

**Reprint
as at 1 July 2019**



Domestic Violence Amendment Rules 2017

(LI 2017/188)

Domestic Violence Amendment Rules 2017: revoked, on 1 July 2019, pursuant to section 259(2) of the Family Violence Act 2018 (2018 No 46).

Patsy Reddy, Governor-General

Order in Council

At Wellington this 7th day of August 2017

Present:

Her Excellency the Governor-General in Council

These rules are made under section 126 of the Domestic Violence Act 1995 on the advice and with the consent of the Executive Council.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal rules	2
4 Rule 43 amended (Service generally)	2
5 Rule 46 replaced (Modes of service)	2
46 How documents to be served	3
6 Rule 47 revoked (Service by means of post office box, document exchange, or facsimile transmission)	3

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These rules are administered by the Ministry of Justice.

7	Rule 51 revoked (Who may undertake personal service)	3
8	Rule 53 amended (Personal service of orders)	3
9	New rule 57A inserted (Who may undertake personal service)	3
	57A Who may undertake personal service	3
10	Rule 58 replaced (Lawyer accepting service)	4
	58 Lawyer accepting service	4
11	New rules 58A to 58D and cross-heading inserted	4
	<i>Service at address for service</i>	
	58A Service at address for service	4
	58B Methods of service if address for service is lawyer's office	4
	58C When and how documents under rule 58B to be treated as served	4
	58D Lawyer must acknowledge document transmitted electronically	5
12	Rule 59 amended (Substituted service)	5
13	Rule 60 replaced (Proof of service)	5
	60 Proof of personal service	5
	60A Proof of substituted service	6
	60B Attaching copy of document to affidavit of service or certificate of service	6

Rules

1 Title

These rules are the Domestic Violence Amendment Rules 2017.

2 Commencement

These rules come into force on 1 September 2017.

3 Principal rules

These rules amend the Domestic Violence Rules 1996 (the **principal rules**).

4 Rule 43 amended (Service generally)

Revoke rule 43(3).

5 Rule 46 replaced (Modes of service)

Replace rule 46 with:

46 How documents to be served

- (1) A document required by the Act or these rules to be served on a person in a particular manner must be served on the person in that manner, regardless of rules 50 to 58D.
- (2) A document not required by the Act or these rules to be served on a person in a particular manner may be served on the person by—
 - (a) personal service (*see* rules 50 to 57A); or
 - (b) service on a lawyer who accepts the document on behalf of the person (*see* rule 58); or
 - (c) service at the person’s address for service (*see* rules 58A to 58D); or
 - (d) service in a manner and at a place that the court or Registrar directs.
- (3) If all reasonable efforts have been made to serve documents in a manner required or (as the case requires) a manner permitted by these rules, but the documents have not been served in that manner, in certain circumstances the court or a Registrar may, under rule 59, make an order for substituted service (that is, an order dispensing with, or changing, the service required by these rules).

6 Rule 47 revoked (Service by means of post office box, document exchange, or facsimile transmission)

Revoke rule 47.

7 Rule 51 revoked (Who may undertake personal service)

Revoke rule 51.

8 Rule 53 amended (Personal service of orders)

In rule 53(5)(b), replace “rule 47(1)(a)” with “rule 58C(1)”.

9 New rule 57A inserted (Who may undertake personal service)

After rule 57, insert:

57A Who may undertake personal service

- (1) A document that must be served personally may be served by—
 - (a) a Registrar, a bailiff, or any other employee appointed under the State Sector Act 1988 for the conduct of the business of the court;
 - (b) an individual who is authorised by the Secretary for Justice to serve documents under the Act;
 - (c) an officer or employee of a corporation that is authorised by the Secretary for Justice to serve documents under the Act;
 - (d) a constable:

- (e) a Police employee authorised by the Commissioner of Police to serve documents under the Act;
 - (f) a party's lawyer or an agent of a party's lawyer;
 - (g) a party's agent, delegate for the purpose, or employee.
- (2) Personal service may not be effected by a party to the proceedings, or by a representative, but the party or, where applicable, the representative may be present when service is effected.

10 Rule 58 replaced (Lawyer accepting service)

Replace rule 58 with:

58 Lawyer accepting service

Where a lawyer represents that he or she is authorised to accept service of any document on behalf of a party, the document is deemed to have been served if the lawyer—

- (a) notes on a copy of that document that he or she accepts service of it on behalf of the party; and
- (b) signs and dates the note.

11 New rules 58A to 58D and cross-heading inserted

After rule 58, insert:

Service at address for service

58A Service at address for service

A document may be served at an address for service by leaving the document at that address between 9 am and 5 pm.

58B Methods of service if address for service is lawyer's office

If an address for service given by a party under these rules is the office of a lawyer acting for the party, and the lawyer has a post office box address, a document exchange box number, or an electronic address, a document may be served on the party by—

- (a) posting the document to the post office box; or
- (b) leaving the document at a document exchange for direction to the document exchange box number; or
- (c) transmitting the document to the electronic address.

58C When and how documents under rule 58B to be treated as served

- (1) A document posted under rule 58B(a) must, unless the contrary is proved, be treated as having been served on the earlier of—
- (a) the day on which it was received; and

- (b) the fifth working day after the day on which it was posted.
- (2) A document left at a document exchange under rule 58B(b) must, unless the contrary is proved, be treated as having been served on the earlier of—
 - (a) the day on which it was received; and
 - (b) the second working day after the day on which it was left at the document exchange.
- (3) A document transmitted under rule 58B(c)—
 - (a) before 5 pm on a day must be treated as having been served on that day unless the contrary is proved;
 - (b) on or after 5 pm on a day must be treated as having been served on the first working day after the day on which it was received unless the contrary is proved.
- (4) A document transmitted under rule 58B(c) must be treated as having been received in a complete and legible form unless—
 - (a) the contrary is proved; or
 - (b) the lawyer receiving the document gave in relation to the document the notice required by rule 58D(1)(b).

58D Lawyer must acknowledge document transmitted electronically

- (1) A lawyer to whom a document is transmitted under rule 58B(c) must, promptly after receiving the document, give the person who served the document—
 - (a) a notice acknowledging receipt of the document and confirming the date of service of the document; or
 - (b) if the document was incomplete or illegible, or both, when it was received, a notice stating that the document was incomplete or illegible, or both, when it was received.
- (2) A notice under subclause (1) may be—
 - (a) given in writing; or
 - (b) transmitted electronically.

12 Rule 59 amended (Substituted service)

In rule 59(1)(a), replace “by advertisement or in some other manner” with “by some other means (for example, by social media or by advertisement)”.

13 Rule 60 replaced (Proof of service)

Replace rule 60 with:

60 Proof of personal service

- (1) Proof that a document has been served personally on a person may be given by—

- (a) oral evidence given on oath before the court; or
 - (b) an affidavit of service in form DV 14.
- (2) If the person on whom the document was served is personally known to the person who makes the affidavit of service, that affidavit must set out the circumstances that enable the deponent to state the deponent's personal knowledge of the person served.
- (3) If the person served is not personally known to the person who makes the affidavit of service, the identity of the person served—
- (a) may not be proved by a mere acknowledgement by the person served; but
 - (b) may be proved by—
 - (i) written acknowledgement proved to be in the handwriting of the person served; or
 - (ii) a satisfactory photograph; or
 - (iii) any other means satisfactory to the court.
- (4) If a document is served by an officer of the court or a constable or Police employee, the service may be proved—
- (a) by stating that the document has been served and stating the date and mode of service—
 - (i) in an endorsement on the original document, or on a copy of it, signed by the person who served the document; or
 - (ii) in a certificate attached to the original document, or on a copy of it, signed by the person who served the document; or
 - (b) in either of the ways referred to in subclause (1).
- (5) If the document being served is a temporary protection order or a final protection order under the Act, and service is being proved in the manner specified in subclause (1)(b) or (4)(a), the affidavit of service or (as the case requires) endorsement or certificate must also state the time that service took place.

60A Proof of substituted service

The service of a document by substituted service may be proved—

- (a) on oath before the court; or
- (b) by affidavit; or
- (c) by any other means satisfactory to the Registrar.

60B Attaching copy of document to affidavit of service or certificate of service

- (1) An affidavit of service of a document need not have a copy of the document attached to it as an exhibit if—

- (a) the original or a copy of the document has, at the time of service, been filed in the court; and
 - (b) the affidavit contains a description of the document that—
 - (i) enables the document to be identified; and
 - (ii) if the document is dated, includes the date of the document.
- (2) Despite rule 60(4)(a)(ii), a certificate of service under that rule need not have a copy of the document attached to it if—
- (a) the original or a copy of the document has, at the time of service, been filed in the court; and
 - (b) the certificate of service contains a description of the document that—
 - (i) enables the document to be identified; and
 - (ii) if the document is dated, includes the date of the document.
- (3) The court may direct a party to attach a copy of a document to an affidavit of service or a certificate of service.
- (4) A direction under subclause (3) overrides subclauses (1) and (2).

Michael Webster,
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 September 2017, amend the Domestic Violence Rules 1996 to—

- enable lawyers to accept service of documents by any electronic means:
- enable the following persons to undertake personal service:
 - an individual who is authorised by the Secretary for Justice:
 - an officer or employee of a corporation that is authorised by the Secretary for Justice:
 - a Police employee authorised by the Commissioner of Police:
- add, as an example of an order for substituted service of a document, an order permitting the document to be brought to the notice of the person to be served using social media.

Reprints notes

1 *General*

This is a reprint of the Domestic Violence Amendment Rules 2017 that incorporates all the amendments to those rules as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Family Violence Act 2018 (2018 No 46): section 259(2)