

**Reprint
as at 1 July 2013**



Criminal Proceedings (Access to Court Documents) Rules 2009

(SR 2009/134)

Criminal Proceedings (Access to Court Documents) Rules 2009: revoked, on 1 July 2013, by rule 9.1 of the Criminal Procedure Rules 2012 (SR 2012/415).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 11th day of May 2009

Present

His Excellency the Governor-General in Council.

Pursuant to section 51C of the Judicature Act 1908, section 409 of the Crimes Act 1961, section 211 of the Summary Proceedings Act 1957, and 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 Right Honourable the Chief Justice, the Chief District Court Judge, and at least 2 other members of the Rules Committee (of whom at least 1 was a

Note

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

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

These rules are administered by the Ministry of Justice.

Judge of the High Court and at least 1 was a District Court Judge), makes the following rules.

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Rules

- 1 Title**
These rules are the Criminal Proceedings (Access to Court Documents) Rules 2009.
- 2 Commencement**
These rules come into force on 12 June 2009.
- 3 Interpretation**
In these rules, unless the context otherwise requires,—

access means to search, inspect, or copy under the supervision of an officer of a court

court means a District Court or the High Court

court file means a collection of documents in the custody or control of the court that relate to a criminal proceeding

criminal proceeding—

- (a) means a proceeding brought against a defendant—
 - (i) that has been commenced by information in form 2 of Schedule 2 of the Summary Proceedings Act 1957; or
 - (ii) in which the defendant has, under section 66 of the Summary Proceedings Act 1957, elected to be tried by jury; or
 - (iii) in which a District Court has, under section 44 of the Summary Proceedings Act 1957, declined to deal summarily with the offence; and
- (b) includes any of the following stages of a criminal proceeding within the meaning of paragraph (a):
 - (i) any committal proceedings within the meaning of section 146 of the Summary Proceedings Act 1957 (as enacted by section 12 of the Summary Proceedings Amendment Act (No 2) 2008):
 - (ii) the trial of the defendant:
 - (iii) the sentencing of the defendant (including, without limitation, any proceedings of the kind specified in paragraph (c)(vii));
 - (iv) any application made to the court in relation to the criminal proceeding; and
- (c) includes any proceeding under the following enactments:
 - (i) Criminal Investigations (Bodily Samples) Act 1995:
 - (ii) Criminal Procedure (Mentally Impaired Persons) Act 2003:
 - (iii) Extradition Act 1999:
 - (iv) Parts 4 to 6 of the International Crimes and International Criminal Court Act 2000:
 - (v) Mutual Assistance in Criminal Matters Act 1992:
 - (vi) Parole Act 2002:

- (vii) sections 142A to 142Q of the Sentencing Act 2002;
- (viii) any other enactment that provides for orders by a court (not being orders made in the course of a criminal proceeding within the meaning of paragraph (a)) in respect of a criminal investigation of an offence that has been, or is believed to have been, committed (whether or not any person has been charged with, convicted of, or acquitted of that offence); and
- (d) includes any appeal or originating application to the High Court under the Summary Proceedings Act 1957 or the Bail Act 2000

defendant includes an accused person

document—

- (a) means any written material in the custody or control of the court that relates to a criminal proceeding, whether or not kept on a court file; and
- (b) includes documentary exhibits, video recordings, records in electronic form, films, photographs, and images in electronic form; but
- (c) excludes—
 - (i) notes made by or for a Judge for his or her personal use; and
 - (ii) any material that relates to the administration of the court

formal court record means any of the following kept in a registry of a court:

- (a) the register of persons committed for trial or sentence;
- (b) the register commonly known as the Return of Prisoners Tried and Sentenced;
- (c) any index;
- (d) the counts or charges set out in any information or indictment;
- (e) any published list that gives notice of a hearing;
- (f) a document that—
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its content to the public:

(g) a judgment, order, or minute of the court given in a criminal proceeding, including any record of the reasons given by the Judge:

(h) the Judge's sentencing notes

interlocutory application has the same meaning as in the High Court Rules or, as the case requires, the District Courts Rules 1992

Judge means a Judge of the High Court or, as the case requires, a District Court Judge

originating application has the same meaning as in the High Court Rules or, as the case requires, the District Courts Rules 1992

Registrar means a Registrar of the High Court or, as the case requires, of a District Court and includes any Deputy Registrar of those courts

trial means a trial governed by Part 12 of the Crimes Act 1961

working day has the same meaning as in the High Court Rules.

Rule 3 **criminal proceeding** paragraph (b)(iii): amended, on 1 December 2009, by rule 4(1) of the Criminal Proceedings (Access to Court Documents) Amendment Rules 2009 (SR 2009/310).

Rule 3 **criminal proceeding** paragraph (c)(vii): substituted, on 1 December 2009, by rule 4(2) of the Criminal Proceedings (Access to Court Documents) Amendment Rules 2009 (SR 2009/310).

4 Application

- (1) These rules apply to documents while they are in the custody or control of the court and until they are transferred to Archives New Zealand.
- (2) These rules do not require any person to prepare a document that is not in existence at the time the document is sought.

5 Decisions under these rules made as part of civil jurisdiction

A decision made by a Judge under these rules is, for the purposes of these rules and any appeal against the decision, made in the exercise of the civil jurisdiction of the relevant court.

6 General right of access to formal court record

- (1) Subject to rule 12, every person has the right to access the formal court record kept in a registry of a court.
- (2) Despite subclause (1),—
 - (a) a Judge of the court may direct that judgments, orders, or sentencing notes not be accessed without the permission of the court;
 - (b) the Crown Book kept under section 353 of the Crimes Act 1961 may not be accessed without the permission of the court.

7 Right of prosecutor and defendant to access court file or documents

- (1) The prosecutor and the defendant in a criminal proceeding and their counsel may (whether during or after the completion of the criminal proceeding), under the supervision of an officer of the court,—
 - (a) search and inspect the court file or any document relating to the criminal proceeding without payment of a fee; and
 - (b) copy any part or parts of the court file or any document relating to the criminal proceeding on payment of any prescribed fee.
- (2) Despite subclause (1), a record of court proceedings in electronic form may be copied only with the permission of the court.
- (3) Despite subclause (1), a Judge may direct that the court file or any document relating to the criminal proceeding not be accessed by the prosecutor and the defendant or their counsel without the permission of the court.
- (4) Despite subclause (1), if there is more than 1 defendant in the criminal proceeding, a defendant or the defendant's counsel may access the court file or any document relating to the criminal proceeding only with the permission of the court.

8 Access to documents during committal stage

- (1) This rule applies to committal proceedings during whichever of the following periods is applicable to the proceedings:

- (a) if the defendant is committed for trial without a hearing, the period that starts with the day of the committal and ends with the close of the 20th working day after that day;
 - (b) if a committal hearing is held, the period that starts with the start of that hearing and ends with the close of the 20th working day after the day on which the defendant is discharged or committed for trial or sentence;
 - (c) if the defendant pleads guilty where no committal hearing is held, the period that starts with the day of the plea and ends with the close of the 20th working day after that day.
- (2) During the period to which this rule applies, any person may access any of the following documents relating to the committal proceedings:
 - (a) any documents filed in the court for the purposes of the committal proceedings;
 - (b) any written statements admitted into evidence for the purposes of any committal hearing;
 - (c) any documents admitted into evidence for the purposes of any committal hearing;
 - (d) if any evidence given orally at any committal hearing has been transcribed, a transcript of that evidence.
- (3) Despite subclause (2), any Judge or, if judicial officers other than a Judge preside at any committal hearing, those other judicial officers may, on his, her, or their initiative or on request, direct that any document, or part of a document, relating to the committal proceedings not be accessed without the permission of a Judge.
- (4) A request for access to a document under this rule is made informally to the Registrar by letter that—
 - (a) identifies the requested document; and
 - (b) gives the reasons for the request.
- (5) The following provisions apply when a request for access to a document is made under subclause (4):
 - (a) the Registrar must promptly give the parties or their counsel a copy of the request;
 - (b) a party who wishes to object must, before the relevant deadline (within the meaning of rule 10), give written

- notice of the objection to the Registrar, to the person who made the request, and to the other parties or their counsel:
- (c) on receipt of an objection, the Registrar must promptly refer the objection and the request—
 - (i) to any Judge for determination; or
 - (ii) to the judicial officers who are presiding at the committal hearing that is currently proceeding for determination:
 - (d) unless the document is subject to a direction stated in subclause (3) or a restriction stated in rule 12, the Registrar must promptly give the person who made the request access to the document—
 - (i) if the Registrar receives no objection before the expiry of the relevant deadline (within the meaning of rule 10); or
 - (ii) if the parties or their counsel earlier agree that the person be given access to the document:
 - (e) every request that relates to a document that is subject to a restriction stated in subclause (3) or in rule 12 is taken to be a request for the permission of a Judge, and must be promptly referred to a Judge by the Registrar.
- (6) The Judge or other judicial officers may determine an objection referred under subclause (5)(c) in any manner the Judge or the judicial officers consider just.
 - (7) The Judge may determine a request for permission under subclause (3) or (5)(e) in any manner the Judge considers just.
 - (8) If judicial officers other than a Judge determine an objection under subclause (6), the determination is subject to review by a Judge on the application of the party who made the objection or any person affected.
 - (9) For the purposes of subclause (2)(b) and (c), **admitted into evidence** does not include evidence admitted provisionally.

9 Access to documents during trial stage

- (1) This rule applies during the trial held by a court in a criminal proceeding and until—
 - (a) the close of the 20th working day after a verdict is given; or

- (b) if the trial does not result in a verdict, the conclusion of the trial, whether by discharge, a guilty plea, or otherwise.
- (2) During the period to which this rule applies, any person may access any of the following documents relating to the criminal proceeding:
 - (a) written statements admitted into evidence for the purposes of the trial:
 - (b) documents admitted into evidence for the purposes of the trial:
 - (c) if any evidence given orally at the trial has been transcribed, a transcript of that evidence.
- (3) Despite subclause (2), a Judge may, on his or her initiative or on request, direct that any document, or part of a document, relating to the criminal proceeding not be accessed without the permission of a Judge.
- (4) A request for access to a document under this rule is made informally to the Registrar by letter that—
 - (a) identifies the requested document; and
 - (b) gives the reasons for the request.
- (5) The following provisions apply when a request for access to a document is made under subclause (4):
 - (a) the Registrar must promptly give the parties or their counsel a copy of the request:
 - (b) a party who wishes to object must, before the relevant deadline (within the meaning of rule 10), give written notice of the objection to the Registrar, to the person who made the request, and to the other parties or their counsel:
 - (c) on receipt of an objection, the Registrar must promptly refer the objection and the request to the Judge for determination:
 - (d) unless the document is subject to a direction stated in subclause (3) or a restriction stated in rule 12, the Registrar must give the person who made the request access to the document—
 - (i) if the Registrar receives no objection before the expiry of the relevant deadline (within the meaning of rule 10); or

- (ii) if the parties or their counsel earlier agree that the person be given access to the document:
- (e) every request that relates to a document that is subject to a direction stated in subclause (3) or a restriction stated in rule 12 is taken to be a request for the permission of a Judge, and must be promptly referred to the Judge by the Registrar.
- (6) The Judge may determine an objection referred to the Judge under subclause (5)(c) or a request for permission under subclause (3) or (5)(e) in any manner the Judge considers just.
- (7) For the purposes of subclause (2)(a) and (b), **admitted into evidence** does not include evidence admitted provisionally.

10 Meaning of relevant deadline in rules 8 and 9

- (1) For the purposes of rules 8 and 9, where a party or counsel receives a copy of a request given to the party or counsel under either of those rules, **relevant deadline** means whichever of the following times is applicable:
 - (a) if the copy of the request is received on a day on which the committal hearing or the trial is proceeding, 3 pm on the first working day after the day on which the copy is received;
 - (b) if the copy of the request is received on any other day, 3 pm on the third working day after the day on which the copy is received.
- (2) For the purposes of subclause (1), a person is deemed to receive a request—
 - (a) on the day on which it is emailed, faxed, or handed to the person;
 - (b) on the day after the day on which it is posted to the person.

11 Access to documents, court files, and formal court record in other cases

If a person is not eligible to access a document, court file, or any part of the formal court record relating to a criminal proceeding under any of rules 6 to 9, the person may access the document, court file, or any part of the formal court record

with the permission of the court, given on an application made under rule 13.

12 Restrictions on access

- (1) Any right or permission conferred or given by these rules to access a document, court file, or any part of the formal court record relating to a criminal proceeding is subject to—
 - (a) any enactment, court order, or direction limiting or prohibiting access or publication; and
 - (b) the payment of any prescribed fees for access.
- (2) Without limiting the generality of subclause (1), a person may access a document of the kind described in subclause (3) only if a Judge permits the person to do so.
- (3) The documents are—
 - (a) in the case of a proceeding to which section 185A of the Summary Proceedings Act 1957 or section 375A of the Crimes Act 1961 applies,—
 - (i) a written statement by, or a transcript of the evidence of, a person who is a complainant or who gives, or is intended to give, propensity evidence:
 - (ii) videotaped records or records in any electronic form of interviews with any person who is a complainant or who gives, or is intended to give, propensity evidence:
 - (iii) photographs or images in any electronic form of any person who is a complainant, or who gives, or is intended to give, propensity evidence:
 - (b) videotaped records or records in any electronic form of interviews with a defendant:
 - (c) a document that identifies, or enables the identification of, a person if the publication of any matter relating to the person's identity (such as the person's name) is forbidden by an enactment or by an order of the court:
 - (d) any written statement or document received, or any record of anything said, in a proceeding while members of the public are excluded from the proceeding by an enactment or by an order of the court.

13 Applications for permission to access documents, court file, or formal court record other than at committal or trial stage

- (1) This rule applies whenever the permission of the court is necessary under these rules and is sought to access a document, court file, or any part of the formal court record relating to a criminal proceeding, except where access may be sought under rule 8 or 9.
- (2) An application under this rule is made informally to the Registrar by a letter that—
 - (a) identifies the document, court file, or part of the formal court record that the applicant seeks to access; and
 - (b) gives the reasons for the application.
- (3) The application is heard and determined by a Judge or, if a Judge directs the Registrar to do so, by the Registrar.
- (4) On receipt of an application made in accordance with subclause (2), the Judge or Registrar may direct that the person file an interlocutory application or originating application.
- (5) The applicant must give notice of the application to any person who, in the opinion of the Judge or Registrar, is adversely affected by the application.
- (6) The Judge or Registrar may dispense with the giving of notice under subclause (5) if it would be impracticable to require notice to be given.
- (7) The Judge or Registrar may deal with an application on the papers, at an oral hearing, or in any other manner the Judge or Registrar considers just.

14 Decisions on applications under rule 13

- (1) The Judge or Registrar may refuse an application made under rule 13 or grant it in whole or in part without conditions or subject to any conditions that the Judge or Registrar thinks appropriate.
- (2) A Judge may permit access to a series of files for the purposes of research.

15 Review of decisions by Registrar

Any decision by a Registrar under rule 14 is subject to review by a Judge on the application of the applicant or any person affected.

16 Matters to be taken into account

In determining an application under rule 13, or a request for permission under rule 8 or 9, or the determination of an objection under those rules, the Judge or other judicial officers or Registrar must consider the nature of, and the reasons for, the application or request and take into account each of the following matters that is relevant to the application, request, or objection:

- (a) the right of the defendant to a fair hearing:
- (b) the orderly and fair administration of justice:
- (c) the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:
- (d) the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, trials and decisions:
- (e) the freedom to seek, receive, and impart information:
- (f) whether a document to which the application or request relates is subject to any restriction under rule 12:
- (g) any other matter that the Judge, other judicial officer, or Registrar thinks just.

17 Revocation

- (1) The Criminal Proceedings (Search of Court Records) Rules 1974 (SR 1974/58) are revoked.
- (2) Despite subclause (1), any application or appeal under the Criminal Proceedings (Search of Court Records) Rules 1974 that is not disposed of on the commencement of these rules must be dealt with as if these rules (other than this subclause) had not been made.

Michael Webster,
for Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 14 May 2009.

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Notes

1 *General*

This is a reprint of the Criminal Proceedings (Access to Court Documents) Rules 2009. The reprint incorporates all the amendments to the rules as at 1 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Criminal Procedure Rules 2012 (SR 2012/415): rule 9.1

Criminal Proceedings (Access to Court Documents) Amendment Rules 2009 (SR 2009/310)
