



THE HIGH COURT AMENDMENT RULES 1990

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 19th day of March 1990

Present:

THE HON. D. F. CAYGILL PRESIDING IN COUNCIL

PURSUANT to section 51c of 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 1990, 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 June 1990.

2. Interpretation—Rule 3(1) of the High Court 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. Non-compliance with rules—The High Court Rules are hereby amended by revoking rule 5, and substituting the following rule:

“5. (1) Where, in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceeding there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form, or content or in any other respect, the failure—

“(a) Shall be treated as an irregularity; and

“(b) Shall not nullify—

“(i) The proceeding; or

“(ii) Any step taken in the proceeding; or

“(iii) Any document, judgment, or order in the proceeding.

“(2) Subject to subclauses (3) and (4), the Court may, on the ground that there has been such a failure as is mentioned in subclause (1), and on such terms as to costs or otherwise as it thinks just,—

“(a) Set aside, either wholly or in part,—

“(i) The proceeding in which the failure occurred; or

“(ii) Any step taken in the proceeding in which the failure occurred; or

“(iii) Any document, judgment, or order in the proceeding in which the failure occurred; or

“(b) Exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceeding generally as it thinks fit.

“(3) The Court shall not wholly set aside any proceeding or the originating process by which the proceeding was begun on the ground that the proceeding was required by these rules to be begun by an originating process other than the one employed.

“(4) The Court shall not set aside any proceeding or any step taken in a proceeding or any document, judgment, or order in any proceeding on the ground of a failure to which subclause (1) applies on the application of any party unless the application is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.”

4. Sittings in vacations or on Court holidays—Rule 21 of the High Court Rules is hereby amended by adding, as subclause (3), the following subclause:

“(3) Where the Court sits pursuant to subclause (1) or subclause (2), it may,—

“(a) For the purpose of the hearing or for the purpose of giving effect to the hearing, authorise the receipt or issue of any document complying with these rules:

“(b) Notwithstanding section 54 of the Act, authorise the service of any document received or issued pursuant to authority given under paragraph (a).”

5. Application of summary judgment procedure—(1) Rule 135 (2) of High Court Rules (as added by rule 5 of the High Court Amendment Rules (No. 2) 1988) is hereby amended by adding to paragraph (b) the expression “; or”.

(2) Rule 135 (2) of the High Court Rules (as so added) is hereby amended by adding the following paragraph:

“(c) A proceeding in which a claim is made for contribution or indemnity.”

6. Time for service—Rule 140 of the High Court Rules is hereby amended by adding, as subclause (2), the following subclause:

“(2) Notwithstanding subclause (1), unless the Court otherwise directs, no part of the period beginning on the 20th day of December and ending with the close of the 10th day of January (being part of the Long Vacation) shall be reckoned in computing the time that is required to elapse between the date of service and the date for hearing; but nothing in this rule or rule 129 prevents any other part of the Long Vacation being reckoned in computing that time.”

7. Filing by post—Rule 240(1) of the High Court Rules is hereby amended by omitting the word “registered”.

8. Drawing up and sealing orders—Rule 267 of the High Court Rules is hereby amended by adding the following subclause:

“(5) If an order filed under subclause (4) gives directions to the Registrar or any Deputy Registrar or otherwise requires action to be taken by the Registrar or any Deputy Registrar, the party who drew up the order shall serve a duplicate of that order on the Registrar or Deputy Registrar.”

9. New rules inserted—The High Court Rules are hereby amended by inserting, after rule 446D (as inserted by rule 2 of the High Court Amendment Rules 1987), the following rules:

“446DA. Entry on commercial list of appeals against determinations of Commerce Commission—(1) Any appellant who files a notice of appeal pursuant to rule 691 appealing against any determination of the Commerce Commission may, by endorsement of the notice of appeal, require the proceeding to be entered on the commercial list, and the proceeding shall thereupon be entered on that list without any order for entry.

“(2) A requirement under subclause (1) shall be made by endorsing on the notice of appeal, immediately under the reference to the registry, the words ‘Commercial list’.

“(3) Any party to an appeal against a determination of the Commerce Commission (including any person who participated in any conference held by the Commission relating to the determination appealed against) may, within 14 days after the day on which that party is served with a copy of the notice of appeal, make application for the proceeding to be entered on the commercial list.

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

“446DB. **Entry on commercial list of applications by liquidators or receivers for directions**—(1) Any liquidator or receiver who files under Part IVA an originating application for directions may, by endorsement of the originating application, require the proceeding to be entered on the commercial list, and the proceeding shall thereupon be entered on that list without any order for entry.

“(2) A requirement under subclause (1) shall be made by endorsing on the originating application, immediately under the reference to the registry in which the proceeding is filed, the words ‘Commercial list’.

“(3) Any party to the proceeding may, at any time before the date for hearing of the application, make application for the proceeding to be entered on the commercial list.

“(4) Where an application is made under 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.”

10. Application of Part IVA (relating to originating applications)—Rule 458D (1) of the High Court Rules (as inserted by rule 12 of the High Court Amendment Rules (No. 2) 1987) is hereby amended by inserting, after paragraph (ba) (as inserted by rule 16 (2) of the High Court Amendment Rules (No. 2) 1988), the following paragraph:

“(bb) Any application for directions by—

“(i) A liquidator; or

“(ii) A receiver; or

“(iii) A judicial manager appointed under Part 1A of the Life Insurance Act 1908; or

“(iv) A statutory manager appointed under the Corporations (Investigation and Management) Act 1989; or

“(v) A statutory manager appointed under the Reserve Bank of New Zealand Act 1989; and”.

11. Form and contents of affidavits—Rule 510 of the High Court Rules is hereby amended by inserting, after subclause (3), the following subclause:

“(3A) Where an affidavit has more than one page,—

“(a) The deponent shall initial or set the deponent’s mark on each page that precedes the page on which the jurat appears; and

“(b) The person before whom the affidavit is sworn shall initial each page that precedes the page on which the jurat appears.”

12. Powers of certain Registrars to make grant, etc.—Rule 651 of the High Court Rules (as amended by rule 20 of the High Court Amendment Rules (No. 2) 1988) is hereby amended by omitting the words “The Registrars (not being Deputy Registrars) for the time being exercising their office at the registries of Auckland, Hamilton, Rotorua, Napier, Palmerston

North, Wellington, Christchurch, and Dunedin”, and substituting the words “Every Registrar, and the Deputy Registrar who is for the time being designated as the Senior Deputy Registrar at the registry of Auckland,”.

13. Conditions of, and order of priority for, grant of administration with will annexed—Rule 655 (1)(b) (iv) of the High Court Rules is hereby amended by omitting the word “minority,”.

14. Grant of letters of administration with will annexed during minority of executor—The High Court Rules are hereby amended by inserting, after rule 656, the following rule:

“656A. Where a person who is the sole executor of a will is at the date of the testator’s death a minor who is not entitled to a grant of probate under section 9 (3) of the Administration Act 1969, administration with the will annexed may be granted to such person as the Court thinks fit, until the minor becomes entitled to and obtains a grant of probate.”

15. Additional and substituted plaintiffs in winding-up proceeding—(1) Rule 700x (3) of the High Court Rules (as inserted by rule 5 of the High Court Amendment Rules 1988) is hereby amended by inserting, after the word “hearing”, the words “or on any day to which the hearing has been adjourned”.

(2) Rule 700x (4) of the High Court Rules (as so inserted) is hereby amended by omitting the words “appointed for the hearing”, and substituting the words “on which the addition or substitution is made”.

16. Discontinuance of proceeding—The High Court Rules are hereby amended by inserting, after rule 700y (as inserted by rule 5 of the High Court Amendment Rules 1988), the following rule:

“700yA. A proceeding commenced by the filing of a statement of claim pursuant to rule 700c may be discontinued only with the leave of the Court.”

17. Notice of proceeding when summary judgment sought—Form 13 in the First Schedule to the High Court Rules (as substituted by rule 23 of the High Court Amendment Rules (No. 2) 1988) is hereby amended by omitting the word “or” where it appears after the words “(a) To file both a notice of opposition and such an affidavit and to serve copies of them on the plaintiff;”, and substituting the word “and”.

18. Notice to judgment debtor—Form 49 in the First Schedule to the High Court Rules is hereby amended by omitting the expression “7 days” in both places where it appears, and substituting in each case the expression “14 days”.

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 June 1990, amend the High Court Rules.

Rule 2 revokes the definition of the term "address for service", and substitutes a new definition. The new definition removes the requirement that the address must be of a place not more than 5 kilometres from the proper office of the Court. In every case, the address must be the address of a place in New Zealand.

Rule 3 substitutes a new rule 5 in the High Court Rules relating to the effect of non-compliance with the High Court Rules. The rule (as enacted in 1985) was limited to the effect of non-compliance on any proceeding or interlocutory application or document in which or in respect of which the non-compliance occurred. The rule (as now substituted) is wider, and relates to any case where there has, by reason of any thing done or left undone, been a failure to comply with the requirements of the High Court Rules.

Rule 4 provides that where the Court sits in any vacation or on a Court holiday it may authorise the receipt, issue, or service of documents. This amendment creates an exception to section 54 of the Judicature Act 1908 which provides that, subject to any rule of Court, service of process on Sundays is void.

Rule 5 provides that a proceeding is not excluded from the summary judgment procedure by reason only of the proceeding being a proceeding in which a claim is made for contribution or indemnity.

Rule 6 relates to the time of service of documents in a proceeding for summary judgment. Rule 140 of the High Court Rules (as enacted in 1985) provided that under the summary judgment procedure certain documents must be served on the defendant not less than 21 days before the date for hearing the application. The rule (as now amended) provides that the time of the Long Vacation up to and including 10 January shall not be reckoned in computing that period of 21 days.

Rule 7 does away with the need to use registered post in filing documents by post.

Rule 8 provides that if an order made on an interlocutory application gives directions to the Registrar or any Deputy Registrar or otherwise requires action to be taken by the Registrar or any Deputy Registrar, the party who drew up the order shall serve a duplicate of that order on the Registrar or Deputy Registrar.

Rule 9 specifies procedures whereby certain matters may be entered on the commercial list. Those matters are appeals against determinations of the Commerce Commission and applications by liquidators or receivers for directions.

Rule 10 provides that applications for directions by a liquidator or by a receiver or by a judicial manager appointed under Part 1A of the Life Insurance Act 1908 or by a statutory manager appointed under the Corporations (Investigation and Management) Act 1989 or by a statutory manager appointed under the Reserve Bank of New Zealand Act 1989 may be made by filing an originating application under Part IVA.

Rule 11 provides that where an affidavit has more than one page, each page shall be initialled by the deponent and the person before whom the affidavit is sworn.

Rule 12 extends the powers of certain Registrars in respect of probate and administration proceedings. Rule 651 of the High Court Rules (as enacted in 1985) conferred certain powers on the Registrars at certain specified registries. Rule 651 (as now amended) confers those powers on all Registrars, and also on the Senior Deputy Registrar at the Auckland registry.

Rule 13 makes an amendment to rule 655 of the High Court Rules that is consequential upon the amendment made by *rule 14* of these rules.

Rule 14 inserts a new rule 656A into the High Court Rules relating to the granting of letters of administration with the will annexed where the sole executor of the will is a minor.

Rule 15 provides that a person may be added or substituted as a plaintiff in a proceeding for the winding-up of a company on any day to which the hearing of the application has been adjourned if, on the day, no plaintiff wishes to proceed with the hearing of the application.

Rule 16 provides that a proceeding commenced under Part IXA of the High Court Rules (which relates to companies (winding-up)) may be discontinued only with the leave of the Court.

Rule 17 amends form 13 (notice of proceeding when summary judgment sought). The form (as substituted in 1988) gave notice that the Court would be entitled to give judgment against the defendant if the defendant failed to file and serve the necessary documents or to appear at the hearing. The form implied that only one of those actions would be necessary to avoid judgment being entered against the defendant. The form (as now amended) gives notice that the Court will be entitled to give judgment against the defendant if the defendant fails to do both of those things.

Rule 18 corrects a drafting error in form 49. The form (as now amended) requires a statement as to the debtor's financial position to be returned within 14 days. This is now in line with the requirement contained in rule 620 of the High Court Rules.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 22 March 1990.

These rules are administered in the Department of Justice.