where the property to be sold is or includes land, in some newspaper at least 21 days before the date of the intended sale:

“(b) In any other case, in some newspaper at least 5 days before the date of the intended sale.

“(3) The notice may be republished in the same or such other newspaper or newspapers in such manner and to such extent as the officer deems sufficient.

“(4) The notice—

“(a) Shall contain the information specified in rule 598; and

“(b) Shall be in such form and shall contain such further particulars as the officer deems sufficient.”

**19. Ex parte application**—Rule 632 of the High Court Rules is hereby amended by adding, as subclause (2), the following subclause:

“(2) An application under subclause (1) may be filed by post in accordance with rule 240 as if the application were an interlocutory application.”

**20. Place of filing application**—Rule 643 of the High Court Rules is hereby amended by adding the following subclause:

“(4) If the application for a grant is filed in a wrong registry, the Court may order that the application, and all other documents filed in the proceeding, be transferred to the proper registry.”

**21. Testator blind, illiterate, etc.**—The High Court Rules are hereby amended by repealing rule 658, and substituting the following rule:

“658. If—

“(a) The will has been signed by the testator by mark or by some other person by direction of the testator and it is not certified in the attestation clause that the will was read over and understood by the testator before the testator signed it; or

“(b) It appears that the testator was blind or illiterate and it is not certified in the attestation clause that the will was read over to and understood by the testator before he signed it; or

“(c) For any other reason the Court is doubtful whether or not the testator had knowledge of the contents of the will at the time of its execution or had, at that time, full possession of his mental faculties,—

evidence satisfying the Court that the testator had that knowledge or full possession of his mental faculties shall be given in accordance with rule 664.”

**22. Praecipe to set down proceeding for trial**—The First Schedule to the High Court Rules is hereby amended by omitting from form 33 the words “The estimated length of time required for the trial (*or* hearing) is      days.”, and substituting the following words “The length of time required for the trial or hearing is estimated—

“(a) By counsel (*or* solicitor) for the Plaintiff to be      days:

“(b) By counsel (*or* solicitor) for the Defendant to be      days:

“(c) By counsel (*or* solicitor) for the [*Additional party*] to be      days.”

**23. Subpoena**—The First Schedule to the High Court Rules is hereby amended by omitting from the notes to form 35 the words “regulations made under the Summary Proceedings Act 1957”, and substituting the words “the Witnesses and Interpreters Fees Regulations 1974”.

**24. Affidavit to lead grant of probate**—(1) The First Schedule to the High Court Rules is hereby amended by omitting paragraph 1 of form 51, and substituting the following paragraph:

“1. The above-named deceased (whom I knew) died at [*Place*] in [*Country*] on or about the      day of      19      .”

(2) The First Schedule to the High Court Rules is hereby amended by omitting paragraph 8, and substituting the following paragraphs:

“8. [*If the applicant is the widow or the widower of the deceased*] I am the widow (*or* the widower) of the above-named deceased and, at the time of the death of the above-named deceased, there was not in force any absolute decree or order or any legislative enactment for my divorce from the above-named deceased or for the dissolution or nullity of the marriage between the above-named deceased and myself.

OR

“8. [*If the applicant is a former spouse of the deceased and, despite the existence of a decree or order or legislative enactment of the kind described in section 2 of the Wills Amendment Act 1977, the applicant’s appointment as executor is not null and void by virtue of that section*] I am a former spouse of the above-named deceased and, despite the fact that, at the time of the death of the above-named deceased, there was in force a [*Give particulars of the decree or order or legislative enactment for the divorce of the deceased from the deponent or for the dissolution or nullity of the marriage between the above-named deceased and the applicant*], my appointment as executor is not null and void by virtue of section 2 of the Wills Amendment Act 1977 because [*State the facts showing why the applicant’s appointment is not rendered null and void by that section*].”

(3) The First Schedule to the High Court Rules is hereby amended by omitting from the paragraph 9 of form 51 in which they appear the words “the widow (*or* the widower *or* a former spouse)”, and substituting the words “a former spouse”.

**25. Affidavit to lead grant of administration with will annexed**—The First Schedule to the High Court Rules is hereby amended by omitting from the paragraph 7 of form 52 in which they appear the words “the widow (*or* the widower *or* a former spouse)”, and substituting the words “a former spouse”.

**26. Affidavit to lead grant of administration on intestacy to widow or widower**—The First Schedule to the High Court Rules is hereby amended by omitting from paragraph 11 of form 53 the word “execute”, and substituting the word “administer”.

**27. Affidavit to lead grant of administration on intestacy to daughter or son of deceased**—The First Schedule to the High Court Rules is hereby amended by omitting from paragraph 14 of form 54 the word “execute”, and substituting the word “administer”.

**28. Affidavit to lead grant of administration on intestacy to parent of deceased**—The First Schedule to the High Court Rules is hereby amended by omitting from paragraph 14 of form 55 the word “execute”, and substituting the word “administer”.

**29. Affidavit to lead grant of administration on intestacy to brother or sister of deceased**—The First Schedule to the High Court Rules is hereby amended by omitting from paragraph 16 of form 56 the word “execute”, and substituting the word “administer”.

**30. Probate in common form**—The First Schedule to the High Court Rules is hereby amended by inserting in form 57, after the words “granted to [Full name],”, the words “of [Place], [Occupation],”.

**31. Letters of administration on intestacy**—The First Schedule to the High Court Rules is hereby amended by inserting in form 59, after the words “Seal of the High Court of New Zealand”, the words “at .....”.

**32. Notice of hearing (Administrative Division)**—The First Schedule to the High Court Rules is hereby amended by omitting from form 63 the words “(General heading—Form 1)”, and substituting the following heading:

“In the High Court of New Zealand  
(Administrative Division)

Registry

No.

Under the [*Specify enactment*]  
In the matter of [*Specify claim, etc.*]  
Between [*Full name*]  
Appellant  
and [*Full name*]  
Respondent”.

**33. Second Schedule amended**—The Second Schedule to the High Court Rules is hereby amended by omitting the expression “\$12,000” in both places where it appears, and substituting in each case the expression “\$20,000”.

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 January 1986, effect a number of miscellaneous amendments to the new High Court Rules (which come into force on that date).

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 19 December 1985.

These rules are administered in the Department of Justice.