



District Court Amendment Rules 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 7th day of August 2017

Present:

Her Excellency the Governor-General in Council

These rules are made under section 228 of the District Court Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) with the concurrence of the Chief District Court Judge and at least 2 other members of the Rules Committee continued under section 155 of the Senior Courts Act 2016 (of whom at least 1 was a District Court Judge).

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Rules

1 Title

These rules are the District Court Amendment Rules 2017.

2 Commencement

These rules come into force on 1 September 2017.

3 Principal rules

These rules amend the District Court Rules 2014 (the **principal rules**).

4 Rule 1.4 amended (Interpretation)

In rule 1.4, insert in its appropriate alphabetical order:

application without notice has the same meaning as in rule 7.16(1)

5 Rule 5.10 amended (Cover sheet, numbering, and fastening of document)

In rule 5.10(4), after “must be securely fastened together”, insert “at the time of filing and service”.

6 Rule 5.51 amended (Appearance and objection to jurisdiction)

(1) Revoke rule 5.51(4).

(2) Replace rule 5.51(6) with:

(6) The court hearing an application under subclause (3) or (5) must,—

- (a) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss the proceeding; and
- (b) if it does not dismiss the proceeding under paragraph (a), set aside the appearance.

7 Rule 6.8 amended (Substituted service)

In rule 6.8, insert as subclause (2):

(2) If a direction is given under subclause (1)(a) in respect of a document, the document must be treated as having been served at the place—

- (a) at which the document is likely to have come to the notice of the person to be served; or

- (b) where that person was or is likely to have been on the happening of the event or the expiry of the time specified under subclause (1)(a)(ii).

8 Rule 6.25 amended (Court’s discretion whether to assume jurisdiction)

After rule 6.25(3), insert:

- (4) This rule is subject to section 27(1) of the Trans-Tasman Proceedings Act 2010 (*see* rule 5.51(8)).

9 Rule 7.16 replaced (Application without notice)

Replace rule 7.16 with:

7.16 Application without notice

- (1) If the applicant wants the application to be determined without any other party having been served (in these rules referred to as an **application without notice**), the applicant must use form 18.
- (2) An application without notice may be made only—
- (a) on 1 or more of the following grounds:
- (i) that requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant;
- (ii) that the application affects only the applicant;
- (iii) that the application relates to a routine matter;
- (iv) that an enactment expressly permits the application to be made without serving notice of the application;
- (v) that the interests of justice require the application to be determined without serving notice of the application; and
- (b) if the applicant has made all reasonable inquiries and taken all reasonable steps to ensure that the application and supporting documents contain all material that is relevant to the application, including any defence that might be relied on by any other party and any facts that would support the position of any other party.
- (3) An applicant who makes an application without notice must, if the application is of a kind that is likely to be contested if it were made on notice, file a memorandum with the application that sets out—
- (a) the background to the proceeding (including the material facts that relate to the proceeding); and
- (b) the grounds on which each order is sought; and
- (c) an explanation of the grounds on which each order is sought without notice; and
- (d) all information known to the applicant that is relevant to the application, including any known grounds of opposition or defence that any other

party might rely on and any facts that would support opposition to the application or defence of the proceeding by any other party.

- (4) Failure to disclose all relevant matters to the court or comply with subclause (3) may result in the court—
- (a) dismissing the application; or
 - (b) if 1 or more orders have been made by the court in reliance on the application, rescinding those orders.

Compare: HCR 7.23

10 Rule 9.7 amended (Requirements in relation to briefs)

- (1) In rule 9.7(4)(a), replace “is made” with “is provided”.
- (2) Replace rule 9.7(6) with:
- (6) A party intending to call a person as a witness must, if that person has not provided a brief,—
- (a) serve a notice on the other parties to the proceeding informing them that the party intends to call the person as a witness; and
 - (b) include the following information in the notice:
 - (i) the name of the intended witness;
 - (ii) the steps that have been taken to obtain a brief from the intended witness;
 - (iii) the reasons for the intended witness not providing a brief;
 - (iv) an explanation of the relevance of the evidence of the intended witness;
 - (v) details of the evidence that the party expects the intended witness to give.
- (7) At the trial or hearing, the person called as a witness must give his or her evidence in accordance with rules 9.10 and 9.12, subject to any directions that the court may give or any terms or conditions that the court may impose.
- (8) The party serving a brief or a notice under subclause (6) must, as soon as practicable after the brief or notice is served, advise the Registrar of what the party has served, on whom it was served, and the date of service.

11 Rule 9.67 amended (Exhibits to affidavits)

- (1) In rule 9.67(1)(b), after “annexed to the affidavit”, insert “at the time of filing and service”.
- (2) In rule 9.67(2)(a), after “securely bound”, insert “at the time of filing and service”.

12 Rule 9.75 amended (Authority to take affidavits in New Zealand)

- (1) In rule 9.75(1), replace “solicitor of the court” with “lawyer”.

- (2) Replace rule 9.75(2) with:
- (2) An affidavit that is sworn before a lawyer who lacks, or may appear to lack, the necessary independence may not be read or used without the leave of the court, except if the affidavit is sworn in respect of a non-contentious proceeding.

13 Rule 14.2 amended (Principles applying to determination of costs)

In rule 14.2, insert as subclauses (2) and (3):

- (2) Despite subclause (1)(f), costs for legal professional services provided in relation to a proceeding may be awarded to a party under this Part even though the services are provided under a conditional fee agreement.
- (3) In subclause (2), **conditional fee agreement** means an agreement under which a party to a proceeding and a person who provides legal professional services agree that, in relation to the liability of the party to the proceeding for some or all of the person's fees and expenses, these are payable depending on the outcome of the proceeding.

14 Rule 14.12 amended (Disbursements)

After rule 14.12(1), insert:

- (1A) For the purposes of this rule, disbursements in respect of an expert witness's fees and expenses must be treated as disbursements within the meaning of subclause (1)(a) even though the expert witness's services in relation to the proceeding are provided under a conditional fee agreement.
- (1B) In subclause (1A), **conditional fee agreement** has the same meaning as in rule 14.2(3), except that the reference to legal professional services must be read as if it were a reference to expert witness services.

15 Schedule 2 amended

- (1) In Schedule 2, form 1 (notice of proceeding), under the heading "**Information for defendant(s)**", replace paragraph 1 and the heading above paragraph 1 with:

Advice

- 1 Although you do not have to employ a lawyer for the purpose of this proceeding, it is recommended that you consult a lawyer about this matter immediately.

A natural person may—

- (a) appear in the proceeding and act for himself or herself; or
- (b) be represented by a lawyer; or
- (c) in special circumstances and with the permission of the court, be represented by an agent authorised in writing under section 107 of the District Court Act 2016.

A corporation may—

- (a) appear and act in the proceeding through an officer of the corporation or a person appointed as the corporation’s attorney (either generally or specifically in relation to the proceeding); or
- (b) be represented by a lawyer; or
- (c) in special circumstances and with the permission of the court, be represented by an agent under section 107 of the District Court Act 2016.
- (2) In Schedule 2, form 27 (witness summons), under the heading “*Notes*”, in paragraph 3, replace “\$300” with “\$2,000”.
- (3) In Schedule 2, form 64 (warrant for recovery of land), under the heading “**To a Bailiff or Constable**”, in paragraph 5, first bullet point,—
- (a) replace “tools of trade to a value not exceeding \$500” with “tools of trade to a value not exceeding \$5,000”; and
- (b) replace “household furniture and clothing up to \$2,000” with “household furniture and clothing up to \$10,000”.
- (4) In Schedule 2, form 109 (summons for extortion or misconduct),—
- (a) in paragraph 2, replace “under section 19 of the District Courts Act 1947”, with “under section 70 of the District Court Act 2016”; and
- (b) in paragraph 2(b), replace “\$300”, with “\$2,000”.

16 Schedule 4 amended

- (1) In Schedule 4, replace items 1 to 4 with—

1	Preparing statement of claim (receiving instructions, researching facts and law, and filing and serving that document)	0.75	1.5	3.0
2	Statement of defence by defendant (receiving instructions, researching facts and law, and preparing and serving that document)	0.75	1.0	2.0
2A	Notice of response by defendant (receiving instructions, researching facts and law, and preparing and serving that document) but only in respect of steps taken on or after 1 July 2014, under the District Courts Rules 2009	0.75	1.0	2.0
3	Preparing and serving information capsule by plaintiff and defendant under rules 2.14 and 2.15 of the District Courts Rules 2009, but only in respect of steps taken on or after 1 July 2014 under those rules	1.0	2.0	3.0
4	Filing notice of proceeding, notice of response, and preparing, filing, and serving notice of pursuit of claim under the District Courts Rules 2009, but only in respect of steps taken on or after 1 July 2014	0.25	0.25	0.25

- (2) In Schedule 4, after item 7.3, insert:

7.3A	Notice of claim against third party, but only in relation to steps taken on or after 1 July 2014 in relation to a claim under rule 2.19 of the District Courts Rules 2009	0.75	1.5	3.0
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- (3) In Schedule 4, after item 26, insert:

Note

Because of the requirements imposed by clause 17(2)(b) of Schedule 1 (which relate to transitional arrangements), items are included in this schedule for time allocations for certain steps taken under the District Courts Rules 2009 on and after 1 July 2014.

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 September 2017, amend the District Court Rules 2014 (the **principal rules**). The substantive amendments include the following, as well as technical and drafting amendments and corrections:

- rule 5.10 is amended to specify that the time at which a document tendered for filing is required to be securely fastened together is at the time of filing and service:
- rule 5.51 is amended so that, when a defendant to a proceeding (who is served in New Zealand) files an appearance objecting to the jurisdiction of the court to hear and determine that proceeding, the onus is on the defendant to satisfy the court that it does not have jurisdiction. This onus does not change regardless of whether, after the appearance is filed, the defendant applies to the court for an order dismissing the proceeding under rule 5.51(3) or the plaintiff applies to the court to set aside the appearance under rule 5.51(6):
- rule 6.8, which applies when a party is not able to serve a document in accordance with the principal rules, is amended so that the Registrar can give directions specifying the place at which the document is to be treated as having been served. This is in addition to the Registrar's current powers to give directions specifying the steps that are to be taken in substitution for service and directions specifying when the document is to be treated as having been served:
- rule 6.25 is amended to clarify that the court's discretion under the rule (to assume jurisdiction in certain circumstances where a process has been served outside the jurisdiction) is subject to section 27(1) of the Trans-Tasman Proceedings Act 2010. Under that provision, a New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia, except in accordance with subpart 2 of Part 2 of that Act:
- rule 7.16 is replaced. *New rule 7.16*—
 - specifies when a person can make an application without notice:

- requires the applicant to make all reasonable inquiries and to ensure that the application and supporting documents contain all material relevant to the application, including any defence that may be relied on by any other party and any facts that would support the position of the other party:
- requires the applicant to file a memorandum, if the application is one that a respondent would be likely to contest were it made on notice, setting out specified information concerning the background to the application, the grounds on which the applicant is seeking each order, and what the applicant knows about grounds of opposition that a party might rely on and facts that would support a party's opposition:
- provides for the consequences of an applicant failing to comply with the requirements in the rule:
- rule 9.7, which sets out requirements in relation to briefs of evidence, is amended to include particular requirements that must be met if a party has not provided a brief of evidence for a person whom the party intends to call as a witness:
- rule 9.67 is amended to specify that the time at which the requirement for exhibits to be annexed to an affidavit is when the affidavit is filed and served:
- rule 9.75 is amended to preclude an affidavit sworn before a lawyer from being read or used in a proceeding, without the leave of the court, in all circumstances that may give rise to the lawyer not having, or potentially not having, sufficient independence. The provision does not apply to affidavits sworn in relation to non-contentious proceedings:
- rule 14.2 is amended to enable costs for legal professional services to be awarded to a party even though the services are provided under a conditional fee agreement, as defined in the amended rule:
- rule 14.12 is amended to enable the fees and expenses of an expert witness who provides services in relation to a proceeding under a conditional fee agreement to be included, as disbursements, in an award of costs:
- Schedule 2, form 1 (notice of proceeding), the information for defendants in paragraph 1 is corrected to ensure that it no longer implies that a company needs to employ a lawyer for the purposes of the proceeding and to clarify the ways in which a natural person and a company can appear and act in a proceeding:
- in Schedule 2, form 27 (witness summons) and form 109 (summons for extortion or misconduct), the stated amount of the fine payable for failure to comply with the summons is in each case amended as a consequence of the increase in the amount of that fine under section 102 of the District Court Act 2016:
- in Schedule 2, form 64 (warrant for recovery of land) is amended to increase the maximum values of the tools of trade and household furniture and clothing that a judgment debtor may retain under the terms of a warrant for recovery, as

a consequence of increases in those amounts under section 167 of the District Court Act 2016.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 10 August 2017.

These rules are administered by the Ministry of Justice.