

1966/78



THE SUPREME COURT AMENDMENT RULES 1966

BERNARD FERGUSON, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 18th day of May 1966

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Judicature Act 1908 and the Crown Proceedings Act 1950, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Honourable the Chief Justice and at least four of the other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (of whom at least one was a Judge of the Supreme Court), hereby makes the following rules.

RULES

1. (1) These rules may be cited as the Supreme Court Amendment Rules 1966, and shall be read together with and deemed part of the Code of Civil Procedure set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the Code).

(2) These rules shall come into force on the twenty-eighth day after the date of their notification in the *Gazette*.

2. Rule 187 of the Code (as substituted by rule 2 of the Supreme Court Amendment Rules 1955*) is hereby amended by revoking subclause (1) and the proviso to that subclause, and substituting the following subclause:

“(1) Any affidavit or affirmation may be sworn or made in New Zealand before a solicitor of the Court, or before a Registrar or Deputy-Registrar, but no such affidavit or affirmation, except one sworn or made in respect of an *ex parte* application in non-contentious proceedings, shall be read or used if it was taken before a solicitor who, at the time of taking it, was acting as the solicitor, or as clerk or agent, of the person on whose behalf or against whom it was intended to be read or used.”

*S.R. 1955/29

3. Rule 190 of the Code (as inserted by rule 2 of the Supreme Court Amendment Rules (No. 2) 1955*) is hereby amended by revoking the definition of the term "Commonwealth representative", and substituting the following definition:

"'Commonwealth representative' means any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d'Affaires, Head of Mission, Consular Officer, Pro-consul, Trade Commissioner, or Tourist Commissioner of a Commonwealth country (including New Zealand); and includes any person lawfully acting for any such officer; and also includes any diplomatic secretary on the staff of any such Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d'Affaires, or Head of Mission:."

4. (1) The Code is hereby amended by revoking rule 547 (as amended by rule 5 of the Supreme Court Amendment Rules (No. 2) 1954†), and substituting the following rule:

"547. **Hearing of summons**—(1) Every such summons shall be heard in open Court.

"(2) Every such summons that is to be heard shall be entered by the Registrar in accordance with this rule in a list kept by him for the purpose.

"(3) Where any person served with the summons has given an address for service in the manner prescribed by rule 584 the entry shall be made only on the filing of a praecipe in the form No. 45 in the First Schedule hereto signed by the plaintiff and all of those persons who have so given an address for service:

"Provided that even though the praecipe is not signed by the plaintiff and all persons who have given an address for service, the Registrar may, if the praecipe is signed by at least the plaintiff or one of those persons, enter the summons in the list if he is satisfied that none of the others has given an acceptable reason for not signing the praecipe. Where the Registrar enters a summons in the list under this proviso he shall endorse the praecipe accordingly.

"(4) Where none of the persons served with the summons has given an address for service in accordance with rule 584 the entry shall be made only on the filing of a praecipe in the form No. 46 in the First Schedule hereto.

"(5) If any person served with the summons has given an address for service rule 251A shall apply to the hearing of the summons in the same way as it applies to the trial of a defended action, and the summons shall not be heard, except by leave of the Court or a Judge, unless a fixture has been made for the hearing in accordance with that rule.

"(6) Rule 250A (relating to notice of hearing) and rule 250B (relating to the powers of a Judge to direct trial at any time) shall apply, with the necessary modifications, in respect of the hearing of every originating summons.

"(7) Except by leave of the Court or a Judge, no party to an originating summons shall file an affidavit after the summons has been set down for hearing."

(2) Rule 426H of the Code (as inserted by rule 3 of the Supreme Court Amendment Rules (No. 2) 1954* and amended by rule 3 of the Supreme Court Amendment Rules (No. 2) 1963†) is hereby further amended by omitting from paragraph (g) of subclause (1) the words “517, and 547”, and substituting the words “and 517”.

(3) The Second Schedule to the Supreme Court Amendment Rules (No. 2) 1954 is hereby amended by revoking so much thereof as relates to rule 547 of the Code.

5. (1) Rule 539 of the Code is hereby amended by adding, as subclause (2), the following subclause:

“(2) The summons shall warn each person on whom it is served that if he does not give an address for service within the time and at the place stated in the summons he will not be notified of the date and time when the summons is to be heard:

“Provided that without prejudice to the provisions of rule 594, the plaintiff may, at any time before service of the summons make an *ex parte* application to the Court or a Judge for an order abridging the time for giving the address for service.”

(2) Rule 425 of the Code (as substituted by rule 3 of the Supreme Court Amendment Rules (No. 2) 1954* and amended by rule 2 (6) of the Supreme Court Amendment Rules 1963‡) is hereby further amended by adding the following paragraph:

“(i) An order abridging the time for giving an address for service made under the proviso to rule 539 (2).”

(3) The First Schedule to the Code is hereby amended by revoking form 44, and substituting the new form set out in the First Schedule hereto.

(4) The Code is hereby further amended by omitting from rule 537, and also from rule 550, the words “returnable before the Court.”

(5) The amendments made by subclauses (1) to (4) of this rule shall not affect the validity of any originating summons issued before the commencement of these rules.

6. The Code is hereby further amended by revoking rule 575.

7. The Code is hereby further amended in inserting after rule 588D (as inserted by rule 8 of the Supreme Court Amendment Rules 1950), the following heading and rule:

“Change of Solicitor

“588E. **Notice of change of solicitor**—Any party may change his solicitor in any proceedings by serving a notice of such change in form No. 47 in the First Schedule hereto, and upon the filing of an affidavit verifying service of a signed copy of such notice upon all other parties to the proceedings and upon the former solicitor, such change shall be deemed to have been effected.”

8. (1) The Code is hereby further amended by revoking rule 597C (as inserted by rule 8 of the Supreme Court Amendment Rules (No. 3) 1951§).

(2) The Supreme Court Amendment Rules 1946|| and rule 8 of the Supreme Court Amendment Rules (No. 3) 1951 are hereby revoked.

*S.R. 1954/155
 †S.R. 1963/170
 ‡S.R. 1963/169
 §S.R. 1951/261
 ||S.R. 1946/13

9. The First Schedule to the Code is hereby further amended by adding, after form 44 (as substituted by rule 5 (3) of these rules), the new forms set out in the Second Schedule hereto.

10. (1) The Code is hereby further amended by revoking Table C in the Third Schedule (as substituted by an Order in Council made on the 4th day of July 1921* and as amended from time to time), and substituting the Table C set out in the Third Schedule hereto.

(2) The new Table C 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 Table C substituted by this rule shall apply in respect of any step in the proceedings taken on or after that date.

(4) The following enactments are hereby consequentially revoked:

- (a) The said Order in Council made on the 4th day of July 1921*:
- (b) The Supreme Court Amendment Rules 1954†:
- (c) Rule 7 of the Supreme Court Amendment Rules (No. 2) 1954‡:
- (d) Rule 3 of the Supreme Court Amendment Rules 1955§.

Rule 5 (3)

FIRST SCHEDULE

NEW FORM OF ORIGINATING SUMMONS

No. 44—Originating Summons

(Rule 539)

In the Supreme Court of New Zealand

.....District

In the matter of [*Here refer to the particular matter in respect of which the proceedings are brought*].

Between C. D., Plaintiff, and
E. F., Defendant.

To the above-named defendant

And

To every other person served with this summons.

Take notice that the plaintiff, [*Here set out the particular capacity (if any) in which the plaintiff is taking out the summons*] has taken out this summons for the purpose of obtaining [*Here set out clearly the relief that is sought*].....and such further relief as in the circumstances may be just.

**Gazette*, 1921, Vol. II, p. 1698

†S.R. 1954/37

‡S.R. 1954/155

§S.R. 1955/29

FIRST SCHEDULE—continued

If you wish to be heard on the summons or to receive copies of any further documents filed herein you must, within thirty days after and exclusive of the day on which this summons is served on you, give an address for service in accordance with rule 584 of the Code of Civil Procedure by filing in the office of this Court at [*Here specify place*] a document specifying that address (which may not be more than three miles from that office) and by serving a copy of that document on the plaintiff.

The summons will be heard in the Supreme Court at [*Here specify place*] at a date and time to be fixed by the Court. You will not be notified of this date and time unless you give an address for service.

Issued under the seal of the Supreme Court at this day of 19 .

[Seal]

(Deputy) Registrar.

This summons is to be served on

(Deputy) Registrar.

N.B.—This summons was taken out by the plaintiff in person [or by his solicitor, Y. Z.] whose address for service is

SECOND SCHEDULE

Rule 9

NEW FORMS ADDED TO THE FIRST SCHEDULE TO THE CODE

Rule 547 (3)

“No. 45—*Praeceptum to Set Down Originating Summons for Hearing*

Please set this originating summons down for hearing on the first available date after [*State date*].

A fixture is not desired during the period to

We do not propose to file any further affidavits.

The other parties to this summons who have given an address for service have been asked to sign this praecipe. They have given no reason for not signing it or the following reasons for not signing it [*Here state their reasons*].

[Delete if the plaintiff and all persons served with the summons are signatories to this praecipe]

The estimated duration of the hearing is days.

We believe that this summons will be in all respects ready for hearing.

Dated at this day of 19 .

(Solicitor for) Plaintiff.

(Solicitor for) Defendant.

(Solicitor for) Other Parties.

To the Registrar of the Supreme Court at

I authorise the setting down of this originating summons under the proviso to subclause (3) of rule 547.

.....
Registrar.

SECOND SCHEDULE—*continued*

Rule 547 (4)

“No. 46—Praecipe by Plaintiff Alone to Set Down Originating Summons for Hearing

Please set this originating summons down for hearing on the first available date after [State date].

A fixture is not desired during the period to

The time allowed for the giving of an address for service by the persons required to be served with this summons has expired.

None of those persons has given an address for service.

I do not propose to file any further affidavits.

The estimated duration of the hearing is days.

I believe that this summons will be in all respects ready for hearing.

Dated at this day of 19 ..

(Solicitor for) Plaintiff.

To the Registrar of the Supreme Court at

Rule 588E

“No. 47—Notice of Change of Solicitor

Take notice that the above-named Plaintiff (Defendant) hereby authorises, of, Solicitor, to appear and act as (his) solicitor in the above-described proceeding and that (his) solicitor henceforth is the said and that (his) address for service is

Dated at the day of 19 ..

(Plaintiff, Defendant, or
as the case may be.)

To: (Other parties).

And to: (Former Solicitor).”

THIRD SCHEDULE

Rule 10

NEW TABLE C IN THE THIRD SCHEDULE TO THE CODE

Table C—Scale of Costs

Supreme Court

Rule 568

	Under £1,000	£1,000 to £2,500	Above £2,500
	£ s. d.	£ s. d.	£ s. d.
1. Issue and service of writ of summons, inclusive of statement of claim, when only one defendant ..	8 5 0	12 10 0	21 0 0
2. Filing statement of claim and affidavits under rule 466 when only one defendant	8 5 0	12 10 0	21 0 0

THIRD SCHEDULE—*continued*NEW TABLE C IN THE THIRD SCHEDULE TO THE CODE—*continued*

—	Under £1,000	£1,000 to £2,500	Above £2,500
3. Writ of summons under rule 490 when only one defendant	£ s. d. 8 5 0	£ s. d. 12 10 0	£ s. d. 21 0 0
4. For each additional defendant in cases 1, 2, and 3 ..	2 0 0	2 0 0	2 0 0
5. On judgment by default without motion	4 0 0	4 0 0	4 0 0
6. On judgment by confession without motion	4 0 0	4 0 0	4 0 0
7. Payment into Court	4 0 0	4 0 0	4 0 0
8. On a discontinuance or a dismissal of action	4 0 0	4 0 0	4 0 0
9. When an application to enter judgment is necessary in cases 5, 6, 7, and 8; the costs of the application as allowed.			
10. Preparing and filing statement of defence	8 5 0	12 10 0	21 0 0
11. Preparing for trial to either party in addition to costs under Nos. 1, 2, 3, or 10.. (These costs, or a portion of them, may be allowed in addition to Nos. 5, 6, 7, and 8, if necessarily incurred): Provided that extra costs may be allowed, if certified for, having regard to the importance of the case and the time reasonably spent in preparation, but so that the total fee for preparation shall not exceed three times the amount in the appropriate scale.	26 5 0	42 0 0	52 10 0
12. In case of special jury, costs of striking and reducing, and other incidental steps	8 5 0	8 5 0	8 5 0
13. Trial or hearing of an action Provided that if the trial is limited to the quantum of damages only, the scale shall, unless the Court otherwise directs, be two-thirds of the amount shown.	8%	8% up to £1,000 and 3% on excess	8% up to £1,000 and 3% on excess

THIRD SCHEDULE—*continued*NEW TABLE C IN THE THIRD SCHEDULE TO THE CODE—*continued*

—	Under £1,000	£1,000 to £2,500	Above £2,500
	£ s. d.	£ s. d.	£ s. d.
14. Extra counsel, if certified for, each per day, not exceeding	8 5 0	12 10 0	21 0 0
15. Second and each succeeding day of hearing, if certified for, not exceeding ..	10 10 0	21 0 0	31 10 0
16. New trials and rehearings, two-thirds of the rates under Nos. 13, 14, and 15.			
17. Charging order nisi ..	6 5 0	6 5 0	6 5 0
Charging order absolute without motion	4 0 0	4 0 0	4 0 0
Charging order absolute on motion	8 5 0	8 5 0	8 5 0
18. Writ of sale	6 5 0	6 5 0	6 5 0
19. Writ of sale against land, extra	4 0 0	4 0 0	4 0 0
20. Conditions of sale, when required; as allowed by Registrar.			
21. Commission or order to examine witnesses in New Zealand, up to examination..	6 5 0	10 10 0	14 10 0
22. Examination before examiner; as fixed by Registrar.			
23. Order and commission for examination of witnesses out of New Zealand ..	8 5 0	14 10 0	21 0 0
24. Interrogatories: copies and service	6 5 0	10 10 0	14 10 0
25. Answers to interrogatories ..	6 5 0	10 10 0	14 10 0
26. Affidavit of discovery; as may be certified for, £5 to £31 10s.			
27. Production and inspection of documents: as may be certified for £2 to £21.			
28. Preparing and settling special cases	6 5 0	10 10 0	15 15 0
29. Argument of special case of question of law stated for the opinion of the Court, or of facts stated by the jury in lieu of verdict, not exceeding	26 5 0	36 15 0	63 0 0
Second and each succeeding day, if certified for, not exceeding	10 10 0	21 0 0	31 10 0

THIRD SCHEDULE—*continued*NEW TABLE C IN THE THIRD SCHEDULE TO THE CODE—*continued*

—	Under £1,000	£1,000 to £2,500	Above £2,500
	£ s. d.	£ s. d.	£ s. d.
30. Motions and other applications in Court not specially provided for, or any proceeding under Chapter II of Part VII, £5 5s. to £105 as certified for or ordered.			
31. Originating summonses: £5 5s. up to £105 as certified for. But the Court may direct that the costs of the parties, or any of them, shall be fixed as in an ordinary action or shall be taxed and paid as between solicitor and client.			
32. Extra counsel may be certified for under Nos. 29, 30, and 31, at each per day, not exceeding	8 5 0	12 10 0	21 0 0
33. Motions and other applications in Chambers, £5 5s. to £31 10s. as certified for or ordered. But the Court may direct costs to be as in an ordinary action or taxed and paid as between solicitor and client.			
34. Taking accounts, making inquiries, and other proceedings before Registrar: per hour, not exceeding £5 5s.			
35. Appeals from inferior Courts (not otherwise provided for): not exceeding £500, £21, over £500, £42. An allowance not exceeding £21 may be made for every day after the first.			

THIRD SCHEDULE—*continued*

36. In addition to the foregoing items, all disbursements for—

(a) Fees of Court:

(b) Witnesses and interpreters fees, allowances, and travelling expenses actually paid by the party in accordance with the Witnesses and Interpreters Fees Regulations 1959*:

(c) Agency charges (including those incurred in preparing for trial) if specially allowed:

(d) Other necessary payments.

37. The foregoing costs are to be calculated on the amount recovered for the plaintiff if he succeeds, and on the amount claimed in the action if the defendant succeeds. Where relief other than a sum of money is claimed, either alone or in addition to a sum of money, the Court on giving judgment shall fix under what head costs shall be allowed.

If judgment is entered before trial, without application to the Court, the Registrar shall fix the head.

38. The total cost of an action exclusive of disbursements shall not exceed £500 unless the Court certifies for the whole costs of the action. This shall not limit the power of the Court under rule 568 to fix the costs at any amount.

T. J. SHERRARD,
Clerk of the Executive Council.

*S.R. 1959/108
Amendment No. 1: S.R. 1965/22

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

The rules make several amendments to the Code of Civil Procedure.

Rule 2 amends rule 187 so that affidavits taken before solicitors acting for parties to the proceedings may be used if the proceedings are non-contentious and the affidavit is in respect of an *ex parte* application.

Rule 3 amends rule 190 so that the definition of "Commonwealth representative" in that rule is now the same as the definition of that term in section 2 of the Oaths and Declarations Act 1957.

Rule 4 substitutes a new rule 547. The rule prescribes a new procedure for setting down an originating summons for hearing. It is similar to the procedure prescribed by the Supreme Court Amendment Rules 1963 for setting down an action commenced by writ of summons for trial. The new rule expressly provides that, except by leave of the Court or a Judge, no party to an originating summons shall file an affidavit after that summons has been set down for hearing.

Rule 5 prescribes a new form of originating summons and makes amendments related to the adoption of the new form.

Rule 6 revokes rule 575 which is spent.

Rule 7 inserts a new rule which enables a party to change his solicitor in any proceedings by serving a notice on his former solicitor and on the other parties to the proceedings.

Rule 8 revokes rule 597c which was enacted as a paper-saving measure in 1951.

Rule 9 prescribes three new forms. Two are forms of praecipe to set an originating summons down for hearing. Form 45 is to be used where some of the persons served with the summons have taken a step in the proceedings and Form 46 is to be used where none of those persons have taken a step in the proceedings.

Form 47 is a notice of change of solicitor.

Rule 10 substitutes a new and increased scale of costs.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 19 May 1966.

These regulations are administered in the Department of Justice.