



## Family Proceedings 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 188 of the Family Proceedings Act 1980 on the advice and with the consent of the Executive Council.

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#### Part 6

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## Rules

### 1 Title

These rules are the Family Proceedings Amendment Rules 2017.

### 2 Commencement

These rules come into force on 1 September 2017.

### 3 Principal rules

These rules amend the Family Proceedings Rules 1981 (the **principal rules**).

### 4 Part 6 replaced

Replace Part 6 with:

## **Part 6**

### **Service**

#### *Service: documents to be served*

#### **39 Documents to be served**

- (1) If no other person is required to do so by either of the Acts or these rules, the Registrar must serve, or cause to be served, without delay, the following documents:
  - (a) the documents issued for service under rule 15(5);
  - (b) any summons issued under either of the Acts or these rules;
  - (c) any other document required to be served under either of the Acts or these rules or that the Judge directs must be served.
- (2) The Registrar may serve, or cause to be served, any other document that he or she considers should be served in any proceedings under the Act.

#### *Service: how documents to be served*

#### **40 How documents to be served**

- (1) A document required by either of the Acts or these rules to be served on a person in a particular manner must be served on the person in that manner, regardless of rules 41 to 47A.
- (2) A document not required by either of the Acts or these rules to be served on a person in a particular manner may be served on the person by—
  - (a) personal service (*see* rules 41 and 42); or
  - (b) service on a lawyer who accepts the document on behalf of the person (*see* rule 43); or
  - (c) service at the person's address for service (*see* rules 44 to 47A); or
  - (d) service in a manner and at a place that the court or Registrar directs.
- (3) If all reasonable efforts have been made to serve documents in a manner required or (as the case requires) a manner permitted by these rules, but the documents have not been served in that manner, in certain circumstances a Judge may, under rule 47B, make an order for substituted service (that is, an order dispensing with, or changing, the service required by these rules).

#### *Service: personal service*

#### **41 Who may carry out personal service**

- (1) A document that must be served personally may be served by—
  - (a) a Registrar, a bailiff, or any other employee appointed under the State Sector Act 1988 for the conduct of the business of the court:

- (b) an individual who is authorised by the Secretary for Justice to serve documents under either of the Acts:
  - (c) an officer or employee of a corporation that is authorised by the Secretary for Justice to serve documents under either of the Acts:
  - (d) a constable:
  - (e) a Police employee authorised by the Commissioner of Police to serve documents under either of the Acts:
  - (f) a party's lawyer or an agent of a party's lawyer:
  - (g) a party's agent, delegate for the purpose, or employee.
- (2) No party may effect personal service, but the party may be present when service is effected.

#### **42 Personal service**

Personal service of a document may be effected by leaving the document with the person to be served or, if that person does not accept it, by putting it down in that person's presence and bringing it to that person's attention.

*Service: lawyer may accept service on behalf of person*

#### **43 Service on lawyer accepting service on behalf of person**

- (1) Service of a document on a person may be effected by serving it on a lawyer who accepts service of it on behalf of the person.
- (2) A lawyer accepts service of a document if the lawyer—
  - (a) notes on a copy of the document that he or she accepts service of it on behalf of the person; and
  - (b) signs and dates the note.
- (3) If a lawyer accepts service of a document on behalf of a person, the document must, unless the contrary is proved, be treated as served on the date on which the lawyer signed the note.

*Service: at address for service*

#### **44 Address for service**

- (1) Subject to subclause (2), each party in a proceeding, unless he or she has sooner given his or her address for service in accordance with that subclause, must give an address for service at the end of the first document filed by him or her or on the information sheet filed under rule 18.
- (2) A party (other than the party who is commencing proceedings) may give an address for service by stating it in a notice filed in the court and by serving a copy of the notice on each other party to the proceedings.

- (3) Any address for service may from time to time be altered by reasonable notice to the Registrar and to each other party to the proceedings.
- (4) If a party has no address for service, the Judge or the Registrar may direct that a particular address is the party's address for service.
- (5) Any person, other than a party to the proceedings, who is given or served with a document in the proceedings must give an address for service at the end of the first document filed by, or on behalf of, that person in the proceedings.

#### **45 Service at address for service**

A document may be served at an address for service by leaving the document at that address between 9 am and 5 pm.

#### **46 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 address, a document exchange box number, or an electronic 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 electronic address.

#### **47 When and how documents under rule 46 to be treated as served**

- (1) A document posted under rule 46(a) must, unless the contrary is proved, be treated as having been served on the earlier of—
  - (a) the day on which it was received; and
  - (b) the fifth working day after the day on which it was posted.
- (2) A document left at a document exchange under rule 46(b) must, unless the contrary is proved, be treated as having been served on the earlier of—
  - (a) the day on which it was received; and
  - (b) the second working day after the day on which it was left at the document exchange.
- (3) A document transmitted under rule 46(c)—
  - (a) before 5 pm on a day must be treated as having been served on that day unless the contrary is proved;
  - (b) on or after 5 pm on a day must be treated as having been served on the first working day after the day on which it was received unless the contrary is proved.
- (4) A document transmitted under rule 46(c) must be treated as having been received in a complete and legible form unless—

- (a) the contrary is proved; or
- (b) the lawyer receiving the document gave in relation to the document the notice required by rule 47A(1)(b).

**47A Lawyer must acknowledge document transmitted electronically**

- (1) A lawyer to whom a document is transmitted under rule 46(c) 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 electronically.

*Service: substituted service*

**47B Order dispensing with or changing service required**

- (1) Subject to section 157 of the Family Proceedings Act 1980, a person may, by an interlocutory application, apply for an order for substituted service if—
  - (a) all reasonable efforts have been made to serve a document in a manner required or (as the case requires) in a manner permitted by these rules; and
  - (b) the document has not been served in that manner; and
  - (c) either—
    - (i) prompt service of the document cannot be effected; or
    - (ii) the document has come to the knowledge of the person on whom it is to be served.
- (2) In response to the application, the Judge may, if satisfied of the matters specified in subclause (1)(a) to (c), make—
  - (a) an order dispensing altogether with the service required; or
  - (b) an order for substituted service in form FP 24 that changes, in any way, the service required (for example, an order permitting the document to be brought to the notice of the person to be served using social media, or by advertisement, or by some other means).
- (3) If the court makes an order for substituted service requiring that a document be brought to the notice of the person to be served by an advertisement, the advertisement must be in form FP 25.

*Service: proof of service***47C Proof of personal service**

- (1) Proof that a document has been served personally on a person may be given by—
  - (a) oral evidence given on oath before the court; or
  - (b) an affidavit of service.
- (2) If the person on whom the document was served is personally known to the person who makes the affidavit of service, that affidavit must set out the circumstances that enable the deponent to state the deponent's personal knowledge of the person served.
- (3) If the person served is not personally known to the person who makes the affidavit of service, the identity of the person served—
  - (a) may not be proved by a mere acknowledgement by the person served; but
  - (b) may be proved by—
    - (i) written acknowledgement proved to be in the handwriting of the person served; or
    - (ii) a satisfactory photograph; or
    - (iii) any other means satisfactory to the court.
- (4) If a document is served by an officer of the court or a constable or a Police employee, the service may be proved—
  - (a) by stating that the document has been served and stating the date and mode of service—
    - (i) in an endorsement on the original document, or on a copy of it, signed by the person who served the document; or
    - (ii) in a certificate attached to the original document, or on a copy of it, signed by the person who served the document; or
  - (b) in either of the ways referred to in subclause (1).

**47D Proof of substituted service**

- (1) Proof that a document has been served (by substituted service) by publishing an advertisement in 1 or more newspapers must be given by an affidavit of advertising in form FP 27.
- (2) The service of a document by substituted service in any other way may be proved—
  - (a) on oath before the court; or
  - (b) by affidavit; or
  - (c) by any other means satisfactory to the Registrar.

**47E Attaching copy of document to affidavit of service or certificate of service**

- (1) An affidavit of service of a document need not have a copy of the document attached to it as an exhibit if—
  - (a) the original or a copy of the document has, at the time of service, been filed in the court; and
  - (b) the affidavit 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.
- (2) Despite rule 47C(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) The court may direct a party to attach a copy of a document to an affidavit of service or a certificate of service.
- (4) A direction under subclause (3) overrides subclauses (1) and (2).

*Service of orders***47F Service of orders**

- (1) The Registrar must, as soon as practicable after the making of any order under either of the Acts, take all reasonable steps to serve a copy of the order on the parties.
- (2) If a party is represented by a lawyer, service of a copy of the order on his or her lawyer is deemed to be service on that party.
- (3) If any party is not represented by a lawyer, service may be effected by—
  - (a) sending a copy of the order to the party's address for service; or
  - (b) transmitting the order to the party's last known electronic address.
- (4) If service cannot be effected under subclause (3) because no address for service or electronic address has been given by the party, and the party resides in New Zealand, service may be effected by sending a copy of the order by a letter that is—
  - (a) addressed to that party at the party's last known or usual place of residence or business in New Zealand; and
  - (b) delivered to that address by a postal or courier service that records details of delivery to the address.

- (5) If service cannot be effected under subclause (3) because no address for service or electronic address has been given by the party, and the party resides overseas, service may be effected by sending a copy of the order by a letter that is—
- (a) addressed to the party at that party’s last known or usual place of residence or business overseas; and
  - (b) sent to that address by airmail.

**5 Schedule 1, form FP 24 replaced**

In Schedule 1, replace form FP 24 with the form set out in the Schedule of these rules.

**6 Schedule 1, form FP 25 amended**

In Schedule 1, form FP 25 heading, replace “r 42(3)” with “r 47B(3)”.

**7 Schedule 1, form FP 27 amended**

In Schedule 1, form FP 27 heading, replace “r 42(3)” with “r 47D(1)”.

**Schedule**  
**Schedule 1, form FP 24 replaced**

r 5

Form FP 24  
Order for substituted service

r 47B(2)(b)

***(General heading—Form FP 6)***

On application made to it, the court orders that—

- (a) service on the respondent of the application for [*specify each application or declaration applied for*] by a method permitted or required under these rules be dispensed with; and
- (b) service on the respondent instead be effected by [*specify the way in which service is to be effected, for example, by social media or advertisement*]; and
- (c) the time within which the respondent may file a notice of defence to the application or a request for an appearance is fixed at [*number*] days from [*specify, for example, the date of publication of the advertisement*].

Date:

Signature:

(Registrar)

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 Family Proceedings Rules 1981 to—

- enable lawyers to accept service of documents by any electronic means:
- enable the following persons to undertake personal service:
  - an individual who is authorised by the Secretary for Justice:
  - an officer or employee of a corporation that is authorised by the Secretary for Justice:
  - a Police employee authorised by the Commissioner of Police:

- add, as an example of an order for substituted service of a document, an order permitting the document to be brought to the notice of the person to be served using social media:
- provide that service of an order on a party who does not have a lawyer acting for him or her may be effected by transmitting the order to the party's last known electronic address.

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.