



District Courts Amendment Rules 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 17th day of November 2014

Present:

The Right Hon John Key presiding in Council

Pursuant to section 122 of the District Courts Act 1947, His 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 other members of the Rules Committee established under section 51B of the Judicature Act 1908 (of whom at least 1 was a District Court Judge), makes the following rules.

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Rules

- 1 Title**
These rules are the District Courts Amendment Rules 2014.
- 2 Commencement**
These rules come into force on 1 January 2015.
- 3 Principal rules**
These rules amend the District Courts Rules 2014 (the **principal rules**).
- 4 Rule 1.4 amended (Interpretation)**
 - (1) In rule 1.4(1), definition of **working day**, paragraph (b), after “following year”, insert “; and”.
 - (2) In rule 1.4(1), definition of **working day**, after paragraph (b), insert:
“(c) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday.”
- 5 Rule 5.26 amended (Requirements as to notice of proceeding)**
Revoke rule 5.26(4).
- 6 Rule 7.2 amended (First case management conference)**
Replace rule 7.2(1) with:
“(1) This rule applies unless—

- “(a) no statement of defence has been filed in a proceeding and no other response prescribed or otherwise required by these rules has been filed in a proceeding; or
- “(b) the procedure is an application for summary judgment.”

7 Rule 12.4 amended (Interlocutory application for summary judgment)

In rule 12.4(5)(c)(i), replace “form 1” with “form 35A”.

8 Schedule 1 amended

In Schedule 1, clause 12, insert as subclause (2):

- “(2) A proceeding started under the District Courts Rules 1992 that was pending immediately before the commencement of these rules continues to be subject to the District Courts Rules 1992 until final judgment is given, and, following that, in all respects (for example, for the purposes of enforcement), is then subject to these rules.”

9 Schedule 2 amended

- (1) In Schedule 2, form 1, under the heading “Information for defendant(s)”, replace paragraph 1 with:

- “1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. Case law indicates that a company or corporation can only carry on proceedings in court by an officer of the company or by a lawyer unless the court gives prior permission in special circumstances.”

- (2) In Schedule 2, form 1, under the heading “Information for defendant served overseas”, after paragraph 7, insert:

“Date:

“Signature:

“(Registrar/Deputy Registrar*)

*Select one.

- (3) In Schedule 2, revoke form 3.
- (4) In Schedule 2, form 91, under the heading “**Note**”, replace “Rule 17.35” with “Rule 20.35”.

10 Schedule 2, new form 35A inserted

In Schedule 2, after form 35, insert the form 35A set out in the Schedule of these rules.

11 Schedule 4 amended

In Schedule 4, after item 24, insert:

24A	Preparation of written submissions	0.5	1.5	0.3
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Schedule

r 10

New form 35A inserted in Schedule 2

Form 35A

r 12.4(5)

Notice of proceeding when summary judgment
sought by plaintiff

To the defendant/defendants*

*Select one.

This document notifies you that—

- (a) a claim, a copy of which is served with this document, has been filed by the plaintiff; and
- (b) the plaintiff has also applied to this court for immediate judgment against you (on that claim or, if judgment is not sought on the full claim, to the extent stated in the notice of application for summary judgment also served with this document) on the ground that you have no defence (to the plaintiff's claim or to the plaintiff's claim to the extent stated in the application).

Notice of opposition and affidavit setting out defence

1 If you have a defence to the plaintiff's claim, you should, not less than 3 working days before the date of hearing shown in the notice of application for summary judgment (also served with this document),—

- (a) file in the court registry at [*place*]**—**
 - (i) a notice of opposition; and
 - (ii) an affidavit sworn by you or on your behalf setting out your defence; and

Form 35A—*continued*

- (b) serve a copy of that notice of opposition and a copy of that affidavit on the plaintiff.
- 2 The court may give whatever judgment on the plaintiff's claim against you is thought just if you fail—
- (a) to file both a notice of opposition and an affidavit, and to serve copies of them on the plaintiff; and
 - (b) to appear on the date of hearing in opposition to the plaintiff's application.

Statement of defence

- 3 You may, in addition to filing a notice of opposition and an affidavit, file a statement of defence.
- 4 If you want to file a statement of defence,—
- (a) you must file it in the registry of the court in which your notice of opposition and your affidavit were filed; and
 - (b) you must serve a copy of it on the plaintiff; and
 - (c) you must both file and serve it not less than 3 working days before the date of hearing.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Memorandum**Advice**

- 1 Although you do not have to employ a lawyer for the purpose of this application, it is recommended that you consult a lawyer about this matter immediately. Case law indicates that a company or corporation can only carry on proceedings in court by an officer of the company or by a lawyer unless the court gives prior permission in special circumstances.

Form 35A—*continued***Legal aid**

- 2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.
- 3 *For this paragraph select the statement that applies.*
- Statement A*
The plaintiff is in receipt of legal aid for the purpose of this proceeding.
- Statement B*
The plaintiff is not in receipt of legal aid for the purpose of this proceeding.
- Statement C*
The plaintiff has applied for legal aid for the purpose of this proceeding.

Appearance objecting to jurisdiction of court

- 4 If you object to the jurisdiction of the court to hear and determine this proceeding, you may, within the time allowed for filing your notice of opposition and your affidavit,—
- (a) file in the registry of the court, instead of a notice of opposition and an affidavit, an appearance stating your objection and the grounds for it; and
- (b) serve a copy of the appearance on the plaintiff.
- 5 Such an appearance will not be treated as a submission to the jurisdiction of the court.

Registry hours

- 6 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Working days

- 7 **Working day** means any day of the week other than—
- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

Form 35A—*continued*

- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; and
- (c) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Add the following notice if the defendant is to be served overseas (other than in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010). If the defendant is to be served in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010, do not use the following notice, but use instead the information that section 15 of that Act requires to be served on the defendant (see form 1 of the Schedule of the Trans-Tasman Proceedings Regulations and Rules 2013).

Notice to defendant served overseas

Since you are resident outside New Zealand, you are further notified that—

- 1 The plaintiff has commenced a proceeding against you in the District Court of New Zealand, claiming the relief specified in the attached statement of claim.
- 2 Although you are resident outside New Zealand, the plaintiff claims that the plaintiff can bring this proceeding against you in the District Court of New Zealand.
- 3 By New Zealand law, the District Court may exercise jurisdiction in certain classes of case even though the defendant is resident outside New Zealand.
- 4 [*Specify particular provision(s) of rule 6.23 on which the plaintiff relies to serve the proceeding overseas.*]
- 5 In this case, the plaintiff claims: [*specify facts alleged by the plaintiff to confer jurisdiction*].

Form 35A—*continued*

- 6 Even though the court has jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied that,—
- (a) in all the circumstances, a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and
 - (b) the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.
- 7 If you want to dispute the jurisdiction of the District Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send authority to a solicitor in New Zealand by airmail instructing that solicitor to act for you.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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 January 2015, amend the District Courts Rules 2014 (the **principal rules**). The main changes are that rule 7.2 is amended to provide that the case management regime provided for in that rule does not apply to applications for summary judgment, a new notice of proceeding is inserted in Schedule 2 for use when an application for summary judgment is made

to reflect the differences between those applications and other proceedings (*new form 35A*), and form 3 (memorandum (general form)) is revoked because it duplicates information contained in form 1. *Clause 8* inserts a transitional provision in Schedule 1 to deal with proceedings brought under the District Courts Rules 1992 that were still pending at the commencement of the District Courts Rules 2014. *Clause 11* amends Schedule 4 of the principal rules (which relates to time allocations for claims for costs) by inserting an allowance for the preparation of written submissions. Minor changes made by these rules include updating the definition of working day to reflect the changes made to the Holidays Act 2003 last year, and to correct a cross-reference in a form.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 20 November 2014.
These rules are administered by the Ministry of Justice.
