



Family Courts Amendment Rules 2011

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 3rd day of October 2011

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.

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		Schedules 1, 5, and 6 amended	

Rules

1 Title

These rules are the Family Courts Amendment Rules 2011.

2 Commencement

These rules come into force on 17 November 2011.

3 Principal rules amended

These rules amend the Family Courts Rules 2002.

4 Memorandum to be on front page with first document filed

Rule 82(1) is amended by revoking paragraph (e) and substituting the following paragraph:

“(e) if the document is filed by a lawyer, any post office box address, document exchange box number, fax number, or email address by which the lawyer will accept service of documents in the course of the proceedings.”

5 New rule 118 substituted

Rule 118 is revoked and the following rule substituted:

“118 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 number, document exchange box number, fax

number, or email 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 fax number; or
- “(d) transmitting the document to the email address.”

6 When and how documents under rule 118 to be treated as served

- (1) Rule 119(3) is amended by inserting “or (d)” after “rule 118(c)”.
- (2) Rule 119(4) is amended by inserting “or (d)” after “rule 118(c)”.

7 New rule 120 substituted

Rule 120 is revoked and the following rule substituted:

“120 Lawyer must acknowledge document faxed or emailed

- “(1) A lawyer to whom a document is transmitted under rule 118(c) or (d) 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 by fax or email.”

8 New rules 230 to 230B substituted

Rule 230 is revoked and the following rules are substituted:

“230 Notice of opposition to application on notice

- “(1) A party served with an application who intends to oppose the application must file and serve a notice of opposition.
- “(2) A notice of opposition must—

- “(a) state the party’s intention to oppose the application and the grounds of opposition; and
 - “(b) refer to any particular enactments or principles of law or judicial decisions on which the party relies.
- “(3) A notice of opposition must be filed and served on every other party—
- “(a) within the period of 10 working days after service of the application; but
 - “(b) if the hearing date for the application is within that 10-working-day period, not less than 3 working days before the hearing date.

“230A Affidavit to be filed with notice of opposition

An affidavit setting out evidence in support of the notice of opposition must be filed and served with the notice of opposition.

“230B Affidavit in reply

- “(1) Any person served with a notice of opposition and supporting affidavit may reply to any new matters raised in the notice of opposition or supporting affidavit.
- “(2) A reply must be by an affidavit.
- “(3) An affidavit in reply must be filed and served on every other party—
 - “(a) within the period of 5 working days after service of the notice of opposition; but
 - “(b) if the hearing date for the application is within that 5-working-day period, by 1 pm on the working day before that hearing date.”

9 Forms

Rule 305 is amended by adding the following subclause as subclause (2):

- “(2) Forms FP 36 and FP 36B of Schedule 6 must be used with such modifications as may be necessary if an interim order is made under section 28B of the Act (interim orders in respect of child of applicant’s family).”

10 Notice of objection to direction to attend programme

- (1) Rule 319 is amended by omitting “section 36(2)(b)(i)” in each place where it appears and substituting in each case “section 36(2)(b)”.
- (2) Rule 319(2)(b) is amended by omitting “5 days” and substituting “10 working days”.

11 Schedules 1, 5, and 6 amended

Schedules 1, 5, and 6 are amended in the manner indicated in the Schedule of these rules.

Schedule

r 11

Schedules 1, 5, and 6 amended**Form G 4 of Schedule 1**

First paragraph (c): add “; or”.

Insert after the first paragraph (c):

“*(d) emailed to the lawyer at [*email address*].

*Omit if email service will not be accepted.

Second paragraph (c): add “; or”.

Add:

“*(d) emailed to the lawyer at [*email address*].

*Omit if email service will not be accepted.

Form G 7 of Schedule 1

Insert after “*Work address:”:

“*Email address:”.

Omit “Email address:”.

Form DV 14 of Schedule 5

Insert before the second signature block:

“***Review of contact arrangements**

“Although no application has been made to it, the court, on its own initiative, has decided to direct that there be a review of the arrangements for contact between the respondent and [*full name of each child*]

Form DV 14 of Schedule 5—continued

of the applicant's family in respect of whom contact arrangements are to be reviewed].

“Date of review

“I appoint [*date*] at [*time*] at the Family Court at [*place*] for this review.

*Omit if court does not direct that there be a review.

Under the heading “**Effect of temporary protection order**” under the heading “**Important information for respondent (or associated respondent)**”: omit the third paragraph and substitute:

“*If you do nothing after being served, this order will automatically become a final order 3 months after the date on which it was made. The final order will come into effect immediately. If you wish to dispute this temporary protection order, you must notify the court as soon as possible.”

Under the heading “**Objection to direction to attend programme**”: omit “5 days” and substitute “10 working days”.

Under the heading “**Objection to direction to attend programme**”: omit “the 5-day” and substitute “this 10-working-day”.

Under the heading “**Prohibition on contact with protected person**”: add:

“If a child of the applicant's family attains the age of 17 and continues to ordinarily or periodically reside with the applicant, then that adult child continues to be a protected person under this order.

“If the applicant dies, this order continues to apply for the benefit of the other protected persons until it lapses or is discharged. In the case of a protected person who at the time of the applicant's death was a child of the applicant's family, the order continues to apply to that person until he or she attains the age of 17, unless it sooner lapses or is discharged.”

In the third paragraph under the heading “**Effect of temporary protection order**” under the heading “**Important information for protected persons**”: insert “and will come into effect immediately” after “made”.

Form DV 15 of Schedule 5

Under the heading “**Prohibition on contact with protected person**”: add:

“If a child of the applicant’s family attains the age of 17 and continues to ordinarily or periodically reside with the applicant, then that adult child continues to be a protected person under this order.

“If the applicant dies, this order continues to apply for the benefit of the other protected persons until it lapses or is discharged. In the case of a protected person who at the time of the applicant’s death was a child of the applicant’s family, the order continues to apply to that person until he or she attains the age of 17, unless it sooner lapses or is discharged.”

Form DV 16 of Schedule 5

Under the heading “**Effect of temporary occupation order**” under the heading “**Important information for respondent**”: omit the third paragraph and substitute:

“*If you do nothing after being served, this order will automatically become a final order 3 months after the date on which it was made. The final order will come into effect immediately. If you wish to dispute this temporary occupation order, you must notify the court as soon as possible.”

In the third paragraph under the heading “**Effect of temporary occupation order**” under the heading “**Important information for applicant**”: insert “and will come into effect immediately” after “made”.

Form DV 18 of Schedule 5

Under the heading “**Effect of temporary tenancy order**” under the heading “**Important information for respondent**”: omit the third paragraph and substitute:

“*If you do nothing after being served, this order will automatically become a final order 3 months after the date on which it was made. The final order will come into effect immediately. If you wish to dispute this temporary tenancy order, you must notify the court as soon as possible.”

Form DV 18 of Schedule 5—continued

In the third paragraph under the heading “**Effect of temporary tenancy order**” under the heading “**Important information for applicant**”: insert “and will come into effect immediately” after “made”.

Form DV 20 of Schedule 5

Under the heading “**Effect of temporary ancillary furniture order**” under the heading “**Important information for respondent**”: omit the third paragraph and substitute:

“*If you do nothing after being served, this order will automatically become a final order 3 months after the date on which it was made. The final order will come into effect immediately. If you wish to dispute this temporary ancillary furniture order, you must notify the court as soon as possible.”

In the third paragraph under the heading “**Effect of temporary ancillary furniture order**” under the heading “**Important information for applicant**”: insert “and will come into effect immediately” after “made”.

Form DV 22 of Schedule 5

Under the heading “**Effect of temporary furniture order**” under the heading “**Important information for respondent**”: omit the third paragraph and substitute:

“*If you do nothing after being served, this order will automatically become a final order 3 months after the date on which it was made. The final order will come into effect immediately. If you wish to dispute this temporary furniture order, you must notify the court as soon as possible.”

In the third paragraph under the heading “**Effect of temporary furniture order**” under the heading “**Important information for applicant**”: insert “and will come into effect immediately” after “made”.

Form FP 33 of Schedule 6

Omit “is about to” in the first place where it appears and substitute “may”.

Form FP 36 of Schedule 6

Insert “; Section 28B, Domestic Violence Act 1995” after “Sections 40(3), 48, and 55, Care of Children Act 2004”.

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 17 November 2011, amend the Family Courts Rules 2002 (the **principal rules**).

The amendments—

- enable lawyers to give an email address as an address for service (*see rules 4 to 7*):
- substitute new provisions in the principal rules that relate to notices of opposition (*see rule 8*). The effect of those new provisions is to—
 - change the time frame for the filing of a notice of opposition (*new rule 230* of the principal rules):
 - require an affidavit to be filed and served with a notice of opposition (*new rule 230A* of the principal rules):
 - provide for the filing of an affidavit in reply to any new matters raised in a notice of opposition or supporting affidavit (*new rule 230B* of the principal rules):
- amend rules 305 and 319 of the principal rules consequential on the coming into force of sections 7 and 9 of the Domestic Violence Amendment Act 2011 (*see rules 9 and 10*):
- amend various forms of Schedules 1, 5, and 6 of the principal rules (*see rule 11 and the Schedule*). These amendments are consequential on—
 - the provision for email service on lawyers (form G 4 of Schedule 1):

- the commencement of the Domestic Violence Amendment Act 2011 (forms DV 14, DV 15, DV 16, DV 18, DV 20, and DV 22 of Schedule 5):
- the commencement of section 13 of the Care of Children Amendment Act 2011 (form FP 36 of Schedule 6):
- amend form G 7 of Schedule 1 of the principal rules to clarify that an email address may be included in the applicant's contact details.

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

Date of notification in *Gazette*: 6 October 2011.

These rules are administered by the Ministry of Justice.
