



Family Courts Amendment Rules 2008

Anand Satyanand, Governor-General

Order in Council

At Wellington this 7th day of July 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 16A of the Family Courts Act 1980, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following rules.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal rules amended	3
4 Interpretation	3
5 Failure to comply with rules	4
6 Procedure if applications presented for filing but incomplete or otherwise not in order	4
7 Time within which notice of defence, or notice of intention to appear, to be filed and served	4
8 Persons who may start, take part in, or defend proceedings only through representatives or managers	5
9 Appointment of representatives	5

10	Family Courts appointing guardians <i>ad litem</i> or managers for proceedings in District Courts	6
11	Representatives and managers may sign documents and swear affidavits on behalf of party	6
12	Responsibility of representative for costs	6
13	When further steps to be taken by party and not by representative or manager	6
14	How documents to be served	7
15	Personal service on minors	7
16	Heading above rule 123 amended	7
17	New rule 124 substituted	7
	124 Directions about service on incapacitated persons	7
18	Attaching copy of document to affidavit of service	7
19	District Courts Rules 1992 apply	8
20	New rule 160 substituted	8
	160 Affidavit in language other than English	8
21	Copy of documents filed to make application to be sent to Commissioner in certain cases	8
22	Order for directions as to service or for representation	8
23	Schedule 1 amended (form G 7)	8
24	Schedule 3 amended (form CS 1)	8
25	Schedule 3 amended (form CS 2)	9
26	Schedule 9 amended (form PPPR 5)	9
27	Schedule 9 amended (form PPPR 7)	9
28	Schedule 9 amended (form PPPR 8)	9
29	Schedule 9 amended (form PPPR 12)	9
30	Schedule 9 amended (form PPPR 13)	9
	Schedule	10
	Schedule 1 amended	

Rules

1 Title

These rules are the Family Courts Amendment Rules 2008.

2 Commencement

These rules come into force on the 28th day after the date of their notification in the *Gazette*.

3 Principal rules amended

These rules amend the Family Courts Rules 2002.

4 Interpretation

- (1) Rule 8 is amended by inserting the following definitions in their appropriate alphabetical order:

“**incapacitated person** means a person who, by reason of physical, intellectual, or mental impairment, whether temporary or permanent, is—

- “(a) not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings; or
- “(b) unable to give sufficient instructions to issue, defend, or compromise proceedings

“**litigation guardian**—

- “(a) means—
 - “(i) a person who is appointed under rule 90 to conduct a proceeding; or
 - “(ii) a person who is authorised by or under any enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor (but only in a proceeding to which the authority extends); and
- “(b) has the same meaning as the expression ‘guardian *ad litem*’.

- (2) The definition of **representative** in rule 8 is amended by—
- (a) omitting from paragraphs (a) and (c) “guardian *ad litem*” and substituting “litigation guardian”; and
 - (b) inserting the following paragraph after paragraph (c):
 - “(ca) a person appointed as a litigation guardian under rule 90(3A); or”; and
 - (c) inserting the following paragraph after paragraph (d):
 - “(da) a person appointed as the representative of another person under section 13 of the Harassment Act 1997; or”; and
 - (d) omitting from paragraph (e) “mentally disordered”; and
 - (e) adding “; or” and also by adding the following paragraph:

- “(f) a person appointed as an attorney to another person under an enduring power of attorney for the purpose of Part 9 of the Protection of Personal and Property Rights Act 1988 (but only if that enduring power of attorney authorises the attorney to bring or defend proceedings on behalf of the person, and only in a proceeding to which that authority extends)”.

5 Failure to comply with rules

Rule 17 is amended by revoking subclause (1) and substituting the following subclause:

- “(1) If these rules have not been complied with in beginning or purporting to begin any proceedings, or at any stage in the course of or in connection with any proceedings, that failure to comply—
 - “(a) must be treated as an irregularity; and
 - “(b) does not nullify—
 - “(i) the proceedings; or
 - “(ii) any step taken in the proceedings; or
 - “(iii) any document, judgment, or order in the proceedings.”

6 Procedure if applications presented for filing but incomplete or otherwise not in order

Rule 31 is amended by inserting the following subclause after subclause (1):

- “(1A) An information sheet required to be filed under rule 20(1)(b) that is not on yellow paper is in order and must, when presented for filing, be accepted by the Registrar.”

7 Time within which notice of defence, or notice of intention to appear, to be filed and served

Rule 41 is amended by revoking paragraph (b) and substituting the following paragraphs:

- “(b) if the person resides outside New Zealand, unless the Court orders otherwise, within—
 - “(i) 30 days if the person is served within the Commonwealth of Australia; or
 - “(ii) 50 days if the person is served elsewhere; or

“(c) if the person is the subject of an order for substituted service (*see* rule 126), within the time that the Judge or Registrar must fix on an interlocutory application that the applicant must make for the purpose.”

8 Persons who may start, take part in, or defend proceedings only through representatives or managers

- (1) Rule 89(2)(b) is revoked.
- (2) Rule 89 is amended by inserting the following subclauses after subclause (2):
 - “(2A) An incapacitated person must have a litigation guardian as his or her representative in any proceeding, unless the Court orders otherwise.
 - “(2B) If a person becomes an incapacitated person during a proceeding, a party must not take any step in the proceeding without the permission of the Court until the incapacitated person has a litigation guardian.”
- (3) Rule 89(5) is amended by omitting “subclause (2) or subclause (3)” and substituting “this rule”.

9 Appointment of representatives

- (1) Rule 90(1), (2), and (3) are amended by omitting “guardian *ad litem*” in each place where it appears and substituting in each case “litigation guardian”.
- (2) Rule 90 is amended by inserting the following subclauses after subclause (3):
 - “(3A) The Court or a Registrar may appoint a litigation guardian for a person if the Court or Registrar is satisfied that—
 - “(a) the person for whom the litigation guardian is to be appointed—
 - “(i) is an incapacitated person; and
 - “(ii) does not have a litigation guardian; and
 - “(b) the litigation guardian—
 - “(i) is able fairly and competently to conduct proceedings on behalf of the incapacitated person; and
 - “(ii) does not have interests adverse to those of the incapacitated person; and

“(iii) consents to being a litigation guardian.

“(3B) In deciding whether to appoint a litigation guardian under subclause (3A), the Court or Registrar may have regard to any matters the Court or Registrar considers appropriate, including the views of the person for whom the litigation guardian is to be appointed.

“(3C) The Court or a Registrar may appoint a litigation guardian under subclause (3A) at any time—

“(a) on the Court’s or Registrar’s own initiative; or

“(b) on the application of any person, including a person seeking to be appointed as litigation guardian.”

(3) Rule 90(5) is amended by omitting “mentally disordered”.

10 Family Courts appointing guardians *ad litem* or managers for proceedings in District Courts

Rule 92 is amended by omitting “mentally disordered”.

11 Representatives and managers may sign documents and swear affidavits on behalf of party

Rule 93(2) is amended by omitting “mentally disordered” and substituting “an incapacitated person”.

12 Responsibility of representative for costs

(1) Rule 95(3)(b)(i) is amended by omitting “mentally disordered” and substituting “an incapacitated person”.

(2) Rule 95(4)(b) is amended by omitting “a mentally disordered person” and substituting “a person for whom a manager has been appointed”.

13 When further steps to be taken by party and not by representative or manager

Rule 98(1) is amended by revoking paragraph (d) and substituting the following paragraph:

“(d) a person who has been an incapacitated person if the person is no longer incapacitated.”

14 How documents to be served

Rule 102(2)(f) is amended by omitting “mentally disordered” and substituting “an incapacitated person”.

15 Personal service on minors

Rule 112(2) is amended by omitting “a mentally disordered person” and substituting “an incapacitated person”.

16 Heading above rule 123 amended

The heading above rule 123 is amended by omitting “*mentally disordered*” and substituting “*incapacitated*”.

17 New rule 124 substituted

Rule 124 is revoked and the following rule substituted:

“124 Directions about service on incapacitated persons

“(1) On an interlocutory application for the purpose, the Court may give directions about service of 1 or more documents on an incapacitated person.

“(2) No direction under subclause (1) may override—

“(a) section 223(1) of the Child Support Act 1991;

“(b) section 156(1) of the Family Proceedings Act 1980.”

18 Attaching copy of document to affidavit of service

(1) The heading to rule 129 is amended by adding “**or certificate of service**”.

(2) Rule 129 is amended by inserting the following subclause after subclause (1):

“(1A) Despite Rule 127(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) Rule 129(2) is amended by adding “or certificate of service”.

19 District Courts Rules 1992 apply

- (1) Rule 131 is amended by omitting the heading and substituting the following heading: “**Translations into Māori and speaking in Māori**”.
- (2) Rule 131 is amended by omitting “Rules 65 to 68” and substituting “Rules 65 to 68B”.

20 New rule 160 substituted

Rule 160 is revoked and the following rule substituted:

“160 Affidavit in language other than English

- “(1) An affidavit in a language other than English (**non-English-language affidavit**) may be filed in a proceeding.
- “(2) The non-English-language affidavit must be accompanied by an affidavit by an interpreter, to which is exhibited—
 - “(a) a copy of the non-English-language affidavit; and
 - “(b) the interpreter’s translation of the non-English-language affidavit.”

21 Copy of documents filed to make application to be sent to Commissioner in certain cases

Rule 262(2) is amended by inserting the following paragraph after paragraph (a):

“(aa) section 103B (appeal by respondent from determination under Part 6A):”.

22 Order for directions as to service or for representation

Rule 382(1) is amended by revoking paragraph (b) and substituting the following paragraph:

“(b) an incapacitated person; or”.

23 Schedule 1 amended (form G 7)

Schedule 1 is amended by omitting form G 7 and substituting the form G 7 set out in the Schedule of these rules.

24 Schedule 3 amended (form CS 1)

Form CS 1 of Schedule 3 is amended by omitting “Commissioner of Inland Revenue” and substituting “[*full name, address, and occupation of respondent(s)*]”.

25 Schedule 3 amended (form CS 2)

Form CS 2 of Schedule 3 is amended by omitting “Commissioner of Inland Revenue” and substituting “[*full name, address, and occupation of respondent(s)*]”.

26 Schedule 9 amended (form PPPR 5)

Paragraph 6 of form PPPR 5 of Schedule 9 is amended by omitting “18 years” and substituting “20 years”.

27 Schedule 9 amended (form PPPR 7)

Paragraph 3 of form PPPR 7 of Schedule 9 is amended by omitting “18 years” and substituting “20 years”.

28 Schedule 9 amended (form PPPR 8)

Paragraph 3 of form PPPR 8 of Schedule 9 is amended by omitting “18 years” and substituting “20 years”.

29 Schedule 9 amended (form PPPR 12)

- (1) Paragraph 3 of form PPPR 12 of Schedule 9 is amended by omitting “18 years” and substituting “20 years”.
- (2) Both paragraphs 4 of form PPPR 12 of Schedule 9 are amended by omitting “18 years” and substituting in each case “20 years”.

30 Schedule 9 amended (form PPPR 13)

- (1) Paragraph 3 of form PPPR 13 of Schedule 9 is amended by omitting “18 years” and substituting “20 years”.
 - (2) Both paragraphs 4 of form PPPR 13 of Schedule 9 are amended by omitting “18 years” and substituting in each case “20 years”.
-

Schedule

r 23

Schedule 1 amended

Form G 7

r 20(1)(b)

Information sheet to
accompany certain applications
(including certain applications made without
notice)

In the Family Court

at [*place*]

No: FAM-

This information sheet accompanies applications for the following
order(s): [*list orders*]

Applicant's full name:

*Home address:

*Work address:

*Contact phone No: [*home, work, mobile*]

Date of birth:

Age:

Gender:

Occupation:

Ethnic origin: [*select from the following list*]

- New Zealand European
- Māori
- Samoan
- Cook Island Māori
- Tongan
- Niuean
- Chinese
- Indian
- Other: [*specify*]

* Country of residence:

Interpreter required: Yes/No

Language: [*specify*]

Form G 7—*continued*

*The applicant may delete these items from copies to be served.

Full name of other party (*or* other applicant (in the case of a joint application)):

Relationship to applicant:

Home address:

Work address:

Contact phone No: [*home, work, mobile*]

Date of birth:

Age:

Gender:

Occupation:

Ethnic origin: [*select from the following list*]

- New Zealand European
- Māori
- Samoan
- Cook Island Māori
- Tongan
- Niuean
- Chinese
- Indian
- Other: [*specify*]

Country of residence:

Interpreter required: Yes/No

Language: [*specify*]

Date of marriage or civil union:

Place of marriage or civil union:

Date by which de facto relationship had begun:

Form G 7—*continued*

Children affected by the application:

Full name of each child	Age	Date of birth	M/F	Ethnic origin*	Name of person with whom each child is living at time of application and relationship (if any) of that person to child	Relationship of applicant to child	Relationship of respondent to child
-------------------------	-----	---------------	-----	----------------	--	------------------------------------	-------------------------------------

*Select ethnic origin from the following list:

- 1 New Zealand European
- 2 Māori
- 3 Samoan
- 4 Cook Island Māori
- 5 Tongan
- 6 Niuean
- 7 Chinese
- 8 Indian
- 9 Other: *[specify]*

Previous applications: *[give the file number of any previous applications between the parties, and the court where they were filed]*

Date stamp:

The accompanying applications are filed by:

Address for service:

Email address:

Rebecca Kitteridge,
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 the 28th day after the date of their notification in the *Gazette*, amend the Family Courts Rules 2002 (the **principal rules**).

The most substantive amendments are contained in *rules 8 and 9*. *Rule 8* revokes rule 89(2)(b), which provides that a person must take part in proceedings through a representative if that person is mentally disordered within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992. It replaces that requirement with a different approach, based on the equivalent provisions in the District Courts Rules 1992. That approach requires an incapacitated person to take part in proceedings through a representative, unless the court orders otherwise. An incapacitated person is someone who, by reason of physical, intellectual, or mental impairment, is not capable of understanding the issues involved in the proceedings, or is unable to provide sufficient instructions (*see rule 4*).

The amendment in *rule 9* empowers the court to appoint a litigation guardian to represent a person who is incapacitated.

The remaining rules make minor drafting changes that will have only minor operational implications. The amendments are designed to address anomalies in the principal rules, and to align the terminology and approach in the principal rules with that in the District Courts Rules 1992. The changes include—

- amending the terminology in a number of rules that relate to the representation of incapacitated persons by—
 - omitting references to mentally disordered persons or replacing them with references to incapacitated persons; and
 - replacing references to guardians *ad litem* with references to litigation guardians; and
- aligning the requirements in the principal rules with the equivalent requirements in the District Courts Rules 1992 in the following areas:
 - the effect of a failure to comply with the rules (*rule 5*):

- the period of time within which a response to proceedings must be filed by a party who was served outside New Zealand (*rule 7*);
- the use of Māori language in court (*rule 19*);
- affidavits in languages other than English (*rule 20*); and
- requiring the Registrar to accept information sheets even if they are not on yellow paper as required under rule 20(1)(b) (*rule 6*); and
- adding a new document to the list of documents required to be sent by the Registrar to the Commissioner of Inland Revenue (*rule 21*); and
- updating forms to correct the details contained in those forms (*rules 23 to 30*).

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 10 July 2008.
These rules are administered by the Ministry of Justice.
