

**Reprint**  
**as at 1 November 2009**

**District Courts Amendment Rules  
(No 4) 2002**

(SR 2002/411)

District Courts Amendment Rules (No 4) 2002: revoked, on 1 November 2009,  
pursuant to rule 17.1 of the District Courts Rules 2009 (SR 2009/257).

Pursuant to section 122 of the District Courts Act 1947, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Chief District Court Judge and at least 2 of the other members of the Rules Committee (of whom at least 1 was a District Court Judge) makes the following rules.

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

**These rules are administered in the Ministry of Justice and the Department for Courts.**

**District Courts Amendment Rules  
(No 4) 2002**

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**1 Title**

- (1) These rules are the District Courts Amendment Rules (No 4) 2002.
- (2) In these rules, the District Courts Rules 1992<sup>1</sup> are called “the principal rules”.

**2 Commencement**

These rules come into force on 1 February 2003.

**3 Office hours**

Rule 20(1) of the principal rules is amended by omitting the expression “8.30 am to 5 pm”, and substituting the expression “9 am to 5 pm”.

**4 New rule 38 substituted**

The principal rules are amended by revoking rule 38, and substituting the following rule:

**“38 Authority to file documents**

No solicitor may file a document on behalf of a party unless the solicitor is—

- “(a) authorised by, or on behalf of, the party to file the document; and
- “(b) the holder of a current practising certificate as a solicitor or as a barrister and solicitor issued under section 56 of the Law Practitioners Act 1982.”

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<sup>1</sup> SR 1992/109

**5 New rule 47A inserted**

The principal rules are amended by inserting, after rule 47, the following rule:

**“47A Disbursements**

- “(1) In this rule, disbursement, in relation to a proceeding,—
- “(a) means an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from professional services in a solicitor’s bill of costs; and
  - “(b) includes—
    - “(i) fees of Court for the proceeding;
    - “(ii) expenses for serving documents for the purposes of the proceeding;
    - “(iii) expenses for photocopying documents required by these rules or by a direction of the Court;
    - “(iv) expenses of conducting a conference by telephone or video link; but
  - “(c) does not include counsel’s fee.
- “(2) A disbursement may be included in the costs awarded for a proceeding to the extent that the disbursement is—
- “(a) of a class that is either—
    - “(i) approved by the Court for the purposes of the proceeding; or
    - “(ii) specified in subclause (1)(b); and
  - “(b) specific to the conduct of the proceeding; and
  - “(c) necessary for the conduct of the proceeding; and
  - “(d) reasonable in amount.
- “(3) A Judge may direct a Registrar to exercise the powers of the Court under this rule.”

**6 New rule 56 substituted**

The principal rules are amended by revoking rule 56, and substituting the following rule:

**“56 Taxation of disbursements**

On taxation, all disbursements claimed (being disbursements that may be included in an award of costs under rule 47A(2)) must be proved to the satisfaction of the Registrar.”

**7 Transitional provision**

- (1) Whenever the question arises whether disbursements paid or invoiced before the commencement of these rules are to be included in an award of costs, the question must be determined as if these rules had not been made.
- (2) If the application of subclause (1) would, in the opinion of the Court, lead to an unjust result, the Court may have regard to rule 47A of the principal rules.

**8 New rules 84 to 98 substituted**

The principal rules are amended by revoking rules 84 to 100, and substituting the following rules:

**“84 Incapacitated person and litigation guardian defined**

For the purposes of these rules,—

**“incapacitated person** means—

- “(a) a person who is a minor within the meaning of section 4 of the Age of Majority Act 1970;
- “(b) a person who is subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- “(c) a person who is subject to an order under section 10(1)(i) or section 31 of the Protection of Personal and Property Rights Act 1988;
- “(d) a person whose property is managed by a trustee corporation under section 32 or section 33 of the Protection of Personal and Property Rights Act 1988

**“litigation guardian** —

“(a) means—

- “(i) a person who is authorised or who has the power under the Protection of Personal and Property Rights Act 1988 to conduct a proceeding; or
  - “(ii) a person who is appointed under rule 87 to conduct a proceeding; and
- “(b) has the same meaning as the expression ‘guardian *ad litem*’.

**“85 Representation of incapacitated person by litigation guardian**

- “(1) An incapacitated person must have a litigation guardian as his or her representative in any proceeding.
- “(2) This rule is subject to rule 86.

**“86 Incapacitated person who may conduct proceeding in own name**

- “(1) An incapacitated person who is permitted by statute to conduct a proceeding in his or her name may elect to conduct a proceeding in his or her own name or to have a litigation guardian represent him or her.
- “(2) An incapacitated person who is not permitted by statute to conduct a proceeding in his or her own name, but who wishes to conduct a proceeding in his or her own name, may apply to the Court to conduct the proceeding without a litigation guardian.
- “(3) On an application under subclause (2), the Court may allow the incapacitated person to conduct the proceeding in his or her own name if it is satisfied that the incapacitated person is capable of making the decisions required, or likely to be required, in that proceeding.
- “(4) Rules 87 to 98 do not apply to an incapacitated person who elects to conduct a proceeding in his or her own name or is allowed by the Court to conduct a proceeding in his or her own name.

**“87 Appointment of litigation guardian**

- “(1) This rule applies if no person has been authorised or has the power under the Protection of Personal and Property Rights Act 1988 to conduct the proceeding.
- “(2) A person may be appointed as a litigation guardian for an incapacitated person if—
- “(a) the person is able fairly and competently to conduct proceedings on behalf of the incapacitated person; and
  - “(b) the person’s interests are not adverse to those of the incapacitated person; and
  - “(c) the person consents to being a litigation guardian.

- “(3) The Court may, on its own initiative or on an *ex parte* application made at any time by any person, appoint as a litigation guardian a person who satisfies the conditions in subclause (2).
- “(4) In deciding whether to appoint a litigation guardian, the Court may have regard to any matters that it considers appropriate, including the views of the incapacitated person.

“**88 Notification of appointment**

A litigation guardian who is authorised or who has the power under the Protection of Personal and Property Rights Act 1988 to conduct the proceeding must file a copy of the order or other document that empowers the litigation guardian to conduct the proceeding at the same time as the first document relating to the proceeding is filed.

“**89 Powers of litigation guardian**

A litigation guardian may do anything in relation to a proceeding that could be done by the incapacitated person if he or she were not an incapacitated person.

“**90 Heading on documents if incapacitated person represented by litigation guardian**

The heading of every document filed in a proceeding in which an incapacitated person is represented by a litigation guardian must state the name of the incapacitated person followed by the words ‘by his/her litigation guardian’ and the name of the litigation guardian.

“**91 Service of documents**

- “(1) This rule applies if an incapacitated person does not have a solicitor acting for him or her.
- “(2) A party who wishes to serve a document in a proceeding on a person who that party knows is an incapacitated person who has a litigation guardian must serve the document on the litigation guardian. Service on the litigation guardian is valid service.
- “(3) A party who wishes to serve a document in a proceeding on a person who that party knows is an incapacitated person but without knowing whether that incapacitated person has a liti-

gation guardian or without knowing the identity of that incapacitated person's litigation guardian—

“(a) may apply to the Court for the appointment of a litigation guardian under rule 87(3); and

“(b) may apply for directions as to service; and

“(c) must serve any documents in the proceeding in accordance with any directions as to service.

“(4) In every other case, service on an incapacitated person in accordance with the requirements of these rules for the service of documents is valid service.

“**92 Representation of incapacitated person by litigation guardian to be disregarded in making award of costs**

The fact that an incapacitated person is, or has been, represented by a litigation guardian must be disregarded in making an award of costs under these rules in favour of or against the incapacitated person.

“**93 Award of costs enforceable against incapacitated person or litigation guardian**

“(1) Unless the Court otherwise orders, an award of costs made against an incapacitated person may be enforced against—

“(a) the incapacitated person; or

“(b) the person who is the litigation guardian of the incapacitated person at the time the costs determination is made; or

“(c) a person against whom an order for indemnity or contribution has been made under rule 94(1) to the extent of the amount of the indemnity or contribution; or

“(d) any of those persons.

“(2) Unless the Court orders otherwise, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs paid by the litigation guardian under subclause (1)(b), (c), or (d).

“**94 Liability of former litigation guardian for costs subsequently awarded against incapacitated person**

“(1) The Court may make an order—

- “(a) directing a person who has ceased to be a litigation guardian of an incapacitated person (former litigation guardian) to indemnify the incapacitated person or the current litigation guardian of the incapacitated person for any costs subsequently awarded against the incapacitated person in relation to any steps taken in the proceeding by the former litigation guardian:
  - “(b) directing a former litigation guardian to indemnify the incapacitated person or the current litigation guardian of the incapacitated person on a basis specified by the Court for any costs subsequently awarded against the incapacitated person in relation to any steps taken in the proceeding after the former litigation guardian ceased to be the litigation guardian:
  - “(c) directing the former litigation guardian to make a contribution to the costs referred to in paragraph (a) or paragraph (b):
  - “(d) declaring that the former litigation guardian is not liable for any of the costs referred to in paragraph (a) or paragraph (b).
- “(2) A former litigation guardian may be required by an incapacitated person or by the current litigation guardian of the incapacitated person to satisfy any order made under subclause (1)(a), (b), or (c).
- “(3) The Court may, on the application of a former litigation guardian, declare that the former litigation guardian is not liable to comply with an order made under subclause (1)(a), (b), or (c) if the Court is satisfied that, having regard to circumstances occurring after the order was made, it is no longer just that the former litigation guardian should have to comply with the order.

**“95 Litigation guardian may be reimbursed out of property of incapacitated person for costs**

Unless the Court otherwise orders, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs (including any solicitor and client costs) paid or incurred or to be paid or incurred by the litigation guardian on behalf of the incapacitated person.

**“96 Retirement, removal, or death of litigation guardian**

- “(1) A litigation guardian may not retire without the leave of the Court.
- “(2) Unless the Court orders otherwise, the appointment of a litigation guardian under rule 87 ends if another person is subsequently authorised or empowered under the Protection of Personal and Property Rights Act 1988 to conduct the proceeding.
- “(3) A litigation guardian may be removed by the Court on sufficient cause being shown.
- “(4) In the case of retirement, removal, or death of a litigation guardian, no further step may be taken in the proceeding until another litigation guardian has been appointed for the incapacitated person.

**“97 Effect of ceasing to be incapacitated person**

- “(1) If a person ceases to be an incapacitated person, all subsequent steps in the proceeding must be carried on by that person.
- “(2) If a person who has ceased to be an incapacitated person continues the proceeding, that person is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not an incapacitated person.

**“98 Court may set aside any step in proceeding**

The Court may set aside a step in a proceeding if, when that step was taken, the incapacitated person did not have a litigation guardian and the Court considers that the incapacitated person was unfairly prejudiced.”

**9 Rules 228 and 230 revoked**

The principal rules are amended by revoking rules 228 and 230.

**10 Directions as to service**

Rule 444 of the principal rules is amended by revoking subclause (5), and substituting the following subclause:

“(5) On an application under this rule, the Court may make any orders for service or representation that it considers proper, and, in particular, it may make orders with regard to the representation of incapacitated persons, without the appointment of a litigation guardian under rule 87(3) if it considers it is not necessary to appoint one.”

**11 Application of rules 8 to 10 to existing proceedings**

- (1) Rules 8 to 10 apply to a proceeding commenced before the coming into force of these rules that has not been set down for hearing.
- (2) Rules 8 to 10 do not apply to a proceeding that has, before the coming into force of these rules, been set down for hearing.
- (3) The principal rules, as in force immediately before the coming into force of these rules, continue to apply to a proceeding that has, before the coming into force of these rules, been set down for hearing.

**12 New rules 478 to 480E substituted**

The principal rules are amended by revoking rules 478 to 480, and substituting the following rules:

**“478 Interpretation**

For the purposes of rules 479 to 480E, a reference to discontinuing a proceeding means discontinuing a proceeding against 1 or more defendants.

**“479 Right to discontinue proceeding**

- “(1) A plaintiff may, at any time before the giving of judgment or a verdict, discontinue a proceeding by—
  - “(a) filing a notice of discontinuance and serving a copy of the notice on every other party to the proceeding; or
  - “(b) orally advising the Court at the hearing of the discontinuance.
- “(2) A notice of discontinuance under subclause (1)(a) must be in form 40AA.
- “(3) This rule is subject to rule 480.

**“480 Restrictions on right to discontinue proceeding**

- “(1) A plaintiff may discontinue a proceeding only with the leave of the Court if a party to the proceeding has given an undertaking to the Court.
- “(2) A plaintiff to whom an interim payment has been made, whether voluntarily or under an order made under rule 355C or rule 355D, may discontinue the proceeding only with the written consent of the party by whom the payment was made or with the leave of the Court.
- “(3) A plaintiff may discontinue a proceeding in which there is more than 1 plaintiff only with the consent of every other plaintiff or with the leave of the Court. If the plaintiff files a notice of discontinuance under rule 479(1)(a), the consent of every other plaintiff must be in writing.
- “(4) If there is more than 1 defendant in a proceeding, a plaintiff may discontinue a proceeding against a particular defendant only with the consent of every other defendant or with the leave of the Court. If the plaintiff files a notice of discontinuance under rule 479(1)(a), the consent of every other defendant must be in writing.

**“480A Effect of discontinuance**

- “(1) A proceeding ends against a defendant or defendants, as the case may be, on—
- “(a) the filing and service of a notice of discontinuance under rule 479(1)(a); or
  - “(b) the giving of oral advice of the discontinuance at the hearing under rule 479(1)(b); or
  - “(c) the making of an order under rule 480.
- “(2) The discontinuance of a proceeding does not affect the determination of costs.
- “(3) This rule is subject to rule 480B.

**“480B Court may set discontinuance aside**

- “(1) The Court may, on the application of a defendant against whom a proceeding is discontinued, make an order setting the discontinuance aside if it is satisfied that the discontinuance is an abuse of the process of the Court.

“(2) An application under subclause (1) must be made within 30 days after discontinuance under rule 479(1).

**“480C Costs**

Unless the defendant otherwise agrees or the Court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

**“480D Restriction on subsequent proceedings**

A plaintiff who discontinues a proceeding (proceeding A) against a defendant may not commence another proceeding (proceeding B) against the defendant if proceeding B arises out of facts that are the same or substantially the same as those relating to proceeding A unless the plaintiff has paid any costs ordered to be paid to the defendant under rule 480C relating to proceeding A.

**“480E Certain remedies not affected**

If a plaintiff discontinues a proceeding in which a defendant has issued a third party notice under rules 177 to 185 or has filed a notice under rules 186 to 191, the discontinuance does not affect the continuation of the proceeding in relation to the third party notice or the notice filed under rules 186 to 191.”

**13 Heading and rules 490 to 492 revoked**

The principal rules are amended by revoking rules 490 to 492 and the heading above those rules.

**14 New form 40AA inserted in First Schedule**

The First Schedule of the principal rules is amended by inserting, after form 40, the form 40AA set out in the Schedule.

**15 Second Schedule amended**

The Second Schedule of the principal rules is amended by revoking item 36.

**16 Consequential amendments to forms**

The First Schedule of the principal rules is consequentially amended by omitting from forms 5, 6, 11, 51, and 67 the expression “8.30 a.m. to 5 p.m.” wherever it appears, and substituting the expression “9 am to 5 pm”.

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**Schedule**

r 14

**New form 40AA inserted in First Schedule  
of principal rules**

Form 40AA

r 479

Notice of discontinuance

(General heading—Form 1 and endorsement)

Take notice that [ <i>name of plaintiff discontinuing proceeding</i> ] discontinues this proceeding against [ <i>name of the defendant or, if there is more than 1 defendant, the names of the defendants or the names of the defendants against whom the plaintiff discontinues the proceeding</i> ].
*Copies of the written consents of the plaintiffs who are required under rule 480(3) of the District Courts Rules to consent to this discontinuance are attached to this notice.
*Copies of the written consents of the defendants who are required under rule 480(4) of the District Courts Rules to consent to this discontinuance are attached to this notice.
*The District Court has granted leave to the plaintiff to discontinue this proceeding.
*Delete if inapplicable.
Dated this        day of        20

Form 40AA—*continued*

(Solicitor for) Plaintiff
To the Registrar of the District Court at _____ and to [ <i>name of other parties to proceeding</i> ].

Marie Shroff,  
Clerk of the Executive Council.

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

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**Notes****1 General**

This is an eprint of the District Courts Amendment Rules (No 4) 2002. It incorporates all the amendments to the rules as at 1 November 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

**2 About this eprint**

This eprint has not been officialised. For more information about officialisation, please *see* “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

**3 List of amendments incorporated in this eprint (most recent first)**

District Courts Rules 2009 (SR 2009/257): rule 17.1

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