



THE HIGH COURT AMENDMENT RULES 1987

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 2nd day of March 1987

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 51C of the Judicature Act 1908 (as substituted by section 4 of the Judicature Amendment Act (No. 2) 1985), 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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2. New Part IIIA inserted

PART IIIA

COMMERCIAL LIST

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446O. Additional powers of Commercial list Judge	3. New forms inserted Schedule

RULES

1. Title and commencement—(1) These rules may be cited as the High Court Amendment Rules 1987, 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 April 1987.

2. New Part IIIA inserted—The High Court Rules are hereby amended by inserting, after Part III, the following Part:

“PART IIIA

COMMERCIAL LIST

“446A. **Interpretation**—In this Part, unless the context otherwise requires,—

“ ‘Commercial list’ means a commercial list established under section 24A of the Act at an office of the High Court:

“ ‘Commercial list Judge in charge’ means, in relation to a commercial list, the Judge nominated from time to time by the Chief Justice under section 24C (1) of the Act to supervise that commercial list:

“ ‘Commercial list Judge’ means, in relation to a commercial list,—

“ (a) The Commercial list Judge in charge:

“ (b) Any Judge nominated under section 24C (2) of the Act to assist the Commercial list Judge in charge:

“ ‘The general rules’ means the rules comprised in Parts I, II, III, IV, V, and VI.

“446B. **Application of this Part**—(1) Subject to this rule, this Part shall apply in relation to—

“ (a) Commercial lists; and

“ (b) The entry of proceedings on commercial lists; and

“ (c) The making of orders for the removal of proceedings entered on commercial lists; and

“ (d) Proceedings entered for the time being on commercial lists.

(2) This Part shall not apply in relation to proceedings commenced before the date of the commencement of this Part.

(3) If in any civil proceedings any question arises as to the application of any provision of this Part, the Court may, either on the application of any party or of its own motion, determine the question and give such directions as it thinks fit.

(4) Subject to any directions of the Court, the general rules shall apply in relation to any proceeding entered on a commercial list except in so far as those rules are modified by or are inconsistent with the Act or this Part.

“446C. **Entry on commercial list by endorsement**—(1) Where—

“(a) A statement of claim or a statement of defence in any proceeding (being a proceeding referred to in paragraphs (a) to (f) of section 24B (1) of the Act) is filed in an office of the Court at which a commercial list is established; and

“(b) Either—

“(i) A plaintiff, by endorsement on the statement of claim; or

“(ii) A defendant, by endorsement on the statement of defence,—

requires the proceeding to be entered on the commercial list, the proceeding shall be entered on that list without any order for entry.

“(2) A requirement under subclause (1) shall be made by a party by endorsing on the statement of claim or statement of defence, as the case may be, immediately under the reference to the registry in which the proceeding is filed, the words ‘Commercial list’.

“(3) The endorsement shall be made before the document is filed in the office of the Court.

“(4) A requirement under subclause (1) shall not be made—

“(a) On a statement of claim which is to be served on the defendant with an application for judgment under rule 136 or rule 137; or

“(b) On a statement of defence filed by a defendant who has been served with an application for judgment under rule 136 or rule 137; or

“(c) On a counterclaim; or

“(d) By a defendant to a counterclaim; or

“(e) By a third or subsequent party.

“446D. **Entry on commercial list by order**—(1) Where a statement of claim that could have been endorsed under rule 446C (1) (b) (i) has not been so endorsed, the plaintiff may, at any time after the filing of the statement of claim but not later than 14 days after the day on which a statement of defence in the proceeding is filed, make application to a Commercial list Judge for the entry of the proceeding on the commercial list.

“(2) Where a statement of claim that, but for rule 446C (4) (a), could have been endorsed under rule 446C (1) (b) (i) is served with an application for judgment under rule 136 or rule 137 and an affidavit by or on behalf of the defendant is, in accordance with rule 141, filed and served in answer to the affidavit by or on behalf of the plaintiff, the defendant may, at any time before the date for hearing of the application for judgment, make application to a Commercial list Judge for the entry of the proceeding on the commercial list.

“(3) Where the statement of claim in a proceeding which is of a commercial nature but which is not within any of the classes of proceeding specified in paragraphs (a) to (f) of section 24B (1) of the Act is filed in an office of the Court at which a commercial list is established, any party to the proceeding may, at any time after the filing of the statement of claim but not later than 14 days after the day on which a statement of defence in the proceeding is filed, make application to a Commercial list Judge for the entry of that proceeding on the commercial list.

“(4) Where an application is made under subclause (1) or subclause (2) or subclause (3), in relation to any proceeding, a Commercial list Judge may, in that Judge’s discretion, order that the proceeding be entered on the commercial list.

“446E. Documents to be served on and filed and served by defendant—Where a proceeding is entered on a commercial list before the notice of proceeding to a defendant is served,—

“(a) That notice of proceeding shall be in form 34A; and

“(b) The defendant shall not be obliged by rule 129 (1) to file and serve a statement of defence but may, within 14 days after the service on the defendant of the notice of proceeding, file and serve either a statement of defence or an appearance in form 34B or in form 10 or form 11 or form 12.

“446F. Heading of documents—The heading of every document filed or issued in any proceeding that is on a commercial list shall show, immediately after the reference to the registry in which the proceeding is filed, the words ‘Commercial list’.

“446G. Interlocutory applications—(1) Notwithstanding anything in rule 234, where—

“(a) A proceeding is entered on a commercial list; and

“(b) Any party to the proceeding wishes to apply to the Court for an order that, unless the Court otherwise directs, it is not necessary to draw up or seal,—

that party may make the interlocutory application by sending it to the Court and to all other parties intended to be affected by it.

“(2) An interlocutory application sent pursuant to subclause (1) may be sent to the Court and to the parties by post, facsimile, telex, or other written communication.

“(3) The Court’s copy of the application shall be addressed to the Registrar for the attention of a Commercial list Judge.

“(4) No order made or decision given on an interlocutory application in a proceeding entered on a commercial list may be varied or rescinded under rule 264.

“446H. Application for directions—(1) Where a proceeding has been entered on the commercial list, the party who required the proceeding to be so entered on the commercial list or the party who obtained the order for the entry of the proceeding on that list, as the case may be, shall file, under rule 437, an interlocutory application for directions regarding the proceeding.

“(2) The application filed pursuant to subclause (1) shall specify, in addition to the matters required by rule 437 (2), the details of a proposed timetable for the steps leading to the hearing of the proceeding.

“(3) Where the proceeding has been entered on the commercial list pursuant to an endorsement on the statement of claim, the application required by subclause (1) may be filed at any time after the statement of claim has been filed but not later than 7 days after the date on which any defendant files a statement of defence or an appearance in the proceeding, whichever first occurs.

“(4) Where the proceeding has been entered on the commercial list pursuant to an endorsement on an appearance or a statement of defence, the application required by subclause (1) shall be filed not later than 7 days after the date on which the appearance or statement of defence is filed.

“(5) Where the proceeding has been entered on the commercial list pursuant to an order under rule 446D (4), the application required by

subclause (1) shall be filed not later than 7 days after the date of the making of the order.

“(6) Notwithstanding rule 239, every application under subclause (1) shall be made on notice.

“446i. **Response to application for directions**—(1) A party who has been served with an application for directions filed pursuant to rule 446H (1) shall file in the Court and serve on the applicant and on all other parties affected by the application a memorandum stating—

“(a) The directions to which the party consents:

“(b) The directions which the party intends to oppose:

“(c) Where the party intends to oppose a direction, a brief statement of the grounds of opposition:

“(d) Whether or not the party intends to oppose the proposed timetable:

“(e) Where the party intends to oppose the proposed timetable, a brief statement of the grounds of opposition:

“(f) Any modifications suggested by the party to the proposed timetable:

“(g) Any other directions sought by the party.

“(2) Every memorandum under subclause (1) shall be filed and served at least 2 days before the day for the hearing of the application to which the memorandum relates:

“Provided that such a memorandum may, with the leave of a Commercial list Judge, be filed and served on that day or less than 2 days before that day.

“(3) Where a memorandum under subclause (1) is filed and served in accordance with this rule in relation to any application for directions, it shall not be necessary for that party to file and serve in relation to that application a notice of opposition in form 21.

“446j. **Hearing of application for directions**—(1) On the hearing of any application for directions made pursuant to rule 446H (1), a Commercial list Judge may give any directions which could be given by a Judge under rule 438 and may give such other directions as the Commercial list Judge thinks fit (whether or not inconsistent with any other provision of these rules or of any rules made under section 51C of the Act) for the speedy and inexpensive determination of the real questions between the parties to the proceeding.

“(2) Without limiting the generality of subclause (1), directions under that subclause may concern any of the following matters:

“(a) Pleadings or points of claim or of defence:

“(b) Counterclaim and third party proceedings:

“(c) Particulars of any claim, defence, or other matter:

“(d) Interrogatories and discovery:

“(e) The exchange of documents or lists of documents:

“(f) The formulation and determination of questions of fact or law:

“(g) An agreed statement of facts:

“(h) The proof of facts:

“(i) The giving by any party to the proceeding of notice of trial, the setting of the proceeding down for hearing, and the fixing of a date for trial:

“(j) The provision of copies of documents for the use of the Court at the trial:

“(k) The exchanging by the parties and supplying to the Court of lists of authorities:

“(l) The preparation of a Court book containing the pleadings, issues or questions, and the documents which the parties to the proceeding expect to be relied on at the hearing:

“(m) The exchange of reports of experts:

“(n) The determination of any question of fact by a referee:

“(o) The making of orders under section 14 or section 15 of the Arbitration Act 1908:

“(p) Any other matters which the nature of the case or its speedy and inexpensive determination may require.

“(3) Without in any way limiting the generality of subclauses (1) and (2), a Commercial list Judge may dispense with—

“(a) Pleadings or further pleadings:

“(b) Any interlocutory proceedings or step:

“(c) The proof of any fact which is not in dispute.

“(4) Nothing in this rule limits the generality of rules 437, 438, 439, and 441.

“446K. **Removal from list**—(1) A Commercial list Judge may, on the application of any party or on the Judge’s own motion, at any time remove any proceeding (including a proceeding to which section 24B (1) of the Act applies) from the commercial list.

“(2) Where a proceeding is removed from the Commercial list, the Commercial list Judge making the order shall give directions as to the future conduct of the proceeding.

“446L. **Proceedings in other Registries**—(1) Any party to a proceeding to which section 24B (1) of the Act applies and which, by virtue of the operation of rule 106, may not be filed in an office of this Court at which a commercial list is established, may apply to a Commercial list Judge for an order that the proceeding be entered on a commercial list established at any office of this Court.

“(2) An application under subclause (1) may be made at any time after the filing of the statement of claim in the proceeding but not later than 14 days after the day on which a statement of defence in the proceeding is filed.

“(3) As a condition of any order under subclause (1) a Commercial list Judge may give such further directions as that Judge thinks fit to minimise difficulties caused to any party arising from distance from the office of this Court at which the Commercial list is established.

“(4) Without limiting the generality of subclause (3), a Commercial list Judge may order that the trial, or part of the trial, or any interlocutory application relating thereto, shall be heard and determined in the registry in which the proceeding was originally commenced or at any other venue.

“446M. **Præcipe or notification of readiness not necessary**—(1) No præcipe to set any proceeding down for hearing shall be necessary in respect of a case entered in the commercial list.

“(2) In respect of any proceeding entered on the commercial list, any filing fee required to be paid to the Registrar upon the filing of a praecipe shall be payable by the plaintiff within 7 days of the allocation of a fixture for the hearing of the substantive proceeding.

“446N. **Memorandum that decision to be final**—Where the parties desire that the decision of a Judge hearing and determining any proceeding entered on the commercial list shall be final, a memorandum to that effect executed by the parties to the proceeding shall be filed before the trial of the proceeding begins.

“446O. **Additional powers of Commercial list Judge**—(1) In addition to all other powers conferred on a Commercial list Judge, such a Judge may give such directions as the Judge thinks fit for the speedy and inexpensive determination of the real questions between the parties to any proceeding entered on a commercial list.

“(2) Without limiting the generality of subclause (1), the Judge may—

“(a) Require the parties or counsel to file and exchange memoranda before any hearing of the proceeding in order to clarify the matters in issue in advance of the hearing:

“(b) Where appropriate deal with applications or hold conferences by way of a telephone conference link-up at the expense of one or more of the parties:

“(c) Where appropriate deal with applications by way of telegram, facsimile, telex message, or courier post at the expense of one or more of the parties:

“(d) Give directions to assist the convenience of the parties and witnesses in the case:

“(e) Change the venue of the trial, or adjourn the trial part heard to continue at different venue:

“(f) With the consent of counsel, make such use of video tape, film projection, computers and other equipment as the Judge sees fit in the proceeding, subject to a direction as to the manner in which the parties shall defray the costs of so doing:

“(g) With the consent of counsel, make arrangements for the more speedy and effective recording of evidence, subject to a direction as to the manner in which the parties shall defray the costs of so doing:

“(h) Appoint any person authorised in law to administer an oath to any witness giving evidence in any manner envisaged by this rule.

“446P. **Disputes concerning construction**—(1) Where a party to a dispute concerning the construction, status, or application of a contract or document wishes to apply to a Commercial list Judge under section 24C (4) of the Act for the determination of the questions involved in the dispute, that party shall file—

“(a) A statement of claim setting out the questions involved in the dispute; and

“(b) An affidavit exhibiting all documents necessary for the Commercial list Judge to make a proper determination of the questions involved in the dispute.

“(2) The notice of proceeding to a defendant in relation to an application under section 24C (4) of the Act shall be in form 34B.

“(3) The defendant shall not be obliged by rule 129 (1) to file and serve a statement of defence but may, within 14 days after the service on the defendant of the notice of proceeding or within such shorter time as a Commercial list Judge may order, file and serve a statement of defence or an appearance in form 34B.

“(4) The Commercial list Judge may hear and determine the question involved in the dispute at such time and on such terms as that Judge considers appropriate.

“(5) If the proper determination of the question requires evidence other than that contained in or exhibited to the affidavit filed pursuant to subclause (1) (b) or cross-examination on that affidavit or those exhibits, a Commercial list Judge may, on the application of any party or on the Judge’s own motion, order that such a proceeding be placed on the commercial list.

“446Q **Form of documents**—(1) Notwithstanding rule 31, all documents filed in respect of a proceeding entered on the commercial list and all documents filed in relation to an application under section 24C (4) of the Act shall be filed flat.

“(2) The part seeking to have a proceeding entered on the commercial list and the party making an application under section 24C (4) of the Act shall provide at that party’s expense, for the filing of all documents in the proceeding or in relation to the application, a folder or ring-binder of a type approved by the Registrar.”

3. New forms inserted—The First Schedule to the High Court Rules is hereby amended by inserting, after form 34, the new forms 34A, 34B, and 34C set out in the Schedule to these rules.

SCHEDULE

Rule 3

NEW FORMS 34A, 34B, AND 34C INSERTED IN FIRST SCHEDULE TO HIGH COURT RULES

Form 34A

Rule 446E (a)

NOTICE OF PROCEEDING (COMMERCIAL LIST)

{ General heading—Form 1 Modified by the addition, immediately under the reference to the registry, of the words 'Commercial list'. }

To the above-named defendant(s)

This proceeding is entered on the commercial list established at the office of this Court at [Place].

Take notice that unless, within 14 days after the date on which this notice is served upon you, you file in this office of this Court at [Place]—

- (a) A statement of your defence to the plaintiff's claim, a copy of which is served herewith; or
(b) An appearance indicating that you oppose the plaintiff's claim and that you wish to be heard in relation to it; or
(c) An appearance under protest to jurisdiction; or
(d) An appearance for ancillary purpose; or
(e) An appearance reserving rights,—

the plaintiff may proceed to a hearing and judgment on the claim in your absence.

The trial of the proceeding, if a trial is necessary, will be held in this Court at [Place] at a time to be fixed by the Court.

As this proceeding is entered on a commercial list it cannot be tried before a jury.

A Commercial list Judge may, on the application of any party or on the Judge's own motion, order the removal of any proceeding from the commercial list.

The plaintiff claims the sum of \$ for costs of and incidental to issuing this proceeding.

Dated this day of 19 .

Plaintiff (or Solicitor for Plaintiff)

SCHEDULE—*continued*

*The Court has directed that this notice and the statement of claim be served, not only on the defendant(s) above-named but also on the following persons:

[Full name, place of residence, and occupation of each person so directed to be served.]

Registrar

*Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

*Delete if inapplicable.

Form 34B

Rules 446E (b), 446F (3)

APPEARANCE IN PROCEEDING ENTERED ON COMMERCIAL LIST

{ General heading—Form 1
Modified, where the form is
filed under rule 446E (b), by
the addition, immediately
under the reference to the
registry, of the words
'Commercial list'. }

The defendant, by this appearance, gives notice that the defendant opposes the plaintiff's claim and wishes to be heard in relation to it.

Dated this day of 19 .

(Solicitor or Counsel for) Defendant

[Subscribe memorandum in form 3]

Form 34C

Rule 446F (2)

NOTICE OF PROCEEDING (BEING APPLICATION TO COMMERCIAL LIST JUDGE)
UNDER SECTION 24C (4) OF JUDICATURE ACT 1908

(General heading—Form 1)

To the above-named defendant(s)

The above-named plaintiff seeks the determination of questions involved in a dispute.

Take notice that unless, within 14 days after the date on which this notice is served upon you, you file in this office of this Court at [Place]—

(a) A statement of your defence to the plaintiff's claim, a copy of which is served herewith; or

SCHEDULE—*continued*

(b) An appearance indicating that you oppose the plaintiff's claim and that you wish to be heard in relation to it; or

(c) An appearance under protest to jurisdiction; or

(d) An appearance for ancillary purpose; or

(e) An appearance reserving rights,—

a Commercial list Judge may determine the questions involved in the dispute in your absence.

The determination of the questions involved in the dispute will take place in this Court at [*Place*] at a time to be fixed by a Commercial list Judge.

If the proper determination of the questions involved in the dispute requires the hearing of evidence other than that contained in or exhibited to the affidavit filed by the plaintiff or cross-examination on that affidavit or those exhibits, a Commercial list Judge may, on the application of any party or on the Judge's own motion, order that the proceeding be placed on the commercial list.

The plaintiff claims the sum of \$ _____ for costs of and incidental to issuing this proceeding.

Dated this _____ day of _____ 19 ____ .

Plaintiff (or Solicitor for Plaintiff)

*The Court has directed that this notice and the statement of claim be served, not only on the defendant(s) above-named but also on the following persons:

[*Full name, place of residence, and occupation of each person so directed to be served.*]

Registrar

*Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

*Delete if inapplicable.

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 April 1987, insert a new Part IIIA into the High Court Rules. New forms 34A, 34B, and 34C are prescribed for the purposes of the new Part. The new Part and the new forms relate to commercial lists and to the entry of proceedings on such lists.

The first commercial list is to be established at the office of the High Court at Auckland for the period of 4 years beginning on 1 April 1987. See the Commercial List (Auckland) Notice 1987 (*Gazette*, 1987, p. 1020).

Nothing in the new Part IIIA applies in relation to proceedings commenced before 1 April 1987.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 5 March 1987.

These rules are administered in the Department of Justice.