



THE SUPREME COURT AMENDMENT RULES 1977

KEITH HOLYOAKE, Governor-General
ORDER IN COUNCIL

At the Government Buildings at Wellington this 19th day of December
1977

Present:

THE RT. HON. R. D. MULDOON PRESIDING 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 Supreme Court), hereby makes the following rules.

RULES

1. Title and commencement—(1) These rules may be cited as the Supreme Court Amendment Rules 1977, 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) Except as provided in rule 2 (3) and rule 6 (5) of these rules, these rules shall come into force on the tenth day after the date of their notification in the *Gazette*.

2. New rules substituted—(1) The Code is hereby amended by revoking rules 173 and 174, and substituting the following rules:

“173. **Issue of subpoenas**—(1) At any time after the issue of the writ of summons any party may issue as of course, without any application to the Court, orders under the Seal of the Court (in these rules referred to as ‘subpoenas’) to require the attendance of witnesses at the trial.

“(2) Such orders shall be in the form No. 19A in the First Schedule hereto.

“(3) Before a subpoena is issued a formal request shall be filed in the registry out of which the subpoena is to issue; and such request shall contain—

“(a) If the party issuing the subpoena is acting in person, his name and address; or

“(b) If that party is not so acting, the name and address of his solicitor or his solicitor’s firm and, if that solicitor is acting as the agent of another, the firm name and address of his principal.

“(4) The names of 2 or more persons may be included in one subpoena.

“174. **Service of subpoenas**—(1) A subpoena shall be served on the witness personally, by leaving a copy thereof with the witness, but it shall not be necessary to show the original order.

“(2) At the time of serving the subpoena, or at some other reasonable time before the hearing, there shall be paid or tendered to the witness a sum in respect of his allowances and travelling expenses in accordance with the scale prescribed for the time being by regulations made under the Summary Proceedings Act 1957.”

(2) The First Schedule to the Code is hereby amended by inserting, after form No. 19, the new form set out in the First Schedule hereto.

(3) This rule, and the First Schedule to these rules, shall come into force on the commencement of section 4 of the Judicature Amendment Act 1977.

3. Additional jurisdiction of Registrars at Auckland, Hamilton, Wellington, Christchurch, and Dunedin—(1) The Code is hereby amended by revoking rule 426H (as inserted by rule 3 of the Supreme Court Amendment Rules (No. 2) 1954* and as amended from time to time), and substituting the following rule:

“426H. (1) The Registrars for the time being exercising their office at the registries at Auckland, Hamilton, Wellington, Christchurch, and Dunedin shall have the jurisdiction and powers of a Judge sitting in Chambers conferred by the following enactments, namely:

“(a) Sections 5 to 9 of the Administration Act 1969, but only in relation to the granting of administration (as defined in section 2 (1) of that Act) of the estates of deceased persons who leave estate in New Zealand:

“(b) Section 15 of the Administration Act 1969, section 35 (4) of the Trustee Act 1956, and section 154 (3) of the Insolvency Act 1967:

“(c) Section 44 (1) of the Public Trust Office Act 1957 and section 8 (1) of the Trustee Companies Act 1967:

“(d) 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:

“(e) Section 26 of the Penal Institutions Act 1954:

“(f) Rules 35, 60, 67, 68, 69, 71, 72, 75, 124, 161, 161B, 175, 179 180, 342, and 517.

“(2) The said Registrars shall also have the jurisdiction and powers of a Judge sitting in Chambers in respect of any unopposed application for leave to swear that any person is dead with the view of obtaining a grant of administration of that person’s estate in New Zealand under sections 5 to 9 of the Administration Act 1969.

“(3) In all matters in which any such Registrar has jurisdiction under this rule, he shall be entitled to exercise, as ancillary to that jurisdiction, all powers that a Judge might exercise in like circumstances.

“(4) The jurisdiction and powers conferred by this rule may be exercised in respect of applications filed in other registries, as well as in the registry at which the Registrar exercises his office.”

- (2) The following rules are hereby consequentially revoked, namely:
- (a) Rule 3 (2) of the Supreme Court Amendment Rules (No. 2) 1963*;
 - (b) Rule 4 (2) of the Supreme Court Amendment Rules 1966†;
 - (c) Subclauses (1) and (2) of rule 3 of the Supreme Court Amendment Rules (No. 2) 1970‡;
 - (d) Rule 3 of the Supreme Court Amendment Rules 1972§;
 - (e) Rule 2 (2) of the Supreme Court Amendment Rules (No. 2) 1973||.

4. Variations of forms—Rule 597 of the Code is hereby amended by adding, as subclause (2), the following subclause:

“(2) Where more than one order is sought on any notice of motion or other document or where more than one order is made in any matter, the orders sought or made, as the case may be, may be enumerated in separate paragraphs without the repetition of introductory or connecting words.”

5. Amendments related to Adoption Act 1955 and Status of Children Act 1969—(1) The First Schedule to the Code (as amended by Order in Council made on the 24th day of February 1909¶) is hereby amended by revoking paragraph (3) of form No. 38, and substituting the following paragraph:

“(3) That the said deceased was my father, and that he left him surviving the following children—namely, myself, this deponent, his son [or daughter], and [other] sons, namely, [State names of sons, and their ages, residences, and occupations]; and [other] daughters, namely, [State names of daughters, and their ages, residences, and occupations, and, if married, the names, residences, and occupations of their husbands], the said children (including myself) being children to whom neither section 16 (2) (d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable.”

(2) The First Schedule to the Code (as so amended) is hereby further amended by revoking paragraphs (3) and (4) of form No. 38A, and substituting the following paragraphs:

“(3) That the said deceased was my brother, and that he was at the time of his death a bachelor, and that the father and mother of the deceased and of me, this deponent, both predeceased him.

“(4) That besides myself the said deceased left him surviving [other] brothers, that is to say, [Here state the names, ages, residences, and occupations of the brothers of the applicant and the deceased]; and [other] sisters, that is to say, [Here state the names, ages, residences, and occupations of the sisters of the applicant and the deceased, and if the sisters are married, the names, residences, and occupations of their husbands], the said brothers and sisters of the deceased being (with myself) children to whom neither section 16 (2) (d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applicable.”

*S.R. 1963/170

†S.R. 1966/78

‡S.R. 1970/251

§S.R. 1972/44

||S.R. 1973/174

¶Gazette, 1909, p. 644

6. New scale of costs substituted—(1) The Code is hereby amended by revoking Table C in the Third Schedule (as substituted by rule 10 of the Supreme Court Amendment Rules 1966*), and substituting the Table C set out in the Second Schedule to these rules.

(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 this rule.

(3) In respect of any proceedings commenced before the date of the coming into force of this rule, 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) Rule 10 of, and the Third Schedule to, the Supreme Court Amendment Rules 1966* are hereby consequentially revoked.

(5) This rule, and the Second Schedule to these rules, shall come into force on the 1st day of February 1978.

*S.R. 1966/78

SCHEDULES

Rule 2 (2)

FIRST SCHEDULE

NEW FORM INSERTED IN FIRST SCHEDULE TO CODE

No. 19A—Subpoena

(General Heading—Form No. 1)

To [*Name, address, and occupation*]

YOU ARE HEREBY ORDERED to attend at the Supreme Court at
 on day, the day of 19 , at o'clock in the
 morning/afternoon and from day to day thereafter until you are dis-
 charged from attendance, to give evidence on behalf of the [*State party*]
 in these proceedings.

*(AND YOU ARE ORDERED to bring with you and produce at the same
 time and place [*Here describe the documents or things to be produced*].)

IF YOU FAIL so to attend, the Court may issue a warrant to arrest you
 and bring you before the Court.

Issued under the Seal of the Supreme Court of New Zealand at
 this day of 19 .

[Deputy] Registrar.

This subpoena is issued on the application of [*Full name*] [*solicitor
 for] the [*State party*] whose address is

[*Where the party's solicitor is acting by an agent, the name and address of
 the agent should be shown as well as the name, firm, and address of the principal.*]

*Delete if inapplicable

SECOND SCHEDULE

Rule 6

NEW TABLE C IN THE THIRD SCHEDULE TO THE CODE

Table C—Scale of Costs

Supreme Court

Rule 568

	Under \$5,000	\$5,000 to \$10,000	Above \$10,000
	\$	\$	\$
1. Issue and service of writ of summons, inclusive of statement of claim, when only one defendant, and matters preliminary thereto	75	125	175
2. Filing statement of claim and affidavits under rule 466 when only one defendant	75	125	175
3. Writ of summons under rule 490 when only one defendant	75	125	175
4. For each additional defendant in cases 1, 2, and 3	25	25	25
5. On judgment by default without motion	25	50	75
6. On judgment by confession without motion	25	50	75
7. Payment into court	20	20	20
8. On a discontinuance or a dismissal of action	20	20	20
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 and matters preliminary thereto	50	100	150
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):	200	300	500
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.			

SECOND SCHEDULE—*continued*

	Under \$5,000	\$5,000 to \$10,000	Above \$10,000
	\$	\$	\$
12. In case of special jury, costs of striking and reducing, and other incidental steps	50	50	50
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 percent	8 percent up to \$5,000 and 3 percent on the excess	8 percent up to \$5,000 and 3 percent on the excess
14. Motions and other applications in Court not specially provided for, or any proceeding under Chapter II of Part VII as certified for . . .			
15. Originating summonses: 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			
16. Extra counsel, if certified for, each per day, not exceeding	50	150	200
17. Second and each succeeding day of hearing, not exceeding	100	200	300
18. New trials and rehearings, two-thirds of the rates under Nos. 13, 16, and 17			
19. Charging order nisi	50	50	50
Charging order absolute without motion	25	25	25
Charging order absolute on motion	50	50	50
20. Writs of execution	50	50	50
21. Writ of sale against land, extra	25	25	25
22. Conditions of sale, when required; \$50 to \$200 as fixed by the Registrar			
23. Commission or order to examine witnesses in New Zealand	50	50	50
24. Examination before examiner; as fixed by the Registrar			
25. Order and commission for examination of witnesses out of New Zealand	75	75	75

SECOND SCHEDULE—*continued*

26. Interrogatories: application for leave to administer; copies and service; up to \$100, as certified for:
 Provided that extra costs may be allowed, if certified for, having regard to the special circumstances of the case.
27. Answers to interrogatories; up to \$100, as certified for:
 Provided that extra costs may be allowed, if certified for, having regard to the special circumstances of the case.
28. Affidavit of discovery; up to \$75, as certified for:
 Provided that extra costs may be allowed, if certified for, having regard to the special circumstances of the case.
29. Production and inspection of documents: \$75.
 Provided that extra costs may be allowed, if certified for, having regard to the special circumstances of the case.
30. Preparing and settling special cases; as certified for.
31. 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; as certified for (including, where necessary, extra counsel in accordance with No. 16).
32. Motions and other applications in Chambers; up to \$200 as certified for.
33. Taking accounts, making inquiries, and other proceedings before the Registrar; as certified for.
34. Appeals from inferior Courts (not otherwise provided for); as certified for.
35. In addition to the foregoing items, all disbursements for:
- (a) Fees of Court:
 - (b) Witnesses and interpreters' fees, allowances, and travelling expenses in accordance with the Witnesses and Interpreters' Fees Regulations 1974*:
 - (c) Agency charges (including those incurred in preparing for trial) if specially allowed:
 - (d) Other necessary payments.
36. 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 determine under what head costs shall be allowed.
 If judgment is entered before trial, without application to the Court, the Registrar shall fix the head.
37. The total cost of an action exclusive of disbursements shall not exceed \$2,500, unless the Court certifies for the whole costs of the action.
38. This Table shall not limit the power of the Court under rule 568 to fix the costs at any amount.
39. Costs may be certified for under this Table by a Judge other than the trial Judge if the trial Judge is, by reason of illness or other incapacity or absence from New Zealand, unable to certify for such costs.

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 amend the Code of Civil Procedure.

Rule 2 provides for the issue and service of orders of subpoenas in the place of writs of subpoena. This rule comes into force on the commencement of section 4 of the Judicature Amendment Act 1977. (This section is to come into force on a date to be appointed by Order in Council.)

Rule 3 substitutes a new rule 426H dealing with the powers of the Registrars at Auckland, Hamilton, Wellington, Christchurch, and Dunedin. The only change of substance is in paragraph (c) of rule 426H (1). This paragraph deals with the powers of such a Registrar to give the Court's consent to appointments under section 44 (1) of the Public Trust Office Act 1957 and section 8 (1) of the Trustee Companies Act 1967. The power of the Registrar to give that consent is no longer to be confined to estates sworn at a sum not exceeding \$10,000. The reference to the Trustee Companies Act 1967 is new.

Rule 4 makes it clear that where more than one order is sought on a notice of motion or other document or is made, the orders sought or made, as the case may be, may be enumerated in separate paragraphs without the repetition of introductory or connecting words.

Rule 5 amends two of the forms of affidavit to lead grant of administration. The amendments are related to the provisions of the Adoption Act 1955 and the Status of Children Act 1969.

Rule 6 substitutes a new and increased scale of costs.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 22 December 1977.
These rules are administered in the Justice Department.