

High Court Amendment Rules 2001

Pursuant to section 51C of the Judicature Act 1908, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

Contents

		Page
1	Title	2
2	Commencement	2
3	Interpretation	2
4	New rule 14 substituted	2
	14 Certain days excluded	2
5	Filing and service of statement of defence	3
6	Interlocutory application for summary judgment	3
7	New rule 138A substituted	3
	138A Service out of New Zealand	3
8	New rule 140 substituted	3
	140 Time for service	4
9	New rule 601 substituted	4
	601 Power of officer to seize title documents	4
10	Power of judgment debtor to give directions concerning sale of land	4
11	Place of filing application	5
12	Notice of proceeding (general)	5
13	Memorandum (general form)	5
14	Form 13A revoked	5
15	New form 16 substituted	5

Schedule

6

New form 16 substituted in Schedule 1 of High Court Rules**1 Title**

- (1) These rules are the High Court Amendment Rules 2001.
- (2) In these rules, the High Court Rules from time to time set out in Schedule 2 of the Judicature Act 1908 are called “the High Court Rules”.

2 Commencement

These rules come into force on 1 October 2001.

3 Interpretation

- (1) Rule 3(1) of the High Court Rules is amended by revoking the definition of the term **Court**, and substituting the following definition:

“**Court** means the High Court; and includes—

- “(a) a Judge of the High Court; and
- “(b) a Master of the High Court exercising the jurisdiction conferred on a Master by the Judicature Act 1908 or by rules made under section 26J of that Act”

- (2) Rule 3(1) of the High Court Rules is amended by inserting, after the definition of the term **interlocutory application**, the following definition:

“**Judge** means a Judge of the High Court; and includes a Master of the High Court exercising the jurisdiction conferred on a Master by the Judicature Act 1908 or by rules made under section 26J of that Act”

4 New rule 14 substituted

The High Court Rules are amended by revoking rule 14, and substituting the following rule:

“14 Certain days excluded

- “(1) The period commencing on 25 December in 1 year and ending with the close of 15 January in the next year must be disre-

garded in calculating a period of time within which a particular act is to be done.

- “(2) A Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day must be disregarded in calculating a period of time within which a particular act is to be done if the period of time is 6 days or less.
- “(3) Subclauses (1) and (2) are subject to an express provision in any Act or in these rules or to a direction of the Court.”

5 Filing and service of statement of defence

Rule 129 of the High Court Rules is amended by revoking subclause (2).

6 Interlocutory application for summary judgment

Rule 138(4) of the High Court Rules is amended by revoking paragraph (a), and substituting the following paragraph:

- “(a) if the party is a plaintiff, a notice of proceeding in form 13:”.

7 New rule 138A substituted

The High Court Rules are amended by revoking rule 138A, and substituting the following rule:

“138A Service out of New Zealand

A plaintiff who makes an application under rule 136 or rule 137 must serve the documents specified in rule 138(4) on a defendant who is overseas,—

- “(a) if the defendant is served in the Commonwealth of Australia, not less than 21 days before the date for hearing the application:
- “(b) if the defendant is served elsewhere, not less than 35 days before the date for hearing the application.”

8 New rule 140 substituted

The High Court Rules are amended by revoking rule 140, and substituting the following rule:

“140 Time for service

- “(1) The documents specified in rule 138(4) must be served on the other party to the proceeding not less than 21 days before the date for hearing the application.
- “(2) This rule is subject to rule 138A.”

9 New rule 601 substituted

The High Court Rules are amended by revoking rule 601, and substituting the following rule:

“601 Power of officer to seize title documents

The officer to whom the writ is directed may—

- “(a) require the party against whom the writ has been issued to provide to the officer, and if the party refuses seize, the certificate of title and any title deeds for the land that is to be sold that are in the party’s possession:
- “(b) require the party against whom the writ has been issued to disclose to the officer—
- “(i) the name of any person who has possession of the certificate of title and any title deeds for the land that is to be sold; and
- “(ii) the address where the certificate of title and title deeds are kept:
- “(c) require a person referred to in paragraph (b)(i) to provide to the officer, and if the person refuses seize, the certificate of title and any title deeds for the land that is to be sold that are in that person’s possession:
- “(d) produce the certificate of title and any title deeds to an intending purchaser.”

10 Power of judgment debtor to give directions concerning sale of land

- (1) The heading to rule 603 of the High Court Rules is amended by inserting, after the word “debtor”, the words “or mortgagee”.
- (2) Rule 603(1) of the High Court Rules is amended by inserting, after the word “sold” in the first place where it appears, the words “, or a mortgagee of that interest,”.
- (3) Rule 603 of the High Court Rules is amended by inserting, after subclause (2), the following subclause:

“(2A) In the case of conflict between a direction given by a judgment debtor and a mortgagee, the direction given by the mortgagee prevails.”

11 Place of filing application

Rule 643(2) of the High Court Rules is amended by inserting, after the words “New Zealand” in the second place where they appear, the words “or if the deceased left no property in New Zealand”.

12 Notice of proceeding (general)

Form 5 in Schedule 1 of the High Court Rules is amended by omitting the sentence “The plaintiff claims the sum of \$ _____ for costs of and incidental to issuing this proceeding.”

13 Memorandum (general form)

Form 6 in Schedule 1 of the High Court Rules is amended by omitting clause 5, and substituting the following clause:

“5

In calculating the time for filing your statement of defence, you must disregard the period that commences with 25 December and ends with 15 January. [*This paragraph must be deleted if it conflicts with a direction by the Court.*]”

14 Form 13A revoked

Schedule 1 of the High Court Rules is amended by revoking Form 13A.

15 New form 16 substituted

Schedule 1 of the High Court Rules is amended by revoking form 16, and substituting the form set out in the Schedule of these rules.

Schedule

r 15

**New form 16 substituted in Schedule 1 of
High Court Rules****Form 16
Affidavit of service**

r 196

(General heading—Form 1 and endorsement)

I, *[Full name]*, of *[Place of residence]*, *[Occupation]*, swear:

1. I did on day, the day of 20 , serve the above-named defendant,
[Full name], with the following documents:

[Describe each document served, e.g., statement of claim and notice of proceeding. If, under rule 196(2) of the High Court Rules, a copy of any document served is not to be annexed to the affidavit, the description of the document—

- (a) Must be sufficient to enable the document to be identified; and*
(b) Must include the date of the document (if the document bears a date)].

2. I served the documents on the above-named defendant at *[Place]* in New Zealand by delivering the documents personally to the defendant *[or as the case may be]*.

3. I believe it was the defendant I served because—

**(a) the defendant acknowledged that he/she is the defendant*

**(b) I know the defendant*

**(c) other [please state].*

*Delete inapplicable paragraphs

- †4. True copies of the documents served are annexed to this affidavit and marked 'A' and 'B'.

†Delete if inapplicable (*see* rule 196(2))

Signature of Deponent:

Sworn at this day of 20 , before me—

.....

(Deputy) Registrar

A solicitor of the High Court of New
Zealand.

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 October 2001, amend the High Court Rules (“the principal rules”). The District Courts Amendment Rules 2001 make a number of corresponding amendments to the District Courts Rules 1992 at the same time.

Rule 3 extends the definition of **Court** in rule 3(1) of the principal rules to include a Master exercising the jurisdiction conferred on Masters by the Judicature Act 1908 or by rules made under section 26J of that Act. The rule also inserts a definition of the term **Judge** in rule 3(1). The term is defined to include a Master exercising the jurisdiction conferred on Masters by the Judicature Act 1908 or by rules made under section 26J of that Act. The purpose of these changes is to make it clear that references in the principal rules to the Court and to a Judge include Masters exercising the jurisdiction and powers of the Court or of a Judge of the Court conferred on Masters by the Judicature Act 1908 or by rules made under section 26J of that Act. Section 26J enables rules to be made conferring on Masters the jurisdiction and powers of a Judge sitting in Chambers.

Rule 4 replaces rule 14 of the principal rules with a new rule that suspends the period from 25 December to 15 January in calculating a period of time within which a particular thing must be done. The new rule also provides that, in calculating a period of 6 days or less, Saturdays, Sundays, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s Birthday, and Waitangi Day are excluded. The new *rule 14* is consistent with the definition of the term **working day** in rule 3(1) of the principal rules. The rule is subject to the provisions of any Act or of the principal rules, or to a direction by the Court. The new rule is the same as new *rule 14* of the District Courts Rules 1992. The position under both the principal rules and the District Courts Rules 1992 will therefore be the same.

Rule 5 revokes rule 129(2) of the principal rules. Rule 129(2) excludes the period 20 December to 20 January from the period within which a statement of defence must be filed and served. In future, only the period 25 December to 15 January will be excluded. The new rule is the same as rule 135 of the District Courts Rules 1992. The position under both the principal rules and the District Courts Rules 1992 will therefore be the same.

Rule 6 removes the requirement under rule 138 of the principal rules for a defendant who seeks summary judgment to file and serve a notice of proceeding. This amendment aligns the procedure on a defen-

dant's summary judgment application with the District Courts Rules 1992.

Rule 7 replaces rule 138A of the principal rules with a new rule. The existing rule provides that, in the case of a summary judgment application that is to be served overseas, the Court must fix both the date for the hearing and the time within which the opposing party must file notice of opposition and other documents. In *Hodder Moa Beckett Publishers Ltd v Weinbaum* (High Court, Auckland (CP 346/97)), Master Faire noted that it was not clear whether, for the Court to fix the date of hearing and the time for filing documents in opposition, the rule required an application to be made by the party seeking summary judgment. The rule may also allow an opposing party who is overseas more time to file documents in opposition than a party in New Zealand has under rule 140.

The new *rule 138A* requires a plaintiff who applies for summary judgment to serve the documents on a defendant who is overseas not less than 21 days before the hearing if the defendant is in Australia, or not less than 35 days before the hearing if the defendant is elsewhere. The new *rule 138A* does not apply to summary judgment applications by defendants. Those applications will be subject to rule 140, which requires the service of documents not less than 21 days before the hearing. The new rule is the same as new rule 155 of the District Courts Rules 1992. The position under the principal rules and the District Courts Rules 1992 will therefore be the same.

Rule 8 makes rule 140 of the principal rules expressly subject to new *rule 138A*. Rule 157 of the District Courts Rules 1992 is amended in the same way.

Rule 9 replaces rule 601 of the principal rules with a new rule. Rule 601 allows an officer who executes a writ of sale to seize title documents of the person against whom the writ is directed. The rule does not enable the officer to obtain possession of title documents from any other person who may have them. In addition to enabling the title documents to be obtained directly from the person against whom the writ is issued, the new *rule 601* will require that person to disclose the identity and address of any other person who has possession of the title documents and will enable the officer to obtain them from that person.

Rule 10 extends rule 603 of the principal rules to enable a mortgagee to give directions requiring any specified portions of land that may

be sold separately to be sold first. The existing rule allows only the judgment debtor to give that direction. In the case of conflict between directions given by the judgment debtor and a mortgagee, the mortgagee's direction prevails.

Rule 11 amends rule 643 of the principal rules to make it clear that, if a deceased person who was not resident in New Zealand at the time of death leaves no property in New Zealand, the application for a grant of probate and all other documents filed under Part 8 of the principal rules must be filed in the Wellington registry of the Court or in any other registry that the Court directs.

Rule 12 omits a reference to costs in the form "Notice of proceeding". The reference to costs is no longer necessary in light of changes to the costs rules.

Rule 13 amends clause 5 of the form "Memorandum attached to a notice of proceeding" as a consequence of the change to rule 129. Form 5 in Schedule 1 of the District Courts Rules 1992 is also amended in the same way.

Rule 14 revokes the form "Notice of proceeding when summary judgment sought by defendant" as a consequence of the change to rule 138(4).

Rule 15 replaces the existing form "Affidavit of service" with a new form. The new form requires the deponent to state his or her reasons for believing that the person served was the defendant. This requirement is new. The new form is the same as the new form 14 in Schedule 1 of the District Courts Rules 1992 that was substituted by rule 32 of the District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

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