

Reprint
as at 1 November 2009

District Courts Rules 1992

(SR 1992/109)

District Courts Rules 1992: revoked, on 1 November 2009, by rule 17.1 of the District Courts Rules 2009 (SR 2009/257).

PURSUANT to the District Courts Act 1947, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

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Note

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

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

These rules are administered in the Department of Justice.

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Rules revoked

Part 1

Preliminary provisions

1 Title and commencement

- (1) These rules may be cited as the District Courts Rules 1992.
- (2) These rules shall come into force on the 1st day of July 1992.

2 Application of rules

- (1) These rules shall apply to—
 - (a) Any civil proceedings taken in a District Court under the District Courts Act 1947; and
 - (b) Unless otherwise provided in any Act or rules, any other civil proceedings taken in any District Court or before any Judge.
- (1A) These rules do not apply to proceedings to which the Family Courts Rules 2002 apply, namely—
 - (a) proceedings in Family Courts; or
 - (b) proceedings in District Courts acting—
 - (i) under section 151 of the Children, Young Persons, and Their Families Act 1989; or
 - (ii) under section 15 of the Family Courts Act 1980.

- (2) If in any civil proceedings any question arises as to the application of any provision of these rules, the Court may, either on the application of any party, or of its own motion, determine the question, and give such directions as it thinks fit.

Compare: SR 1948/197 r 4; High Court Rules, r 2(4)

Subclause (1A) was inserted, as from 3 February 2003, by rule 3 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

3 Interpretation

- (1) In these rules, unless the context otherwise requires,—

Act means, except in Parts 6A to 6D, the District Courts Act 1947

The Act: this definition was amended, as from 1 May 1998, by rule 2 District Courts Amendment Rules 1998 (SR 1998/63) by inserting the words “, except in Part 6A,”.

The Act: this definition was amended, as from 1 May 1998, by rule 2(1) District Courts Amendment Rules (No 2) 1998 (SR 1998/73) by inserting the words “and in Part 6B”.

The Act: this definition was substituted, as from 1 February 2005, by rule 3 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Address for service, in relation to any party, means the address of a place in New Zealand at which any document may be left for, or sent to, that party in accordance with these rules

Chattels includes all things not being land

Christmas vacation means the period specified in rule 17(b); and includes any subsequent day if—

- (a) The office of the Court is closed on that day pursuant to an order made under rule 19; or
(b) That day is a Saturday or a Sunday:

Civil proceedings, in relation to the Crown, has the same meaning as in the Crown Proceedings Act 1950

Court means a District Court; and includes a District Court Judge

Court holiday means a day that is a holiday under rule 17

The Crown has the same meaning as in the Crown Proceedings Act 1950

Defendant means a person served or intended to be served with any proceeding

Document means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes—

- (a) Any writing on any material:
- (b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) Any book, map, plan, graph, or drawing:
- (e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

To file, in relation to any document, means to lodge the document in the form required by these rules in the proper Court, together with the fee (if any) payable for filing the same; and **filing** has a corresponding meaning

Interlocutory application—

- (a) Means any application to the Court in any proceeding or intended proceeding for an order or a direction relating to a matter of procedure or for some relief ancillary to that claimed in a pleading; and
- (b) Includes—
 - (i) An application for a rehearing; and
 - (ii) An application to review an order made, or a direction given, on any interlocutory application:

Land includes any estate, right, title, or interest in land

mentally disordered person means a person who is mentally disordered within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Mentally disordered person: the reference to the Mental Health (Compulsory Assessment and Treatment) Act 1992 (in the original definition) was substituted, as from 1 November 1992, for a reference to the Mental Health Act 1969 pursuant to section 137(1) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Mentally disordered person: this definition was substituted, as from 1 March 2001, by rule 3 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Maori means a person of the Maori race of New Zealand; and includes any descendant of such a person

Nearer or nearest, in relation to any place, means nearer or nearest by the most practicable route

Notice of proceeding means a notice filed pursuant to rule 126

Opposite party means, in relation to any party, any other party whose interests are opposed to those of that party

Plaintiff means the person by whom or on whose behalf a proceeding is brought

Pleading includes a statement of claim, a statement of defence, a reply, and a counterclaim

Proceeding means any application to the Court for the exercise of the civil jurisdiction of the Court other than an interlocutory application

Working day means, except in Part 6B, 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
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year.

Working day: this definition was amended, as from 1 May 1998, by rule 2(2) District Courts Amendment Rules (No 2) 1998 (SR 1998/73) by inserting the words “, except in Part 6B,”.

- (2) Where any work or expression in any rule or form in these rules is not defined in these rules but is defined in an Act dealing with the subject-matter of that rule or form, that work or expression shall, unless the context otherwise requires, bear in that rule or form the meaning given to it by that Act.
- (3) In these rules, unless the context otherwise requires,—
 - (a) A reference to a Part or rule is a reference to a Part or rule of these rules;
 - (b) A reference in a rule to a subclause is a reference to a subclause of that rule;
 - (c) A reference to a numbered form is a reference to the form so numbered in Schedule 1 to these rules;
 - (d) A reference to a proceeding for the recovery of land or chattels shall be construed as including a proceed-

ing against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or chattels or to the possession thereof.

- (4) In a judgment, order, direction, or other document forming part of a proceeding or of an interlocutory application, unless the context otherwise requires,—

month means a calendar month

working day has the same meaning as in subclause (1) or as in rule 461ZN.

Compare: SR 1948/197 r 5; SR 1952/242 r 2; SR 1980/55 r 4(2); High Court Rules, r 3

Subclause (4) was substituted, as from 1 June 2006, by rule 4 District Courts Amendment Rules 2006 (SR 2006/97). *See* rule 14 of those rules as to the transitional provision relating to costs.

4 Construction

These rules shall be so construed as to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application.

Compare: SR 1948/197 r 6; High Court Rules, r 4

5 Non-compliance with rules

- (1) Where, in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceeding there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form, or content or in any other respect, the failure—

(a) Shall be treated as an irregularity; and

(b) Shall not nullify—

(i) The proceeding; or

(ii) Any step taken in the proceeding; or

(iii) Any document, judgment, or order in the proceeding.

- (2) Subject to subclauses (3) and (4), the Court may, on the grounds that there has been such a failure as is mentioned in subclause (1), and on such terms as to costs or otherwise as it thinks just,—

(a) Set aside, either wholly or in part,—

- (i) The proceeding in which the failure occurred; or
 - (ii) Any step taken in the proceeding in which the failure occurred; or
 - (iii) Any document, judgment, or order in the proceeding in which the failure occurred; or
- (b) Exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceeding generally as it thinks fit.
- (3) The Court shall not wholly set aside any proceeding or the originating process by which the proceeding was begun on the ground that the proceeding was required by these rules to be begun by an originating process other than the one employed.
- (4) The Court shall not set aside any proceeding or any step taken in a proceeding or any document, judgment, or order in any proceeding on the ground of a failure to which subclause (1) applies on the application of any party unless the application is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Compare: SR 1948/197 r 8; High Court Rules, r 5; SR 1990/66 r 3

6 Enlargement or abridgment of time

- (1) The Court or the Registrar may, in the discretion of the Court or Registrar, enlarge or abridge the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding, on such terms (if any) as the Court or the Registrar thinks just.
- (2) The Court or the Registrar may order an enlargement of time although the application for the enlargement of time is not made until after the expiration of the time appointed or fixed.

Compare: SR 1948/197 r 147; High Court Rules, r 6

7 Forms

Where, by these rules, any form is directed or authorised to be used, such variations may be made therein as the circumstances of any particular case may require, and such informa-

tion may be added as is required for identification or other official purposes.

Compare: SR 1948/197 r 9(1); High Court Rules, r 7

Rule 7: amended, on 1 March 2008, by rule 4 of the District Courts Amendment Rules (No 2) 2007 (SR 2007/383).

8 Directions in case of doubt

- (1) Where any party or intended party is in doubt regarding the joinder of any person as a party, or as to the proper Court in which to take any step in the proceeding, or as to any other matter of procedure under these rules, that party or intended party may apply *ex parte* to the Court for directions.
- (2) Any step taken in accordance with the directions given on any application under subclause (1) shall be deemed to have been properly taken.

Compare: High Court Rules, r 8

9 Cases not provided for

If any case arises for which no form of procedure is prescribed by any Act or rule or regulation or by these rules, the Court shall dispose of the case as nearly as may be practicable in accordance with the provisions of the rules affecting any similar case or in accordance with the provisions of the High Court Rules, or, if there are no such provisions, in such manner as the Court thinks best calculated to promote the ends of justice.

Compare: SR 1948/197 r 7(2); High Court Rules, r 9

10 Consent instead of leave of Court

- (1) Where, by these rules, the leave of the Court is required in any matter of procedure and all parties and persons to be affected thereby consent thereto, any party may, instead of filing an interlocutory application in respect thereof, file a memorandum signed by all such parties or persons, or by their respective solicitors, or by counsel or other person appointed under these rules to represent any such party or person, signifying such consent and the terms and conditions thereof.
- (2) On the filing of a memorandum under subclause (1), the Registrar shall either—

- (a) Make and seal an order in terms of the memorandum;
or
 - (b) Refer the memorandum to a Judge.
- (3) If the Registrar refers the memorandum to a Judge under subclause (2)(b), the memorandum shall be treated as an interlocutory application for the requisite leave.

Compare: High Court Rules, r 10

11 Power to amend defects and errors

- (1) The Court or the Registrar may, either before, at, or after the hearing of any proceeding, amend any defects and errors in the pleading or procedure in the proceeding, whether or not there is anything in writing to amend, and whether or not the defect or error is that of the party (if any) applying to amend.
- (2) The Court may, at any stage of a proceeding, make, either of its own motion or on the application of any party to the proceeding, such amendments to any pleading or the procedure in the proceeding as are necessary for determining the real controversy between the parties.
- (3) All amendments made under subclause (1) or subclause (2) shall be made with or without costs and on such terms as the Court thinks fit.

Compare: SR 1948/197 rr 164, 165; High Court Rules, r 11

Subclause 11(2) was substituted, as from 1 August 1995, by rule 2(1) District Courts Rules 1992, Amendment No 2 (SR 1995/130).

Subclause 11(3) was amended, as from 1 August 1995, by rule 2(2) District Courts Rules 1992, Amendment No 2 (SR 1995/130) by inserting the words “or subclause 2”.

12 Correction of accidental slip or omission

- (1) If any judgment or order contains a clerical mistake or an error arising from any accidental slip or omission, whether the mistake, error, slip, or omission was made by an officer of the Court or not, or if any judgment or order is so drawn up as not to express what was actually decided and intended, the judgment or order may be corrected by the Court, or, where the judgment or order was made by a Registrar, then by the Registrar.

- (2) The correction may be made by the Court or the Registrar, as the case may be, of its or his or her own motion or on an interlocutory application made for that purpose.

Compare: SR 1948/197 r 174; High Court Rules, r 12

Computation of time

13 Reckoning periods of time

- (1) Where any provision of this rule or of rule 14 or rule 15 prescribes the method of reckoning any period of time, that period of time, if fixed by these rules or by any judgment, order, or direction or by any document in any proceeding, shall be reckoned in accordance with that provision.
- (2) Where a time of one day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.
- (3) Nothing in this rule or in rule 14 or rule 15 affects the reckoning of any period of time fixed by the Limitation Act 1950 or any other statute or the application of the Acts Interpretation Act 1924 in relation to the Limitation Act 1950 or any other statute.

Compare: SR 1948/197 r 336; High Court Rules, r 13

14 Certain days excluded

- (1) The period commencing on 25 December in 1 year and ending with the close of 15 January in the next year must be disregarded in calculating a period of time within which a particular act is to be done.
- (2) A Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's Birthday, and Waitangi Day must be disregarded in calculating a period of time within which a particular act is to be done if the period of time is 6 days or less.
- (3) Subclauses (1) and (2) are subject to an express provision in any Act or in these rules or to a direction of the Court.

Rule 14 was substituted, as from 1 October 2001, by rule 3 District Courts Amendment Rules 2001 (SR 2001/221).

15 When time expires on Court holiday

Where the time for doing any act at an office of the Court expires on a day on which that office is closed, and by reason thereof that act cannot be done on that day, that act shall be in time if done on the next day on which that office is open.

Compare: SR 1948/197 r 336; High Court Rules, r 15

*Offices, holidays, and office hours***16 Court offices**

- (1) For every Court there shall be an office for the transaction of business relating to proceedings in the Court.
- (2) Every office shall be situated at such place as the Minister of the Crown who is responsible for the Department for Courts directs, and shall be in the charge of the Registrar.
- (3) Where the same person is Registrar of two or more Courts, the Minister of the Crown who is responsible for the Department for Courts may direct that the office of one of those Courts shall also be the office of any other of those Courts.

Compare: SR 1948/197 r 10

Rule 16 was amended, as from 1 July 1995, by section 12(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words "Minister of the Crown who is responsible for the Department for Courts" for the words "Minister of Justice".

17 Court holidays

Subject to the Holidays Act 2003, holidays shall be observed in the Court and in the offices of the Court on the following days:

- (a) The days in the period beginning on Good Friday and ending with the close of the Monday following Easter:
- (b) The days in the period beginning on the 25th day of December and ending with the close of the 2nd day of January in the following year:
- (c) Saturdays and Sundays:
- (d) The Sovereign's birthday:
- (e) Anzac Day:
- (f) Labour Day:
- (g) Waitangi Day:

- (h) The day observed as the anniversary of the province in which the Court is situated:
- (i) In each place where an office of the Court is situated, any day which in that place is—
 - (i) A public holiday; or
 - (ii) A proclaimed holiday:
- (j) Any days on which any office of the Court is closed pursuant to an order under rule 19.

Compare: SR 1948/197 r 12; High Court Rules, r 19

Rule 17 was amended, as from 1 April 2004, by section 91(2) Holidays Act 2003 (2003 No 129) by substituting the words “Holidays Act 2003” for the words “Holidays Act 1981”.

18 Sittings on Court holidays

- (1) The Court may lawfully sit on any Court holiday if, subject to subclause (2), any Judge considers it desirable to do so for the despatch of business.
- (2) The Court may lawfully sit on a Sunday or on Christmas Day, New Year’s Day, or Good Friday, only if, in the opinion of the Judge, the business to be despatched is extremely urgent.
- (3) Where the Court sits pursuant to subclause (1) or subclause (2), it may,—
 - (a) For the purpose of the hearing or for the purpose of giving effect to the hearing, authorise the receipt or issue of any document complying with these rules:
 - (b) Authorise the service of any document received or issued pursuant to authority given under paragraph (a).

Compare: High Court Rules, r 21; SR 1990/66 r 4

19 Closing or opening by special order

- (1) The Minister of the Crown who is responsible for the Department for Courts may by general or special order direct that any office may be closed on any day specified in the order.
- (2) Notwithstanding rule 17, any office of the Court may from time to time be closed or opened by special order of a Judge.
- (3) Where an order to close an office is made under subclause (2), the Registrar shall ensure that the order is advertised forthwith in such manner as the Judge directs.

Compare: SR 1948/197 rr 12, 13; High Court Rules, r 20

Subclause (1) was amended, as from 1 July 1995, by section 12(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words “Minister of the Crown who is responsible for the Department for Courts” for the words “Minister of Justice”.

20 Office hours

- (1) The office of the Court shall be open from 9 am to 5 pm on every day that is not a Court holiday.
- (2) The Minister of the Crown who is responsible for the Department for Courts may from time to time authorise the closing of the office of any Court for 1 hour.
- (3) Where the Registrar is Registrar of two or more Courts, or in any other special circumstances, the offices of those Courts shall be open on such days and at such times as the Minister of the Crown who is responsible for the Department for Courts may from time to time direct.
- (4) A notice of the office hours shall be posted in some convenient place accessible to the public.

Compare: SR 1948/197 r 11; High Court Rules, r 22

Subclause (1) was amended, as from 1 March 2001, by rule 4 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting the expression “8.30 am to 5 pm” for the expression “9.30 am to 4 pm”.

Subclause (1) was amended, as from 1 February 2003, by rule 3 District Courts Amendment Rules (No 4) 2002 (SR 2002/411), by substituting the expression “9 am to 5 pm” for the expression “8.30 am to 5 pm”.

Subclause (2) was amended, as from 1 July 1995, by section 12(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words “Minister of the Crown who is responsible for the Department for Courts” for the words “Minister of Justice”.

Subclause (4) was amended, as from 1 July 1995, by section 12(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words “Minister of the Crown who is responsible for the Department for Courts” for the words “Minister of Justice”.

Shape, etc, of documents to be filed

21 General requirements

- (1) A document that does not comply with rules 22 to 35 shall be received for filing only by leave of a Judge or the Registrar.
- (2) The cost of an application under subclause (1) shall be disallowed to the solicitor who presented the document for filing.

- (3) Notwithstanding subclause (1), a document presented for filing by a party who is not represented by a solicitor may be received and corrected by the Registrar, with the consent of that party.

Compare: High Court Rules, r 23

22 Paper

Each sheet of paper shall be of International size A4.

Compare: High Court Rules, r 24

23 Margin

- (1) Subject to subclause (2), a margin of at least one-quarter of the width of the paper shall be left on the left-hand side of each page.

- (2) Where the reverse side of a page is used, a margin of at least one-quarter of the width of the paper shall be left on the right-hand side of that page.

Compare: High Court Rules, r 26

Rule 23 was substituted, as from 1 April 1996, by rule 2(1) District Courts Rules 1993, Amendment No 3 (SR 1995/319).

24 Contents to be legible

- (1) The contents of each document shall be legible and shall be clearly typewritten, printed, handwritten, or produced in permanent form by photocopying.

- (2) The signature on a document must comply with rule 25.

Compare: High Court Rules, r 25

25 Signature to be original

Where a document is required to be signed—

- (a) The signature shall be an original signature; and
(b) Immediately below the original signature, the name of the signatory shall be—
(i) Legibly typed, printed, or stamped; or
(ii) Legibly written in the style of printed matter.

Compare: High Court Rules, r 27; SR 1986/228 r 2

26

Rule 26 was revoked, as from 1 April 1996, by rule 3(1) District Courts Rules 1992, Amendment No 3 (SR 1995/319).

27

Rule 27 was revoked, as from 1 April 1996, by rule 4(1) District Courts Rules 1992, Amendment No 3 (SR 1995/319).

28 Cover sheet, numbering, and fastening of document

- (1) The first sheet of a document is the cover sheet, showing the matters specified in rules 29 and 29A.
- (2) The cover sheet is not numbered, even if the heading is continued on another sheet under rule 29A(2).
- (3) Each page after the cover sheet must be numbered consecutively, starting with the number 1.
- (4) All sheets of a document must be securely fastened together.

Rules 28 and 29 were substituted, as from 1 April 1996, by rule 5(1) District Courts Rules 1992, Amendment No 3 (SR 1995/319).

Rule 28 was substituted, as from 24 August 2007, by rule 4 District Courts Amendment Rules 2007 (SR 2007/205).

29 Description of document

- (1) Each document shall show on its cover sheet, immediately below the heading, a description of the document adequate to show its precise nature.
- (2) The description shall include—
 - (a) Words indicating the party by whom or on whose behalf the document is filed; and
 - (b) The words “*ex parte* application” in the case of an application so made.

Compare: SR 1948/197 r 9A; SR 1952/242 r 16(1); SR 1970/60 r 2; High Court Rules, r 32; SR 1986/228 r 3

Rules 28 and 29 were substituted, as from 1 April 1996, by rule 5(1) District Courts Rules 1992, Amendment No 3 (SR 1995/319).

Subclause (1) was amended, as from 24 August 2007, by rule 5 District Courts Amendment Rules 2007 (SR 2007/205) by substituting “cover sheet” for “first page”.

29A Format of cover sheet

- (1) The cover sheet of an originating document and of a notice of interlocutory application must—
 - (a) include only—
 - (i) the heading; and
 - (ii) the description of the document; and
 - (iii) if applicable, the next event date; and
 - (iv) if applicable, the name of the Judge to whom the proceeding has been assigned; and
 - (v) the subscription; and
 - (b) must leave ample space between the description of the document and the subscription for the inclusion of a minute.
- (2) The heading may, where necessary, be continued on another sheet.
- (3) In subclause (1)(a)(iii), **next event date** means, if allocated, the date and nature of a hearing or conference that is to be held next after the date on which the document is filed.

Compare: High Court Rules r 33

Rule 29A was inserted, as from 1 April 1996, by rule 5(1) District Courts Rules 1992, Amendment No 3 (SR 1995/319).

Rule 29A was substituted, as from 1 November 2004, by rule 3 District Courts Amendment Rules 2004 (SR 2004/321).

The heading to rule 29A was amended, as from 24 August 2007, by rule 6(1) District Courts Amendment Rules 2007 (SR 2007/205) by substituting “cover sheet” for “first page”.

Subclause (1) was amended, as from 24 August 2007, by rule 6(2) District Courts Amendment Rules 2007 (SR 2007/205) by substituting “cover sheet” for “first page”.

30 Heading on statement of claim and counterclaim

- (1) Every statement of claim, and every counterclaim intended to be served upon any person other than the plaintiff, shall show on the first page—
 - (a) The number of the proceeding;
 - (b) The office of the Court in which it is filed;
 - (c) Where the statement of claim or counterclaim seeks relief in reliance on jurisdiction conferred by an Act, the Short Title of that Act:

- (d) Where the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an instrument other than a will, the name of the maker of, or the names of the parties to, the instrument and its date:
 - (e) The full name and the place of residence and occupation, of every plaintiff and defendant, so far as they are known to the party presenting the document for filing.
- (2) Form 1 shall be used for the purposes of subclause (1).
Compare: SR 1948/197 r 9A; SR 1952/242 r 16(1); SR 1970/60 r 2; High Court Rules, r 36

31 Heading on judgment and certain orders

The heading of every judgment and of every order (being an order that is required to be registered under any enactment) shall be the same as the heading on the statement of claim or other document by which the proceeding was commenced.

Compare: High Court Rules, r 36A; SR 1985/328 r 4; SR 1986/228 r 4

32 Heading on other documents

- (1) The heading on every document (other than a document by which a proceeding is commenced or a document to which rule 31 applies) may be abbreviated in the following respects:
- (a) First or Christian names of persons shall be denoted by initials only, unless full names are necessary to distinguish between persons having the same initials:
 - (b) Where two or more persons are joined in the same interest, the name of the first named only of such persons shall be set out, followed by the words “and another” or “and others”, as the case may be:
 - (c) Places of residence and descriptions of persons (unless necessary to distinguish two or more persons required to be named and bearing the same name) and indications of the interest in which a person is a party shall be omitted:
 - (d) The names of corporations shall be set out in full; but it is not necessary to state the fact of incorporation or refer to the registered office or make any other addition.

- (2) Notwithstanding subclause (1), a fuller title may be used upon change of parties or if any party considers that a person has in a previous document been wrongly named or described or for other sufficient reason.

Compare: SR 1948/197 r 9A; SR 1952/242 r 16(1); High Court Rules, r 37; SR 1986/228 r 5(1)

Rule 32 was amended, as from 1 April 1996, by rule 6(1) District Courts Rules 1992, Amendment No 3 (SR 1995/319), by omitting the words “, and the backing of all documents,”.

33 Division into paragraphs

- (1) Every document presented for filing shall be divided into paragraphs numbered consecutively.
- (2) Each paragraph shall as nearly as may be, be confined to a single topic.

Compare: High Court Rules, r 38

34 Numbers

Numbers shall be expressed in figures and not in words.

Compare: High Court Rules, r 39

35 Subscription at foot of cover sheet

- (1) At the foot of the cover sheet of every document for filing, there shall be subscribed—
- (a) The name of the solicitor or firm of solicitors (if any) presenting it for filing and the name of any agent by whom the document is filed; and
 - (b) Where the document is presented for filing by or on behalf of a solicitor or firm of solicitors—
 - (i) The name and telephone number of the principal or employee dealing with the proceeding; and
 - (ii) The address of any postal box or document exchange used by the solicitor or firm; and
 - (iii) Any facsimile number used by the solicitor or firm.
- (2) The fact that the name of a solicitor or firm of solicitors is subscribed on a document shall be prima facie evidence that the document was filed by that solicitor or firm of solicitors.

Compare: High Court Rules, r 40; SR 1991/132 r 3(1)

Rule 35 was substituted, as from 1 April 1996, by rule 7(1) District Courts Rules 1992, Amendment No 3 (SR 1995/319).

The heading to rule 35 was amended, as from 24 August 2007, by rule 7(1) District Courts Amendment Rules 2007 (SR 2007/205) by substituting “cover sheet” for “first page”.

Subclause (1) was amended, as from 24 August 2007, by rule 7(2) District Courts Amendment Rules 2007 (SR 2007/205) by substituting “cover sheet” for “first page”.

36 Documents that must be sealed

The following documents shall be sealed with the seal of the Court before being issued by that Court:

- (a) Final orders;
- (b) Documents requiring certification for use in proceedings before another Court or Tribunal;
- (c) Orders made on interlocutory applications which are required by rule 290 to be sealed.

Compare: SR 1948/197 r 9B; SR 1980/55 r 4(1)

Postal provision

37 Postal provision

- (1) Any document that may be filed by a party in the office of a Court by attendance at the office may be filed by post, subject to the condition that the party shall send to the Court office by prepaid post—
 - (a) Such documents as the party would have been required to produce at the Court office if the party had attended; and
 - (b) Any Court fees payable; and
 - (c) Postal notes for the amount of any money to be paid or tendered to any party or witness.
- (2) Nothing in this rule shall affect any duty of a party to be present at any proceedings before the Court or the Registrar in Court or in Chambers.

Compare: SR 1948/197 r 331; SR 1956/81 r 13(2)

Solicitor's authority to file and sign documents

38 Authority to file documents

No solicitor may file a document on behalf of a party unless the solicitor is—

- (a) authorised by, or on behalf of, the party to file the document; and
- (b) the holder of a current practising certificate as a barrister and solicitor issued under section 39 of the Lawyers and Conveyancers Act 2006.

Rule 38 was substituted, as from 1 February 2003, by rule 4 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

Rule 38(b): amended, on 1 August 2008, by rule 4 of the District Courts (Lawyers and Conveyancers Act 2006) Amendment Rules 2008 (SR 2008/197).

39 Adverse parties

Where a solicitor or a solicitor's partner acts as solicitor for any party to a proceeding, or is a party to any proceeding, that solicitor shall not, without the leave of the Court, act for any other party to the proceeding not having the same interest in the subject-matter of the proceeding.

Compare: High Court Rules, r 41A; SR 1991/132 r 3(1)

40 Solicitor's warranty as to authorisation to file documents

Every solicitor by whom, or on whose behalf, a document is filed in the Court shall be deemed to warrant to the Court and to all parties to the proceeding that he or she is authorised, by the party on whose behalf the document purports to be filed, to file the document.

Compare: High Court Rules, r 41B; SR 1991/132 r 3(1)

41 Solicitor on the record

Subject to rule 44, the solicitor on the record for a party to a proceeding shall be the solicitor whose original signature is on the memorandum subscribed to the first document filed by the party in accordance with rule 43.

Compare: SR 1948/197 r 337; High Court Rules, r 42; SR 1991/132 r 3(1)

42 Authority to sign documents

- (1) Any document which is required by these rules to be signed by a party may, unless the party's personal signature is expressly required, be signed on behalf of the party by the party's solicitor on the record.
- (2) Nothing in subclause (1) shall derogate from authority of counsel to sign documents.

Compare: SR 1948/197 r 74(1)(a); High Court Rules, r 43; SR 1991/132 r 3(1)

42A Solicitors to inform clients of orders or directions

When an order or a direction that affects a party is made, it is the responsibility of that party's solicitor on the record promptly to notify the party of the order or direction.

Compare: High Court Rules r 43A

Rule 42A was inserted, as from 1 November 2004, by rule 4 District Courts Amendment Rules 2004 (SR 2004/321).

43 Memorandum to be subscribed to first document filed by party

- (1) At the end of the first document filed by a party there shall be a memorandum stating—
 - (a) That the document is filed by the party in person, or by the party's solicitor, as the case may be; and
 - (b) Where it is filed by a solicitor,—
 - (i) The name of the solicitor; and
 - (ii) If the solicitor is a member of a firm or practises under a firm name, the name of the firm; and
 - (c) Where it is filed by a solicitor who has another solicitor acting as his or her agent in the proceeding,—
 - (i) The name of the agent, or of his or her firm (if any); and
 - (ii) The postal address of the party's solicitor; and
 - (d) An address for service; and
 - (e) Where it is filed by a solicitor, any Post Office box address, document exchange box number, or facsimile number by which the solicitor will accept service of documents in the course of the proceeding.

- (2) The memorandum may be in one of the paragraphs of form 2.
Compare: SR 1948/197 rr 74(3), 75(2), 122; SR 1973/244 r 3(1); High Court Rules, r 44; SR 1991/132 r 3(1)

44 Change of representation or address for service

- (1) A party must file and serve on every other party to the proceeding a notice of change of representation if—
- (a) the party has acted in person and appoints a solicitor to act for that party; or
 - (b) the party wishes to change that party's solicitor; or
 - (c) the party for whom a solicitor has acted wishes to act in person.
- (2) If the party's address for service after the change of representation will be different from that which applied before the change, the party must also serve a copy of the notice at the address that was, immediately before the change, the party's address for service.
- (3) The notice—
- (a) must be signed by the party personally or by the party's attorney; and
 - (b) in the case of a notice under subclause (1)(a) or (b), must contain the information about the new solicitor required by paragraphs (b) to (e) of rule 43(1); and
 - (c) in the case of a party referred to in subclause (1)(c), must state that the party's intention is to act in person.
- (4) For the purpose of the proceeding, the change of representation takes effect on the filing of an affidavit proving service in accordance with subclause (1) and exhibiting and verifying a copy of the notice served.
- (5) A party may change that party's address for service by—
- (a) filing a notice of the change showing the new address for service; and
 - (b) serving a copy of the notice on every other party.
- (6) A change of address for service may be combined with a notice under subclause (1). A notice of change of address for service need not be filed under subclause (5)(a) if an affidavit is filed under subclause (4).
- (7) Form 3 may be used for a notice under this rule.

Rule 44 was substituted, as from 1 March 2001, by rule 5 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Rule 44 was substituted, as from 1 July 2002, by rule 3 District Courts Amendment Rules 2002 (SR 2002/133).

44A Withdrawal of solicitor who has ceased to act for party

- (1) Where the solicitor on the record for a party to a proceeding has ceased to act for that party, that solicitor may apply to the Court for an order declaring that that solicitor has ceased to be the solicitor on the record for that party in that proceeding and the Court may make an order accordingly.
- (2) It shall not be necessary to make an application under subclause (1) if—
 - (a) The party has effected a change of solicitor in accordance with rule 44; or
 - (b) The party—
 - (i) Has filed a notice stating that the party intends to act in person and showing the party's new address for service; and
 - (ii) Has served on the solicitor on the record and on every other party to the proceeding who has given an address for service a copy of the notice filed under subparagraph (i); and
 - (iii) Has filed an affidavit proving compliance with subparagraph (ii) and exhibiting and verifying a copy of the notice served.
- (3) Except where paragraph (a) or paragraph (b) of subclause (2) applies, the solicitor on the record for a party to a proceeding shall, for the purposes of that proceeding, be considered to be the solicitor on the record for that party until the final conclusion of the proceeding unless and until the solicitor—
 - (a) Obtains an order under subclause (1); and
 - (b) Serves on every party to the proceeding who has given an address for service a copy of the order obtained under subclause (1); and
 - (c) Files an affidavit proving compliance with paragraph (b).

- (4) Every application under subclause (1) shall be made by interlocutory application and shall be supported by an affidavit giving the grounds of the application.
- (5) Unless the Court otherwise directs, notice of every application under subclause (1), and a copy of the affidavit in support of the application, shall be served on the party for whom the solicitor acted.
- (6) The notice served under subclause (5) on the party for whom the solicitor acted shall inform the party of the effect that rule 44B will have on the party's address for service if the solicitor obtains an order under subclause (1).
- (7) An order made under subclause (1) shall not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

Rules 44A and 44B were inserted, as from 1 August 1995, by rule 3 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

44B Address for service of party whose solicitor has ceased to act

Where the solicitor on the record for a party has obtained an order under rule 44A(1) and has complied with paragraphs (b) and (c) of rule 44A(3), then until the party either—

- (a) Appoints another solicitor and complies with rule 44; or
- (b) Being entitled to act in person,—
 - (i) Files a notice stating that the party intends to act in person and showing the party's new address for service; and
 - (ii) Serves on the solicitor who obtained the order under rule 44A(1) and on every other party to the proceeding who has given an address for service a copy of the notice filed under subparagraph (i); and
 - (iii) Files an affidavit proving compliance with subparagraph (ii) and exhibiting and verifying a copy of the notice served,—

the last known address of the party, or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on the party of any document not re-

quired to be served personally, be deemed to be the party's address for service.

Rules 44A and 44B were inserted, as from 1 August 1995, by rule 3 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

Costs

45 Costs at discretion of Court

- (1) All matters relating to the costs of and incidental to a proceeding or a step in a proceeding are at the discretion of the Court.
- (2) Rules 46 to 47G apply subject to subclause (1).
- (3) This rule is subject to the provisions of any Act.

Compare: High Court Rules r 46

Rules 45 to 47A were substituted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

46 Principles applying to determination of costs

The following general principles apply to the determination of costs:

- (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:
- (b) an award of costs should reflect the complexity and significance of the proceeding:
- (c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application:
- (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:
- (e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the actual solicitor or counsel involved or on the time actually spent by the actual solicitor or counsel involved or on the costs actually incurred by the party claiming costs:
- (f) an award of costs should not exceed the costs incurred by the party claiming costs:

- (g) so far as possible the determination of costs should be predictable and expeditious.

Compare: High Court Rules r 47

Rules 45 to 47A were substituted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47 Categorisation of proceedings

- (1) For the purposes of rule 46(b), proceedings must be classified as falling within 1 of the following categories:

Category 1 proceedings	Proceedings of a straightforward nature able to be conducted by counsel considered junior.
Category 2 proceedings	Proceedings of average complexity requiring counsel of skill and experience considered average.
Category 3 proceedings	Proceedings that because of their complexity or significance require counsel to have special skill and experience.

- (2) The Court may at any time determine in advance an applicable category in relation to a proceeding. If it does, the category applies to all subsequent determinations of costs in the proceeding unless there are special reasons to the contrary.
- (3) Each step specified in item 10 of Schedule 2A must be treated as having been taken in a category 2 proceeding.
- (4) Unless the Court otherwise directs, subclause (3) applies to a proceeding even if the Court has, under subclause (2), determined the category of the proceeding.

Compare: High Court Rules r 48

Rules 45 to 47A were substituted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47A Appropriate daily recovery rates

For the purposes of rule 46(c), the rates specified in Schedule 2 are the appropriate daily recovery rates for the categories of

proceedings referred to in rule 47 and must be applied to those categories of proceedings. Those appropriate daily recovery rates are calculated, in accordance with the principle referred to in rule 46(d), on the basis of being two-thirds of the actual daily rates referred to in that paragraph.

Compare: High Court Rules r 48A

Rule 47A was inserted, as from 1 February 2003, by rule 5 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 7 of those Rules as to the transitional provision.

Rules 45 to 47A were substituted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47B Determination of reasonable time

- (1) For the purposes of rule 46(c), a reasonable time for a step in a proceeding is—
 - (a) the time specified for that step in Schedule 2A; or
 - (b) if Schedule 2A does not apply, a time determined by analogy with that schedule; or
 - (c) if no analogy can usefully be made, the time assessed as likely to be required for the particular step.
- (2) In determining what is a reasonable time for a step in a proceeding under subclause (1),—
 - (a) if a comparatively small amount of time for the particular step is considered reasonable, the determination must be made by reference to band A; or
 - (b) if a normal amount of time for the particular step is considered reasonable, the determination must be made by reference to band B; or
 - (c) if a comparatively large amount of time is considered reasonable, the determination must be made by reference to band C.

Compare: High Court Rules r 48B

Rules 47B to 47I were inserted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47C Increased costs and indemnity costs

- (1) Despite rules 46 to 47B, the Court may make an order—

- (a) increasing costs otherwise payable under those rules (**increased costs**); or
 - (b) that the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party (**indemnity costs**).
- (2) The Court may make the order at any stage of a proceeding in relation to any step in the proceeding.
- (3) The Court may order a party to pay increased costs if—
 - (a) the nature of the proceeding or the step in the proceeding is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or
 - (b) the party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—
 - (i) failing to comply with these rules or a direction of the Court; or
 - (ii) taking or pursuing an unnecessary step or an argument that lacks merit; or
 - (iii) failing, without reasonable justification, to admit facts, evidence, or documents or accept a legal argument; or
 - (iv) failing, without reasonable justification, to comply with a notice for discovery, notice for further particulars, notice for interrogatories, or other similar requirement under these rules; or
 - (v) failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 47G or some other offer to settle or dispose of the proceeding; or
 - (c) the proceeding is of general importance to persons other than just the parties and it was reasonably necessary for the party claiming costs to bring the proceeding or participate in the proceeding in the interests of those affected; or
 - (d) some other reason exists which justifies the Court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

- (4) The Court may order a party to pay indemnity costs if—
- (a) the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or
 - (b) the party has ignored or disobeyed an order or direction of the Court or breached an undertaking given to the Court or another party to the proceeding; or
 - (c) costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund, and the party claiming costs has acted reasonably in the proceeding; or
 - (d) the person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to the proceeding; or
 - (e) the party claiming costs is entitled to indemnity costs under a contract or deed; or
 - (f) some other reason exists which justifies the Court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: High Court Rules High Court Rules r 48C

Rules 47B to 47I were inserted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47D Refusal of, or reduction in, costs

Despite rules 46 to 47B the Court may refuse to make an order for costs or may reduce the costs otherwise payable under those rules if—

- (a) the nature of the proceeding or the step in a proceeding is such that the time required by the party claiming costs would be substantially less than the time allocated under band A; or
- (b) the property or interests at stake in the proceeding were of exceptionally low value; or
- (c) the issues at stake were of little significance; or
- (d) although the party claiming costs has succeeded overall, that party has failed in relation to a cause of action or issue that significantly increased the costs of the party opposing costs; or

- (e) the party claiming costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—
 - (i) failing to comply with these rules or a direction of the Court; or
 - (ii) taking or pursuing an unnecessary step or an argument that lacks merit; or
 - (iii) failing, without reasonable justification, to admit facts, evidence, or documents or accept a legal argument; or
 - (iv) failing, without reasonable justification, to comply with a notice for discovery, notice for further particulars, notice for interrogatories, or other similar requirement under these rules; or
 - (v) failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 47G or some other offer to settle or dispose of the proceeding; or
- (f) some other reason exists that justifies the Court refusing costs or reducing costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: High Court Rules r 48D

Rules 47B to 47I were inserted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47E Costs in interlocutory applications

- (1) Unless there are special reasons to the contrary, costs on an opposed interlocutory application—
 - (a) must be fixed in accordance with these rules when the application is determined; and
 - (b) become payable when they are fixed.
- (2) Despite subclause (1), the Court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.

- (3) This rule does not apply to an application for summary judgment.

Compare: High Court Rules r 48E

Rules 47B to 47I were inserted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47F Costs may be determined by different Judge

Costs may be determined by a Judge other than the Judge who heard the matter to which the costs relate, if the Judge who heard the matter to which the costs relate is not available conveniently to make the determination.

Compare: High Court Rules r 48F

Rules 47B to 47I were inserted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47G Written offers without prejudice except as to costs

- (1) A party to a proceeding may at any time make to any other party to the proceeding a written offer that—
- (a) is expressly stated to be without prejudice except as to costs; and
 - (b) relates to an issue in the proceeding.
- (2) The fact that the offer has been made must not be communicated to the Court until the question of costs is to be decided.

Compare: High Court Rules r 48G

Rules 47B to 47I were inserted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47H Effect on costs

- (1) The effect (if any) that the making of an offer under rule 47G has on the question of costs is at the discretion of the Court.
- (2) Subclauses (4) and (5)—
- (a) apply subject to subclause (1); and
 - (b) do not limit rule 47C or rule 47D.
- (3) Subclauses (4) and (5) apply to an offer made under rule 47G by a party to a proceeding (**party A**) to another party to the proceeding (**party B**).
- (4) If party A—

- (a) offers a sum of money to party B that exceeds the amount of a judgment obtained by party B against party A; or
- (b) makes an offer that would have been more beneficial to party B than the judgment obtained by party B against party A,—

the principle to be applied in determining costs is that party A is entitled to costs on the steps taken in the proceeding after the offer is made.

- (5) If an offer made by party A does not fall within paragraph (a) or paragraph (b) of subclause (4), but is close to the value or benefit of the judgment obtained by party B, the principle to be applied in determining costs is that the offer may be taken into account.

Compare: High Court Rules r 48GA

Rules 47B to 47I were inserted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). See rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

47I Disbursements

- (1) In this rule, **disbursement**, in relation to a proceeding,—
 - (a) means an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from professional services in a solicitor's bill of costs; and
 - (b) includes—
 - (i) fees of Court for the proceeding;
 - (ii) expenses for serving documents for the purposes of the proceeding;
 - (iii) expenses for photocopying documents required by these rules or by a direction of the Court;
 - (iv) expenses of conducting a conference by telephone or video link; but
 - (c) does not include counsel's fee.
- (2) A disbursement may be included in the costs awarded for a proceeding to the extent that the disbursement is—
 - (a) of a class that is either—
 - (i) approved by the Court for the purposes of the proceeding; or

- (ii) specified in subclause (1)(b); and
 - (b) specific to the conduct of the proceeding; and
 - (c) necessary for the conduct of the proceeding; and
 - (d) reasonable in amount.
- (3) A Judge may direct a Registrar to exercise the powers of the Court under this rule.

Compare: High Court Rules r 48H

Rules 47B to 47I were inserted, as from 1 February 2005, by rule 4 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

48 Each defendant liable for all costs

Each of several unsuccessful defendants shall, unless the Court otherwise directs, be liable to the plaintiff for the costs allowed to the plaintiff even though they defend separately.

Compare: SR 1948/197 r 42(3); High Court Rules, r 50

49 Where defendants defend separately

Where several defendants defend a proceeding separately and it appears to the Court that they, or some of them, might have joined in their defence, the Court shall not allow more than one set of costs to the defendants who might have so joined unless it appears to the Court that there is good reason for allowing more than one set of costs to those defendants.

Compare: High Court Rules, r 51

50 Where claim and counterclaim both established

Where the plaintiff succeeds in the proceeding and the defendant succeeds in a counterclaim, the Court shall award costs as if each party respectively had succeeded in an independent proceeding except where, in the opinion of the Court, the justice of the case otherwise requires.

Compare: High Court Rules, r 52

51 Set-off where costs allowed to both parties

Where opposite parties are awarded costs against each other, their respective costs, unless the Court otherwise directs, shall be set off and the lesser sum shall be deducted from the greater.

Compare: High Court Rules, r 53

52 Solicitor acting in person

A solicitor who is a party to a proceeding and acts in person shall be entitled to solicitors' costs.

Compare: SR 1948/197 r 318

53 Proceeding transferred from High Court

Where a proceeding has been transferred from the High Court to a District Court and the amount remaining in dispute at the date on which the Registrar receives the documents referred to in section 47 of the Act is less than the amount originally claimed, the costs incurred after that date shall be allowed on the scale and subject to the rules applicable to the costs of a proceeding commenced in a District Court to recover the amount so remaining in dispute.

Compare: SR 1948/197 r 323; SR 1986/358 r 13(2)

54 Enforcement of order for costs

An order for the payment of costs may be enforced in the same manner as any other order of a District Court for the payment of money.

Compare: SR 1948/197 r 319

Taxation of costs inter partes

55 Appointment to tax costs

(1) Any party entitled to costs subject to taxation may obtain from the Registrar an appointment for taxation of the costs.

(2) If the party liable to pay the costs has given an address for service, but not otherwise, the party entitled to the costs shall serve a copy of the appointment on the party liable to pay costs at least 2 clear days before the day appointed.

Compare: High Court Rules, r 54

56 Taxation of disbursements

On taxation, all disbursements claimed (being disbursements that may be included in an award of costs under rule 47A(2)) must be proved to the satisfaction of the Registrar.

Rule 56 was substituted, as from 1 February 2003, by rule 6 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 7 of those Rules as to the transitional provision.

57 No charge allowed for bill of costs

No charge shall be allowed on taxation for the preparation or service of the bill of costs or any copy thereof.

Compare: High Court Rules, r 56

58 Registrar sole judge of questions of fact

The Registrar shall be the sole judge of all questions of fact which may arise on taxation, and his or her decision thereon shall be final.

Compare: High Court Rules, r 57

59 Direction to Registrar to ascertain expenses

Without ordering taxation of costs, the Court may direct the Registrar to ascertain what amount should be allowed in respect of witnesses' expenses and other disbursements to a party to whom costs are awarded.

Compare: SR 1948/197 rr 314, 315, 317; SR 1956/81 r 14(1); SR 1981/259 rr 314, 315, 317; High Court Rules, r 58

60 Review of taxation

Where, under these rules or by a direction of the Court, the Registrar has ascertained or fixed the amount of any costs or disbursements or the head under which costs should be allowed, and it appears that the Registrar has acted erroneously, whether as to amount or as to principle, the Court may, on the application of any party dissatisfied with the actions of the Registrar, refer the matter back to the Registrar with such directions as may be requisite, or may itself make such amendments as may appear necessary.

Compare: High Court Rules, r 59

*Security for costs***61 Power to make order for security for costs**

(1) Where the Court is satisfied, on the application of a defendant,—

(a) That a plaintiff—

(i) Is a resident out of New Zealand; or

(ii) Is a corporation incorporated outside New Zealand; or

- (iii) Is, within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be, a subsidiary of a corporation incorporated outside New Zealand;
or
 - (b) That there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding,—
the Court may, if it thinks fit in all the circumstances, order the giving of security for costs.
- (2) An order under subclause (1)—
 - (a) Shall require the plaintiff or plaintiffs against whom the order is made to give security for costs in respect of such sum as the Court considers sufficient—
 - (i) By paying that sum into Court; or
 - (ii) By giving, to the satisfaction of the Registrar, security for that sum; and
 - (b) May stay the proceeding until the sum is paid or the security given, as the case may be.
- (3) This rule—
 - (a) May apply, if the Court thinks fit, although a plaintiff may be temporarily resident within New Zealand; and
 - (b) Shall apply notwithstanding that the defendant may have taken a step in the proceeding before the application for security.
- (4) The references in this rule to a plaintiff and a defendant shall be construed as references to the person (however described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding, including a counterclaim.

Compare: SR 1948/197 r 39; High Court Rules, r 60; SR 1991/132 r 5

Rule 61(1)(a)(iii) was substituted, as from 1 August 1995, by rule 4 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

62 How security to be given

- (1) Where any officer is empowered to take security from any person for any purpose, the security shall be given by such number of sureties and shall be in such form and for such amount as the officer empowered to take security thinks proper.

- (2) Any person required to give security may appeal to the Court against any decision under subclause (1).
Compare: SR 1948/197 rr 340, 341, 342; High Court Rules, r 16

63 Solicitor not to be surety

A solicitor shall not be accepted as surety for his or her client to any security given under rule 62.

Compare: High Court Rules, r 61

64 Surety becoming bankrupt or insolvent

If any surety becomes bankrupt or insolvent or makes a composition with his or her creditors, all further steps in the proceeding by the principal party to the security may be stayed by the Court until another surety has been found.

Compare: High Court Rules, r 17

Translations into Maori

65 Right to translation into Maori

Where any Maori, upon whom in any proceeding a document is served,—

- (a) Applies, orally or in writing, to the Registrar in the place where the proceeding is pending, within 10 days after the date of service, for a translation into the Maori language of the document; and
(b) If he or she has not already given an address for service, states a postal address for the service of the translation,—

that Maori shall be entitled to receive a translation of the document into the Maori language.

Compare: SR 1948/197 r 346(1); SR 1968/183 r 7(1); High Court Rules, r 62

66 Preparation and service of translation

- (1) Where a Maori is entitled, under rule 65, to a translation of a document, the Registrar shall require that translation to be prepared by, and at the expense of, the party or person on whose behalf the document was served.
(2) The translation shall be certified correct by a person holding a certificate of competency as an interpreter or translator under

the Maori Language Act 1987 or by some person authorised by the Court to do so.

- (3) The translation may be served—
 - (a) Personally; or
 - (b) At the address for service (if any) of the Maori; or
 - (c) By sending it by registered post addressed to the Maori at the postal address stated by the Maori to the Registrar.
- (4) Where the translation is sent by registered post, it shall be deemed to have been served when it would be delivered or available for delivery at its address in the ordinary course of registered post.
- (5) The costs of preparing and certifying and serving the translation shall be in the discretion of the Court as costs in the proceeding.

Compare: SR 1948/197 r 346(2), (5); High Court Rules, r 63

67 Consequences of requirement for translation

Where a Maori is entitled, under rule 65, to a translation of a document, then, unless the Court otherwise orders,—

- (a) The document shall be deemed not to have been served until the translation is served in accordance with rule 66(3); and
- (b) The proceeding in which the document is issued shall be stayed as far as the Maori is concerned until the translation is so served; and
- (c) Every subsequent document served on the Maori in the proceeding and every execution process or other process issued against the Maori to enforce any judgment entered or order made in the proceeding shall, unless the Maori is at the time represented by a solicitor, be accompanied by a translation into the Maori language complying with rule 66; and
- (d) The execution of any warrant or writ against a Maori shall not be invalid by reason only of its not being accompanied by a translation into the Maori language.

Compare: SR 1948/197 r 346(2), (4); High Court Rules, r 64

68 Translation may be ordered by Court

- (1) The Court may at any time order that a translation into the Maori language, complying with rule 66 of any document served before or after the making of the order, upon a Maori concerned in a proceeding be served on that Maori, whether or not he or she has applied for it under rule 65.
- (2) An order under subclause (1) may be made subject to such terms and conditions as the Court thinks proper.
- (3) The Court may, on ordering a translation under this rule, grant such adjournment of the proceeding as justice may require.

Compare: SR 1948/197 r 346(3); High Court Rules, r 65

Speaking in Maori

This heading was inserted, as from 1 June 2006, by rule 5 District Courts Amendment Rules 2006 (SR 2006/97). See rule 14 of those rules as to the transitional provision relating to costs.

68A Speaking in Maori

- (1) This rule applies to a person entitled under section 4(1) of the Maori Language Act 1987 to speak Maori in a proceeding or at the hearing of an interlocutory application.
- (2) If a person to whom this rule applies wishes to speak Maori in a proceeding or at the hearing of an interlocutory application, that person, or, if the person is a witness, the party intending to call that person, must file and serve on every other party to the proceeding a notice of his or her intention to speak Maori.
- (3) The notice must state that the person intends to speak Maori at—
 - (a) all conferences and hearings; or
 - (b) all conferences and hearings held after a specified conference or hearing; or
 - (c) a specified conference or hearing.
- (4) The notice must be in form 3A.
- (5) The notice must be filed and served—
 - (a) if the person intends to speak Maori at all conferences and hearings, not less than 10 working days before the first conference or hearing; or
 - (b) if the person intends to speak Maori at conferences and hearings held after a particular conference or hearing,

not less than 10 working days before the first conference or hearing at which the person intends to speak Maori; or

- (c) if the person intends to speak Maori at a particular conference or hearing, not less than 10 working days before the conference or hearing.

Rules 68A and 68B were inserted, as from 1 June 2006, by rule 5 District Courts Amendment Rules 2006 (SR 2006/97). *See* rule 14 of those rules as to the transitional provision relating to costs.

68B Failure to give notice

A failure to comply with rule 68A does not prevent a person speaking Maori at a conference or hearing, but—

- (a) the Court may adjourn the conference or hearing to enable the Registrar to arrange for a person who holds a certificate of competency under section 15(2)(a) or (c) of the Maori Language Act 1987 or some other person competent to interpret Maori to be available at the adjourned conference or hearing;
- (b) the Court may treat the failure to comply as a relevant consideration in an award of costs.

Rules 68A and 68B were inserted, as from 1 June 2006, by rule 5 District Courts Amendment Rules 2006 (SR 2006/97). *See* rule 14 of those rules as to the transitional provision relating to costs.

Search of court records

69 Search of Court records generally

- (1A) Nothing in this rule applies to documents, files, or records to which the Family Courts Rules 2002 apply (that is, documents, files, or records relating to proceedings in a Family Court).
- (1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search, inspect, and take a copy of any of the following, namely,—
 - (a) All registers and indexes of Court records:
 - (b) Any document on any file in any office of the Court if—
 - (i) A right of search or inspection of that document is given by any Act; or
 - (ii) That document constitutes notice of its contents to the public.

- (2) Despite anything in subclauses (4) and (5), but subject to subclause (6), the following persons have the right, without payment of a fee, to search, inspect, and take a copy of the file relating to a proceeding or interlocutory application:
- (a) a party to the proceeding or interlocutory application; or
 - (b) the solicitor on the record acting for a party to the proceeding or interlocutory application.
- (3) Subject to subclauses (4) to (7), a person has the right to search, inspect, and copy a document on a file relating to a proceeding that has been determined.
- (3A) Subject to subclauses (4) to (7), a person has a right to search, inspect, and copy a document on a file relating to an interlocutory application—
- (a) if the interlocutory application relates to a proceeding that has been determined; or
 - (b) if the interlocutory application relates to an intended proceeding and leave to bring the proceeding is refused; or
 - (c) with the leave of a Judge in any case where the interlocutory application relates to an intended proceeding and the Judge is satisfied that the proceeding has not been commenced within a reasonable time.
- (4) No file and no document upon any file shall be searched, inspected, or copied which relates to any proceedings under—
- (a) The Adoption Act 1955:
 - (b)
 - (c) The Marriage Act 1955:
 - (ca) the Civil Union Act 2004:
 - (d)
 - (e) The Alcoholism and Drug Addition Act 1955:
 - (f) The Mental Health Act 1969:
 - (fa) the Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - (g) The Guardianship Act 1968:
 - (ga) the Care of Children Act 2004:
 - (h) The Domestic Actions Act 1975:
 - (i) The Property (Relationships) Act 1976:
 - (j) The Family Proceedings Act 1980:

- (ja)
 - (k)
 - (l) The Child Support Act 1991:
 - (la) The Domestic Violence Act 1995:
 - (lb) The Harassment Act 1997:
 - (m) Any former provisions corresponding to provisions of any of the Acts mentioned in paragraphs (a) to (l).
- (5) No document shall be searched, inspected, or copied which relates to any cause or matter involving—
- (a) Defamation:
 - (b) Property disputes arising out of agreements to marry.
- (6) No document which a Judge has at any time directed shall not be inspected without leave shall be searched, inspected, or copied save in accordance with the direction.
- (7) No person has the right to search, inspect, or copy a file or a document on a file in a proceeding or interlocutory application after the following periods:
- (a) if there is a sealed judgment or order, the expiration of 6 years from its date:
 - (b) if there is no sealed judgment or order, the expiration of 6 years from the date of the Judge's reasons or minute making the order.
- (8) A Registrar may grant to any person leave to search, inspect, or copy any file, part of a file, or a document the search and inspection of which is prohibited by any of the provisions of subclauses (4), (5) and (7) and shall, subject to any directions of a Judge, grant such leave to any person having a genuine or proper interest.
- (9) An application under subclause (8) may be made on an informal basis to the Registrar.
- (10) If leave is refused by the Registrar, a Judge may review the refusal.
- (11) Notwithstanding anything in the foregoing provisions of this rule, any person shall, on payment of the prescribed fee (if any), be entitled during office hours to search, inspect, and take a copy of any document or record filed or lodged in the Court more than 60 years before.
- (12) For the purposes of this rules, **document** includes—

- (a) The record made of oral evidence given at any hearing other than any notes made personally by the Judge:
 - (b) All exhibits produced in evidence:
 - (c) The record made of the reasons given by the Judge for his or her judgment other than any notes made personally by the Judge.
- (13) Nothing in this rule shall affect any Act, regulations, or rules which contain express provisions of any kind in relation to the search of Court records, and this rule shall be subject to those provisions.

Compare: SR 1948/197 r 25; SR 1971/142 r 2(1); High Court Rules, r 66; 1988 No 4 ss 1(2), 113

Subclause (1A) was inserted, as from 3 February 2003, by rule 4(1) District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

Subclauses (2) and (3) were substituted, as from 1 March 2001, by rule 6(1) District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclause (3A) was inserted, as from 1 March 2001, by rule 6(1) District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclause (4)(b) was revoked, as from 3 February 2003, by rule 4(2) District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

Subclause (4)(ca) was inserted, as from 1 July 2005, by rule 3(1) District Courts Amendment Rules (No 2) 2005 (SR 2005/149).

Subclause (4)(d) was revoked, as from 3 February 2003, by rule 4(2) District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

Subclause (4)(fa) was inserted, as from 1 March 2001, by rule 6(2) District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclause (4)(ga) was inserted, as from 1 July 2005, by rule 3(2) District Courts Amendment Rules (No 2) 2005 (SR 2005/149).

Subclause 4(i) was amended, as from 1 February 2002, by rule 3 District Courts Amendment Rules (No 2) 2001 (SR 2001/381) by substituting the expression “Property (Relationships) Act 1976” for the expression “Matrimonial Property Act 1976”.

Subclause (4)(ja) was inserted, as from 1 August 1995, by rule 5 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

Subclause (4)(ja) was revoked, as from 1 July 1996, by rule 2(1)(a) District Courts Rules 1992, Amendment No 2 (SR 1996/152).

Subclause (4)(k) was revoked, as from 3 February 2003, by rule 4(2) District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

Subclause 4(la) was inserted, as from 1 July 1996, by rule 2(1)(b) District Courts Rules 1992, Amendment No 2 (SR 1996/152).

Subclause (4)(lb) was inserted, as from 1 May 1998, by rule 3 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause 4(m) was amended, as from 1 July 1996, by rule 2(1)(c) District Courts Rules 1992, Amendment No 2 (SR 1996/152) by substituting the expression “(la)” for the expression “(l)”.

Subclause (7) was substituted, as from 1 March 2001, by rule 6(3) District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Investment of funds in Court

70 Application for order

- (1) Where in any proceeding money has been, or is to be, paid into Court pursuant to any order of the Court or to any provision of these rules, any party to the proceeding may apply to the Court for an order directing the Registrar to invest the money on such security or securities as the Court thinks fit.
- (2) Unless the Court otherwise orders, no application under this rule may be made until 21 days after the money has been paid into Court.

Compare: SR 1948/197 r 23; High Court Rules, r 69

71 Powers of Court

- (1) On any application under rule 70 the Court, when making an order for investment of the money,—
 - (a) May direct that any security on which the money is invested shall be taken in the name of the Registrar or in the names of the Registrar and such other person or persons as the Court may nominate; and
 - (b) May also give—
 - (i) Directions as to the form and the terms of the security; and
 - (ii) Such other directions as may appear necessary or expedient.
- (2) Any order made under this rule may from time to time be varied by the Court on the application of any party to the proceeding.

Compare: High Court Rules, r 70

72 Disposal of securities and income

- (1) The Court may, on the application of any party to the proceeding, and either at the time of making an order under rule 70 or at any time thereafter, direct—

- (a) That any security on which money is invested pursuant to rule 70 be transferred to any party or to 2 or more parties in such shares or proportions as it thinks fit; or
 - (b) That any security be converted into money and that, on any such conversion or on the repayment of the money invested therein, the capital and income received be paid to such party or parties and in such shares or proportions as the Court thinks fit; or
 - (c) That the capital be paid to one or more parties and the income be paid to any other party or parties and in such shares or proportions as the Court thinks fit.
- (2) Unless the Court otherwise directs, the income received from any investment made pursuant to an order under rule 70 shall be paid to the party or parties who shall be found by the Court to be entitled to the capital and in the same shares or proportions.

Compare: High Court Rules, r 71

73 No liability on Crown

Neither the Registrar nor the Crown shall be liable for any loss either of capital or of income in respect of any investment made pursuant to and in accordance with an order under rule 70.

Compare: High Court Rules, r 72

Hearings in Chambers

74 Hearings in Chambers

Where any proceeding or interlocutory application is heard and decided in Chambers, particulars of the hearing or the decision or both (including the reasons for the decision) may be published unless the Judge or Registrar, exercising jurisdiction in Chambers, otherwise directs.

Compare: High Court Rules, r 72A; SR 1991/132 r 7

Part 2

Commencement and service of proceedings

Parties

75 Plaintiffs

- (1) All persons may be joined in a proceeding as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction, matter, event, instrument, or other document, or series of the same, or of the same statute, regulation, or bylaw, is alleged to exist, whether jointly, severally, on in the alternative, where if such persons brought separate proceedings any common question of law or fact would arise.
- (2) Notwithstanding subclause (1), if upon the application of any defendant, it appears that any joinder may embarrass or delay the hearing of the proceeding, the Court may order separate hearings, or make such other order as it thinks fit.

Compare: SR 1948/197 r 40(1); High Court Rules, r 73

76 Defendants

- (1) All persons may be joined as defendants against whom the right to any relief in respect of or arising out of the same transaction, matter, event, instrument, or other document, or series of the same, or of the same statute, regulation, or bylaw, is alleged to exist, whether, jointly, severally, or in alternative.
- (2) It shall not be necessary that every defendant shall be interested in all the relief claimed in the proceeding, or in every cause of action included therein, but the Court may make such order as appears just to prevent any defendant from being embarrassed or put to expense by being required to attend any part of the proceeding in which he or she may have no interest.
- (3) Where in any proceeding the plaintiff is in doubt as to the person or persons against whom he or she may be entitled to relief, the plaintiff may join 2 or more persons as defendants to the intent that, in the proceeding, the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties to the proceeding.

Compare: SR 1948/197 rr 42(1), 43, 45; High Court Rules, r 74

77 Third and subsequent parties

- (1) Where in any proceeding a defendant claims against any person not already a party to the proceeding (hereinafter referred to as the third party)—
- (a) That the defendant is entitled to contribution or indemnity; or
 - (b) That the defendant is entitled to any relief or remedy relating to or connected with the subject-matter of the proceeding and substantially the same as some relief or remedy claimed by the plaintiff against him or her; or
 - (c) That any question or issue in the proceeding should properly be determined not only as between the plaintiff and the defendant but also as between the plaintiff, the defendant, and the third party or between any or either of them; or
 - (d) That any question or issue relating to or connected with the subject-matter of the proceeding is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined as aforesaid,—
- then the defendant may, within 14 days after the expiration of the time for filing the defendant's statement of defence or thereafter with leave of the Court, issue a notice to that effect (hereinafter referred to as a third party notice) to the third party in the manner provided in rules 177 to 185.
- (2) Where a third party makes as against any person not already a party to the proceeding (hereinafter referred to as a fourth party) such a claim as is defined by subclause (1), the third party may, within 14 days after the expiration of the time for filing the third party's statement of defence or thereafter with the leave of the Court on notice to all other existing parties or with the written consent of all existing parties, issue a notice to that effect (hereinafter referred to as a fourth party notice) to the fourth party in the manner provided by rules 177 to 185 and so on successively; but no notice to any subsequent party shall be issued without the written consent of all existing parties or without the leave of the Court on an application in that behalf made on notice to the other existing parties.

- (3) A third or subsequent party shall, as from the time of service of such notice upon that party, be a party to the proceeding, with the same rights in respect of that party's defence against any claim made against that party and otherwise as if that party had been made a defendant to a proceeding instituted by the party by whom the notice was issued.
- (4) On any application for leave under this rule the Court shall have regard to the delay to the plaintiff as well as to all other relevant circumstances and may grant or refuse leave or may grant leave upon such terms as may appear just.
- (5) Where an application for judgment in any proceeding is pending under rule 152 or rule 153, a notice under subclause (1) or subclause (2) of this rule to any person not already a party to the proceeding may be issued only with the leave of the Court.
Compare: SR 1948/197 rr 138, 141; SR 1968/183 r 7(1); High Court Rules, r 75; SR 1988/269 r 3

78 Limitation of parties and representation

In all proceedings the number of persons named or joined as parties shall be limited as far as is practicable to those whose presence before the Court is necessary for a due and just determination of the issue or issues arising out of the proceeding or whom it is sought to bind by any judgment given therein.

Compare: High Court Rules, r 76

79 Trustees, executors, and administrators

Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons in the proceeding; but the Court may, at any stage, order any of such persons to be made parties to the proceeding, either in addition to or in lieu of the trustees, executors, or administrators.

Compare: High Court Rules, r 77

80 Persons having same interest

Where two or more persons have the same interest in the subject-matter of a proceeding, one or more of them may, with the

consent of the other or others, or by direction of the Court on the application of any party or intended party to the proceeding, sue or be sued in such proceeding on behalf of or for the benefit of all persons so interested.

Compare: SR 1948/197 r 47; High Court Rules, r 78

81 Partners

- (1) Any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm (if any) in which they were partners when the cause of action arose.
- (2) The opposite party may in such case apply to the firm for the names of the persons who are or were partners in the firm and, until an affidavit has been filed stating the names and addresses of the partners, all further steps in the proceeding on the part of the partners shall be stayed.
- (3) Subclauses (1) and (2) shall apply where a firm sues or is sued by one or more of its members and where firms having one or more members in common sue each other.

Compare: SR 1948/197 rr 61, 63; High Court Rules, r 79

82 Person trading as a firm

- (1) Any person carrying on business in the name of a firm may be sued in the name of the firm.
- (2) The opposite party may in such case apply to the Court for an order—
 - (a) Directing that an affidavit be filed stating the name and address of the person carrying on the business; and
 - (b) Staying any further step in the proceeding on the part of the person carrying on the business until the affidavit has been filed.

Compare: SR 1948/197 r 64; High Court Rules, r 80

83 Representation by other persons

In respect of any proceeding or intended proceeding, the Court may, on the application of any party or intending party thereto, or of its own motion,—

- (a) Direct any executor or trustee to represent minors, unborn persons, or absentees, or persons otherwise unrep-

resented, or appoint counsel to represent them on such counsel undertaking so to do:

- (b) Appoint a guardian *ad litem* to represent any person where such a course appears necessary:
- (c) Direct the Public Trustee to represent any person or class of persons:
- (d) Direct that the Attorney-General or the Solicitor-General be served:
- (e) Direct that, with the consent of the Attorney-General, any chief executive of a Government department or other officer may represent the public interest:
- (f) Direct that any local authority, public body, or other representative body of persons represent the inhabitants of any locality or any class of persons, unless it appears to the Court that their interests, or the interests of a considerable section of them, may be adverse to those of the local authority or public body or other representative body:
- (g) Where a local authority, public body, or other representative body is itself the plaintiff, or is a party whose interests appear to the Court to be adverse to those of the inhabitants of any locality or any class of persons, or a considerable section of them, direct in what manner those inhabitants or that class or that section shall be represented.

Compare: High Court Rules, r 81

84 Incapacitated person and minor defined

For the purposes of these rules,—

incapacitated person means a person who by reason of physical, intellectual, or mental impairment, whether temporary or permanent, is—

- (a) not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings; or
- (b) unable to give sufficient instructions to issue, defend, or compromise proceedings

minor means a person who has not attained the age of 18 years; and a person is of **full age** if he or she has attained the age of 18 years.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rule 84 was substituted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

85 Litigation guardian defined

For the purposes of these rules, **litigation guardian**—

- (a) means—
 - (i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor (but only in a proceeding to which the authority extends); or
 - (ii) a person who is appointed under rule 88C to conduct a proceeding; and
- (b) has the same meaning as the expression “guardian *ad litem*”.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rule 85 was substituted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

86 Incapacitated person must be represented by litigation guardian

- (1) An incapacitated person must have a litigation guardian as his or her representative in any proceeding, unless the Court orders otherwise.
- (2) If a person becomes an incapacitated person during a proceeding, a party must not take any step in the proceeding without the permission of the Court until the incapacitated person has a litigation guardian.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rule 86 was substituted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

87 Minor must be represented by litigation guardian

- (1) A minor must have a litigation guardian as his or her representative in any proceeding, unless the Court orders otherwise.
- (2) Subclause (1) does not apply to a minor who—
 - (a) is required by an enactment to conduct a proceeding without a litigation guardian; or
 - (b) is permitted by an enactment to conduct a proceeding without a litigation guardian and elects to do so; or
 - (c) is authorised under rule 88 to conduct a proceeding without a litigation guardian.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rule 87 was substituted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

88 Minor may apply to conduct proceeding without litigation guardian

- (1) This rule applies to a minor who—
 - (a) is not required or permitted by an enactment to conduct a proceeding without a litigation guardian; and
 - (b) is not prohibited by an enactment from conducting a proceeding without a litigation guardian.
- (2) A minor who wishes to conduct a proceeding in his or her own name may apply to the Court for authorisation to conduct the proceeding without a litigation guardian.
- (3) On an application under subclause (2), the Court may make an order allowing the minor to conduct the proceeding without a litigation guardian if it is satisfied that—
 - (a) the minor is capable of making the decisions required or likely to be required in the proceeding; and
 - (b) no reason exists that would make it in the interests of the minor to be represented by a litigation guardian.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rule 88 was substituted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

88A Application of rules 88B to 96 to minors

Rules 88B to 96 apply to a minor to whom rule 87(1) applies, and every reference in those rules to an incapacitated person must be read as if it was also a reference to a minor.

Rules 88A to 88E were inserted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

88B Court may set aside any step in proceeding

The Court may set aside a step in a proceeding if an incapacitated person did not have a litigation guardian when that step was taken and the Court considers that the incapacitated person was unfairly prejudiced.

Rules 88A to 88E were inserted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

88C Appointment of litigation guardian

- (1) This rule applies if an incapacitated person does not have a litigation guardian within the meaning of rule 85(a)(i).
- (2) The Court may appoint a litigation guardian if it is satisfied that—
 - (a) the person for whom the litigation guardian is to be appointed is an incapacitated person; and
 - (b) the litigation guardian—
 - (i) is able fairly and competently to conduct proceedings on behalf of the incapacitated person; and
 - (ii) does not have interests adverse to those of the incapacitated person; and
 - (iii) consents to being a litigation guardian.
- (3) In deciding whether to appoint a litigation guardian, the Court may have regard to any matters it considers appropriate, including the views of the person for whom the litigation guardian is to be appointed.
- (4) The Court may appoint a litigation guardian under this rule at any time—
 - (a) on its own initiative; or
 - (b) on the application of any person, including a person seeking to be appointed as litigation guardian.

Rules 88A to 88E were inserted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

88D Application to be served on person for whom litigation guardian to be appointed

- (1) Unless the Court orders otherwise, an application under rule 88C—
 - (a) may be made *ex parte*; and
 - (b) must be served on the person for whom the litigation guardian is to be appointed, unless the Court orders otherwise.
- (2) When the person for whom the litigation guardian is to be appointed is a minor,—
 - (a) subclause (1) does not apply; and
 - (b) unless the Court directs otherwise, the application must be served instead on—
 - (i) the minor's parent or guardian; or
 - (ii) if there is no parent or guardian, a person of full age who has the care of the minor or with whom the minor lives.

Rules 88A to 88E were inserted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

88E Notification of appointment

- (1) A litigation guardian within the meaning of rule 85(a)(i) must file a copy of the order or other document that empowers him or her to conduct the proceeding, at the same time as the first document relating to the proceeding is filed.
- (2) A person appointed under rule 88C as a litigation guardian of a party to a proceeding must give notice of the appointment to each other party in the proceeding, as soon as practicable after the appointment.

Rules 88A to 88E were inserted, as from 24 August 2007, by rule 8 District Courts Amendment Rules 2007 (SR 2007/205).

89 Powers of litigation guardian

A litigation guardian may do anything in relation to a proceeding that could be done by the incapacitated person if he or she were not an incapacitated person.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

90 Heading on documents if incapacitated person represented by litigation guardian

The heading of every document filed in a proceeding in which an incapacitated person is represented by a litigation guardian must state the name of the incapacitated person followed by the words “by his/her litigation guardian” and the name of the litigation guardian.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

91 Service of documents

- (1) A party who knows that an incapacitated person has a litigation guardian must serve any document in a proceeding—
 - (a) on the litigation guardian, unless the litigation guardian has filed an address for service;
 - (b) if the litigation guardian has filed an address for service, at that address for service.
- (2) Subclause (3) applies to a party who believes on reasonable grounds that a person is an incapacitated person but does not know if that person has a litigation guardian.
- (3) The party—
 - (a) may apply to the Court for the appointment of a litigation guardian under rule 88C; and
 - (b) may apply for directions as to service; and
 - (c) must serve any documents in the proceeding in accordance with any directions as to service.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rule 91 was substituted, as from 24 August 2007, by rule 9 District Courts Amendment Rules 2007 (SR 2007/205).

92 Representation of incapacitated person by litigation guardian to be disregarded in making award of costs

The fact that an incapacitated person is, or has been, represented by a litigation guardian must be disregarded in making an award of costs under these rules in favour of or against the incapacitated person.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

93 Award of costs enforceable against incapacitated person or litigation guardian

- (1) Unless the Court otherwise orders, an award of costs made against an incapacitated person may be enforced against—
 - (a) the incapacitated person; or
 - (b) the person who is the litigation guardian of the incapacitated person at the time the costs determination is made; or
 - (c) a person against whom an order for indemnity or contribution has been made under rule 94(1) to the extent of the amount of the indemnity or contribution; or
 - (d) any of those persons.
- (2) Unless the Court orders otherwise, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs paid by the litigation guardian under sub-clause (1)(b), (c), or (d).

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

94 Liability of former litigation guardian for costs subsequently awarded against incapacitated person

- (1) The Court may make an order—
 - (a) directing a person who has ceased to be a litigation guardian of an incapacitated person (**former litigation guardian**) to indemnify the incapacitated person or the current litigation guardian of the incapacitated person for any costs subsequently awarded against the incapacitated person in relation to any steps taken in the proceeding by the former litigation guardian:

- (b) directing a former litigation guardian to indemnify the incapacitated person or the current litigation guardian of the incapacitated person on a basis specified by the Court for any costs subsequently awarded against the incapacitated person in relation to any steps taken in the proceeding after the former litigation guardian ceased to be the litigation guardian:
 - (c) directing the former litigation guardian to make a contribution to the costs referred to in paragraph (a) or paragraph (b):
 - (d) declaring that the former litigation guardian is not liable for any of the costs referred to in paragraph (a) or paragraph (b).
- (2) A former litigation guardian may be required by an incapacitated person or by the current litigation guardian of the incapacitated person to satisfy any order made under subclause (1)(a), (b), or (c).
- (3) The Court may, on the application of a former litigation guardian, declare that the former litigation guardian is not liable to comply with an order made under subclause (1)(a), (b), or (c) if the Court is satisfied that, having regard to circumstances occurring after the order was made, it is no longer just that the former litigation guardian should have to comply with the order.

Rule 94 was amended, as from 1 February 1996, by rule 8 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

95 Litigation guardian may be reimbursed out of property of incapacitated person for costs

Unless the Court otherwise orders, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs (including any solicitor and client costs) paid or incurred or to be paid or incurred by the litigation guardian on behalf of the incapacitated person.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

96 Retirement, removal, or death of litigation guardian

- (1) A litigation guardian may not retire without the leave of the Court.
- (2) Unless the Court orders otherwise, the appointment of a litigation guardian under rule 88C ends if another person is subsequently authorised by or under an enactment to conduct the proceeding in the name of, or on behalf of, the incapacitated person.
- (3) A litigation guardian may be removed by the Court when it is in the interests of the person he or she represents.
- (4) In the case of retirement, removal, or death of a litigation guardian, no further step may be taken in the proceeding without the leave of the Court until the incapacitated person is represented by another litigation guardian.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rules 96 to 98 were substituted, as from 24 August 2007, by rule 10 District Courts Amendment Rules 2007 (SR 2007/205).

97 Procedure where person ceases to be incapacitated person

- (1) The Court must make an order terminating the appointment of a litigation guardian if it is satisfied that the person the litigation guardian represents is no longer an incapacitated person.
- (2) The Court may make an order at any time—
 - (a) on its own initiative; or
 - (b) on the application of—
 - (i) the incapacitated person; or
 - (ii) the incapacitated person's litigation guardian; or
 - (iii) a party.
- (3) From the date of the order,—
 - (a) all subsequent steps in the proceeding must be carried on by the person formerly represented by the litigation guardian; and
 - (b) the person formerly represented by the litigation guardian is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had

become a party to the proceeding when he or she was not an incapacitated person.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rules 96 to 98 were substituted, as from 24 August 2007, by rule 10 District Courts Amendment Rules 2007 (SR 2007/205).

98 Procedure where minor attains full age

- (1) A minor who attains full age must file and serve an affidavit confirming that he or she is no longer a minor.
- (2) Unless the Court orders otherwise, from the date a minor attains full age—
 - (a) the appointment of his or her litigation guardian ends; and
 - (b) all subsequent steps in the proceeding must be carried on by the former minor; and
 - (c) that person is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not a minor.

Rules 84 to 98 were substituted, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Rules 96 to 98 were substituted, as from 24 August 2007, by rule 10 District Courts Amendment Rules 2007 (SR 2007/205).

99 Effect of ceasing to be mentally disordered person

[Revoked]

Rule 99 was revoked, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

100 Power of next friend, guardian *ad litem*, or manager to sign documents or swear affidavits

[Revoked]

Rule 100 was revoked, as from 1 February 2003, by rule 8 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

101 Relators

- (1) A relator seeking to bring a proceeding by the Attorney-General on his or her relation, must be approved by the Attorney-General and shall be liable for the costs of the proceeding.
- (2) If the relator or all the relators die or become incapable of acting, the proceeding shall not abate, but the Court may stay the proceeding until the name of a new relator has been substituted after he or she has been approved by the Attorney-General.
- (3) No person shall be named as a relator in a proceeding until he or she has authorised the solicitor issuing the proceeding so to name him or her.
- (4) The authority under subclause (3) shall be in writing signed by the proposed relator and shall be filed in the office of the Court in which the proceeding is to be commenced.

Compare: High Court Rules, r 95

102 Misjoinder of parties

No proceeding shall be defeated by reason of the misjoinder of parties, and the Court may in every proceeding deal with the matter in controversy in accordance with the rights and interests of the parties before it.

Compare: SR 1948/197 r 46; High Court Rules, r 96

103 Striking out and adding parties

- (1) The Court may at any stage of a proceeding, either upon or without the application of any party, and on such terms as appear to the Court to be just, order—
 - (a) That the name of any party, whether as plaintiff or as defendant, improperly or mistakenly joined be struck out:
 - (b) That the name of any person who ought to have been joined, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the proceeding be added, whether as plaintiff or defendant.
- (2) Notwithstanding subclause (1)(b), no person shall be added as plaintiff without that person's consent.

Compare: SR 1948/197 rr 41, 173; High Court Rules, r 97

*Change of parties by death, etc***104 When proceeding not to abate**

- (1) Subject to section 52 of the Act and the provisions of any other Act, no proceeding shall abate by reason of the death or bankruptcy of any of the parties if the cause of action survives or continues.
- (2) No proceeding shall become defective by the assignment, creation, or devolution of any estate or title while the proceeding is pending.

Compare: SR 1948/197 r 65(1); High Court Rules, r 98

105 Procedure on devolution of interest

- (1) In the case of the death, or bankruptcy, or devolution of the estate by operation of law, of any party to a proceeding, the other party may apply to the Court for an order that the personal representative, trustee, or other successor in interest (if any) of that party be made a party to the proceeding, or be served with notice thereof, in such manner or form as is hereinafter prescribed, and on such terms as the Court thinks just and to make such order for the disposal of the proceeding as it thinks just.
- (2) If the other party fails to apply to the Court under subclause (1) of this rule, the Court may make the necessary orders of its own motion.

Compare: SR 1948/197 r 66; High Court Rules, r 99

106 Devolution while proceeding pending

In the case of an assignment, creation, or devolution of any estate or title while a proceeding is pending, the proceeding may be continued by or against the person to or upon whom such estate or title has come or devolved.

Compare: High Court Rules, r 100

107 Order as to new parties

Where, by reason of death or bankruptcy or any other event occurring after the commencement of a proceeding and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the

commencement of the proceeding, it becomes necessary or desirable that any person not already a party to the proceeding should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceeding shall be carried on between the continuing parties to the proceeding and the new party or parties may be obtained *ex parte* on application to the Court upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

Compare: High Court Rules, r 101

108 Service and effect of order

An order obtained under rule 107 shall, unless the Court otherwise directs, be served upon the continuing party or parties to the proceeding, and also upon each new party, unless the person making the application is the only new party; and, subject to rules 109 and 110, the order shall from the time of service be binding on the person served therewith; and every person served therewith who is not already a party shall be bound to file a statement of defence within the same time and in the same manner as if that person had been served with a statement of claim.

Compare: High Court Rules, r 102

109 Application to discharge or vary order

Where any person who is under no disability, or being under disability but having a next friend or guardian *ad litem* or manager in the proceeding, is served with an order obtained under rule 107, that person may apply to the Court to discharge or vary the order within 14 days from the service thereof.

Compare: High Court Rules, r 103

110 Application to discharge or vary order by person under disability

Where any person being under any disability is served with an order obtained under rule 107 and that person has not had a next friend or guardian *ad litem* appointed in the proceeding or a manager appointed, that person may apply to the Court to

discharge or vary the order within 14 days from the appointment of a next friend or guardian *ad litem* or a manager for that party, and until the period of 14 days has expired the order shall have no force or effect as against the last-mentioned person.

Compare: High Court Rules, r 104

111 Change of name

If the name of any party is incorrectly stated in the pleadings or is changed by marriage, by civil union, by deed poll, or otherwise, that party may amend that name by filing with the Court and serving on all other parties, a notice signed by that party.

Compare: High Court Rules, r 105

Rule 111 was amended, as from 1 July 2005, by rule 4 District Courts Amendment Rules (No 2) 2005 (SR 2005/149) by substituting the words “, by civil union, by deed poll,” for the words “or by deed poll”.

Statement of claim

112 Proceeding commenced by filing statement of claim

- (1) Every proceeding shall, subject to subclauses (2) and (3), be commenced by filing a statement of claim in the proper Court, as determined in accordance with rule 113.
- (2) Subclause (1) does not apply to—
 - (a) A proceeding to which rule 452 applies; or
 - (b) An appeal from a determination of a statutory tribunal or statutory officer.
- (3) Notwithstanding subclause (1), the statement of claim may be filed in any Court if the parties agree, by endorsement on the statement of claim, to the filing of the statement of claim in that Court.

Compare: SR 1948/197 r 26; SR 1952/242 r 3; SR 1956/81 r 4; SR 1970/60 r 5; SR 1977/219 r 2(1), (2); SR 1986/358 r 3(1); SR 1973/244 r 3(1); High Court Rules, r 106

113 Proper Court

- (1) The proper Court, for the purposes of rule 112(1), shall, subject to subclauses (2) and (4), be determined as follows:
 - (a) Where any defendant is resident or has his or her principal place of business in New Zealand, that Court shall

be the Court nearest to the residence or principal place of business of the defendant:

Provided that where there are two or more defendants, that Court shall be determined by reference to the first-named defendant who is resident or has his or her principal place of business in New Zealand:

- (b) Where no defendant is resident or has his or her principal place of business in New Zealand, that Court shall be such Court as the plaintiff selects:
 - (c) Notwithstanding paragraphs (a) and (b), where the Crown is a defendant, that Court shall be the Court nearest to the place where the cause of action or a material part thereof arose.
- (2) Notwithstanding subclause (1)(a), if the place where the cause of action, or some material part thereof, arose is nearer to the place where the plaintiff or the plaintiff first named in the statement of claim resides than to the place where the defendant resides, the proper Court, for the purposes of rule 112(1), shall, at the option of the plaintiff or the first-named plaintiff, as the case may be, be the Court nearest to the residence of the plaintiff or the first-named plaintiff, as the case may be.
- (3) Where a plaintiff proposes to exercise the option conferred by subclause (2), the plaintiff shall file with the statement of claim and notice of proceeding an affidavit by the plaintiff or the plaintiff's solicitor showing the place where the cause of action or the material part thereof arose and showing that that place is nearer to the place where the plaintiff or the first-named plaintiff in the statement of claim resides than to the place where the defendant resides.
- (4) Where the Court nearest to the place where the defendant or one of the defendants resides or has his or her principal place of business in New Zealand is the Court at Auckland, Manukau, North Shore, Papakura, or Waitakere, and the Court at one of those 5 places is the Court nearest to the place where the cause of action or a material part thereof arose, subclause (2) shall not apply.
- (5) Where it appears to the Court or the Registrar that the statement of claim has been filed in the wrong Court or that any

other Court would be more convenient to the parties, the Court or the Registrar may, of his or her or its own motion or an application, direct that the statement of claim be filed in such other Court, or that all documents filed in the proceeding be transferred to the proper Court or, as the case may be, to such other Court which shall thereupon be deemed to be the proper Court.

Compare: SR 1948/197 r 26; SR 1952/242 r 3; SR 1956/81 r 4; SR 1970/60 r 5; SR 1977/219 r 2(1), (2); SR 1948/197 r 176, High Court Rules, r 107; SR 1991/132 r 8

Subclause (4) was amended, as from 1 May 1998, by rule 3 District Courts Amendment Rules (No 2) 1998 (SR 1998/73) by substituting the word “Wai-takere” for the word “Henderson”.

Subclause (4) was amended, as from 30 October 2000, by rule 3 District Court Amendment Rules 2000 (SR 2000/184) by substituting the words “Manukau, North Shore,” for the words “North Shore, Otahuhu,”.

114 Statement of claim to show nature of claim, etc

The statement of claim—

- (a) Shall show the general nature of the plaintiff’s claim to the relief sought; and
- (b) Shall give such particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances, including particulars of the finance rate where appropriate, as may suffice to inform the Court and the party or parties against whom relief is sought of the plaintiff’s cause of action; and
- (c) Shall state specifically any claim for interest; and
- (d) In a proceeding against the Crown that is instituted against the Attorney-General, shall give particulars of the Government department or officer of the Crown concerned.

Compare: SR 1948/197 r 77(1)-(4); SR 1952/242 rr 6, 18(1); High Court Rules, r 108

115 Statement of claim to specify relief sought

The statement of claim shall conclude by specifying the relief or remedy sought.

Compare: High Court Rules, r 109

116 Joinder of several causes of action

- (1) Subject to subclauses (2) and (3), a plaintiff may join in the same statement of claim several causes of action.
- (2) Claims by or against an Official Assignee in Bankruptcy, or a liquidator or a receiver of a company, as such, shall not, unless by leave of the Court, be joined with any claim by or against him or her in any other capacity.
- (3) Claims by or against an executor or administrator or trustee, as such, shall not, unless by leave of the Court, be joined with claims by or against him or her personally unless the last-mentioned claims are alleged to arise with reference to the estate or trust in respect of which he or she sues or is sued as executor or administrator or trustee.

Compare: SR 1948/197 r 36(b); High Court Rules, r 110

117 Joint plaintiffs

Subject to rule 138, claims by plaintiffs jointly may be joined with claims by them or any of them against the same defendant.

Compare: SR 1948/197 r 36(c); High Court Rules, r 111

118 Joining claims by or against spouses or partners

Claims by or against spouses, civil union partners, or de facto partners may be joined with claims by or against either of those spouses, civil union partners, or de facto partners if the opposite party is the same person.

Rule 118 was substituted, as from 1 July 2005, by rule 5 District Courts Amendment Rules (No 2) 2005 (SR 2005/149).

119 Court may order separate hearings

In any case where justice so requires, the Court may order separate hearings of causes of action and, for that purpose, may direct the order of the separate hearings, or may make such other order as the Court thinks just.

Compare: SR 1948/197 r 38; High Court Rules, r 113

120 Relief to be sought for each cause of action

A statement of claim which includes 2 or more causes of action shall specify separately the relief or remedy sought by the plaintiff on each cause of action.

Compare: SR 1948/197 r 82; High Court Rules, r 114

121 Unnecessary to ask for general relief

The relief claimed shall be stated specifically, either simply or in the alternative, and it shall not be necessary to ask for general or other relief; but the Court may, if it thinks just, grant any other relief to which the plaintiff may be entitled, notwithstanding that the relief has not been specifically claimed and there is no claim for general or other relief.

Compare: High Court Rules, r 115

122 Amount of money claim

If the statement of claim seeks the recovery of a sum of money, the amount shall be stated as precisely as the nature of the case admits.

Compare: SR 1948/197 r 77(2); SR 1952/242 r 18(1); High Court Rules, r 116

123 Special damages

If the plaintiff seeks to recover special damages, the statement of claim shall show the nature and particulars thereof.

Compare: High Court Rules, r 117

124 Set-off

If the plaintiff wishes to allow a set-off, or relinquish a portion of his or her claim, the statement of claim shall show the amount so allowed or relinquished.

Compare: High Court Rules, r 118

125 Representative capacity of party

If any party to a proceeding sues or is sued in a representative capacity, the statement of claim shall show in what capacity he or she sues or is sued.

Compare: High Court Rules, r 119

Notice of proceeding

126 Notice of proceeding to be filed with statement of claim

Subject to rule 130, there shall be filed with every statement of claim a notice to the defendant to be called a notice of proceeding.

Compare: High Court Rules, r 120

127 Requirements as to notice of proceeding

- (1) The notice of proceeding—
 - (a) Shall be signed by the plaintiff or the plaintiff's solicitor:
 - (b) Shall state the place for the filing of a statement of defence and the time within which the statement of defence is required to be filed, in accordance with these rules:
 - (c) Shall warn the defendant that if the defendant does not file a statement of defence within the required time the plaintiff may at once proceed to judgment on the claim and judgment may be given in the absence of the defendant.
- (2) The notice of proceeding shall be in form 4.
- (3) Where the Court has directed that any person other than the defendant named in the title of the proceeding be served, a statement to that effect setting out the name, place of residence, and occupation of every such person shall be appended to the notice of proceeding, and such statement shall be signed by the Registrar.
- (4) There shall be endorsed on the notice of proceeding or annexed thereto a memorandum signed by the Registrar in form 5 or form 7 as may be appropriate.

Compare: High Court Rules, r 121

Subclause (4) was amended, as from 3 February 2003, by rule 6 District Courts Amendment Rules (No 3) 2002 (SR 2002/394) by omitting the words "or form 6".

128 Place and time for filing statement of defence

Unless otherwise ordered by the Court,—

- (a) The place for filing the statement of defence shall be the Court in which the statement of claim was filed or into which it has been transferred; and
- (b) The time within which the statement of defence is required to be filed shall be within 30 days after the day on which the statement of claim and notice of proceeding are served on the defendant.

Compare: High Court Rules, r 122

129 Place of hearing

Subject to rule 483, the place at which the proceeding shall be heard shall be the town where the Court in which the statement of defence is to be filed is situated.

Compare: High Court Rules, r 123; SR 1987/230 r 2

130 When not necessary to file notice of proceeding

Unless the Court so orders, it shall not be necessary to file or serve a notice of proceeding—

- (a) Where no relief against any person is claimed in the statement of claim; or
- (b) Where service of the notice is dispensed with—
 - (i) By statute; or
 - (ii) Under these rules; or
 - (iii) By order of the Court.

Compare: High Court Rules, r 124

Service of statement of claim and notice of proceeding

131 Service generally

- (1) Except as otherwise provided by any Act or these rules or any order made under these rules, every statement of claim and notice of proceeding shall be served, in accordance with these rules,—
 - (a) On every defendant named therein; and
 - (b) On every other person directed to be served therewith.
- (2) Notwithstanding subclause (1), in any civil proceeding against the Crown in which the Attorney-General is named as defendant or is directed to be served on behalf of the Crown or in

which the Crown is joined by joining the Attorney-General as a party or third or subsequent party, service on the Crown shall be effected in accordance with section 16 of the Crown Proceedings Act 1950.

Compare: SR 1948/197 Part 9; SR 1952/242 r 7; High Court Rules, r 125

132 Personal service required

Subject to rule 131(2) and except where the Court directs or these rules require or permit a different mode of service, the statement of claim and notice of proceeding shall be served personally.

Compare: SR 1948/197 r 85; SR 1968/183 r 2; High Court Rules, r 126

133 Prompt service required

- (1) The statement of claim and notice of proceeding shall be served—
 - (a) As soon as practicable after they are filed; or
 - (b) Where directions as to service are sought, as soon as practicable after such directions have been given.
- (2) Unless service is effected within 12 months after the day on which the statement of claim and notice of proceeding are filed or within such further time as the Court may allow, the proceeding shall be deemed to have been discontinued by the plaintiff against any defendant or other person directed to be served who has not been served.

Compare: SR 1948/197 r 111(1); High Court Rules, r 127

134 Extension of time for service

- (1) The plaintiff may, before or after the expiration of the period referred to in rule 133 apply to the Court or the Registrar for an order extending that period in respect of any person (being a defendant or other person directed to be served) who has not been served.
- (2) On an application under subclause (1), the Court or the Registrar, if satisfied that reasonable efforts have been made to effect service on that defendant or person, or for other good reason, may extend the period of service for 6 months from the date

of the order and so on from time to time while the proceeding is pending.

Compare: SR 1948/197 r 111(2); High Court Rules, r 128

Statement of defence and appearance

135 Filing and service of statement of defence

- (1) A defendant who intends to defend the proceeding—
 - (a) Shall, within the number of days stated in the notice of proceeding, file in the office of the Court named in the notice a statement of his or her defence to the plaintiff's claim; and
 - (b) Shall serve a copy of the statement of defence on the plaintiff and any other party.

(2)

Compare: High Court Rules, r 129

Subclause (2) was revoked, as from 1 October 2001, by rule 4 District Courts Amendment Rules 2001 (SR 2001/221).

136 Requirements as to statement of defence

- (1) The statement of defence shall either admit or deny the allegations of fact in the statement of claim but no defendant shall be required to plead to an allegation that does not affect that defendant.
- (2) Where the defendant denies any allegation of fact in the statement of claim, the defendant must not do so evasively but must answer the point in substance. Thus, if it is alleged that the defendant received a sum of money, it shall not be sufficient to deny receipt of the particular amount, but the defendant must deny that the defendant received that sum or any part thereof, or set out how much the defendant received; and, when a matter is alleged with circumstances, it shall not be sufficient to deny it as alleged with those circumstances, but a fair and substantial answer must be given.
- (3) Every allegation not denied shall be deemed to be admitted.
- (4) Where an affirmative defence is intended, it shall be pleaded.
- (5) The statement of defence shall give such particulars of time, place, amounts, names of persons, nature and dates of instruments, including the finance rate where appropriate, and other

circumstances as may suffice to inform the Court, the plaintiff, and any other parties of the defendant's defence.

Compare: SR 1948/197 r 113; SR 1968/183 r 7(1); SR 1973/244 r 7; SR 1980/55 r 5(1), (2), (3), (4), (5); High Court Rules, r 130

137 Defence where plaintiff sues on behalf of others

Where a plaintiff sues on behalf of or for the benefit of others having the same interest, a defendant may avail himself or herself of any defence in respect of each person on whose behalf or for whose benefit the plaintiff sues which the defendant would have had against that person if he or she had been a plaintiff.

Compare: SR 1948/197 r 115

138 Where all persons liable not joined

Where a plaintiff relies on the provisions of section 51 of the Act, and does not proceed against all of several persons jointly liable, every person sued may set up any defence or counterclaim which he or she would have been entitled to set up if all the persons liable had been made defendants.

Compare: SR 1948/197 r 116

139 Appearance under protest to jurisdiction

- (1) A defendant who objects to the jurisdiction of the Court to hear and determine the proceeding in which the defendant has been served may, within time limited for filing the defendant's statement of defence and instead of so doing, file and serve an appearance stating the defendant's objection and the grounds thereof.
- (2) The filing and serving of an appearance under subclause (1) shall not be or be deemed to be a submission to the jurisdiction of the Court in the proceeding.
- (3) A defendant who has filed an appearance under subclause (1) may apply to the Court to dismiss the proceeding on the ground that the Court has no jurisdiction to hear and determine it.
- (4) On hearing an application under subclause (3), the Court—
 - (a) If it is satisfied that it has no jurisdiction to hear and determine the proceeding, shall dismiss the proceeding; but

- (b) If it is satisfied that it has jurisdiction to hear and determine the proceeding, shall dismiss the application and set aside the appearance.
- (5) At any time after an appearance has been filed under subclause (1), the plaintiff may apply to the Court by interlocutory application to set aside the appearance.
- (6) On hearing an application under subclause (5), the Court—
 - (a) If it is satisfied that it has jurisdiction to hear and determine the proceeding, shall set aside the appearance; and
 - (b) If it is satisfied that it has no jurisdiction to hear and determine the proceeding, shall dismiss both the application and the proceeding.
- (7) The Court, in exercising its powers under this rule, may do so on such terms and conditions as may be just and, in particular, on setting aside the appearance may enlarge the time within which the defendant may file and serve a statement of defence and may give such directions as may appear necessary regarding any further steps in the proceeding in all respects as though the application were an application for directions under rule 433 or rule 434.
- (8) Where the appearance set aside has been filed in relation to a proceeding in which the plaintiff has applied for judgment under rule 152 or rule 153, the Court—
 - (a) Shall enlarge the time within which the defendant may file and serve—
 - (i) A notice of opposition; and
 - (ii) An affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff; and
 - (b) May, under subclause (7), give such other directions as appear necessary regarding any further steps in the proceeding.

Compare: High Court Rules, r 131; SR 1988/269 r 4

140 Appearance for ancillary purposes

A defendant who does not oppose the plaintiff's claim but who desires to be heard on any ancillary matter (including costs) may, without filing a statement of defence, file and serve an appearance setting forth those matters and thereafter no matter

therein specified shall be determined except on notice to that defendant.

Compare: High Court Rules, r 132

141 Appearance reserving rights

- (1) A defendant who does not oppose the plaintiff's claim but who desires to reserve the defendant's rights in the event that any other person may become a party to the proceeding or that any person, already a party, may take some steps in the proceeding adverse to the defendant's interests, may, without filing a statement of defence, file and serve an appearance reserving those rights, and thereafter that defendant shall be entitled to be served with all documents relevant to the rights so reserved that may be filed in the proceeding by any person who is or may become a party thereto.
- (2) A defendant who has filed an appearance under subclause (1) may at any time, by leave of the Court, file and serve a statement of defence and any other document within such time and upon such terms and conditions as may be prescribed by the Court when granting such leave.

Compare: High Court Rules, r 133

142 Forms

Form 8 or form 9 or form 10 may be used, as appropriate, for the purpose of entering an appearance under rules 139 to 141.

Compare: High Court Rules, r 134

Summary proceeding for recovery of land

143 Application of rules relating to summary proceeding for recovery of land

- (1) Rules 144 to 150 apply to every proceeding in which the plaintiff claims the recovery of land that is occupied solely by a person or persons (not being a tenant or tenants or subtenant or subtenants holding over after the termination of the tenancy or subtenancy) who entered into or remained in occupation without the plaintiff's licence or consent or that of any predecessor in title of the plaintiff.

- (2) Nothing in this rule or in rules 144 to 150 limits the application, in relation to any proceeding for the recovery of land, of rules 152 to 167.

Compare: High Court Rules, r 134A; SR 1987/169 r 3

144 Defendants

- (1) In a proceeding to which this rule applies, the plaintiff shall, subject to subclause (2), name as a defendant in the statement of claim each person who is known to the plaintiff to be in occupation of the land.
- (2) If the plaintiff does not know the name of any person in occupation of the land, the plaintiff may commence the proceeding without naming any person as defendant.

Compare: High Court Rules, r 134B; SR 1987/169 r 3

145 Affidavit in support

In a proceeding to which this rule applies, the plaintiff shall file with the statement of claim an affidavit—

- (a) Stating the interest of the plaintiff in the land; and
- (b) Stating the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and
- (c) If the statement of claim does not name any person as defendant, stating that the plaintiff does not know the name of any person in occupation of the land.

Compare: High Court Rules, r 134C; SR 1987/169 r 3

146 Service

- (1) In the case of a proceeding to which this rule applies,—
- (a) The statement of claim; and
- (b) The notice of proceeding; and
- (c) A copy of the affidavit required by rule 145; and
- (d) A copy of any exhibit referred to in the affidavit required by rule 145,—
- shall be served on each defendant, if any, and on each person occupying the land who is not a defendant.
- (2) In the case of a defendant, service shall be effected in accordance with rule 132.

- (3) In the case of a person occupying the land who is not a defendant, service (except where the Court directs or permits a different mode of service) shall be effected—
- (a) By affixing to some conspicuous part of the land the documents required to be served pursuant to subclause (1); and
 - (b) If practicable, by leaving in the letterbox or other receptacle for mail on the land the documents required to be served pursuant to subclause (1) (which documents shall be enclosed in a sealed envelope addressed to “The Occupiers”).

Compare: High Court Rules, r 134D; SR 1987/169 r 3

147 Time for filing statement of defence

Notwithstanding anything in rule 128(b), where service is effected in accordance with rule 146(3), the time within which the statement of defence is required to be filed shall be within 30 days after the day on which service is effected under rule 146(3).

Compare: High Court Rules, r 134E; SR 1987/169 r 3

148 Power of Court to make occupiers defendants

In the case of any proceeding to which this rule applies, the Court may order that a person occupying the land to which the proceeding relates who is not a defendant be made a defendant or be added as a defendant, as the case may require.

Compare: High Court Rules, r 134F; SR 1987/169 r 3

149 Judgment for possession

Rule 464 shall not apply in respect of a proceeding to which this rule applies.

Compare: High Court Rules, r 134G; SR 1987/169 r 3

150 Warrant for recovery of land

- (1) No warrant for recovery of land to enforce a judgment for possession in a proceeding to which this rule applies shall issue without the leave of the Court after 3 months have elapsed since the date of judgment.

- (2) An application for leave under subclause (1) may be made by way of an *ex parte* application unless the Court otherwise directs.

Compare: High Court Rules, r 134H; SR 1987/169 r 3

Summary judgment procedure

151 Application of summary judgment procedure

Except as provided in these rules or by any other enactment, rules 152 to 167 apply to every proceeding other than a proceeding under Part 9.

Compare: High Court Rules r 135

Rule 151 was substituted, as from 1 August 1995, by rule 6 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

152 Judgment if there is no defence or if no cause of action can succeed

- (1) The Court may give judgment against a defendant if the plaintiff satisfies the Court that the defendant has no defence to a claim in the statement of claim or to a particular part of the claim.
- (2) The Court may give judgment against a plaintiff if the defendant satisfies the Court that none of the causes of action in the plaintiff's statement of claim can succeed.

Compare: High Court Rules r 136

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

153 Summary judgment on liability

The Court may give judgment on the issue of liability, and direct a hearing of the issue of amount (at the time and place that it thinks fit), if the party applying for summary judgment satisfies the Court that the only issue to be heard is one as to the amount claimed.

Compare: High Court Rules r 137

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

154 Interlocutory application for summary judgment

- (1) Application for judgment under rule 152 or rule 153 must be made by interlocutory application.
- (2) An application by a plaintiff must be made at the time the statement of claim is served on the defendant, or later with the leave of the Court.
- (3) An application by a defendant must be made at the time the statement of defence is served on the plaintiff, or later with the leave of the Court.
- (4) The party making the application must file and serve on the other party the following documents:
 - (a) if the party is a plaintiff, a notice of proceeding in form 11;
 - (b) a notice of interlocutory application in form 20;
 - (c) a statement of claim (if the application is made by the plaintiff);
 - (d) a statement of defence (if the application is made by the defendant);
 - (e) a supporting affidavit.
- (5) That affidavit—
 - (a) must be by or on behalf of the person making the application;
 - (b) if given by or on behalf of the plaintiff, must verify the allegations in the statement of claim to which it is alleged that the defendant has no defence, and must depose to the deponent's belief that the defendant has no defence to the allegations and set out the grounds of that belief;
 - (c) if given by or on behalf of the defendant, must show why none of the causes of action in the plaintiff's statement of claim can succeed.

Compare: High Court Rules r 138

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

155 Service out of New Zealand

A plaintiff who makes an application under rule 152 or rule 153 must serve the documents specified in rule 154(4) on a defendant who is overseas,—

- (a) if the defendant is served in the Commonwealth of Australia, not less than 21 days before the date for hearing the application:
- (b) if the defendant is served elsewhere, not less than 35 days before the date for hearing the application.

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Rule 155 was substituted, as from 1 October 2001, by rule 5 District Courts Amendment Rules 2001 (SR 2001/221).

156 Requirements as to notice of proceeding

Rule 127 does not apply to a proceeding to which rules 152 to 167 apply.

Compare: High Court Rules r 139

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

157 Time for service

- (1) The documents specified in rule 154(4) must be served on the other party to the proceeding not less than 21 days before the date for hearing the application.
- (2) This rule is subject to rule 155.

Compare: High Court Rules r 140

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Rule 157 was substituted, as from 1 October 2001, by rule 6 District Courts Amendment Rules 2001 (SR 2001/221).

158 Enlargement of date of hearing

The Registrar, on request, may enlarge the date of the hearing whenever the documents specified in rule 154(4) have not been served within the time prescribed by rule 157(1) by—

- (a) striking out the original date of hearing shown in the notice of interlocutory application; and
- (b) inserting a new date; and
- (c) initialling the new date in the margin opposite the alteration.

Compare: High Court Rules r 140A

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

159 Notice of opposition and affidavit in answer

- (1) A party who intends to oppose an application for judgment under rule 152 or rule 153 must, at least 3 working days before the date for hearing the application, file in the Court and serve on the party making the application—
 - (a) a notice of opposition in form 22; and
 - (b) an affidavit by or on behalf of the party intending to oppose the application in answer to the affidavit by or on behalf of the party making the application.
- (2) A party who does not comply with subclause (1) will not be heard in opposition to the application without the leave of the Court.
- (3) Rule 267 applies, with all necessary modifications, in relation to a notice of opposition filed under subclause (1)(a).

Compare: High Court Rules r 141

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

160 Statement of defence

- (1) A defendant who has filed both a notice of opposition and an affidavit under rule 159 may, in addition, file a statement of defence in the office of the Court in which the notice of opposition and the affidavit were filed.
- (2) If a defendant files a statement of defence under subclause (1), the defendant must serve a copy of the statement of defence on the plaintiff.
- (3) A statement of defence filed under subclause (1) must be filed and served at least 3 days before the date for the hearing of the application.

Compare: High Court Rules r 141A

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

161 Affidavits in reply

- (1) An affidavit may be filed by or on behalf of the party making the application in reply to an affidavit filed by or on behalf of the party opposing the application.
- (2) An affidavit filed under subclause (1)—

- (a) must be limited to new matters in the affidavit of the party opposing the application; and
- (b) must be filed in the Court and served on the party opposing the application not later than 1 pm on the last working day before the date for hearing the application.

Compare: High Court Rules r 141B

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

162 Removal of summary judgment application from District Court to High Court

- (1) If a summary judgment application is made in a Court, a Judge may, on the application of either party or on his or her own motion, remove into the High Court—
 - (a) that summary judgment application; or
 - (b) any matter arising in that summary judgment application.
- (2) On any removal under subclause (1), the High Court may—
 - (a) determine the application or matter; or
 - (b) refer the application or matter back to the Court with any directions that the High Court thinks fit.

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

163 Disposal of application

- (1) If the Court dismisses an application for judgment under rule 152 or rule 153, the Court must give directions as to the future conduct of the proceeding as may be appropriate.
- (2) If it appears to the Court on an application for judgment under rule 152 or rule 153 that the defendant has a counterclaim that ought to be heard, the Court—
 - (a) may give judgment for the amount that appears just on any terms it thinks fit; or
 - (b) may dismiss the application and give directions under subclause (1).

Compare: High Court Rules r 142

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

164 Time for filing statement of defence on dismissal of plaintiff's application

- (1) The statement of defence in the proceeding, if not already filed, must be filed within 14 days after the date on which any application by a plaintiff for judgment under rule 152 or rule 153 is dismissed.
- (2) This rule is subject to any directions given under rule 163(1).

Compare: High Court Rules r 142A

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

165 Setting aside judgment

A judgment given against a party who does not appear at the hearing of an application for judgment under rule 152 or rule 153 may be set aside or varied by the Court on any terms that it thinks fit if it appears to the Court that there has been or may have been a miscarriage of justice.

Compare: High Court Rules r 143

Rule 165 was substituted, as from 1 February 1996, by rule 9 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

166 Discontinuance

- (1) The party making the application may, at any time before an application for judgment under rule 152 or rule 153 is heard, discontinue the application—
 - (a) by filing in the office of the Court in which the application is filed a memorandum to that effect; and
 - (b) by serving a copy of the memorandum on the other party to the application.
- (2) If an application for judgment under rule 152 or rule 153 is discontinued, the Court may give directions as to the future conduct of the proceeding.

Compare: High Court Rules r 143A

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

167 Application to counterclaims

Rules 151 to 166 apply, with all necessary modifications, to counterclaims.

Compare: High Court Rules r 144.

Rules 151 to 167 were substituted, as from 1 March 2001, by rule 7 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

*Counterclaim***168 Counterclaim against plaintiff only**

Subject to rule 169, where a defendant has a counterclaim which the defendant wishes to raise in the proceeding and which is against the plaintiff only, that defendant shall file a statement of the counterclaim in the Court in which the defendant is required to file the defendant's statement of defence.

Compare: SR 1948/197 r 119; SR 1952/242 r 10; SR 1968/183 r 7(1); High Court Rules, r 145

169 Restriction where Crown involved

- (1) In any proceeding by the Crown for the recovery of taxes, duties, or penalties, no defendant shall be entitled to avail himself or herself of any set-off or counterclaim.
- (2) In any proceeding of any other nature by the Crown, no defendant shall be entitled to avail himself or herself of any set-off or counterclaim arising out of a right or claim to payment in respect of any taxes, duties, or penalties.
- (3) In any proceeding by or against the Crown, being a proceeding to which neither subclause (1) nor subclause (2) applies, no defendant shall be entitled, without leave of the Court, to avail himself or herself of any set-off or counterclaim—
 - (a) If the Crown sues or is sued either—
 - (i) In the name of the Attorney-General on behalf of a Government department or officer of the Crown; or
 - (ii) In the name of a Government department or officer of the Crown; and
 - (b) If the subject-matter of the set-off or counterclaim does not relate to that department or officer.
- (4) Where an application for leave under subclause (3) is made by a defendant other than the Crown, that application shall

be served on the Crown not less than 7 days before the date therein specified for hearing the application.

Compare: SR 1948/197 r 120A; SR 1952/242 r 11; High Court Rules, r 146

170 Heading of counterclaim

A counterclaim shall be headed with the word “Counterclaim” but shall in all other respects conform to the rules as to statements of claim.

Compare: SR 1948/197 r 119(1); SR 1952/242 r 10; High Court Rules, r 147

171 Filing and service

A counterclaim shall be filed in the Court and a copy thereof served upon the plaintiff within the time stated in the notice of proceeding for filing a statement of defence or, if no such time is stated, within a time fixed by the Court.

Compare: SR 1948/197 r 119(1A); SR 1952/242 r 10; High Court Rules, r 148

172 Defence to counterclaim

(1) A plaintiff who intends to defend a counterclaim that has been served on the plaintiff shall, within 30 days after the day on which the counterclaim is served on the plaintiff, file a statement of defence thereto and serve a copy thereof upon the defendant.

(2) Such statement of defence shall be headed with the words “Defence to Counterclaim” but shall in all other respects conform to the rules as to statements of defence.

Compare: SR 1948/197 r 119(3); High Court Rules, r 149

173 Counterclaim against plaintiff and another person

(1) Subject to rule 169, if the defendant has a counterclaim against the plaintiff along with any other person (whether a party to the proceeding or not) for any relief relating to or connected with the original subject-matter of the proceeding, the defendant may, within the time limited for filing the defendant’s statement of defence, file a statement of the counterclaim and serve a copy thereof on the plaintiff and such other person. Such other person shall be referred to as a counterclaim defendant.

- (2) In a counterclaim filed under subclause (1) the defendant shall add to the title thereof a further title similar to the title in the statement of claim in the manner set out in form 1.
- (3) The time within which a plaintiff or a counterclaim defendant may file a statement of defence to a counterclaim under subclause (1) shall be within 30 days after the day on which the counterclaim is served on the plaintiff or the counterclaim defendant.
- (4) A notice of proceeding in form 4 shall be served with each copy of a counterclaim served under subclause (1).
- (5) Subject to this rule, rules 168 to 172 shall apply with respect to any counterclaim under subclause (1) and any defence thereto.
- (6) The Court may at any time order that a counterclaim under subclause (1) be struck out, upon such terms as it thinks fit, if it shall appear—
 - (a) That by reason of the counterclaim the plaintiff is likely to be unduly delayed in obtaining the plaintiff's relief;
or
 - (b) That the hearing (if a hearing is necessary) is to be held at a place where it could not be held if a counterclaim defendant had been made defendant to an independent proceeding instituted against the counterclaim defendant by the defendant in respect of the subject-matter of the counterclaim; or
 - (c) That the relief in the counterclaim is not related to or connected with the original subject-matter of the proceeding.

Compare: SR 1948/197 r 120; High Court Rules, r 150

174 Place of hearing

- (1) A counterclaim shall be heard at the same place as the statement of claim in the original proceeding and either contemporaneously therewith or immediately thereafter.
- (2) Notwithstanding subclause (1), if it appears to the Court that a counterclaim and the statement of claim can more fairly or conveniently be heard separately, it may, subject to such conditions as it thinks fit, make an order that the counterclaim be heard at some other place or time.

- (3) Subject to subclauses (1) and (2), after a counterclaim has been served it shall proceed in the same manner as if the defendant had commenced an independent proceeding against the plaintiff.

Compare: SR 1948/197 r 206(3), (4); High Court Rules, r 151

175 Where claim stayed, etc

If, in any case in which the defendant sets up any counterclaim against the plaintiff, whether alone or along with any other person, the proceeding of the plaintiff is stayed, discontinued, or dismissed, the defendant may nevertheless proceed with the counterclaim.

Compare: SR 1948/197 r 206(1); High Court Rules, r 152

176 Counterclaim by counterclaim defendant

Rules 168 to 174 shall apply to a counterclaim by a counterclaim defendant in the same way as if the counterclaim defendant were a defendant in a separate proceeding brought against the counterclaim defendant by the defendant by whom the counterclaim defendant has been joined, and in such case the term **defendant** shall be deemed to include the counterclaim defendant and the term **plaintiff** shall be deemed to include the defendant by whom the counterclaim defendant has been joined.

Compare: High Court Rules, r 153

Third and subsequent party notices

177 Requirements of third party notice

- (1) A third party notice shall be signed by the defendant and shall inform the third party of—
- (a) The claim by the plaintiff against the defendant; and
 - (b) The claim by the defendant against the third party; and
 - (c) The steps that the third party is required to take if the third party wishes to dispute either claim; and
 - (d) The consequences that will follow if the third party fails to dispute either claim.
- (2) A third party notice may be in form 12.

Compare: High Court Rules, r 154

178 Filing of notice

- (1) A third party notice shall be filed in the Court together with a statement of the defendant's claim against the third party.
- (2) A statement of claim filed under subclause (1)—
 - (a) Shall comply with the requirements of rules 114 to 125; and
 - (b) In particular, shall state—
 - (i) The nature of the question or issue sought to be determined; and
 - (ii) The nature and extent of any relief or remedy claimed against the third party.

Compare: High Court Rules, r 155

179 Service on third party

The third party shall be served, within 30 days after the date of filing of the third party notice or the date of the order granting leave to issue the same, as the case may be, with—

- (a) A copy of the third party notice;
- (b) A copy of the defendant's statement of claim against the third party;
- (c) A copy of the plaintiff's statement of claim;
- (d) A copy of the notice of proceeding;
- (e) A copy of the defendant's statement of defence or appearance;
- (f) A list of any other documents which up till that time have been served by the plaintiff on the defendant or by the defendant on the plaintiff.

Compare: High Court Rules, r 156

180 Service on plaintiff

- (1) The plaintiff shall be served, within 30 days after the date of filing of the third party notice or the date of the order granting leave to issue the same, as the case may be, with—
 - (a) A copy of the third party notice; and
 - (b) A copy of the defendant's statement of claim against the third party.
- (2) After such service the plaintiff may not, without the leave of the Court,—
 - (a) Enter judgment in the proceeding; or

- (b) Set the proceeding down for hearing; or
 - (c) Proceed to hearing—
until the time within which the third party may file a defence has expired.
- (3) Application for leave under subclause (2) shall be made on notice to the defendant and (if the third party has been served) the third party.
- Compare: High Court Rules, r 157

181 Filing and service of statement of defence

- (1) The time within which a third party may file and serve a statement of defence shall be within 30 days after the day of service upon the third party of the third party notice and other documents referred to in rule 179.
- (2) A third party shall serve a copy of the third party's statement of defence on both the plaintiff and the defendant.
- Compare: High Court Rules, r 158

182 Service of application for leave

Where by these rules leave is required to issue a third party notice, application for such leave shall be made to the Court on notice to the other party or parties to the proceeding.

Compare: High Court Rules, r 159

183 Setting aside notice

- (1) Where a third notice has been issued and served, the third party, or, where it has been issued and served without prior leave of the Court, the plaintiff or any other party served therewith, may apply to the Court to set aside the third party notice.
- (2) On the hearing of an application under subclause (1), the Court may—
- (a) Set aside the third party notice and dismiss the defendant's statement of claim against the third party either on the merits or without prejudice to the right of the defendant to pursue the defendant's claim against the third party by an independent proceeding; or
 - (b) Give such other directions with regard to the third party notice as may appear just.

Compare: High Court Rules, r 160

184 Default in filing statement of defence

- (1) If the third party makes default in filing a statement of defence, the third party shall be deemed to admit the validity of and be bound by any judgment given in the proceeding, whether by consent, default, or otherwise, and by any decision therein on any question specified in the defendant's statement of claim; and when contribution or indemnity or any relief or remedy is claimed against the third party in such statement of claim, the third party shall be deemed to admit liability in respect thereof.
- (2) Subclause (1) of this rule shall not apply in the case of third party proceedings against the Crown unless the Court so orders upon an application in that behalf served upon the Crown not less than 7 days before the day for hearing the same specified in the application.

Compare: High Court Rules, r 161

185 Application of rules to fourth, etc, party notices

Rules 177 to 184 shall apply, with such modifications as may be necessary in the circumstances, to fourth and subsequent party notices.

Compare: High Court Rules, r 162

*Claims between defendants***186 Right to give notice**

Where in any proceeding a defendant claims against another defendant in circumstances where (had that other defendant not been a defendant) the defendant making the claim would be entitled to issue and serve a third party notice on that other defendant, the defendant making the claim may at any time before the proceeding has been set down for hearing file and serve on that other defendant and on the plaintiff a notice to that effect.

Compare: High Court Rules, r 163

187 Statement of claim to be filed and served

- (1) Where a defendant files a notice under rule 186, the defendant shall file and serve with that notice a statement of the defendant's claim against the other defendant.

- (2) A statement of claim filed and served under subclause (1)—
- (a) Shall comply with the requirements of rules 114 to 125; and
 - (b) In particular, shall state the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed against the other defendant.

Compare: High Court Rules, r 164

188 Statement of defence

- (1) Unless a defendant served with a notice under rule 186 wishes to raise an affirmative defence to the claim made against that defendant by the defendant serving the notice, it shall not be necessary for the defendant so served to file a statement of defence to that claim.
- (2) Any statement of defence to a claim made in a notice served under rule 186 shall, within 10 days after the day of service of the notice, be filed and served—
- (a) On the defendant serving the notice; and
 - (b) On the plaintiff.

Compare: High Court Rules, r 165

189 Form of notice

- (1) A notice filed and served under rule 186 shall be in form 13.
- (2) Every such notice shall be signed by the defendant.

Compare: High Court Rules, r 166

190 Effect of omission to give notice

The omission of a defendant to give a notice under rule 186 shall not prevent the Court from giving any judgment or granting any relief in favour of that defendant that might have been given or granted had that rule not been made.

Compare: High Court Rules, r 167

191 Application of rule relating to third and subsequent party notices

Except where otherwise provided in rules 186 to 190 the provisions of the rules relating to third and subsequent party notices

(rules 177 to 185) shall apply with all necessary modifications to claims under rules 186 to 190.

Compare: High Court Rules, r 168

Reply

192 Right to file and serve reply

- (1) Where a statement of defence pleads any affirmative defence or contains any positive allegation affecting any other party, the plaintiff or that other party may, within 10 days after the day on which that statement of defence is served on the plaintiff or that other party, file a reply thereto and serve the same on the party serving the statement of defence.
- (2) It shall not be obligatory to file and serve a reply under subclause (1) unless the Court so orders.

Compare: High Court Rules, r 169

193 Contents of reply

A reply shall be limited to answering the affirmative defence or positive allegation but shall otherwise comply with the rules as to statements of defence so far as they are applicable.

Compare: High Court Rules, r 170

194 Affirmative defence or positive allegation deemed to be denied unless admitted

Every affirmative defence or positive allegation in a statement of defence shall be deemed to be denied unless admitted.

Compare: High Court Rules, r 171

Interpleader before judgment

195 Interpretation

In this rule and in rules 196 to 202, unless the context otherwise requires,—

Applicant means a person entitled under section 111 of the Act to apply to the Court for relief under rule 201

Claimant means a person claiming against an applicant in terms of section 111 of the Act.

Compare: High Court Rules, r 172

196 Interpleader

Where a person is under a liability for any debt or other cause of action, money, or chattels for or in respect of which that person is or expects to be sued by 2 or more persons making adverse claims thereto, that person may, if the subject-matter does not exceed in value the sum of \$200,000, apply to a Court in accordance with rule 197 to 202 for relief by way of interpleader under section 111 of the Act.

197 Form of application

- (1) Where a claimant has issued a proceeding in a Court against the applicant in respect of the debt or other cause of action, or money, or chattels in dispute, the application shall be in the form of an interlocutory application in the proceeding and, subject to rules 197 to 202, rules 255 to 299 shall apply thereto.
- (2) In every other case, the application shall be made by filing and serving a statement of claim and notice of proceeding under this Part of these rules.

Compare: SR 1948/197 r 293(1); High Court Rules, r 174

198 Affidavit in support

- (1) Every application shall be supported by an affidavit filed by the applicant and stating—
 - (a) That the applicant claims no interest in the subject-matter in dispute other than the charges or costs; and
 - (b) That adverse claims (of which details shall be given) have been made by the claimants and the steps which have already been taken by the respective claimants in support of their respective claims; and
 - (c) That the applicant does not collude with any of the claimants to that subject-matter; and
 - (d) That the applicant is willing to pay or transfer that subject-matter into Court or dispose of it as the Court may direct; and
 - (e) That the subject-matter does not exceed in value the sum of \$200,000.

- (2) A copy of the affidavit shall be served on each claimant at the time when the application is served.

Compare: SR 1948/197 r 293(2); SR 1989/363 r 2(1)(h); High Court Rules, r 175

199 Time for applying

If any claimant has commenced a proceeding against the applicant to enforce the claimant's claim, any application under rule 196 shall be made before a statement of defence has been filed by the applicant, or, if no defence has been filed by the applicant, before judgment has been entered against the applicant.

Compare: SR 1948/197 r 293(3); SR 1968/183 r 7(1); High Court Rules, r 176

200 Claimants to file affidavits

- (1) Subject to subclauses (2) and (3), every claimant who wishes to justify his or her claim shall, within 7 days after service upon the claimant of an application made under rule 197(1), file and serve on every other claimant and on the applicant an affidavit deposing to the facts and matters upon which the claimant relies in support thereof.
- (2) Where, in accordance with rule 197(2), a statement of claim and notice of proceeding have been filed and served together with an affidavit in accordance with rule 198, the claimant shall file and serve, with the affidavit under subclause (1), a statement of defence.
- (3) Where the claimant, had the claimant been a defendant, might have filed an appearance under any of the provisions of rules 139 to 141, the claimant may, instead of filing and serving an affidavit under subclause (1), file and serve an appearance.
- (4) Any appearance filed and served under subclause (3) shall, for all the purposes of rules 201 and 202, have effect as though the claimant were a defendant in a proceeding brought against the claimant by the applicant or by any other claimant referred to in the appearance.

Compare: High Court Rules, r 177

201 Powers of Court

- (1) Upon the hearing of an application under rule 196, the Court may make such orders and give such directions as the justice of the case may require.
- (2) In particular, and without limiting the general power conferred by subclause (1), the Court may—
 - (a) Stay any proceeding commenced by any claimant:
 - (b) Bar the claim of any claimant who has not filed and served either—
 - (i) An affidavit justifying his or her claim; or
 - (ii) An appearance pursuant to rule 200(3):
 - (c) Adjudicate upon the competing claims on the affidavits filed, or adjourn the application to such time and place as it thinks fit for that purpose, and, where the question appears to be one of law only, order a special case for the opinion of the Court to be prepared by the parties:
 - (d) Direct the hearing of the issues involved in such manner, at such time, and at such place as the Court then or at any other time may direct:
 - (e) Order that one of the claimants do commence a proceeding against any other or others to try the question involved; or, if a proceeding has been commenced by a claimant, order that any other claimant be joined as a defendant to that proceeding:
 - (f) Order that the chattels in dispute or any part thereof be sold and that the proceeds of the sale be applied in such manner and on such terms as may be just and as may be specified in the order.
- (3) Where a claimant, having been duly served with an application for relief under this rule, does not appear on the hearing of the application or, having appeared, fails or refuses to comply with an order made thereon, the Court may make an order declaring that the claimant and all persons claiming under the claimant be forever barred from prosecuting the claimant's claim against the applicant and all persons claiming under the applicant; but such an order shall not affect the rights of the claimants as between themselves.

Compare: SR 1948/197 r 299; High Court Rules, r 178

202 Costs of applicant

- (1) Unless the Court orders otherwise, an applicant shall be entitled to the costs of and incidental to the claimant's application and such costs shall be allowed on the footing of solicitor and client.
- (2) The Court may order that the applicant's costs be paid by any one or more of the claimants and may apportion the liability therefor between any two or more claimants, as it thinks fit.
- (3) The Court may charge any property in dispute, or the proceeds of the sale thereof, or both, with payment of the costs of the applicant.

Compare: High Court Rules, r 179

*Recovery of specific property subject to lien***203 Recovery of specific property subject to lien, etc**

- (1) Where a party seeks in any proceeding to recover specific property other than land and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court may, at any time after such last-mentioned claim appears from the statement of defence, or, if there is no statement of defence, by affidavit or otherwise to the satisfaction of the Court, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the proceeding, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the Court directs, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.
- (2) This rule shall, with the necessary modifications, apply to a counterclaim as it applies to a claim.

Compare: SR 1948/197 r 150; High Court Rules, r 180

Pleadings generally

204 Distinct matters to be stated separately

- (1) Distinct causes of action and distinct grounds of defence, founded on separate and distinct facts, shall be stated as nearly as may be separately and clearly.
- (2) Where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention, or other condition of mind except knowledge, the party pleading shall give particulars of the facts on which that party relies in alleging that condition of mind.

Compare: SR 1948/197 r 82; High Court Rules, r 181

205 Denial of representative character

If any party wishes to deny the right of any other party to claim as executor or administrator or as trustee, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, that party shall deny the same specifically.

Compare: High Court Rules, r 182

206 Denial of contract

A bare denial of a contract shall be construed only as a denial of the making of the contract in fact, and not of its legality or sufficiency in law, whether with reference to subpart 2 of Part 2 of the Property Law Act 2007 (which requires certain contracts to be in writing) or otherwise.

Compare: High Court Rules, r 183

Rule 206: amended, on 1 January 2008, by rule 4 of the District Courts (Property Law Act 2007) Amendment Rules 2007 (SR 2007/387).

207 Effect of document to be stated

If, in any statement, a party relies upon any document or any part thereof, it shall be sufficient to state the effect thereof as briefly as possible, without setting it out, unless the precise words are material.

Compare: High Court Rules, r 184

208 Notice requiring further particulars or more explicit pleading

- (1) A party may, by notice, require any other party—
 - (a) To give such further particulars as may be necessary to give fair notice of—
 - (i) The cause of action or ground of defence; or
 - (ii) The particulars required by these rules; or
 - (b) To file and serve a more explicit statement of claim or of defence or counterclaim.
- (2) A notice under subclause (1) shall indicate as clearly as may be the points on which the pleading in respect of which it has been served is considered defective.
- (3) If the party on whom a notice under subclause (1) is served neglects or refuses to comply with the notice within 7 days after service thereof, the Court may, if it considers that the pleading objected to is defective or does not give particulars reasonably required by the notice, order a more explicit pleading to be filed and served.
- (4) Notwithstanding that no notice has been given under this rule, the Court may of its own motion order a more explicit pleading to be filed and served.

Compare: SR 1948/197 r 83; SR 1968/183 r 7(1); High Court Rules, r 185

209 Striking out pleading

Where a pleading—

- (a) Discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading; or
 - (b) Is likely to cause prejudice, embarrassment, or delay in the proceeding; or
 - (c) Is otherwise an abuse of the process of the Court,—
- the Court may at any stage of the proceeding, on such terms as it thinks fit, order that the whole or any part of the pleading be struck out.

Compare: SR 1948/197 r 148; High Court Rules, r 186

210 Filing of amended pleading

- (1) Subject to subclauses (2) and (5), any party may at any time before the hearing file an amended pleading and serve a copy thereof on the other party or parties.

- (2) After a proceeding has been set down for hearing, an amended pleading may be filed only with the leave of the Court.
- (3) An amended pleading may introduce—
 - (a) A fresh cause of action which is not statute barred; or
 - (b) A fresh ground of defence,—
whether as an alternative or not.
- (4) Subject to subclause (5), an amended pleading may introduce a fresh cause of action whether or not that cause of action has arisen since the filing of the statement of claim.
- (5) Where a cause of action has arisen since the filing of the statement of claim, that cause of action may be added only by the leave of the Court and shall, if that leave is granted, have effect from the date of the filing of the application for leave to introduce that cause of action.
- (6) Where an amended pleading introduces a fresh cause of action, the other party shall file and serve that other party's defence thereto within 14 days after the day on which the amended pleading is served on that other party.
- (7) Where an amended pleading does not introduce a fresh cause of action, the other party (if that other party so wishes) may, within 10 days after the day on which the amended pleading is served on that other party, file and serve an amended defence thereto.
- (8) Where an amended pleading has been filed under any of the provisions of subclauses (1) to (7), the party filing the amended pleading shall bear all the costs of and occasioned by the original pleading and any application for amendment, unless the Court otherwise orders.
- (9) Nothing in this rule limits the powers conferred on the Court by rule 11.

Compare: SR 1948/197 r 167; High Court Rules, r 187

Rule 210(9) was inserted, as from 1 August 1995, by rule 7 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

212

Rules 211, 212, 213 and Heading “Pleadings in Defamation Proceeding” were revoked, as from 1 February 1993, by section 56(4) Defamation Act 1992 (1992 No 105).

213

Rules 211, 212, 213 and Heading “Pleadings in Defamation Proceeding” were revoked, as from 1 February 1993, by section 56(4) Defamation Act 1992 (1992 No 105).

Service

214 Modes of service

- (1) Except where an Act or these rules prescribes a particular and exclusive mode of service, service of a document that is required by these rules to be served may be effected in any of the following modes:
 - (a) Personal service:
 - (b) Service at an address for service given in accordance with these rules:
 - (c) Service at an address directed by the Court or the Registrar as the address for service for the party or person:
 - (d) Where the solicitor for the party or person has, under rule 43(1)(e), specified a Post Office box address, document exchange box number, or facsimile number,—
 - (i) By posting the document to that Post Office box address; or
 - (ii) By leaving the document at a document exchange for direction to that document exchange box number; or
 - (iii) By transmitting the document to that facsimile number.
- (2) In any case not provided for by these rules, service shall be effected in such manner and at such place as the Court or the Registrar directs.

Compare: SR 1948/197 r 85; SR 1968/183 r 2; High Court Rules, r 192; SR 1991/132 r 11

215 Service of copies

Except where an Act or these rules expressly requires an original document to be served, service of a true copy thereof shall be deemed to be service of the document.

Compare: High Court Rules, r 193

216 Notices

The provisions of rules 214 and 215 and of rules 217 to 241 shall apply to any notice which by these rules, or by any order made pursuant to these rules, is required to be given to any person, whether that person is a party or not and whether or not the notice is required to be filed in the Court.

Compare: High Court Rules, r 194

217 Notices to be given by Registrar

Subject to the provisions of any Act, where any notice is required to be given by the Registrar to any person, whether a party or not, it may be given—

- (a) If the person is acting by a solicitor, by sending it by ordinary post addressed to the solicitor at the address for service (if given) or at the solicitor's place of business:
- (b) If the person is not acting by a solicitor, by sending it by ordinary post addressed to that person at the address for service (if given) or at that person's last known or usual place of abode or business in New Zealand:
- (c) In such other manner as the Court directs.

Compare: SR 1948/197 r 85; SR 1968/183 r 2; High Court Rules, r 195

218 Proof of service

- (1) Where it is necessary to prove service of a document, it may be proved on oath before the Court or by affidavit in form 14.
- (2) Where the service of a document is proved by affidavit in form 14, it shall not be necessary, unless the Court otherwise directs, for a copy of the document to be annexed to the affidavit if—
 - (a) Either the original of the document or a copy of the document has, at the time of service, been filed in the office of the Court; and
 - (b) The affidavit contains a description of the document that—

- (i) Is sufficient to enable the document to be identified; and
- (ii) Includes the date of the document (if the document bears a date).

Compare: SR 1948/197 r 93(1), (2); SR 1968/183 r 3; SR 1986/358 r 5; High Court Rules, r 196

Rule 218(2) was inserted, as from 1 February 1996, by rule 10 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

219 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 notice.

Compare: SR 1948/197 r 85(2)(a); High Court Rules, r 197

220 Personal service where defendant on board ship

Where the person to be served is living or serving on board any vessel (including any vessel belonging to any of Her Majesty's Naval Forces), personal service shall be effected by delivering the document to be served to the person on board who at the time of service is apparently in charge of the vessel.

Compare: SR 1948/197 r 101

221 Personal service on serving member of armed forces

Where the person to be served is in any barracks, camp, or station while serving as a member of any of Her Majesty's Armed Forces, personal service shall be effected by delivering the document to be served at the barracks, camp, or station to the Adjutant or to the officer for the time being in command of the unit or detachment to which the defendant belongs.

Compare: SR 1948/197 r 102

222 Personal service on inmate of penal institution

Where the person to be served is an inmate of a penal institution personal service shall be effected by delivering the document to be served to the Superintendent or other officer apparently in charge of the penal institution in which the person is

confined, who shall deal therewith in accordance with the penal institutions regulations.

Compare: SR 1948/197 r 103

223 Personal service on New Zealand corporations

- (1) Personal service of a document on a company incorporated under the Companies Act 1955 shall be effected by service in accordance with section 460 of that Act.
- (2) Personal service of a document on a company within the meaning of section 2 of the Companies Act 1993 shall be effected by service in accordance with section 387 of that Act.
- (3) Personal service of a document on a corporation incorporated in New Zealand other than a company incorporated under the Companies Act 1955 or a company within the meaning of section 2 of the Companies Act 1993, as the case may be, may be effected—
 - (a) By service in accordance with rule 219 on—
 - (i) The mayor, chairman, president, town clerk, managing director, secretary, treasurer, or other similar officer of the corporation; or
 - (ii) Any member, officer, or servant of the corporation at the corporation's head office or principal place of business; or
 - (b) By leaving the document at the corporation's registered office; or
 - (c) By serving the document on a member, officer, or servant of the corporation in such manner as the Court directs.
- (4) Subclause (3) is in addition to any provision made by or under any Act for service of a document on a corporation unless the provision so made is expressed to be exclusive of any other mode of service.

Compare: SR 1948/197 r 104; SR 1973/244 r 5; High Court Rules, r 198; SR 1988/142 r 3

Rule 223 was substituted, as from 1 August 1995, by rule 8 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

224 Personal service in New Zealand on foreign corporations

- (1) Personal service on an overseas company (being a company which is an overseas company within the meaning of section 2 of the Companies Act 1993 and which, under these rules, may be served out of New Zealand) shall be effected in accordance with section 389 of the Companies Act 1993.
- (2) Personal service on a corporation (other than an overseas company within the meaning of section 2 of the Companies Act 1993) that—
 - (a) Is incorporated outside New Zealand; and
 - (b) Under these rules may be served out of New Zealand; and
 - (c) Has a place or places of business in New Zealand—
may be effected in New Zealand by service in accordance with rule 219 on any person appearing to have control of the business of that corporation at the principal or only place of business of that corporation in New Zealand.

Compare: High Court Rules, r 199

Rule 224 was substituted, as from 1 August 1995, by rule 9 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

225 Personal service on unincorporated societies

Personal service of a document on an unincorporated society may be effected by service in accordance with rule 219 on the president, chairperson, or secretary or any similar officer of the society.

Compare: High Court Rules, r 200

226 Personal service on partnership or apparent partnership

- (1) Personal service of a document on a partnership or on a person carrying on business in the name of a firm apparently consisting of more than one person may be effected by service in accordance with rule 219—
 - (a) On any partner or on any such person; or
 - (b) At the principal place in New Zealand of the business of the partnership or apparent partnership, on any person appearing to have the control of the business there.
- (2) Where the party wishing to effect service knows that the partnership has been dissolved before the commencement of the

proceeding, every person in New Zealand sought to be made liable shall be personally served in accordance with rule 219.

Compare: SR 1948/197 r 98; High Court Rules, r 201

227 Personal service on attorney or agent of absentee

Personal service of a document on a person who is out of New Zealand and has in New Zealand—

(a) An attorney or agent authorised to transact that person's affairs generally and to defend proceedings; or

(b) An attorney or agent authorised to transact that person's affairs in respect of the subject-matter of the proceeding and to defend the particular proceeding,—

may be effected by service in accordance with rule 219 on the attorney or agent.

Compare: High Court Rules, r 202

228 Personal service on minors

[Revoked]

Rule 228 was revoked, as from 1 February 2003, by rule 9 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). See rule 11 of those rules for the transitional provision relating to application to existing proceedings.

229 Personal service on person whose property is managed under Protection of Personal and Property Rights Act 1988

Where, under section 31 or section 32 or section 33 of the Protection of Personal and Property Rights Act 1988, any person or trustee corporation is acting as the manager of any property of any person, personal service on the person whose property is being managed may be effected by service in accordance with rule 219 on the person or trustee corporation who is acting as the manager of any property of that person.

230 Personal service on mentally disordered persons

[Revoked]

Rule 230 was amended, as from 1 March 2001, by rule 8 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by omitting the words “(as defined in section 2 of the Mental Health Act 1969)”.

Rule 230 was revoked, as from 1 February 2003, by rule 9 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

231 Personal service on spouses or partners

- (1) This rule applies when defendants to a proceeding are—
 - (a) husband and wife; or
 - (b) civil union partners; or
 - (c) de facto partners.
- (2) When this rule applies, service on one spouse, civil union partner, or de facto partner, as the case may be, is not treated as service on the other unless the Court so orders.

Rule 231 was substituted, as from 1 July 2005, by rule 6 District Courts Amendment Rules (No 2) 2005 (SR 2005/149).

232 Service at address for service

Service of a document at an address for service may be effected by leaving the document at that address at any time between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon.

Compare: High Court Rules, r 206

233 Service by means of Post Office box, document exchange, or facsimile number

- (1) Where a document is served on a party or person in accordance with rule 214(1)(d), the document shall,—
 - (a) If posted to a Post Office box address, be deemed to have been duly served on the earlier of—
 - (i) The fifth working day after the day on which it was so posted; or
 - (ii) The day on which it was received; and
 - (b) If left at a document exchange, be deemed to have been duly served on the earlier of—
 - (i) The second working day after the day on which it was so left; or
 - (ii) The day on which it was received; and
 - (c) If transmitted to a facsimile number, be deemed, subject to subclauses (2) and (3), to have been duly served on the day on which it was so transmitted.

- (2) Where a document is transmitted to a facsimile number after 5pm on any day, that document shall, subject to subclause (3), be deemed to have been duly served on the first working day after the day on which the document was received in a complete and legible condition.
- (3) A document transmitted to a facsimile number shall be deemed to have been received in a complete and legible condition unless—
- (a) The contrary is shown; and
 - (b) As soon as practicable after the transmission is concluded, the solicitor to whom the document was transmitted notifies the person who transmitted the document that the document was incomplete or illegible or both when it was received.
- (4) Where a document is served under rule 214(1)(d), the solicitor to whom the document was sent or transmitted shall, on receiving the document, immediately give to the person by whom the document was served an acknowledgment, in writing or by facsimile transmission, that the document has been received and shall include in that acknowledgment a statement of the date of service.

Compare: High Court Rules, r 206A; SR 1991/132 r 12

234 Service of statement of claim, etc, on certain days void

- (1) Service or execution of a statement of claim, application, writ, process, warrant, order or judgment on a Sunday or on Christmas Day, New Year's Day, Good Friday or Anzac Day shall be void.
- (2) Subclause (1) does not apply to the service of any witness summons or interlocutory injunction.

Compare: SR 1948/197 r 86

235 Service on representatives

Where—

- (a) Any person is appointed by the Court to represent any person or persons, of any class of persons; or
- (b) Any person, pursuant to these rules, sues or defends on behalf of himself or herself and any other person or persons,—

service on the person so appointed or so suing or defending shall be deemed to be service on behalf of all persons whom that person has been appointed to represent or on whose behalf that person sues or defends.

Compare: High Court Rules, r 208

236 Service on solicitor

Where a solicitor signs on a copy of a document a note that he or she accepts service of the document on behalf of any person, the document shall be deemed to have been duly served on that person on the date on which the solicitor signs the note or on such earlier date of service as may be proved.

Compare: SR 1948/197 r 94; High Court Rules, r 209

237 Service under agreement

Where any party has, before or after the commencement of the proceeding, agreed in writing that any document in the proceeding may be served on that party or on some other person on that party's behalf in a manner or at a place (whether in or outside New Zealand) specified in the agreement, service in accordance with the agreement shall be sufficient service on that party.

Compare: High Court Rules, r 210

238 Recovery of land

If in a proceeding for the recovery of land the defendant cannot be found, or if the defendant's place of residence is not known or admission thereto cannot be obtained for the purpose of effecting service of a notice of proceeding and statement of claim, or if from any cause it is impracticable to effect service, the notice of proceeding and statement of claim may be posted on some conspicuous part of the premises sought to be recovered not less than 10 clear days before the day fixed for the hearing, and such posting shall be deemed good service on the defendant.

Compare: SR 1948/197 r 106

239 Substituted service

If it appears to the Court or the Registrar that reasonable efforts have been made to effect service of any document by any of the modes permitted or required under these rules and either that the document has come to the knowledge of the person to be served or that prompt service thereof cannot be effected, the Court or the Registrar may—

- (a) Direct—
 - (i) That instead of service, such steps as are specified in the order be taken for the purpose of bringing the document to the notice of the person to be served; and
 - (ii) That the document be deemed to have been served on the happening of any specified event, or on the expiry of any specified time:
- (b) Where steps have been taken for the purpose of bringing, or which have a tendency to bring, the document to the notice of the person on whom it is required to be served, direct that the document be deemed to have been served on that person on a date specified in the order:
- (c) Subject to such conditions as the Court or the Registrar thinks fit to impose, dispense with service of any document on any person and give leave to the party by whom the document is required to be served to proceed as if service thereof had been effected on that person.

Compare: SR 1948/197 r 87; High Court Rules, r 211

240 Enlargement of time for service

Whenever a document has not been served within the prescribed time the Registrar, on request, may enlarge the hearing by striking out the original date of hearing, inserting the new date, and placing his or her initials in the margin opposite the alteration, or may issue a new document bearing the same date as the original.

Compare: SR 1948/197 r 92

241 Failure to give address for service

Until a party to a contentious proceeding has given an address for service in terms of these rules, that party shall not be en-

titled to be served with notice of any step in connection with the proceeding or with copies of any further documents filed in the proceeding or, except by leave of the Court, to address the Court.

Compare: High Court Rules, r 212

Service out of New Zealand

242 When allowed without leave

Where in any proceeding which a District Court has jurisdiction to hear and determine a statement of claim or counterclaim and the relevant notice of proceeding or third party notice cannot be served in New Zealand under these rules, they may be served out of New Zealand without leave in the following cases:

- (a) Where any act or omission for or in respect of which damages are claimed was done or occurred in New Zealand:
- (b) Where the contract sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any proceeding, or for the breach whereof damages or other relief is demanded in the proceeding—
 - (i) Was made or entered into in New Zealand; or
 - (ii) Was made by or through an agent trading or residing within New Zealand; or
 - (iii) Was to be wholly or in part performed in New Zealand; or
 - (iv) Was by its terms or by implication to be governed by New Zealand law:
- (c) Where there has been a breach in New Zealand of any contract, wherever made:
- (d) Where it is sought to compel or restrain the performance of any act in New Zealand which a District Court has jurisdiction to compel or restrain:
- (e) Where the subject-matter of the proceeding is land, stock, or other property situated in New Zealand, or any act, deed, will, instrument, or thing affecting such land, stock, or property:
- (f) Where any relief is sought against any person domiciled or ordinarily resident in New Zealand:

- (g) Where any person out of New Zealand is a necessary or proper party to a proceeding properly brought against some other person duly served or to be served within New Zealand:
- (h) Where the proceeding is a proceeding for relief under the Property (Relationships) Act 1976:
- (i) Where the proceeding is brought under the Marine Pollution Act 1974:
- (j) Where the person to be served has submitted to the jurisdiction of the Court.

Compare: High Court Rules, r 219(a)-(e), (g), (h), (k), (l), (m)

Paragraph (h) was amended, as from 1 February 2002, by rule 4 District Courts Amendment Rules (No 2) 2001 (SR 2001/381) by substituting the expression “Property (Relationships) Act 1976” for the words “Matrimonial Property Act 1963 or the Matrimonial Property Act 1976”.

243 When allowed with leave

- (1) In any other proceeding which the Court has jurisdiction to hear and determine, any document may be served out of New Zealand by leave of the Court.
- (2) An application for leave under this rule shall be made on notice to every party other than the party intended to be served.
- (3) A sealed copy of every order made under this rule shall be served with the document to which it relates.
- (4) Upon any application for leave under this rule, the Court, in exercising its discretion, shall have regard to—
 - (a) The amount or value of the property in dispute or sought to be recovered; and
 - (b) The existence, in the place of residence of the person to be served, of a Court having jurisdiction in the matter in question; and
 - (c) The comparative cost and convenience of proceeding in New Zealand or in the place of residence of the person to be served.
- (5) Every application for leave under this rule shall be supported by an affidavit—
 - (a) Stating the particulars referred to in subclause (4); and
 - (b) Showing—

- (i) In what place or country the person to be served is or possibly may be found; and
- (ii) Whether or not the person to be served is a New Zealand citizen.

Compare: High Court Rules, r 220

244 Notice to defendant served overseas

- (1) Where a defendant is to be served out of New Zealand, the memorandum required by rule 127(4) shall also include a notice informing the defendant of—
 - (a) The scope of the jurisdiction of the Court in respect of claims against persons who are not resident in New Zealand; and
 - (b) The grounds alleged by the plaintiff in relying on that jurisdiction; and
 - (c) The defendant's right to enter an appearance under protest to the jurisdiction of the Court.
- (2) A notice under subclause (1) may be in form 7.

Compare: High Court Rules, r 221

245 Mode of service

Subject to rule 246, rules 214 to 241 shall apply to service outside New Zealand.

Compare: High Court Rules, r 222

246 Service in Convention countries

- (1) Where—
 - (a) Any Convention is in force between the Sovereign of New Zealand and the Head of State of any other country or between the Government of New Zealand and the Government of any other country relating to the service of documents in proceedings in the Courts of the respective countries; and
 - (b) A party to a proceeding in New Zealand desires to take advantage of any provision made in the Convention for service in such other country by official means for which provision is made in the Convention, then, subject to any special provisions contained in the Convention,—

the party seeking such service may file a request for service in form 15 stating the official means of service desired and containing the undertaking set out in that form covering the payment of expenses.

- (2) In respect of each person to be served, the request for service shall be accompanied by—
 - (a) The document to be served; and
 - (b) A copy thereof to be exhibited to the evidence verifying service; and
 - (c) When the language of the person to be served is not English,—
 - (i) A translation of the document into his or her language (verified as correct to the satisfaction of the Registrar) for service with the document; and
 - (ii) A copy of that translation to be exhibited to the evidence verifying service.
- (3) The document and translation thereof to be served shall be sealed by the Registrar with the seal of the Court and the documents required to accompany the request for service shall be forwarded by the Registrar to the chief executive of the Department for Courts for transmission through the appropriate channels to the country concerned for service in accordance with the request for service.
- (4) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a British or New Zealand consular officer, and transmitted by the chief executive of the Department for Courts to the Registrar, shall be sufficient proof of such service.
- (5) The Registrar may file a certificate under subclause (4) and, if the Registrar does so, that certificate shall thereupon be equivalent to an affidavit of service of the documents referred to in the certificate.
- (6) The provisions of subclauses (1) to (5) shall not render invalid or insufficient any mode of service in any country referred to in subclause (1) if that mode of service is otherwise valid or sufficient under these rules and is not expressly excluded by the Convention with, or contrary to the law of, the country concerned.

Compare: High Court Rules, r 224

Subclause (3) and (4) was amended, as from 1 July 1995, by section 12(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words “chief executive of the Department for Courts” for the words “Secretary for Justice”.

247 Time for filing defence

Except where the Court otherwise orders, the time after the day of service within which a defendant who has been served out of New Zealand may file a statement of defence or appearance shall be 30 days if he or she is served within the Commonwealth of Australia and 50 days if he or she is served elsewhere.

Compare: High Court Rules, r 225

248 Judgment by default

Where any document has been transmitted abroad for service on a party under the provisions of rule 242 and that person has not appeared, judgment by default against that party shall not be sealed without the leave of the Court, which leave shall not be granted unless the Court is satisfied—

- (a) That the party applying for leave was entitled to effect service without leave in accordance with that rule; and
- (b) That the document was duly served by a method prescribed by the internal law of the country where service was to be effected, being a method prescribed in respect of the service of documents in domestic actions upon persons who are within that country; and
- (c) That such service was effected in sufficient time to enable that party to appear.

Compare: High Court Rules, r 226

249 Application to Crown

Rules 242 to 248 shall not apply to civil proceedings against the Crown alone or in respect of service on the Crown where the Crown is joined as a defendant or third party.

Compare: High Court Rules, r 227

Part 3 **Transfer of proceedings**

Change of venue after proceeding commenced

250 Proceeding commenced at Auckland, Manukau, North Shore, Papakura, or Waitakere

- (1) The parties to any proceeding which is defended and which has been commenced in the Court at Auckland, Manukau, North Shore, Papakura, or Waitakere may request the Registrar to transfer the proceeding to the Court at such other one of those 5 places as the parties specify in their request.
- (2) Every such request must be in writing and must be signed by or on behalf of all the parties to the proceeding.
- (3) On receipt of any such request the Registrar must transfer the proceeding accordingly.

Rule 250 was substituted, as from 1 May 1998, by rule 4 District Courts Amendment Rules (No 2) 1998 (SR 1998/73).

The heading to Rule 250 was amended, as from 30 October 2000, by rule 4(2) District Courts Amendment Rules 2000 (SR 2000/184) by substituting the words "Manukau, North Shore," for the words "North Shore, Otahuhu,".

Subclause (1) was amended, as from 30 October 2000, by rule 4(1) District Courts Amendment Rules 2000 (SR 2000/184) by substituting the words "Manukau, North Shore," for the words "North Shore, Otahuhu,".

251 Procedure on change of venue

Where a transfer is ordered under rule 250, the Registrar of the Court in which the proceeding is pending shall send to the Registrar of the other Court all the documents in the Registrar's custody relating to the proceeding.

Compare: SR 1948/197 r 178; SR 1970/60 r 6(2)

Transfer from a District Court to the High Court

252 Transfer under section 43 of Act

- (1) A notice under section 43(1) of the Act may be in form 16, and shall be filed by the defendant not later than 7 days after service of the notice of proceeding on the defendant, including the day of service.
- (2) A notice under section 43(2) of the Act may be in form 17, and shall be filed by the defendant not later than 7 days after

service of the notice of proceeding on the defendant, including the day of service.

- (3) An order transferring a proceeding may be in form 18.
Compare: SR 1948/197 r 179; SR 1968/183 r 7(1)

253 Procedure

On the making of any order transferring a proceeding from a District Court to the High Court the Registrar shall forward all papers in the proceeding to the Registrar of the High Court whose office is named in the order.

Compare: SR 1948/197 r 180; SR 1973/244 r 10

Transfer from the High Court to a District Court

254 Procedure

1 Where by order of the High Court any proceeding is ordered to be transferred to a District Court, the Registrar shall, at an appropriate time after receipt of the documents prescribed by section 47 of the Act, appoint a day on which the parties shall attend in Chambers for the giving of directions for the conduct of the proceedings in the District Court.

Compare: SR 1948/197 r 181; SR 1968/183 r 7(1)

Rule 254 was substituted, as from 1 August 1995, by rule 10 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

Part 4

Interlocutory matters

Interlocutory applications

255 Mode of application

Every interlocutory application shall be made by motion to the Court.

Compare: SR 1948/197 r 143; High Court Rules, r 234

256 Application to be filed and served

- (1) Subject to rules 263 and 268, notice of an interlocutory application shall be—
- (a) Signed—
 - (i) By the party applying; or

- (ii) By his or her solicitor personally in the solicitor's own name; or
 - (iii) By counsel personally in the counsel's own name; and
 - (b) Filed; and
 - (c) Served on all other parties intended to be affected by the application.
- (2) No interlocutory application shall be heard unless the provisions of subclause (1) have been complied with.
- (3) It shall not be necessary to serve notice of an application any specified period of time before the date fixed for hearing of the application, but, if it appears to the Court that any party served wishes to oppose the application and has had insufficient time to do so, it may adjourn the hearing for as long as may be necessary upon such terms as to costs or otherwise as it thinks fit.

Compare: SR 1948/197 r 143(1)(c); High Court Rules, r 235

257 Form and contents of application

- (1) Every interlocutory application filed in the Court shall be in form 20 or form 21.
- (2) The application—
- (a) Shall state—
 - (i) The relief sought; and
 - (ii) The grounds justifying that relief; and
 - (b) Shall also contain a reference to any statutory provision, regulation, or rule, or any principle of law on which the party applying relies.
- (3) Notwithstanding subclause (2), it shall not be necessary to ask for general or other relief; but the Court may, if it thinks just, grant any other relief to which the party applying may be entitled, notwithstanding that the relief has not been specifically claimed and there is no claim for general or other relief.

Compare: High Court Rules, r 236

258 Application for injunction

- (1) An application for an interlocutory injunction may be made by any party before or after the commencement of the hearing of

the proceeding, whether or not a claim for an injunction was included in the party's statement of claim, counterclaim, or third-party notice, as the case may be.

- (2) The plaintiff may not make an application under subclause (1) before the commencement of the proceeding except in case of urgency, and in that case the injunction may be granted on terms providing for the commencement of the proceeding and on such other terms, if any, as the Court thinks fit.
- (3) An applicant for an interlocutory injunction must file a signed undertaking that the applicant will abide by any order that the Court may make in respect of damages—
 - (a) that are sustained by the other party through the granting of the interim injunction; and
 - (b) that the Court decides that the applicant ought to pay.
- (4) The undertaking must be referred to in the order granting the interlocutory injunction and is part of it.
- (5) The applicant is deemed to be bound by an undertaking in the terms stated in subclause (3) whether or not one has been signed or filed by the applicant and whether or not it has been referred to in the order.

Compare: 1948/197 rr 149, 207; High Court Rules, r 236A, r 630; SR 1988/269 r 12, r 19

Subclauses (3) and (4) were substituted, and subclause (5) inserted, as from 1 March 2001, by rule 9 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

259 Interim injunction in relation to party's assets

- (1) The Court may grant an interlocutory injunction restraining a party from removing from New Zealand, or otherwise dealing with, assets in New Zealand whether or not the party is domiciled, resident, or present in New Zealand.
- (2) Where a party makes an application for an interlocutory injunction of the kind described in subclause (1), that party shall, in making that application, identify any person who is not a party to the proceeding but who would be detrimentally affected by the granting of the injunction.

Compare: High Court Rules, r 236B; SR 1988/269 r 12

260 Certificate of solicitor or counsel to be subscribed on application made without notice

- (1) Every interlocutory application which, in accordance with rule 263, is made without notice to any other party and which is not intended to be made by the party applying in person, shall be subscribed with a certificate signed by that party's solicitor or counsel, in the following form:
"Certified pursuant to the rules of Court to be correct."
- (2) A certificate given under subclause (1)—
 - (a) Shall be signed by the solicitor or counsel personally and in his or her own name; and
 - (b) May be given by a solicitor notwithstanding that he or she has taken an affidavit in support of the application or any other affidavit relevant to the application.
- (3) Subject to subclauses (4) and (5), a certificate given under subclause (1) may be given only—
 - (a) By a solicitor or counsel who is in practice on his or her own account or as a principal in a firm of solicitors; or
 - (b) By the Solicitor-General or a Crown counsel employed in the Crown Law Office.
- (4) A certificate given under subclause (1) in relation to an application intended to be made by the Public Trustee in any proceeding in which the Public Trustee is a party or is in any way interested may be given—
 - (a) By a person of a kind described in subclause (3); or
 - (b) By the Office Solicitor (as defined in section 2 of the Public Trust Office Act 1957).
- (5) A certificate given under subclause (1) in relation to an application intended to be made by any party referred to in paragraph (d) or paragraph (e) of rule 38 may be given—
 - (a) By a person of a kind described in subclause (3); or
 - (b) By any solicitor who could file a document on behalf of that party in accordance with rule 38.
- (6) Every solicitor or counsel shall, before giving a certificate under subclause (1), personally satisfy himself or herself that the notice of application and every affidavit filed therewith in support thereof comply with the requirements of these rules

and that the order sought is one that ought to be made, and shall be responsible to the Court in respect of these matters.

Compare: High Court Rules, r 237; SR 1991/132 r 13

261 Date of hearing

- (1) The date shown on the notice of application as the date for the hearing of the application shall be that allocated by the Registrar when the notice of the application is filed.
- (2) Subject to rule 262, the Registrar shall enter the application on the Chambers list for that date without any further request.
- (3) When an interlocutory application first comes before a Judge in Chambers, it shall be the duty of counsel to be ready to advise the Judge of the likely time needed for the hearing of the application.
- (4) Before the hearing of the application (including an application under rule 152 or rule 153, a Judge in Chambers may make such orders as he or she thinks fit, including orders as to the date and place of hearing and the time within which any party may file affidavits.
- (5) The Judge may exercise the powers conferred by subclause (4) when directing that an interlocutory application be heard in open Court or at any time and whether upon formal application or otherwise.

Compare: SR 1948/197 r 143; High Court Rules, r 238; SR 1985/328 r 6

262 Hearing

- (1) Subject to subclause (2), every interlocutory application shall be heard in Chambers unless the Judge otherwise directs.
- (2) Every interlocutory application for summary judgment under rule 152 or rule 153 shall be heard in open Court.

263 When service not required

- (1) Where—
 - (a) Service of notice of an application would cause undue delay or other serious detriment to the party applying; or
 - (b) All parties interested consent in writing to the order sought; or

- (c) The application affects the party applying only, or is in respect of a matter of routine, or the interests of no other party can be affected thereby; or
 - (d) The Court dispenses with service of notice of the application; or
 - (e) Any enactment or these rules permit the application to be made without serving notice thereof,—
a party may make an interlocutory application without serving notice thereof.
- (2) An application made under this rule is referred to in these rules as an *ex parte* application.

Compare: SR 1948/197 rr 75(8); 143(1)(a); High Court Rules, r 239

264 Time when application deemed to be made

Where, by these rules or by any enactment, an interlocutory application is required to be made within a limited time, the application shall be deemed to have been made in time—

- (a) If notice of the application is filed and served within that time; or
- (b) Where the application is not required to be served, the application is filed within that time; or
- (c) Where the application is not required to be filed, the application is made orally within that time.

Compare: SR 1948/197 r 143(1)(c); High Court Rules, r 241

265 Staying proceeding pending disposal of application

Where, by these rules or by any enactment, a party has a limited time which to take a step in a proceeding and that party has filed a notice of an application relating to that step, the Court or the Registrar may, on the *ex parte* application of that party, direct that the notice shall operate as a stay of the proceeding from the time when it is served until the application is disposed of.

Compare: High Court Rules, r 242

266 Notice of opposition to application

- (1) A respondent who intends to oppose an application must file and serve on every other party a notice of opposition to the application within the earlier of—

- (a) 10 working days after being served with the application;
or
 - (b) 3 working days before the date for the hearing.
- (2) The notice of opposition must be in form 22.
- (3) The notice of opposition must—
- (a) state the respondent's intention to oppose the application and the grounds of opposition; and
 - (b) contain a reference to any particular provision of an enactment or principle of law or judicial decision on which the respondent relies.

Rule 266 was substituted, as from 1 June 2006, by rule 7 District Courts Amendment Rules 2006 (SR 2006/97). See rule 14 of those rules as to the transitional provision relating to costs.

267 Contents of notice of opposition

[Revoked]

Rule 267 was revoked, as from 1 June 2006, by rule 8 District Courts Amendment Rules 2006 (SR 2006/97). See rule 14 of those rules as to the transitional provision relating to costs.

268 Oral application

Where—

- (a) The preparation and filing of notice of an application would cause undue delay or other serious detriment to the party applying; or
- (b) All parties interested consent to the order sought; or
- (c) The Court dispenses with the filing of notice of the application; or
- (d) These rules permit the application to be made without filing a notice thereof,—

a party may make an interlocutory application without filing or serving a notice thereof.

Compare: High Court Rules, r 245

Evidence on interlocutory application

269 Evidence on applications made orally

In the case of an interlocutory application made under rule 268, evidence may be given orally at the hearing or in such other form as the Court directs.

Compare: High Court Rules, r 246

270 Evidence on applications made ex parte

In the case of an interlocutory application made under rule 263, the evidence in support thereof shall be given by an affidavit or affidavits filed with the notice of application, but supplementary affidavits may be filed at any time thereafter while the application is pending:

Provided that the Court may accept the certificate subscribed to the application in place of such affidavit.

Compare: High Court Rules, r 247

271 Evidence on applications made inter partes

In the case of an interlocutory application that does not come within rule 269 or rule 270, evidence of every disputed fact shall be given by affidavit; but the parties may agree to proceed on the statements of fact appearing in the notice of application and the notice of opposition thereto, or on a statement of facts agreed to for the purpose.

Compare: High Court Rules, r 248

272 Oral evidence where justice requires

Notwithstanding the provisions of rules 270 and 271, the Court, on the hearing of any interlocutory application, may accept oral evidence in special circumstances, if justice so requires.

Compare: High Court Rules, r 249

273 When admissions binding

No admission of a fact, made for the purpose of an interlocutory application, shall bind the party making the admission in

any proceeding or application other than the application in respect of which it is made.

Compare: High Court Rules, r 250

274 Previous affidavits and agreed statements of facts

Affidavits already filed in the Court and (subject to rule 273), agreed statements of fact, if made in the same proceeding or, with the leave of the Court, in any other proceeding between the same parties, may be used on the disposal of any interlocutory application, if prior notice of the intention to use them has been given to the opposite party (whether in the notice of application or in the notice of opposition or otherwise) or, in the case of a notice of application which is not required to be served, if they are referred to in the notice of application.

Compare: High Court Rules, r 251

275 Provisions as to affidavits

The provisions of rules 508 to 521 shall apply, with all necessary modifications, to affidavits filed in respect of interlocutory applications:

Provided that where the application affects the party applying only or where the interests of no other party can be affected thereby, or in a routine matter, or where the interests of justice so require, the Court may accept statements of belief in an affidavit in which the grounds of such belief are given.

Compare: High Court Rules, r 252

276 Time for filing affidavits

(1) Except by leave of the Court—

- (a) No affidavit shall be read in support of any opposed interlocutory application unless it has been filed and served not later than 2 clear days before the date shown on the notice of application for the hearing, or, in the case of an affidavit or an agreed statement of facts filed in the Court before the filing of the notice of application, until notice of intention to read it has been so filed and served;
- (b) No affidavit shall be read in opposition to an interlocutory application unless it has been filed and served not

later than 1 pm on the day preceding the hearing of the application, or in the case of an affidavit or an agreed statement of facts previously filed in the Court, unless notice of intention to read it has been so filed and served.

- (2) Any party may, by leave of the Court, read any affidavit filed in answer to any new matter arising from an affidavit filed by any other party irrespective of the time when the answering affidavit was filed or served.

Compare: High Court Rules, r 253

277 Cross-examination of deponents

The Court may, on the application of any party, order the attendance for cross-examination of any person making any affidavit in support of or in opposition to any interlocutory application; but such an order shall be made only in special circumstances.

Compare: High Court Rules, r 254

278 Notices of application filed in absence of Judge

- (1) Where a notice of interlocutory application is filed at a time when no Judge is present and a party, or the solicitor or counsel for any party to the application certifies that the application is urgent, the Registrar shall forward the application with all other relevant documents from the Court in which it has been filed to the Registrar at any other place where a Judge is present to be dealt with at that place.
- (2) Where an application has been dealt with at another Court pursuant to subclause (1), an application to vary or rescind the order and any affidavit in support or in opposition may be filed at such other Court.
- (3) The Registrar at the latter Court may, having regard to the provisions of subclause (2), retain the original notice of application and other relevant documents for such period as the Registrar considers appropriate, but otherwise shall return them to the Court in which the original application was filed unless a Judge orders otherwise.

Compare: High Court Rules, r 255; SR 1987/169 r 4(1)

279 Chambers lists

- (1) An interlocutory application that has been entered on a Chambers list shall not be removed therefrom unless—
 - (a) The Court or the Registrar so orders on the application of any party, or of its own motion:
 - (b) In terms of rule 280(1), no appearance is required:
 - (c) The parties concerned consent to the dismissal of the application:
 - (d) The parties concerned agree to the adjournment thereof, in which case the Registrar shall enter the application on the Chambers list for a date agreed upon and approved by the Registrar.
- (2) Where, in respect of any interlocutory application on which, in terms of rule 280(1), no appearance is required, but the attendance of solicitors or counsel is nevertheless required under subclause (2) or subclause (4) of rule 281, the application shall be entered on the Chambers list for the date on which attendance is required.

Compare: High Court Rules, r 256

280 Where no appearance necessary

- (1) Subject to any direction given by the Court and to subclauses (2) to (4) of rule 281, no appearance shall be required on—
 - (a) An interlocutory application which has been filed but which is not required to be served:
 - (b) An interlocutory application to which the party served consents in writing:
 - (c) An interlocutory application in respect of which the parties file submissions and request in writing that appearance be dispensed with.
- (2) Any consent or request in writing for the purposes of paragraph (b) or paragraph (c) of subclause (1) may be given or made informally but shall be signed by the party giving the consent or making the request or by that party's solicitor or counsel.
- (3) An application in respect of which no appearance is required may be disposed of at any time notwithstanding that the date for hearing shown in the notice of application may not have

arrived, and the Registrar shall, as soon as possible after such disposal, give notice of the result thereof to—

- (a) The applicant or the applicant's solicitors; and
 - (b) Any party who has consented in writing to the application or that party's solicitor; and
 - (c) Any party who has filed written submissions under subclause (1)(c) or that party's solicitor.
- (4) Where an application has been forwarded to another office of the Court for disposal under rule 278, notice under subclause (3) shall be given by the Registrar of the Court in which the application was filed.

Compare: High Court Rules, r 257; SR 1985/328 r 9

281 When appearance required

- (1) In any case to which rule 280 does not apply or in which the Court so directs, the parties concerned or their solicitors or counsel shall attend the hearing of the application.
- (2) If, in any case to which paragraph (a) or paragraph (b) of rule 280(1) applies, there is any irregularity in the notice of application or in any affidavit filed in support thereof, the Registrar shall draw the irregularity to the attention of the applicant or the applicant's solicitor or counsel.
- (3) If the irregularity is not cured, or if it appears to the Court to be doubtful whether the order sought should be made, the solicitor or counsel for the applicant shall attend and support the application at a time of which notice shall be given by the Registrar.
- (4) In any case to which paragraph (c) of rule 280(1) applies, the Court may require the attendance of the party or the solicitors or counsel for the parties concerned, if it thinks fit, and notice of the time for such attendance shall be given by the Registrar.

Compare: High Court Rules, r 258

281A Synopsis of argument

- (1) This rule applies to a defended interlocutory application unless or to the extent that the Court directs otherwise.
- (2) The applicant must file and serve a synopsis of argument (**synopsis**) on every other party,—

- (a) if the respondent has filed a notice of opposition under rule 266(1)(a), at least 3 working days before the hearing of the interlocutory application; or
 - (b) if the respondent has filed a notice of opposition under rule 266(1)(b), at least 2 working days before the hearing of the interlocutory application.
- (3) The applicant's synopsis must—
- (a) identify the general nature of the case;
 - (b) include a chronology of the material facts;
 - (c) outline the applicant's principal submissions;
 - (d) be accompanied by or have annexed to it—
 - (i) an indexed and paginated set of relevant documents; and
 - (ii) a list of authorities.
- (4) The material required to be included in the applicant's synopsis under subclause (3)(a), (b), and (c) must not exceed 10 pages.
- (5) The respondent must, at least 1 working day before the hearing, file and serve a synopsis on every other party.
- (6) The respondent's synopsis must—
- (a) identify any material facts that are not referred to in the applicant's synopsis;
 - (b) state any facts that are disputed;
 - (c) outline the respondent's principal submissions;
 - (d) be accompanied by or have annexed to it—
 - (i) an indexed and paginated set of any relevant documents not referred to in the applicant's synopsis; and
 - (ii) a list of any authorities not included in the applicant's synopsis.
- (7) The material required to be included in the respondent's synopsis under subclause (6)(a), (b), and (c) must not exceed 10 pages.

Rule 281A was inserted, as from 1 June 2006, by rule 9 District Courts Amendment Rules 2006 (SR 2006/97). See rule 14 of those rules as to the transitional provision relating to costs.

282 When necessary parties not served

If it appears to the Court, when dealing with an application to which rule 280 applies or at the hearing of an application to which rule 281 applies, that notice of the application should be served on any party or person who has not been served therewith, the Court may dismiss the application or may direct that notice thereof be served on that party or person and adjourn the disposal of the application to such time and on such terms as the Court thinks fit, or may otherwise deal with the matter as justice may require.

Compare: High Court Rules, r 259

283 Failure to appear

- (1) If a party is neither present nor represented at the hearing of an application, the Court may—
 - (a) determine the application in the party's absence in any manner that appears just; or
 - (b) adjourn the application; or
 - (c) strike out the application.
- (2) If an order determining an application is made in the absence of a party, the Court may, if it thinks it just to do so, recall the order at any time before a formal record of it has been drawn up and sealed.
- (3) The Court may, in any manner that the Court thinks just, reinstate an application that has been struck out for non-appearance.
- (4) The Court may make a determination referred to in subclause (2) or subclause (3) on its own initiative or on the application of a party.
- (5) Notice of an application under subclause (4) must be filed and served,—
 - (a) if it is made by a party who was present or represented at the hearing, within 5 working days after the hearing;
 - (b) if it is made by a party who was neither present nor represented, within 5 working days after receipt by the party of notice of the decision given at the hearing.

Rule 283 was substituted, as from 1 June 2006, by rule 10 District Courts Amendment Rules 2006 (SR 2006/97). See rule 14 of those rules as to the transitional provision relating to costs.

284 Adjournment

The hearing of any interlocutory application may from time to time be adjourned on such terms (if any) as the Court or the Registrar thinks fit.

Compare: High Court Rules, r 261(1)

285 Order of addresses

Subject to any direction of the Court in any particular case, on the hearing of any interlocutory application the party applying shall be entitled to be heard first, then the party opposing the application, and then the party applying may be heard in reply.

Compare: High Court Rules, r 262

286 Orders may be made subject to conditions, etc

An order made on an interlocutory application may be limited to have effect for such time and on such terms and conditions and subject to such undertakings as the Court thinks just.

Compare: SR 1948/197 r 144; High Court Rules, r 263

287 Review of orders

- (1) Where any order is made or decision is given on an interlocutory application made *ex parte*, any party affected by that order or decision may, instead of appealing therefrom, apply to the Court to vary or rescind the order or decision unless that order or decision was made or given with that party's consent.
- (2) Where any order is made or decision is given on an interlocutory application (other than an interlocutory application made *ex parte* or an interlocutory application for judgment under rule 152 or rule 153), any party affected by that order or decision may, with the leave of the Court and instead of appealing therefrom, apply to the Court to vary or rescind the order or decision unless that order or decision was made or given with that party's consent.
- (3) Notice of an application under subclause (1) or subclause (2) shall be filed and served —
 - (a) If it is made by a party who was present or represented when the order was made or the decision given, within 7 days thereafter:

- (b) If it is made by a party who was not so present or represented, within 7 days after receipt by that party of notice of the making of the order or the giving of the decision, as the case may be, and of its effect.
- (4) The application shall not operate as a stay unless the Court so orders.
- (5) Notwithstanding subclauses (1) to (4), the Court may, on the motion of any party or of its own motion, remove into the High Court any application made under subclause (1) or subclause (2).

Compare: High Court Rules, r 264; SR 1988/269 r 13

Subclause (3) was amended, as from 1 March 2001, by rule 10 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by inserting, after the word “filed”, the words “and served”. See rule 11 of those Rules for the transitional provision relating to review of orders.

288 Limitation as to second application

- (1) Where a party fails on an interlocutory application from a substantial defect in that party’s evidence, that party shall not apply again on other or additional evidence unless, under special circumstances, leave to do so is given by the Court.
- (2) Such leave may be on such terms as the Court thinks just.

Compare: High Court Rules, r 265

289 Rescinding order for fraud, etc

If on any interlocutory application an order is fraudulently or improperly obtained, the order and any proceeding under it may be varied or rescinded by the Court.

Compare: High Court Rules, r 266

290 Drawing up and sealing orders

- (1) The order made on an interlocutory application shall (except in cases referred to in rule 291) be drawn up by the party in whose favour it was made and submitted to the Registrar for approval; but, if that party fails to do so within 6 days after the day on which it was made, any other party to the application may do so.
- (2) The order may be in form 23.

- (3) The order shall specify both the date on which it was made and the date on which it was sealed.
- (4) The order, when it is approved, shall be signed by the Registrar, sealed with the seal of the Court, and filed with the proceeding.
- (5) If an order filed under subclause (4) gives directions to the Registrar or any Deputy Registrar or otherwise requires action to be taken by the Registrar or any Deputy Registrar, the party who drew up the order shall serve a duplicate of that order on the Registrar or Deputy Registrar.

Compare: High Court Rules, r 267; SR 1988/269 r 14; SR 1990/66 r 8

291 When drawing up of order unnecessary

It shall not be necessary, unless the Court otherwise directs, to draw up or seal—

- (a) An order dismissing an interlocutory application, whether or not costs are allowed to any party thereon:
- (b) An order made *inter partes* that enlarges the time for commencing any proceeding or enlarges or abridges the time for taking any step or filing any document in a proceeding:
- (c) An order fixing a time for the substantive hearing of any application or the hearing of any proceeding, or adjourning any hearing:
- (d) An order giving leave to issue any proceeding:
- (e) An order giving directions for the service of any statement of claim or notice of application, where service is not directed to be effected on a person appointed to represent a person under disability or on a person acting or directed to act in a representative capacity:
- (f) An order amending or granting leave to amend any document filed in a proceeding, or granting leave to file any document:
- (g) An order authorising the omitting or waiving of any act by the Registrar or any other officer of the Court except a solicitor; but in each such case a minute of the order shall be made on the notice of application (if any) or

other appropriate document and signed by the Judge making the order or by the Registrar.

Compare: High Court Rules, r 268; SR 1985/328 r 10

292 Duplicate orders

Duplicates of any order, enfacéd with the word “duplicate”, may be issued to any party.

Compare: High Court Rules, r 269

Powers of Registrars

293 General jurisdiction of Registrars

In addition to the powers prescribed elsewhere in these rules every Registrar shall have the jurisdiction and powers of the Court in Chambers—

- (a) To hear and determine any application to enlarge or abridge the time for filing a statement of defence or any notice of interlocutory application:
- (b) To adjourn a hearing, reserving to the Court the costs of or arising out of the adjournment:
- (c) To make an order on any interlocutory application in proceedings *inter partes* where the consent of all necessary parties is endorsed thereon or filed, or on receiving a draft order consented to in writing by all necessary parties or by their solicitors or counsel.

Compare: SR 1948/197 rr 143(2), 333; SR 1980/55 r 4(4); High Court Rules, r 270; SR 1991/132 r 14

294 Exercise of jurisdiction

Subject to any general or special directions of a Judge, the Registrar may exercise his or her jurisdiction under rule 293 without any further directions; but shall not exercise that jurisdiction otherwise than in Chambers.

Compare: SR 1948/197 r 333; SR 1980/55 r 4(4); High Court Rules, r 272

295 Ancillary powers

In all matters in which a Registrar has jurisdiction under rule 293, he or she shall be entitled to exercise, as ancillary to that

jurisdiction, all powers that a Judge might exercise in like circumstances.

Compare: SR 1948/197 r 333; SR 1980/55 r 4(4); High Court Rules, r 273

296 Other Courts

The jurisdiction and powers conferred by rule 293 may be exercised in respect of applications filed in other Courts, as well as in the Court at which the Registrar exercises his or her office.

Compare: High Court Rules, r 274

297 Form of order

An order made by a Registrar under rule 293 shall, when it is drawn up,—

- (a) Be headed “before the Registrar at, in Chambers”;
- (b) Be signed by a Registrar or Deputy Registrar, and sealed with the seal of the Court;
- (c) Refer to the rule under which it is made.

Compare: High Court Rules, r 275

298 Review of Registrar’s decision

- (1) Any party to a proceeding or an intended proceeding who is affected by—

- (a) Any decision of a Registrar in exercise of his or her jurisdiction under rule 293 or any other provision in these rules; or
- (b) The refusal of a Registrar to file any document tendered by that party for filing or to perform any duty incumbent on him or her under these rules,—

may apply to the Court by interlocutory application to review that decision or that refusal, and the Court may make such order thereon as may be just.

- (2) Notice of every application made under this rule shall be filed—

- (a) If it is made by a party who was present or represented when the decision or refusal of the Registrar was given, within 7 days thereafter;
- (b) If it is made by a party who was not so present or represented, within 7 days after the receipt by that party of

notice of the giving of the decision or refusal, and of its effect.

- (3) The application shall not operate as a stay of the proceeding, or any step therein, unless the Court, or the Registrar, acting under rule 293 so directs.

Compare: SR 1948/197 r 229; High Court Rules, r 276

299 Enforcement of interlocutory order

- (1) Where a party makes default in complying with any interlocutory order, the Court may, subject to any express provision of these rules,—

(a) If the party in default is a plaintiff, order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by that party in the proceeding:

(b) If the party in default is a defendant, order that that party's defence be struck out and that judgment be sealed accordingly:

(c) Subject to section 79 of the Act, order that the party in default be committed:

(d) Order that any fund in dispute be paid into Court.

- (2) An order shall not be enforced by committal unless the order has been served personally on the person in default or that person had notice or knowledge of the order within sufficient time for compliance with the order.

- (3) For the purposes of this rule—

Defendant includes any party defending or opposing any proceeding

Plaintiff includes—

(a) A defendant who has counterclaimed; or

(b) Any party claiming under rules 177 to 191; or

(c) Any applicant or claimant in a proceeding under rules 195 to 202:

Proceeding includes—

(a) A counterclaim; or

(b) A claim under rules 177 to 191; or

- (c) Any application or claim in a proceeding under rules 195 to 202.

Compare: High Court Rules, r 277(1), (6)

Interrogatories

300 Interrogatories by notice

- (1) After a statement of defence has been filed, any party who has filed a pleading may file and serve on any other party who has filed a pleading a notice in form 24 requiring that party to answer specified interrogatories relating to any matter in question in the proceeding between the interrogating party and the party served.
- (2) The notice may require that the answers be verified and may so require notwithstanding that the interrogating party has previously required all or any of the interrogatories to be answered without requiring the answers to be verified.

Compare: SR 1948/197 r 161A; SR 1973/244 r 9(1); High Court Rules, r 278

301 Duties of party served

Subject to rule 302, a party required by notice under rule 300 to answer interrogatories shall—

- (a) Answer the interrogatories within such time, not being less than 14 days (or, if that party be resident out of New Zealand, 28 days) after the day on which the notice under rule 300 is served on that party, as may be specified in the notice; and
- (b) If verification is not required, answer the interrogatories by filing and serving on the party requiring the answers, a statement in accordance with rule 305; and
- (c) If verification is required, answer the interrogatories by filing and serving on the party requiring the answers, an affidavit verifying the statement together with the statement so verified unless the statement has already been filed and served.

Compare: High Court Rules, r 279

302 Limitation of interrogatories by notice

- (1) The Court may, on the application of any party made before or after that party has been served with a notice under rule 300, order that answers to interrogatories under rule 301 by that party shall not be required, or shall be limited to such interrogatories or classes of interrogatories or to such of the matters in question in the proceeding, as may be specified in the order.
- (2) On any such application, the Court shall make such orders as may be required to prevent unnecessary or oppressive interrogatories or unnecessary answers to interrogatories.

Compare: High Court Rules, r 280

303 Multiple parties

Where there are more than 2 parties to a proceeding, any party who is required under rule 301 to answer interrogatories shall serve his or her statement in answer and affidavit (if any) not only on that party but also on every other party who has given an address for service.

Compare: High Court Rules, r 281

304 Order to answer

- (1) The Court may, at any stage of any proceeding, order any party to file and serve on any other party (whether the interrogating party or not)—
 - (a) A statement in accordance with rule 305 in answer to interrogatories specified or referred to in the order relating to any matter in question in the proceeding; or
 - (b) A statement as mentioned in paragraph (a) verified by affidavit.
- (2) The Court shall not make an order under subclause (1) unless satisfied that the order is necessary at the time when the order is made.

Compare: SR 1948/197 r 161A; SR 1973/244 r 9(1); High Court Rules, r 282

305 Contents of statement

- (1) A statement in answer to interrogatories shall, unless the Court otherwise orders, conform to the requirements of this rule.

- (2) A statement in answer to interrogatories shall deal with each interrogatory specifically either—
 - (a) By answering the substance of the interrogatory without evasion; or
 - (b) By objecting to answer the interrogatory on one or more of the grounds mentioned in rule 306 and briefly stating the facts on which the objection is based.
- (3) The statement shall set out above or opposite to each answer or objection the interrogatory to which it relates.

Compare: High Court Rules, r 283

306 Objection to answer

- (1) Subject to subclauses (2) and (3) and to rule 307, a party may object to answer any interrogatory on the following grounds but no other:
 - (a) That the interrogatory does not relate to any matter in question between him or her and the party requiring the answer:
 - (b) That the interrogatory is vexatious or oppressive:
 - (c) Privilege:
 - (d) That the sole object of the interrogatory is to ascertain the names of the witnesses.
- (2) It shall not be a sufficient objection that the answer to any interrogatory will determine a substantial issue in the proceeding.
- (3) On an application under rule 302(1) or rule 304 in respect of any interrogatory, the Court may require the applicant to specify on what grounds the applicant objects to answer that interrogatory and may determine the sufficiency of the objection and, if the Court determines that the objection is not sufficient, the applicant shall not be entitled to object to answer that interrogatory in a statement in answer to interrogatories.

Compare: High Court Rules, r 284

307 Defamation proceedings

If, in a proceeding for defamation, the defendant pleads that the words or matters complained of are honest opinion on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of in-

formation or grounds of belief shall be allowed unless the interrogatories are necessary in the interests of justice.

Compare: High Court Rules r 285

Rule 307 was substituted, as from 1 November 2004, by rule 5 District Courts Amendment Rules 2004 (SR 2004/321).

308 Who may swear affidavit verifying statement in answer to interrogatories

- (1) An affidavit verifying a statement of a party in answer to interrogatories may be made as follows:
 - (a) by the person required to make the statement;
 - (b) by the person's litigation guardian if the person required to make the statement is—
 - (i) a minor, except a minor to whom rule 87(2) applies; or
 - (ii) an incapacitated person;
 - (c) if the person required to make the statement is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 515;
 - (d) if the person required to make the statement is the Crown, or an officer of the Crown who sues or is sued in an official capacity or as representing a Government department, by an officer of the Crown.
- (2) Despite subclause (1), if paragraph (c) or paragraph (d) of that subclause applies, and the affidavit is to be filed and served in accordance with an order, the Court may—
 - (a) specify by name or otherwise the person to make the affidavit; or
 - (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

Compare: High Court Rules r 286

Rule 308 was substituted, as from 1 March 2001, by rule 12 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclause (1)(b) was substituted, as from 24 August 2007, by rule 11 District Courts Amendment Rules 2007 (SR 2007/205).

309 Insufficient answer

Where a party fails to answer an interrogatory sufficiently, the Court may, without prejudice to its powers under rule 299,—

- (a) If he or she has made an insufficient answer, order that party to make a further answer verified by affidavit in accordance with rule 308; or
- (b) Order that party, or any of the persons mentioned in paragraphs (b) to (d) of rule 308(1) as the nature of the case requires, to attend to be orally examined.

Compare: SR 1948/197 r 161F; SR 1973/244 r 9(1); High Court Rules, r 287

310 Incorrect answer to be amended

If, by reason of any change of circumstances or from the discovery of any error or omission, any statement filed pursuant to any notice given or order made under rule 300 or rule 304 or rule 309 appears to the party by or on whose behalf it was filed to be defective or erroneous, the party shall forthwith file and serve an amended statement or, if the amendment is necessary solely to remedy an omission, at that party's option a supplementary statement, and shall, if the original statement has been verified, verify the amended or supplementary statement.

Compare: High Court Rules, r 288

311 Answers as evidence

- (1) A party may tender as evidence—
 - (a) One or more answers to interrogatories without tendering the others:
 - (b) Part of an answer to an interrogatory without tendering the whole of the answer.
- (2) Where the whole or part of an answer to an interrogatory is tendered as evidence, the Court may look at the whole of the answers, and if it appears to the Court that any other answer or any part of an answer is so connected with a matter tendered that the matter tendered ought not to be used without that other answer or part, the Court may reject the tender unless that other answer or part is also tendered.

Compare: SR 1948/197 r 161G; SR 1973/244 r 9(1); High Court Rules, r 289

312 Public interest

The provisions of these rules which relate to interrogatories do not affect any rule of law which authorises or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

Compare: SR 1948/197 r 162A(c); SR 1952/242 r 13; SR 1973/244 r 9(3); High Court Rules, r 290

Admission of facts

313 Notice to admit facts

- (1) A party who is entitled to serve a notice under rule 300 may at any time serve on any other party a notice in form 25 requiring the party to admit, for the purpose of that proceeding only, the facts specified in the notice.
- (2) An admission made in compliance with a notice under this rule—
 - (a) may be amended or withdrawn by the party by whom it was made at any time, if the Court so allows and on any terms that the Court thinks just:
 - (b) must not be used against the party by whom it was made in a proceeding or interlocutory application other than the proceeding or interlocutory application for the purpose of which it was made.
- (3) If the party on whom a notice to admit facts has been served under the provisions of subclause (1) refuses or neglects to admit the facts within 7 days after the day on which the notice is served on that party or within such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by that party, unless the Court otherwise orders.

Compare: SR 1948/197 r 194; High Court Rules, r 291

Subclause (2) was substituted, as from 1 March 2001, by rule 13 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

314 Judgment on admission of facts

Where admissions of facts are made by a party to a proceeding either by that party's pleadings or otherwise, any other party to the proceeding may apply to the Court for such judgment or order as upon those admissions the party may be entitled to, without waiting for the determination of any other question

between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

Compare: High Court Rules, r 292

Discovery and inspection of documents

315 Notice for discovery

- (1) After a statement of defence has been filed any party who has filed a pleading may, by notice for discovery in form 26 filed and served on any other party who has filed a pleading, require that party to give discovery of the documents which are or have been in that party's possession or power relating to any matter in question in the proceeding, with or without verification.
- (2) A party may require another party to give discovery with verification notwithstanding that he or she has previously required the same party to give discovery without verification.

Compare: SR 1948/197 r 155; High Court Rules, r 293

316 Compliance with notice

Subject to rule 317, a party required by notice under rule 315 to give discovery shall—

- (a) Give discovery within such time, not being less than 28 days (or, if he or she be resident out of New Zealand, 42 days) after the day on which the notice for discovery is served on that party, as may be specified in the notice:
- (b) If verification is not required, give discovery by filing and serving on the party giving the notice a list in accordance with rule 320 of documents relating to any matter in question in the proceeding:
- (c) If verification is required, give discovery by filing and serving on the party giving the notice an affidavit verifying such a list as is mentioned in paragraph (b), together with the list so verified, unless the list has already been filed and served on the party giving the notice.

Compare: SR 1948/197 r 156; High Court Rules, r 294

Rule 316(a) was amended, as from 1 February 1996, by rule 11 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expressions "28 days" and "42 days" for the expressions "14 days" and "28 days" respectively.

317 Limitations of discovery on notice

- (1) The Court may, before or after any party has been required under rule 315 to give discovery, order that discovery under rule 316 by any party shall not be required or shall be limited to such documents or classes of documents, or to such of the matters in question in the proceeding, as may be specified in the order.
- (2) The Court shall, on application, make such orders under subclause (1) as are necessary to prevent unnecessary discovery.
Compare: SR 1948/197 r 155; High Court Rules, r 295

318 Multiple parties

Where there are more than 2 parties to a proceeding, any party who is required to give discovery to any other party shall give discovery not only to that party but also to every other party who has given an address for service.

Compare: High Court Rules, r 296

319 Order for general discovery

- (1) The Court may, at any stage of any proceeding, order any party to file and serve on any other party—
 - (a) A list in accordance with rule 320 of documents relating to any matter in question in the proceeding; or
 - (b) A list as mentioned in paragraph (a), verified by affidavit.
- (2) Where a party who has filed and served a notice under rule 315, files—
 - (a) An affidavit of service in respect of that notice on any other party who has filed a pleading; and
 - (b) An affidavit deposing that the party on which that notice was served has failed to comply with paragraph (a) or paragraph (b) of rule 316,—
that party may, without any application to the Court, issue as of course, as the case may require, an order under subclause (1)(a) or subclause (1)(b) of this rule, which order shall include a provision requiring the costs of the order to be paid by the party ordered to file and serve a list of documents and shall,

for the purposes of rule 299, be deemed to be an order made on an interlocutory application.

Compare: High Court Rules, r 297

Rule 319(2) was inserted, as from 1 February 1996, by rule 12 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

320 Contents of list

- (1) A list of documents required by or under rule 316 or rule 319 shall, unless the Court otherwise orders, conform to the requirements of this rule.
- (2) The list may be in form 27.
- (3) The list shall enumerate the documents which are or have been in the possession, custody, or power of the party making the list.
- (4) The list shall enumerate the documents in a convenient sequence and as shortly as possible, but shall describe each document or, in the case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.
- (5) Where the party making the list claims that any document in that party's possession, custody, or power is privileged from production, the party shall, in the list, sufficiently state the grounds of the privilege.
- (6) The list shall distinguish those documents which are in the possession, custody, or power of the party making the list from those that have been but are no longer in that party's possession, custody, or power.
- (7) The list shall, as to any document which has been but is no longer in the possession, custody, or power of the party making the list, state when that party parted with the document and what has become of it.
- (8) The list shall further enumerate any other relevant documents known to the party making the list to exist and shall state the name of the person (whether a party or not) in whose possession that party believes such documents respectively to be.
- (9) The party making the list shall, unless the list is verified, certify on the list that the list and the statements in the list are correct and comply with the requirements of this rule. Where,

however, the party has a solicitor on the record in the proceeding, the solicitor may give such certificate and may qualify it by stating that these particulars are correct according to his or her instructions.

Compare: SR 1948/197 r 160; High Court Rules, r 298

321 Order for particular discovery before proceeding commenced

- (1) Where it appears to the Court that any person (hereinafter in this rule referred to as the intending plaintiff) is or may be entitled to claim in the Court relief against another person (hereinafter in this rule referred to as the intended defendant) but that it is impossible or impracticable for the intending plaintiff to formulate the intending plaintiff's claim without reference to a document or class of documents and that there are grounds for a belief that such document or one or more documents of that class may be or may have been in the possession, custody, or power of a person (whether the intended defendant or not), the Court may, on the application of the intending plaintiff made before any proceeding is brought, order the last-mentioned person—
 - (a) To file an affidavit stating whether that document or (as the case may be) any document of that class is or has been in his or her possession, custody, or power, and, if it has been but is no longer in his or her possession, custody, or power, when he or she parted with it and what has become of it; and
 - (b) To serve the affidavit on the intending plaintiff.
- (2) An application under subclause (1) shall be by interlocutory application made on notice—
 - (a) To the person from whom discovery is sought; and
 - (b) To the intended defendant.

Compare: High Court Rules, r 299

Rule 321(2) was substituted, as from 1 February 1996, by rule 13 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

322 Order for particular discovery against party after proceeding commenced

Where at any stage of the proceeding it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for a belief that some document or class of document relating to any matter in question in the proceeding may be or may have been in the possession, custody, or power of a party, the Court may order that party—

- (a) To file an affidavit stating whether that document or (as the case may be) any document of that class is or has been in that party's possession, custody, or power, and, if it has been but is no longer in that party's possession, custody, or power, when that party parted with it and what has become of it; and
- (b) To serve the affidavit on any other party.

Compare: SR 1948/197 r 160; High Court Rules, r 300

323 Order for particular discovery against non-party after proceeding commenced

- (1) Where, in the circumstances referred to in rule 322, it appears that the document or class of document may be or may have been in the possession, custody, or power of a person who is not a party, the Court may order that person—

- (a) To file an affidavit stating whether that document or (as the case may be) any document of that class is or has been in that person's possession, custody, or power, and, if it has been but is no longer in that person's possession, custody, or power, when that person parted with it and what has become of it; and
- (b) To serve the affidavit on any party.

- (2) An application for an order under subclause (1) shall be made on notice to the person from whom discovery is sought and to every other party who has filed an address for service.

Compare: High Court Rules, r 301

324 Expenses

Where an order is made under rule 321(1) or rule 323(1), the Court may, if it thinks fit, order the applicant to pay to the

person from whom discovery is sought that person's expenses (including solicitor and client costs) of and incidental to the application and in complying with any other order made thereon.

Compare: High Court Rules, r 302

325 Who may swear affidavit verifying list of documents

- (1) An affidavit verifying a list of documents under a notice or order given or made under any of the provisions of rules 315 to 326 may be made as follows:
 - (a) by the person required to make the list:
 - (b) by the person's litigation guardian if the person required to make the list is—
 - (i) a minor, except a minor to whom rule 87(2) applies; or
 - (ii) an incapacitated person:
 - (c) if the person required to make the list is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 515:
 - (d) if the person required to make the list is the Crown, or an officer of the Crown who sues or is sued in an official capacity or as representing a Government department, by an officer of the Crown.
- (2) Despite subclause (1), if paragraph (c) or paragraph (d) of that subclause applies, and the affidavit is to be filed and served in accordance with an order, the Court may—
 - (a) specify by name or otherwise the person to make the affidavit; or
 - (b) specify by description or otherwise the persons from whom the person required to verify the list may choose the person to make the affidavit.

Compare: High Court Rules r 303

Rule 325 was substituted, as from 1 March 2001, by rule 14 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclause (1)(b) was substituted, as from 24 August 2007, by rule 12 District Courts Amendment Rules 2007 (SR 2007/205).

326 Incorrect list to be amended

If, by reason of any change of circumstances or from the discovery of any error or omission, any list of documents filed pursuant to any notice given or order made under any of the provisions of rules 315 to 326 appears to the party giving discovery to be defective or erroneous, that party shall forthwith file and serve an amended list or, if the amendment is necessary solely to remedy an omission, at that party's option, a supplementary list, and shall, if the original list has been verified, verify the amended or supplementary list.

Compare: High Court Rules, r 304

327 Effect of failure to include document

No document which should have been included in a list filed by a party may, without the consent of the other party or parties or the leave of the Court, be produced in evidence at the hearing unless it has been included in that party's list of documents.

Compare: High Court Rules, r 305

328 Notice to produce for inspection

- (1) Where a pleading, list, or affidavit filed by a party or any other person refers to a document, any party or the intending plaintiff (as the case may be) on whom it is served may, by notice to produce served on the party or other person who has filed the pleading, list, or affidavit, require that party or other person to produce the document for inspection.
- (2) Where a notice to produce a document is served on a party or any other person under subclause (1), the person served shall, within 4 days after that service, serve on the party requiring production a notice—
 - (a) Appointing a time within 7 days after service of the notice under this subclause when, and a place where, the document may be inspected; or
 - (b) Claiming that the document is privileged from production and sufficiently stating the ground of the privilege; or
 - (c) Stating that the document is not in that person's possession, custody, or power and stating to the best of that person's knowledge, information, and belief, where the

document is and in whose possession, custody, or power it is.

Compare: SR 1948/197 rr 156, 159; High Court Rules, r 306

329 Order for production for inspection

- (1) Where it appears to the Court or the Registrar—
- (a) From a pleading, list, or affidavit filed by a party or any other person, that any relevant document is in the possession, custody, or power of that party or person; or
 - (b) From the evidence or from the nature or circumstances of the case or from any document filed in the proceeding, that any relevant document is in the possession, custody, or power of a party or any other person—
- the Court or the Registrar may, unless the document is privileged from production, order that party or other person to produce the document for inspection by any party or intending plaintiff at a time and place specified in the order, or to serve on any party or intending plaintiff a copy of the whole or any part of the document, with or without an affidavit verifying the copy by a person who has examined the document and the copy.
- (2) An affidavit made pursuant to an order under subclause (1) shall, unless the Court or the Registrar otherwise orders, state whether there are in the document copied any and, if so, what erasures, interlineations, or alterations.

Compare: High Court Rules, r 307

330 Costs of production by non-party

The Court may, if it thinks fit, order that the expenses (including solicitor and client costs) incurred by any person who is not a party to a proceeding already commenced or incidental to compliance with a notice under rule 328 or an order under rule 329 be paid by the party to whom the document or copy, as the case may be, is produced.

Compare: High Court Rules, r 308

331 Right to make copies

- (1) A party to whom a document is produced for inspection under rule 328 or rule 329 may make copies of the document.

- (2) On the application of a party to whom a document is produced for inspection under rule 328 or rule 329, the Court may order that the party having the document in his or her possession, custody, or power shall furnish the applicant with a legible copy.
- (3) An order under subclause (2) may be made on such terms as the Court thinks fit, and in particular the Court may order the applicant to pay the reasonable expenses of the other party, and may order that the document be marked to the effect that it is a copy furnished for purposes of inspection only.
- (4) A party who obtains a copy under this rule—
 - (a) Shall make use of that copy only for the purposes of the proceeding; and
 - (b) Except for the purposes of the proceeding, shall not make it available to any other person.

Compare: High Court Rules, r 309

332 Production to the Court

The Court may, at any stage of any proceeding, order any party or person to produce to the Court any document in his or her possession, custody, or power relating to any matter in question in the proceeding, and on production of such document the Court may deal with it in such manner as the Court thinks fit.

Compare: SR 1948/197 r 161; High Court Rules, r 310

333 Inspection to decide objection

- (1) Where an application is made for an order under rule 329 for the production of any document for inspection by another party or for an order under rule 332, for the production of any document to the Court, and a claim is made that the document is privileged from production or an objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.
- (2) It shall not be a valid claim of privilege that the document relates solely to the case of the party claiming privilege or

that the fact or otherwise of the existence of the document is a substantial issue in the proceeding.

Compare: SR 1948/197 r 159; High Court Rules, r 311

334 Order only if necessary

The Court shall not make an order under any of the provisions of rules 319 to 332 for the filing or service of any list of documents or affidavit or other document or for the production of any document unless satisfied that the order is necessary at the time when the order is made.

Compare: High Court Rules, r 312

335 Crown documents and public interest

Any order made under section 27(1) of the Crown Proceedings Act 1950 shall be construed as not requiring disclosure of the existence of any document if—

- (a) The Prime Minister certifies that the disclosure of the existence of that document would be likely to prejudice—
 - (i) The security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (ii) Any interest protected by section 7 of the Official Information Act 1982; or
- (b) The Attorney-General certifies that the disclosure of the existence of that document would be likely to prejudice the prevention, investigation, or detection of offences.

Compare: High Court Rules, r 313

336 Admission of documents discovered

- (1) Where a list of documents is served on a party under any of the provisions of rules 315 to 326 and inspection of any document specified in the list is permitted to that party then, subject to subclause (2), the following admissions by that party in favour of the party serving the list shall have effect unless the Court otherwise orders—

- (a) That the document, if described in the list as an original document, is an original document and was printed,

- written, signed, or executed as it purports to have been;
or
- (b) That the document, if described in the list as a copy, is a true copy.
- (2) Where a party—
- (a) Has by that party's pleading denied the authenticity of a document; or
- (b) Within 14 days after inspection of a document, serves on the party giving inspection a notice that the first-mentioned party disputes the authenticity of the document,—
- the first-mentioned party shall not be deemed to make any admission in relation to that document under subclause (1).
- (3) Where in any list served in accordance with any of the provisions of rules 315 to 326, a document is shown to be in the possession or power of the party serving the list and is not the subject of a claim of privilege, secondary evidence of that document and of its contents may be given at the hearing by the party served with the list, unless the document itself is produced by the party serving the list when requested by the party served therewith.
- (4) Subclause (3) shall apply whether or not a notice to produce the document has been served on the party serving the list.
- (5) Subclauses (1) to (3) apply in relation to an affidavit made in compliance with an order under any of the provisions of rules 321 to 323 (which relate to discovery of particular documents) as they apply in relation to a list of documents served under any of the provisions of rules 315 to 326.

Compare: High Court Rules, r 314

337 Notice to produce documents

- (1) Where a party to any proceeding serves on another party a notice requiring the party served to produce any document or thing for the purpose of evidence at any hearing in the proceeding, or before any Judge, officer, examiner, or other person having authority to take evidence in the proceeding, and the document or thing is in the possession, custody, or power of the party served, the party served shall, unless the Court otherwise orders, produce the document or thing in accord-

ance with the notice, without the need for any summons for production.

- (2) A notice under subclause (1) shall be deemed to be an order of the Court to produce the document or thing referred to in the notice.

Compare: High Court Rules, r 315

338 Notice to admit documents

- (1) A party to a proceeding may, by notice served on another party, require him or her to admit, for the purpose of that proceeding only, the authenticity of the documents specified in the notice.
- (2) If, as to any document specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit documents, a notice disputing the authenticity of the document, the document shall, for the purpose of the proceeding, be admitted by the party on whom the notice to admit documents is served.
- (3) A party may, with the leave of the Court, withdraw an admission under subclause (2).

Compare: 1948/197 r 195; High Court Rules, r 316

339 Restricted effect of admission

An admission under rule 336 or rule 338 for the purpose of any proceeding shall not be used against the admitting party in any other proceeding.

Compare: High Court Rules, r 317

Inspection and testing of property

340 Order for inspection, etc

- (1) The Court may, for the purpose of enabling the proper determination of any matter in question in any proceeding, make orders, on terms, for—
- (a) The inspection of any property:
 - (b) The taking of samples of any property:
 - (c) The making of any observation of any property:
 - (d) The measuring, weighing, or photographing of any property:
 - (e) The making of any experiment on or with any property:

- (f) The observation of any process.
- (2) An order under subclause (1) may authorise any person to enter any land or do any other thing for the purpose of getting access to the property.
- (3) In this rule **property** includes any land and any document or other chattel, whether in the ownership, possession, custody, or power of a party or not.
- Compare: SR 1948/197 rr 151-154; High Court Rules, r 322

341 Notice of application for order for inspection, etc

A party applying for an order under rule 340 shall, so far as practicable, serve notice of the application on each person who would be affected by the order if made.

Compare: High Court Rules, r 323

Expert evidence

342 Appointment of Court expert

- (1) In any proceeding in which any question for an expert witness arises, the Court may at any time, of its own motion or on the application of any party, appoint an independent expert or, if more than one such question arises, 2 or more such experts, to inquire into and report upon any question of fact or opinion not involving questions of law or of construction.
- (2) An expert appointed under subclause (1) is referred to in this rule and in rules 343 to 348 as a **Court expert**.
- (3) Any Court expert in a proceeding shall, if possible, be a person agreed upon by the parties and, failing agreement, shall be appointed by the Court from persons named by the parties.
- (4) In this rule, **expert**, in relation to any question arising in a proceeding, means any person who has such knowledge or experience of or in connection with that question that his or her opinion on it would be admissible in evidence.

Compare: High Court Rules, r 324

343 Submission of question to Court expert

The question to be submitted to the Court expert and the instructions (if any) given to the Court expert shall, failing agreement between the parties, be settled by the Court.

Compare: High Court Rules, r 325

344 Report of Court expert

- (1) The Court expert shall send his or her report to the Court, together with such number of copies thereof as the Court may direct.
- (2) The Registrar shall send copies of the report to the parties or their solicitors.
- (3) The Court may direct the Court expert to make a further or supplemental report.
- (4) Any part of the Court expert's report which is not accepted by all the parties to the proceeding in which it is made shall be treated as information furnished to the Court and shall be given such weight as the Court thinks fit.

Compare: High Court Rules, r 326

345 Experiments and tests

- (1) If the Court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him or her to make a satisfactory report, the Court expert—
 - (a) Shall inform the parties or their solicitors; and
 - (b) Shall, if possible, make an arrangement with the parties or their solicitors about—
 - (i) The expenses involved; and
 - (ii) The persons to attend the experiment or test; and
 - (iii) Any other relevant matters.
- (2) If the parties or their solicitors are unable to agree on any of the matters referred to in subclause (1)(b), the matters on which they are unable to agree shall be settled by the Court.

Compare: High Court Rules, r 327

346 Cross-examination of Court expert

- (1) Any party may, within 14 days after receiving a copy of the Court expert's report, apply to the Court for leave to cross-examine the Court expert on his or her report.
- (2) On an application under subclause (1), the Court shall make an order for the cross-examination of the Court expert by all parties, either—
 - (a) At the hearing of the proceeding; or
 - (b) Before an examiner at such time and place as may be specified in the order.

Compare: High Court Rules, r 328

347 Remuneration of Court expert

- (1) The remuneration of the Court expert shall be fixed by the Court and shall include—
 - (a) A fee for his or her report; and
 - (b) A proper sum for each day during which the expert is required to be present either in Court or before an examiner.
- (2) The Court may, by the order appointing the Court expert or at any later time, make such order as it thinks fit for and incidental to the payment of the remuneration of the Court expert, including (without limiting the generality of the foregoing provisions of this rule) any one or more of the following:
 - (a) An order directing that the remuneration of the Court expert shall be paid by one or more of the parties and, if more than one, in such proportions as the Court thinks proper;
 - (b) An order that any party or parties give security, on such terms as the Court thinks fit, for the remuneration of the Court expert.
- (3) Where the Court appoints the Court expert of its own motion, the Court, instead of making an order under subclause (2), may, by the order appointing the expert or at any later time, order that the remuneration of the Court expert shall be paid by the chief executive of the Department for Courts out of money appropriated by Parliament for the purpose.
- (4) The provisions of subclauses (2) and (3) are without prejudice to the power of the Court to make an order providing for the

payment of the Court expert's remuneration as part of the costs of the proceeding.

Compare: High Court Rules, r 329

Subclause (3) was amended, as from 1 July 1995, by section 12(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words "chief executive of the Department for Courts" for the words "Secretary of Justice".

348 Calling of expert witnesses

- (1) If a Court expert is appointed in a proceeding or interlocutory application,—
 - (a) a party may call 1 expert witness to give evidence on the question reported on by the Court expert if the party gives notice of the party's intention to do so a reasonable time before the hearing; but
 - (b) no party may call more than 1 expert witness to give evidence on the question reported on by the Court expert without the leave of the Court.
- (2) The Court shall not grant leave under subclause (1)(b) unless it considers that the circumstances of the case are exceptional.

Compare: High Court Rules, r 330

Subclause (1) was substituted, as from 1 March 2001, by rule 15 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Interim preservation, etc, of property

349 Preservation of property

- (1) In any proceeding, the Court may make orders for the detention, custody, or preservation of any property.
- (2) An order under subclause (1) may authorise any person to enter any land or to do any other thing for the purpose of giving effect to the order.
- (3) In a proceeding concerning the right of any party to a fund, the Court may order that the fund be paid into Court or otherwise secured.

Compare: SR 1948/197 r 152; High Court Rules, r 331

350 Sale of perishable property, etc

Where in any proceeding concerning any property (other than land) or in any proceeding in which any question may arise

concerning any property (other than land), it appears to the Court that—

- (a) The property is of a perishable nature or is likely to deteriorate by keeping; or
- (b) For any other reason it is desirable that the property should be sold before the hearing,—

the Court, on the application of any party to a proceeding, may make an order for the sale of the property, by a person named in the order, in such manner and on such terms as the Court thinks appropriate.

Compare: High Court Rules, r 332

351 Interim distribution

Where, in a proceeding concerning property, it appears to the Court that the property is more than sufficient to answer the claims on the property for which provision ought to be made in the proceeding, the Court may allow any part of the property to be conveyed, transferred, or delivered to any person having an interest in the property.

Compare: High Court Rules, r 333

352 Interim income

Where, in a proceeding concerning property, it appears to the Court that the whole or any part of the income of the property is not required to answer the claims on the property or its income for which provision ought to be made in the proceeding, the Court may allow that income or part to be paid, during such period as the Court may determine, to all or any of the persons having an interest in the income.

Compare: High Court Rules, r 334

353 Directions

Where application is made for an order under rule 349 or rule 350, the Court may treat the application as though it were also an application for directions under rule 433 and may give directions accordingly.

Compare: High Court Rules, r 335

354 Time and terms for order

The Court may make orders under rules 349 to 353 on terms and at any stage of the proceeding.

Compare: High Court Rules, r 336

Injunctions and receivers

355 Application for order

Where any party desires, before the hearing, an immediate order—

(a) In the nature of an injunction; or

(b) The appointment of a receiver—

that party may apply to the Court, who may, on proof of the facts rendering the order immediately necessary, make such order as it thinks fit.

Compare: SR 1948/197 r 149

355A Interpretation

In rules 355B to 355J, **interim payment** means a payment on account of any damages, debt, or other sum (excluding costs) which the defendant in a proceeding may be held liable to pay to or for the benefit of the plaintiff in that proceeding.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

355B Application for interim payment

- (1) The plaintiff in a proceeding may, at any time after the statement of claim and notice of proceeding have been served on a defendant and the time for the filing of a statement of defence by that defendant has expired, apply to the Court for an order requiring that defendant to make an interim payment.
- (2) An application under this rule shall be supported by an affidavit which shall—
 - (a) Verify the amount of the damages, debt, or other sum to which the application relates and the grounds of the application; and
 - (b) Exhibit any documentary evidence relied on by the plaintiff in support of the application.

- (3) The application and a copy of the affidavit in support and any documents annexed thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the date fixed for the hearing of the application.
- (4) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

355C Order for interim payment in respect of damages

If, on the hearing of an application under rule 355B, the Court is satisfied—

- (a) That the defendant against whom the order is sought has admitted liability for the plaintiff's damages; or
- (b) That the plaintiff has obtained, against the defendant against whom the order is sought, judgment for damages to be assessed; or
- (c) That, if the proceeding were tried, the plaintiff would obtain judgment for substantial damages against the defendant against whom the order is sought, or, where there are two or more defendants, against any of them—
the Court may, if it thinks fit, order that defendant to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

355D Order for interim payment in respect of sums other than damages

If, on the hearing of an application under rule 355B, the Court is satisfied—

- (a) That the plaintiff has obtained an order for an account to be taken as between the plaintiff and the defendant

and for any amount certified due on taking the account to be paid; or

- (b) That the plaintiff's claim includes a claim for possession of land and, if the proceeding were tried, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the proceeding, even if a final judgment or order were given or made in favour of the defendant; or
- (c) That, if the proceeding were tried, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,—

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

355E Manner of payment

- (1) Subject to subclause (2), the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into Court, and where the amount is paid into Court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to the plaintiff at such time or times as the Court thinks fit.
- (2) Where a minor, except a minor to whom rule 87(2) applies, or an incapacitated person is or may be entitled to an interim payment, or to part of an interim payment, under these rules,—
 - (a) acceptance of the interim payment is subject to the approval of the Court; and
 - (b) payment out of Court must not be made without the leave of the Court.
- (3) An application under subclause (1) for money in Court to be paid out may be made *ex parte*, but the Court hearing the application may direct that notice of the application be served on the other party.

- (4) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.
- (5) Where a payment is ordered in respect of the defendant's use and occupation of land, the order may provide for periodical payments to be made during the pendency of the proceeding.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

Subclause (2) was substituted, as from 24 August 2007, by rule 13 District Courts Amendment Rules 2007 (SR 2007/205).

355F Directions on application under rule 355B

Where an application is made under rule 355B, the Court may give directions as to the further conduct of the proceeding as the Court thinks fit, and, in particular, the Court may order an early hearing of the proceeding.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

355G Non-disclosure of interim payment

The fact that an order has been made under rule 355C or rule 355D shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the hearing of any question or issue as to liability or damages until all questions of liability and amount have been determined.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

355H Payment into Court in satisfaction

Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into Court under rule 356, the notice of payment into Court must state that the defendant has taken into account the interim payment.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

355I Adjustment on final judgment or order or on discontinuance

Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue the proceeding or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceeding on the application of any party, make such order with respect to the interim payment as may be just, and, in particular,—

- (a) An order for the repayment by the plaintiff of all or part of the interim payment; or
- (b) An order for the payment to be varied or discharged; or
- (c) An order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from that other defendant by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

355J Counterclaims and other proceedings

Rules 355A to 355I shall apply, with the necessary modifications, to any counterclaim or proceeding where one party seeks an order for an interim payment to be made by another.

Rules 355A to 355J were inserted, as from 1 February 1996, by rule 14 District Courts Rules 1993, Amendment No 3 (SR 1995/319).

Payment into court

This heading was revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

356 Payment of a sum of money into Court

[Revoked]

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

357 Time of payment into Court*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

358 Notice of payment*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

359 Place of payment where hearing held at different Court*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

360 Restrictions on disclosure of payment into Court*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

361 Acceptance and payment out*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

362 Acceptance in respect of general damages only*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

363 Restriction on acceptance after commencement of hearing*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

364 Refund in event of non-acceptance*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

365 Restrictions on payment out

[Revoked]

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

366 Admission of part of relief claimed or of other relief

[Revoked]

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

367 Money paid in with admission of liability on claim for liquidated demand

[Revoked]

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

368 Consequences of acceptance of payment or relief offered

[Revoked]

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

369 Consequences of non-acceptance of payment or relief offered

[Revoked]

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

370 Offer of contribution

[Revoked]

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

371 Amendment of notice of payment

[Revoked]

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

372 Interest*[Revoked]*

Rule 372 was substituted, as from 1 February 1995, by rule 15 District Courts Rules 1992, Amendment No 3 (SR 1995/310).

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

373 Counterclaim*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

374 Payments to be made to solicitor*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

375 Payment out when person entitled under disability*[Revoked]*

Subclause (1)(b) was substituted, as from 1 March 2001, by rule 16(1) District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclause (2) was amended, as from 1 March 2001, by rule 16(2) District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting the expression “Mental Health (Compulsory Assessment and Treatment) Act 1992” for the expression “Mental Health Act 1969”.

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

376 Application of rules to admissions of relief*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

377 Forms*[Revoked]*

Rules 356 to 377 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Evidence by deposition

378 Order for examination of witness

- (1) Where in any proceeding any party desires to have the evidence of any person or persons taken otherwise than at the time and place appointed or to be appointed for the hearing of the proceeding, the Court may, on application by way of notice by that party, make orders on such terms as it thinks fit for the examination of any person on oath before a Judge or Registrar at a time and place appointed by the Court.
- (2) Immediately upon receiving the order for examination the Registrar—
 - (a) Shall appoint a time and place for the examination; and
 - (b) Notify the applicant of the time and place appointed; and
 - (c) Give notice in form 33 to all interested parties of the intention to hold the examination and of the time and place appointed therefor.
- (3) At any time after receiving an order for examination under this rule the Registrar may issue a witness summons under the provisions of rule 496.
- (4) The examination of the witnesses shall take place in Court or in the Registrar's office, except that the Registrar may, if he or she thinks fit, examine any witness at any other place; and the parties shall be at liberty to attend the examination with or without counsel or a solicitor.
- (5) The Registrar may administer an oath to each witness, who may be examined, cross-examined, and re-examined as at the hearing.
- (6) Notwithstanding the provisions of subclause (5) but subject to subclause (7), where any witness who attends at an examination pursuant to the provisions of this rule is represented at that examination by a solicitor, the Registrar may, if the parties to the proceeding agree, permit the witness to give evidence by affidavit instead of, or in addition to, being examined on oath by the Registrar.
- (7) Nothing in subclause (6) shall prevent the witness being cross-examined and re-examined on the facts deposed to in the affidavit or on any other matter on which the witness could have

been cross-examined or re-examined at the hearing of the proceeding.

- (8) The deposition shall be taken down in writing by or in the presence of the Registrar.

Compare: SR 1948/197 r 198(1)-(19); SR 1973/244 r 12(1), (3); SR 1986/358 r 9; High Court Rules, r 369(1)

379 Objection to question

- (1) The Registrar shall not have power to decide upon the admissibility of any evidence, but if any evidence is objected to the Registrar shall take down the question and the answer thereto or admit the document, as the case may be, and make a note of the objection on the deposition, and the question of admissibility shall be decided by the Court at the hearing.
- (2) If the witness objects to any question put to the witness before the Registrar, the question and the objection shall be taken down in the deposition, and the validity of the objection shall be decided by the Court at the hearing.

Compare: SR 1948/197 r 198(11), (12)

380 Refusal to attend and be sworn

- (1) If any witness refuses—
- (a) To attend; or
 - (b) To be sworn; or
 - (c) To answer any lawful question; or
 - (d) To produce any document,—
- a certificate of such refusal shall be made and signed by the Registrar and filed in the Court, and the party requiring the attendance of the witness may apply to any Judge for an order directing the witness to attend, or to be sworn, or to answer any question, or to produce any document, as the case may require, and the Judge may thereupon make such order as the Judge thinks fit.
- (2) When the examination of each witness has been concluded, the deposition shall be read over to the witness, and each page thereof shall be signed by the witness and by the Registrar. If the witness refuses to sign the deposition, the Registrar shall make a note of the refusal on the deposition, and the deposition

may be tendered in evidence, notwithstanding that it is not signed by the witness.

- (3) Forms 34 and 35 shall be attached to the depositions which, together with any exhibits suitably marked, and the certificate of costs in accordance with the provision of rule 381, shall be transmitted to the office of the Court in which the proceeding is to be heard.

Compare: SR 1948/197 r 198(13)-(15)

381 Costs

The costs of the examination, together with the allowances for solicitors and witnesses in accordance with the prescribed scale, shall be certified by the Registrar in form 36:

Provided that such costs and allowances shall in all cases be in the discretion of the Court of hearing.

Compare: SR 1948/197 r 198(16)

382 Failure to appear

If, at the time appointed or at any adjournment thereof, the party applying to take evidence fails to appear, or fails to proceed with the examination, the application shall be struck out and the Registrar shall forthwith send to the Court of hearing a certificate in form 37 together with the documents referred to in rule 380(3); and, if the opposite party appears, the Registrar shall forward a certificate of costs in accordance with the provisions of rule 381.

Compare: SR 1948/197 r 198(17)

383 Deposition as evidence

- (1) Subject to subclause (3), evidence given in accordance with these rules before any Registrar may be tendered in the proceeding in respect of which the examination took place as if the evidence were given in the course of the hearing of that proceeding, and the signature of the Registrar to the deposition shall be judicially noticed without any proof thereof.
- (2) On the application of the opposite party and upon being satisfied that the party securing an order for examination is not proceeding with due diligence to implement the order, the Court

may rescind the order and make such other order as justice requires.

- (3) Where in the opinion of the Court the credibility of a witness whose evidence has been taken at a distance is likely to be of decisive importance the Court may decline to accept the deposition and require the party tendering the same to call the witness to give oral evidence at the hearing.

Compare: SR 1948/197 r 198(18), (20); SR 1973/244 r 12(2), (3)

Consolidation of proceedings

384 When order may be made

Where 2 or more proceedings are pending and it appears to the Court—

- (a) That some common question of law or fact arises in both or all of them; or
- (b) That the rights to relief claimed therein are in respect of or arise out of—
- (i) The same event; or
 - (ii) The same transaction; or
 - (iii) The same event and the same transaction; or
 - (iv) The same series of events; or
 - (v) The same series of transactions; or
 - (vi) The same series of events and the same series of transactions; or
- (c) That for some other reason it is desirable to make an order under this rule,—

the Court may order those proceedings to be consolidated on such terms as it thinks just, or may order them to be heard at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

Compare: High Court Rules, r 382

385 Application of rule 384

Rule 384 shall apply notwithstanding—

- (a) That the relief claimed in the proceedings is not the same; or

- (b) That one or more of the proceedings is brought pursuant to the provisions of an Act conferring special jurisdiction on the Court.

Compare: High Court Rules, r 383; SR 1991/132 r 16(1)

Arbitration by consent

Rule 385A and the preceding heading were inserted, as from 1 March 2001, by rule 17 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

385A Arbitration by consent

- (1) The parties to a proceeding may agree to arbitration of their dispute or any part of it under the Arbitration Act 1996 at any time during the course of the proceeding.
- (2) If an arbitration agreement entered into during the course of a proceeding relates to all the matters in dispute in the proceeding, the Court must stay the proceeding.
- (3) If an arbitration agreement entered into during the course of a proceeding relates to some but not all of the matters in dispute in the proceeding, the Court must stay those parts of the proceeding to which the arbitration agreement relates.
- (4) Subclauses (2) and (3) do not apply if the Court finds that the agreement has no effect or is inoperative or incapable of being performed.

Compare: High Court Rules r 383A.

Rule 385A and the preceding heading were inserted, as from 1 March 2001, by rule 17 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Accounts and inquiries

386 When accounts and inquiries may be ordered

A Judge may, on the application of any party, before, at, or after the hearing of a proceeding, make orders for the taking of any account or the making of any inquiry, whether or not that relief has been claimed in that party's pleading.

Compare: SR 1948/197 rr 78, 149, 184; SR 1973/244 r 11(1), (2); SR 1980/55 r 3(1)(b); High Court Rules, r 384

387 Directions

Where the Judge makes an order for the taking of an account or the making of an inquiry, the Judge may, by the same or a subsequent order,—

- (a) Give directions or further directions as to the account or inquiry:
- (b) Order additional accounts or inquiries:
- (c) Direct that, in the taking of any account, the relevant books of account shall be prima facie evidence of the truth of the matters contained in them.

Compare: High Court Rules, r 385

388 Summary order for accounts

- (1) Subject to subclause (2), where a party, in that party's pleading, claims an account or makes a claim which involves taking an account, the Judge may, on application by that party at any stage of the proceeding, order that an account be taken and that any amount certified on taking the account to be due to any party be paid to that party.
- (2) The Judge shall not make an order under subclause (1)—
 - (a) If it appears that there is some preliminary question to be determined; or
 - (b) As against a defendant who has not filed a statement of defence or an appearance, until the time for filing a statement of defence has expired.

Compare: High Court Rules, r 386

389 Mutual accounts

- (1) Where, on any application for an order under rule 386 or rule 388 for the taking of an account, it appears to the Judge that by reason of the relationship of the parties or their course of dealing or for any other reason each is accountable to the other, the Judge may order that accounts be taken between them on that footing.
- (2) At the time of making an order under subclause (1), or at any time thereafter, the Judge may direct—
 - (a) That the result of taking the account be certified as the net balance found to be due to one party; or

- (b) That the certificate show the amounts shown to be due to the respective parties.

Compare: High Court Rules, r 387

390 Before whom accounts may be taken

- (1) Accounts may be ordered to be taken before—
 - (a) The Registrar; or
 - (b) The Registrar and an accountant.
- (2) Unless otherwise ordered, any accountant who takes an account shall be a member of the New Zealand Society of Accountants who is classified as a chartered accountant in public practice.

Compare: High Court Rules, r 388

391 Remuneration of accountant

- (1) Where, pursuant to rule 390, accounts are ordered to be taken before the Registrar and an accountant, the remuneration of the accountant shall be fixed by the Judge.
- (2) The Judge may by the order for the taking of accounts or at any later time make such order as the Judge thinks fit for and incidental to the payment of the remuneration of the accountant, including (without limiting the generality of the foregoing provisions of this rule) any one or more of the following:
 - (a) An order directing that the remuneration of the accountant shall be paid by one or more of the parties, and, if more than one, in such proportions as the Judge thinks proper;
 - (b) An order that any party or parties give security, on such terms as the Judge thinks fit, for the remuneration of the accountant.
- (3) The provisions of subclause (2) are without prejudice to the power of the Judge to make an order providing for the payment of the accountant's remuneration as part of the costs of the proceeding.

Compare: SR 1948/197 r 187(2)(c); SR 1973/244 r 11(3); High Court Rules, r 389

392 Form, etc, of accounts

- (1) This rule and rules 393 to 405 apply subject to any order or direction made or given under rule 387 or rule 389.
- (2) In this rule and in rules 393 to 405, **accounting party**—
 - (a) Means the party required by the order for the taking of an account to account to the other; and
 - (b) In a case coming within rule 389, means each party.

Compare: High Court Rules, r 390

393 Form and verification of account

- (1) The items on each side of an account shall be numbered consecutively.
- (2) An accounting party shall verify his or her account by affidavit and the account shall be made an exhibit to the affidavit.

Compare: SR 1948/197 r 186; High Court Rules, r 391

394 Filing and service of account

An accounting party shall, within 14 days after the order for taking the account has been served on that party,—

- (a) File that party's account and verifying affidavit; and
- (b) Serve a copy of that party's account and verifying affidavit on each other party.

Compare: SR 1948/197 r 187(1); SR 1973/244 r 11(1); High Court Rules, r 392

395 Notice of surcharge

Where a party seeks to charge an accounting party with the receipt of an amount beyond that admitted by the accounting party in the accounting party's account, the party served with the account shall, within 14 days after being so served, give to the accounting party notice of the charge stating, so far as the party served with the account is able, the amount which the party served with the account seeks to charge, with brief particulars.

Compare: High Court Rules, r 393

396 Notice of error

Where a party alleges that any item in the account of an accounting party is erroneous in amount or otherwise, that party

shall, within 14 days after being served with the account, give to the accounting party notice of the allegation, stating the grounds for alleging the error.

Compare: High Court Rules, r 394

397 Admission of items

Except to the extent shown in a notice given under rule 395 or rule 396, all items in the account shall be deemed to be admitted as correct.

Compare: High Court Rules, r 395

398 Appointment and notice for taking accounts

As soon as may be after the accounting party has filed the accounting party's account, the person or persons before whom the account is to be taken—

- (a) Shall appoint a time (not being less than 21 days after the day of the filing of the account) and a place for taking the account; and
- (b) Shall give notice of that time and place to the parties not less than 7 days before the day on which the account is to be taken.

Compare: High Court Rules, r 396

399 Parties to attend taking of account

At the time and place appointed under rule 398, the parties or their solicitors or counsel shall attend and, on being satisfied that notice of the appointment has been duly given and received, the person or persons before whom the account is to be taken may thereupon proceed therewith, notwithstanding the absence of any party.

Compare: SR 1948/197 r 185; High Court Rules, r 397

400 Adjournment

The person or persons before whom the account is to be taken may adjourn the taking thereof from time to time and from place to place as may be necessary or expedient.

Compare: High Court Rules, r 398

401 Submission of question to Judge

The Registrar or the accountant and the Registrar, as the case may be, may submit any question arising in the inquiry for the decision of the Judge.

Compare: SR 1948/197 r 185(g)

402 Examination of accounting party

Where any item has been referred to the Judge under rule 401, the Judge may order that the accounting party appear before the Judge to be examined orally with regard to the disputed item of account.

Compare: High Court Rules, r 400

403 Production of vouchers

Where required by written notice to that effect, the accounting party shall produce, at the taking of the account or at that party's examination under rule 402, all vouchers in that party's possession or power relating to any disputed item of account specified in the notice.

Compare: High Court Rules, r 401

404 Interest on debts of deceased person

Where a judgment or order is made directing an account of the debts of a deceased person, interest shall be computed on such debts, unless otherwise ordered, from the date of the judgment, and as to such of them as carry interest, at the rate they respectively carry, and as to all others at the rate from time to time prescribed for the purposes of section 62B of the Act or such lower rate as the Court may order.

Compare: High Court Rules, r 402

405 Just allowances

In taking an account all just allowances shall be made.

Compare: High Court Rules, r 404

406 Directions as to inquiries, etc

The Court may direct that inquiries as to next of kin, creditors, and other claimants, or as to any other matters of like nature,

shall be made by or before the Registrar or any other person, at such time and in such manner as the Court may direct.

Compare: High Court Rules, r 405

General provisions affecting accounts and inquiries

407 Powers of persons taking accounts or making inquiries

The person or persons before whom accounts are directed to be taken or inquiries made under rule 390 or rule 406 may, as he or she or they think fit,—

- (a) Issue advertisements; and
- (b) Summon parties and witnesses; and
- (c) Administer oaths; and
- (d) Receive affidavits and acknowledgements; and
- (e) Examine parties and witnesses either upon interrogatories or *viva voce*.

Compare: SR 1948/197 r 185(e), (f); High Court Rules, r 406

408 Duty of persons summoned to attend

- (1) Persons so summoned shall be bound to attend in accordance with the summons, and to attend further from time to time without further summons, at such times as may be appointed for the consideration or further consideration of the matter.
- (2) If any person so summoned fails so to attend, that person shall be liable to the same extent as if that person had disobeyed an order of the Court.

Compare: SR 1948/197 r 185(e); High Court Rules, r 407

409 Time for proving claims

The time to be allowed for persons to come in and prove their claims (as creditors, next of kin, etc) shall be fixed by the Judge and shall not be less than one clear month after the date of the first publication of the advertisement to come in and prove.

Compare: High Court Rules, r 408

410 Statement of claim to be filed

Every person coming in to claim as creditor or next of kin or otherwise shall file a statement of claim verified by affidavit.

Compare: High Court Rules, r 409

411 Failure to claim within time

All persons who do not come in and prove their claims within the time fixed for that purpose by advertisement shall be excluded from the benefit of the judgment or order directing accounts or enquiries.

Compare: High Court Rules, r 410

412 Report

- (1) A report under section 62 or section 62A of the Act—
 - (a) Shall be in writing; and
 - (b) Shall be filed in the office of the Court; and
 - (c) Shall be open to inspection by the parties.
- (2) The Registrar shall, on the filing of the report, give notice thereof to all parties.
- (3) When the report has been filed,—
 - (a) If the further consideration of the proceeding has been adjourned to a day named, any party may apply on that day to the Judge to adopt the report, or may give not less than 3 clear days' notice of that party's intention to make an application on that day to vary the report, or to remit the report or any part thereof for further inquiry or report:
 - (b) If the further consideration has not been adjourned to a day named, any party may, on not less than 3 clear days' notice apply to the Judge to adopt or vary the report, or to remit the report or any part thereof for further inquiry and report.

Compare: SR 1948/197 r 187(1), (2)(a), (b); SR 1973/244 r 11(1)

413 Abandonment of excess where more than \$200,000 found due on taking of accounts

Where upon taking an account it appears that a plaintiff is entitled to a larger amount than \$200,000, and the plaintiff has not by the plaintiff's statement of claim abandoned the excess

over \$200,000 the plaintiff may, if the defendant does not agree to extend the jurisdiction of the Court under section 37 of the Act, by leave of the Court abandon the excess over \$200,000, and judgment may be entered accordingly.

Compare: SR 1948/197 r 171; SR 1980/55 r 3(1)(d)

414 Party may take opinion of Court

Any party may, either while any accounts are being taken or inquiries made, or within 14 clear days after such accounts or inquiries have been completed, and before the certificate or report has been signed as adopted, take the opinion of the Court on any particular point or matter arising in the course thereof or on the general result thereof when completed.

Compare: High Court Rules, r 413

415 Distribution before all persons entitled are ascertained

Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

Compare: High Court Rules, r 415

416 Payment of share carried over to separate trust account

Where the rights or circumstances of the parties at the time judgment is given are not such as to enable the Judge to order absolutely that payment be made to the persons entitled thereto, and the Judge has ordered the share of any party which has not become absolute to be carried over on trust in the proceeding to a separate account, such party on becoming entitled may apply for payment of his or her share on notice to the other persons interested in the separate account, whereupon payment to the party so entitled may be ordered.

Compare: High Court Rules, r 416

*Separate decision of questions***417 Definition of question**

In rules 418 to 424, **question** includes any question or issue in any proceeding, whether of fact or of law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties, or otherwise.

Compare: High Court Rules, r 417

418 Orders for decision

The Court may, whether or not the decision will dispose of the proceeding, make orders for—

- (a) The decision of any question separately from any other question, before, at, or after any hearing or further hearing in the proceeding; and
- (b) The formulation of the question for decision and, if thought necessary, the statement of a case.

Compare: High Court Rules, r 418

419 Removal into High Court

- (1) Where the Court makes an order under rule 418 for the decision of a question of law, the Court may further order that the question of law be removed into the High Court.
- (2) The Court shall give a direction as to which documents, or classes of documents, relating to the proceeding shall be forwarded to the High Court.

Compare: High Court Rules, r 419

420 Agreed result

- (1) The parties to a proceeding in which an order is sought or has been made under rule 418 may agree that, on any question being decided in the sense specified in the agreement, a specified direction for entry of judgment or a specified order shall be made.
- (2) On that question being so decided, the Court may make the agreed direction or order.

- (3) Where an agreement is made pursuant to subclause (1) before a case is stated, the terms of the agreement shall be set out in the case stated.

Compare: High Court Rules, r 420

421 Record, etc, of decision

Where any question is decided pursuant to an order made under rule 418, the Court shall, subject to rule 422, either—

- (a) Cause the decision to be recorded; or
- (b) Direct the entry of such judgment or make such order, as the nature of the case requires.

Compare: High Court Rules, r 421

422 Disposal of proceeding

Where a decision of a question pursuant to an order made under rule 418—

- (a) Substantially disposes of the proceeding or of the whole or any part of any claim for relief in the proceeding; or
- (b) Renders unnecessary any hearing or further hearing in the proceeding or on the whole or any part of any claim for relief in the proceeding,—

the Court, at the time of deciding the question or at any subsequent time, may, as the nature of the case requires,—

- (c) Dismiss the proceeding or the whole or any part of any claim for relief in the proceeding; or
- (d) Direct the entry of any judgment; or
- (e) Make any other order.

Compare: High Court Rules, r 422

423 Form and contents of case

A case stated pursuant to an order under rule 418(b)—

- (a) Shall be divided into paragraphs numbered consecutively; and
- (b) Shall state concisely such facts, and have attached to it such documents, as are necessary to enable the Court—
 - (i) To decide the questions arising on the case stated; or
 - (ii) Otherwise to hear and determine the questions arising on the case stated; and

- (c) State the questions and matters to be decided or determined.

Compare: High Court Rules, r 423

424 Insufficient case, disputed facts or documents

Where it appears to the Court that a case stated does not state the facts and documents sufficiently to enable the Court to decide the questions arising or otherwise to hear and determine the questions and matters on the case stated, or in any case in which any relevant fact or document is disputed, the Court may—

- (a) With the consent of all parties interested, amend the case stated; or
- (b) Receive evidence, make findings of fact, and amend the case stated in accordance with the findings of fact of the Court.

Compare: High Court Rules, r 424

Setting down and fixtures for hearing

425 Application of rules 426 to 432

The provisions of rules 426 to 432 apply to all proceedings other than—

- (a) An action for recovery of land under section 32 of the Act;
- (b) Proceedings which are to be dealt with in Chambers.

Compare: High Court Rules, r 425

426 Procedure for setting down

- (1) When a proceeding is ready for hearing, any party thereto may set it down for hearing by filing an application for a fixture in form 38 signed by each party who has given an address for service.
- (2) Where there are 3 or more parties to a proceeding whose signatures are required, separate applications may be used for the purposes of this rule.

Compare: High Court Rules, r 426

426A Consequences of failure to set down within 12 months after last step in proceeding

- (1) If a proceeding has not been set down for hearing and at least 12 months have elapsed since the last step was taken in that proceeding, no further step may be taken in that proceeding without the leave of the Court.
- (2) Leave must not be given under subclause (1) unless the Court is satisfied that there is a proper issue to be heard in the proceeding.

Compare: High Court Rules r 426A.

Rule 426A was inserted, as from 1 March 2001, by rule 18 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

427 Particulars required in application for fixture

- (1) Every application for a fixture shall include a certificate that the proceeding is in all respects ready for hearing and shall state the estimated length of time required for the hearing.
- (2) Every application shall also contain the following additional information, so far as the same is applicable:
 - (a) Any dates on which, or between which, a fixture is not desired:
 - (b) The names of counsel for the respective parties.

Compare: High Court Rules, r 428(1), (2)(b), (f)

428 Preparing and signing application

- (1) The party preparing the application for a fixture shall sign it before submitting it to any other party.
- (2) Where a party has a solicitor on the record, the application for a fixture and any certificate which may be required to be given in respect thereof shall be signed by that solicitor, or by counsel.
- (3) Each person signing an application for a fixture shall add to his or her signature the date on which it is signed by that person.
- (4) Each party to whom an application for a fixture is presented for signing shall return it to the party by whom it is presented not later than 14 days after the day on which that party receives it, whether or not it has been signed.

- (5) If at any time after the filing of an application for a fixture a party by whom or on whose behalf it has been signed, or that party's solicitor or counsel, finds that any information given in it is not, or is no longer, correct, he or she shall immediately inform the Registrar.

Compare: High Court Rules, r 429

429 Procedure on filing application

- (1) It shall be the duty of the party by whom an application for a fixture is prepared to ensure that it is filed within 14 days after the date upon which it is returned by the last party to whom it has been presented for signing; but any party may file the application.
- (2) If any party who has given an address for service fails to sign and return an application for a fixture within 14 days after it has been presented to that party for that purpose, that party shall be deemed to have refused to sign it and any party who has signed it may file an application for a fixture without such signature and in that case shall subscribe the application for a fixture with a certificate signed by that party that such other party has failed to sign and return the application in terms of this subclause.
- (3) Within 7 days after the application for a fixture has been filed, the Registrar shall send a copy thereof to the other party together with a notice, signed by the Registrar, that the application for a fixture has been filed. Such notice may be in form 39.
- (4) The party by whom the application for a fixture is filed shall, at the time of filing it, lodge in the Court a sufficient number of copies of the application and forms of notice to enable the Registrar to send copies thereof as required by subclause (3).
- Compare: SR 1948/197 r 113(c); SR 1968/183 r 4; SR 1980/55 r 6(a), (b), (c); High Court Rules, r 430

430 Setting down

On receipt of an application for a fixture the Registrar shall set the proceeding down for hearing and give notice to the parties in form 40.

Compare: High Court Rules, rr 431-434; SR 1991/132 r 17(1)

431 No steps after setting down, without leave

- (1) After a proceeding has been set down for hearing no statement of defence or amended pleading or affidavit shall be filed, and no interlocutory application shall be made, or step taken, in the proceeding without the leave of the Court, except an application for such leave or an application for directions under rule 434.
- (2) Where the effect of a pleading or affidavit is merely to bring up to date the information before the Court, subclause (1) shall not apply to that pleading or affidavit.

Compare: High Court Rules, r 432

432 Court may direct hearing at any time

- (1) Notwithstanding the provisions of rules 425 to 431, where a Judge is satisfied that it is just so to do, he or she may at any time, on the application of any party, or of his or her own motion order that a proceeding be heard at such time as the Judge in the circumstances thinks proper.
- (2) Subject to subclause (3), every application under this rule shall be made on notice to all other parties.
- (3) No notice shall be required to be given to a party who has not filed a statement of defence or an address for service if the time (if any) allowed to such party for taking either step has expired.
- (4) Upon making an order under this rule, the Judge may, for the purpose of facilitating the prompt and just disposal of the proceeding, make such order as the Judge thinks fit as to—
 - (a) The time for filing statements of defence or other pleadings or affidavits in opposition; and
 - (b) The place of hearing; and
 - (c) Any other matter.

Compare: High Court Rules, r 436

Directions

433 Directions before setting down

- (1) At any time before a proceeding has been set down for hearing, any party may file an interlocutory application for directions regarding the proceeding.

- (2) The application shall specify the matter or matters upon which directions are sought and, as far as possible, the directions sought.
- (3) The application—
 - (a) Where it is filed before the time for filing a statement of defence has expired, shall be served on the other parties; and
 - (b) In any other case, shall be served on any other party who has given an address for service.
- (4) Service shall be effected under subclause (3) whether or not any party served will be affected by the directions sought.
- (5) At the hearing of an interlocutory application for directions any party served may apply for directions without filing an application.
- (6) Upon any application for directions, the Court or the Registrar may make such orders and give such directions as the Court or the Registrar thinks fit with a view to facilitating and expediting preparation for the hearing and overcoming delay by any party, whether or not any such order or direction has been sought by any party.
- (7) In particular, but without limiting the powers of the Court or the Registrar under this rule, the Court or the Registrar may—
 - (a) Make any order that the Court or the Registrar, as the case may be, is empowered to make upon any interlocutory application for a specific order; or
 - (b) Give such directions as the Court or the Registrar thinks fit as to the future course of the proceeding as may best secure the just, expeditious, and economical disposal thereof; or
 - (c) Give such directions as the Court or the Registrar thinks fit for the completion of all necessary steps in the proceeding; or
 - (d) Fix the time within which any step shall or may be taken by any party; or
 - (e) Where any party is in default in complying with these rules or any order made thereunder, order that the proceeding if commenced by that party be stayed, or that the pleading of the party in default be struck out either at the time when the order is made or at such time there-

after and subject to such terms and conditions as may be specified in the order.

- (8) The Court or the Registrar may, with the consent of the parties, make an order directing the parties to attempt to settle their dispute by any form of mediation or other alternative dispute resolution (to be specified in the order) that the parties have agreed.

Compare: SR 1948/197 r 145; High Court Rules, r 437

Subclause (8) was inserted, as from 1 March 2001, by rule 19 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

434 Directions affecting the hearing

- (1) At any time after the proceeding is set down for hearing, any party may apply to the Court for an order for directions affecting the hearing, stating the directions sought.
- (2) The application shall be served on any party who has given an address for service in the proceeding, whether or not any party served will be affected by the directions sought.
- (3) On the hearing of the application, the Court may make such orders and give such directions (whether sought by the party applying or not) as appear best adapted to secure the just, expeditious, and economical disposal of the proceeding.
- (4) In particular, but without limiting the generality of the foregoing provision, the Court may by its order—
- (a) Direct such amendments to pleadings be made as may appear necessary:
 - (b) Direct that any admissions (including admissions of the validity of documents) which have been made by any party and which do not appear in the pleadings, be recorded in such manner as the Court thinks fit:
 - (c) Define the issues to be heard:
 - (d) Direct that any issue, whether of fact or of law or of both, be heard before any other issue:
 - (e) Direct how and when any issue affecting a third or subsequent party shall be heard, including directions as to the part that such party may take in the hearing of any issue between the plaintiff and the defendant:

- (f) Direct the order in which the parties shall present their respective cases, having regard to the onus of proof on any particular issue or issues:
 - (g) Direct the order in which counsel may cross-examine witnesses called on behalf of any other party:
 - (h) Limit the number of addresses and cross-examinations of witnesses by counsel appearing for parties having the same interest:
 - (i) Direct that the evidence, or the evidence of any particular witness or witnesses, shall be given by examination viva voce in open Court, or by affidavit, or by pre-recorded statement or report duly sworn by the witness before or at the hearing, or partly by one and partly by another or others of such modes of testifying:
 - Provided that in every case any opposite party shall (if that party so requires) have the opportunity of cross-examining any witness:
 - (j) Direct that a copy of any pre-recorded statement or report or any affidavit of a witness which is intended to be tendered as his or her evidence shall be delivered to the opposite party not less than 24 hours before it is so tendered:
 - (k) Limit the number of expert witnesses that may be called by any party:
 - (l) Direct that any party or all parties shall deliver to every opposite party a list of all documents (whether included in any discovery made by the party or not) which the party delivering the list intends to tender in evidence, not less than 24 hours before the commencement of the hearing:
 - (m) Determine any question of admissibility of any evidence proposed to be tendered at the hearing by any party:
 - (n) Order that evidence of any particular fact may be given at the hearing in such manner (to be specified in the order) as the parties have agreed.
- (5) The Court may, with the consent of the parties, make an order directing the parties to attempt to settle their dispute by any

form of mediation or other alternative dispute resolution (to be specified in the order) that the parties have agreed.

Compare: High Court Rules, r 438

Subclause (5) was inserted, as from 1 March 2001, by rule 20 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

435 Court to seek admissions and agreements

- (1) At the hearing of an application made under rule 434, the Court—
 - (a) Shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceeding which ought reasonably to be made by them; and
 - (b) With a view to such special order (if any) as to costs as may be just being made at the hearing, may cause a record to be made, in such form as the Court may direct, of any refusal to make any admission or agreement.
- (2) Nothing in this rule shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the Court shall cause a record to be made, in such form as the Court may direct, of any such agreement.

Compare: High Court Rules, r 439

436 Order may be varied at hearing

Any order or direction made or given pursuant to rule 434 may, if justice so requires, be varied or revoked (in whole or in part) by the Court at the hearing.

Compare: High Court Rules, r 440

437 Court may convene conference of parties

- (1) The Court or the Registrar may, of the Court's or the Registrar's own motion or on the application of any party at any time before or during the hearing, require the parties to attend in Chambers with a view to making any order or giving any directions, which might be made or given on an application under rule 433 or rule 434.

- (2) The Court may, after hearing the parties, make any order or give any directions which might be made or given pursuant to rule 433 or rule 434.
- (3) The Registrar may, after hearing the parties, make any order or give any directions which might be made or given pursuant to rule 433.

Compare: High Court Rules, r 441; SR 1985/328 r 12

438 Judge may assist in negotiations for settlement

- (1) A Judge may, at any time before the hearing commences, convene a conference in chambers of the parties for the purpose of negotiating for a settlement of the proceeding or of any issue, and may assist in the negotiations; but that Judge must not preside at the hearing of the proceeding unless—
 - (a) all parties taking part in the conference consent; or
 - (b) the only matter for resolution at the hearing is a question of law.
- (2) A Judge may, at any time during the hearing, with the consent of the parties, convene a conference in chambers of the parties for the purpose of negotiating for a settlement of the proceeding or of any issue; and the Judge must arrange for another Judge to assist in the negotiations unless the parties agree that the hearing Judge should assist, in which case the hearing Judge may do so and continue to preside at the hearing.

Compare: High Court Rules r 442.

Rule 438 was substituted, as from 1 March 2001, by rule 21 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Part 5 Procedure in special cases

439 Application of this Part to proceedings within equitable jurisdiction

This Part applies to proceedings in which the relief claimed is wholly within the equitable jurisdiction of the Court.

Compare: High Court Rules, r 447

440 Application of this Part to proceedings under certain Acts

(1) This Part applies to proceedings in which the relief claimed is solely under the following Acts:

(a)

(b)

(c)

(d) The Industrial and Provident Societies Act 1908.

(2) Where any rules are in force under the Act under which relief is claimed, the application of this Part to the proceedings shall be subject to those rules.

Compare: High Court Rules, r 448(1)(e), (g), (h), (i), (k), (2)

Subclause (1)(a) and (1)(b) was revoked, as from 3 February 2003, by rule 6 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

Subclause (1)(c) was revoked, as from 1 February 2002, by rule 5 District Courts Amendment Rules (No 2) 2001 (SR 2001/381).

Subclause (1)(d) was inserted, as from 1 February 1996, by rule 16 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

440A Application of rule 447 to proceedings under Property (Relationships) Act 1976

[Revoked]

Rule 440A was inserted, as from 1 February 2002, by rule 6 District Courts Amendment Rules (No 2) 2001 (SR 2001/381).

Rule 440A was revoked, as from 3 February 2003, by rule 7 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

441 Application of this Part to other proceedings

This Part applies to—

(a) Any proceeding—

(i) By any mortgagee or mortgagor, whether legal or equitable, of real property; or

(ii) By any person entitled to or owning real property subject to a legal or equitable charge; or

(iii) By any person having the right to exercise any powers, whether statutory or otherwise, under any mortgage or charge of real property or to redeem any mortgage or charge whether legal or equitable, of real property—

for the purpose of determining any sufficient question arising out of the plaintiff's status as such mortgagee

or mortgagor or person, or the exercise or purported or threatened exercise of any right or power conferred or alleged to be conferred by the mortgage or charge:

- (b) Any other proceeding to which the Court directs that this Part shall apply.

Compare: High Court Rules, r 449(b), (d); SR 1991/132 r 18

442 Proceedings commenced by originating application

Nothing in rule 440 prevents relief under any of the provisions specified in that rule or relief under any provision to which rule 452(1)(a) applies being claimed in a proceeding commenced by the filing of an originating application under Part 6; but where relief under any of the provisions so specified is claimed in a proceeding so commenced, nothing in this Part applies to that proceeding.

Compare: High Court Rules, r 449A; SR 1987/169 r 9

443 Naming of defendants

[Revoked]

Rule 443 was revoked, as from 3 February 2003, by rule 8 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

444 Directions as to service

- (1) Where—
- (a) The law so requires; or
 - (b) The plaintiff is in doubt regarding the persons on whom the statement of claim should be served; or
 - (c) An order is sought that any person represent any other person or class of persons who should be served; or
 - (d) The Court, being of the opinion that the plaintiff should apply to the Court under this rule, so directs,—
- the plaintiff shall apply to the Court *ex parte* for directions as to service and for such orders for representation as may be required.
- (2) In support of the application the plaintiff shall furnish (by affidavit or otherwise) such information as may be necessary to enable the Court to decide what persons or classes of persons are interested in or may be adversely affected by the relief

sought by the plaintiff and by what means the interests of each such person or class of persons may be adequately represented.

- (3)
- (4) The application shall specify the directions that are considered appropriate and shall be accompanied by a memorandum by the plaintiff's solicitor or counsel giving the reasons therefor.
- (5) On an application under this rule, the Court may make any orders for service or representation that it considers proper, and, in particular, it may make orders with regard to the representation of incapacitated persons or minors, without the appointment of a litigation guardian under rule 88C if it considers it is not necessary to appoint one.
- (6) The effect of every order for directions as to service or for representation made pursuant to this rule shall be set out in the notice of proceeding in accordance with rule 127(3).

Compare: High Court Rules, r 451; SR 1987/169 r 10

Subclause (3) was substituted, as from 1 February 1996, by rule 17 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

Subclause (3) was amended, as from 1 February 2002, by rule 7 District Courts Amendment Rules (No 2) 2001 (SR 2001/381) by substituting the words "or the Law Reform (Testamentary Promises) Act 1949, the information required by subclause (2) includes" for the words "the Law Reform (Testamentary Promises) Act 1949, or the Matrimonial Property Act 1963, the information required by subclause (2) shall include".

Subclause (3) was revoked, as from 3 February 2003, by rule 9 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

Subclause (5) was substituted, as from 1 February 2003, by rule 10 District Courts Amendment Rules (No 4) 2002 (SR 2002/411). *See* rule 11 of those rules for the transitional provision relating to application to existing proceedings.

Subclause (5) was amended, as from 24 August 2007, by rule 14(a) District Courts Amendment Rules 2007 (SR 2007/205) by inserting "or minors" after "incapacitated persons".

Subclause (5) was amended, as from 24 August 2007, by rule 14(b) District Courts Amendment Rules 2007 (SR 2007/205) by substituting "88C" for "87(3)".

445 Proceeding without service

- (1) Where—
 - (a) By any Act or by these rules service of the statement of claim in a proceeding to which this Part applies is not required; or
 - (b) Service has been dispensed with by the Court,—

the facts alleged in the statement of claim shall be verified by or on behalf of the plaintiff by an affidavit (which may be appended to the statement of claim or filed separately) deposing that, so far as they relate to matters within the personal knowledge of the deponent, they are true, and, so far as they relate to matters not within the deponent's personal knowledge, the deponent believes them to be true.

- (2) Notwithstanding subclause (1), the Court may require any fact not within the personal knowledge of the deponent to be proved by the affidavit of a person having such personal knowledge.

Compare: High Court Rules, r 452

446 Joining in proceedings under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949

[Revoked]

Rule 446 was revoked, as from 3 February 2003, by rule 10 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

447 Joinder of claims and consolidation

[Revoked]

Rule 447 was revoked, as from 3 February 2003, by rule 10 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

Subclause 2 was substituted and subclause 2A was inserted, as from 1 February 2002, by rule 8 District Courts Amendment Rules (No 2) 2001 (SR 2001/381).

448 Evidence

- (1) Subject to any direction by the Court in any particular case, evidence in any proceeding to which this Part applies shall be given—
- (a) By means of an agreed statement of facts in accordance with rule 500; or
 - (b) By affidavit in accordance with rules 505 to 517.
- (2) Subject to any direction by the Court in any particular case, nothing in subclause (1) applies in respect of—
- (a)

- (b) A proceeding in which relief by way of specific performance is sought.

Compare: High Court Rules, r 455; SR 1985/328 r 15

Subclause (2)(a) was revoked, as from 3 February 2003, by rule 11 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

449 Time for serving claimant’s affidavit in certain proceedings under Family Protection Act 1955

[Revoked]

Rule 449 was substituted, as from 1 February 2002, by rule 9 District Courts Amendment Rules (No 2) 2001 (SR 2001/381).

Rule 449 was revoked, as from 3 February 2003, by rule 12 District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

450 Time for serving affidavit in support of appearance

- (1) Where a defendant in any proceeding to which this Part applies files an appearance in lieu of a statement of defence, he or she may, at the time of serving that appearance, without leave, and at any time thereafter with leave of the Court, serve affidavits in support of any matters referred to in the appearance.
- (2) These rules shall apply to affidavits filed under subclause (1) as though they were affidavits filed by a plaintiff in support of a statement of claim.

Compare: High Court Rules, r 457

451 Statement of defence to be filed

- (1) Subject to rule 450, no affidavit may be filed by a defendant in opposition to the claim of the plaintiff unless the defendant has filed and served a statement of defence thereto or an appearance.
- (2) Affidavits filed by any party after a statement of defence or appearance has been filed shall be confined to matters put in issue by pleadings or by the appearance.

Compare: High Court Rules, r 458

Subclause (1) was amended, as from 3 February 2003, by rule 13 District Courts Amendment Rules (No 3) 2002 (SR 2002/394), by omitting the words “or of any claimant under rule 446”.

Part 6

Originating applications

452 Application of this Part

- (1) This Part applies to—
- (a) an application to a Court under any of the following provisions:
 - (i) sections 3, 8, 12, 13, and 20 of the Adoption Act 1955:
 - (ii) sections 8, 9, 19, and 20 of the Alcoholism and Drug Addiction Act 1966:
 - (iii) Arbitration Act 1996:
 - (iv) section 72A of the Arms Act 1983:
 - (v) Auctioneers Act 1928:
 - (vi) sections 227, 126, 130, 156, 158, 330, and 381 of the Building Act 2004:
 - (via) sections 9 and 10 of the Criminal Records (Clean Slate) Act 2004:
 - (vii) section 62 of the Civil Aviation Act 1990:
 - (viii) sections 52, 58(1), and 78(1)(b) of the Crown Minerals Act 1991:
 - (ix) section 23(3) of the Defamation Act 1992:
 - (x) sections 95D, 96, 180, and 208 of the Electoral Act 1993:
 - (xi) Fencing Act 1978:
 - (xii) section 32 of the Gas Act 1992:
 - (xiii) section 126 of the Health Act 1956:
 - (xiv) section 105 of the Land Transport Act 1998:
 - (xv) section 12 of the Layby Sales Act 1971:
 - (xvi) section 43 of the Local Elections and Polls Act 1976:
 - (xvii) section 18(2)(c) of the Marriage Act 1955:
 - (xviii) Massage Parlours Act 1978:
 - (xix) section 14(4) of the Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - (xx) sections 9, 12, and 16 of the Minors' Contracts Act 1969:
 - (xxi) *[Revoked]*
 - (xxii) Proceeds of Crime Act 1991:

- (xxiii) sections 313, 316, 334, 341, and 357 of the Property Law Act 2007:
 - (xxiv) section 66 of the Public Trust Office Act 1957:
 - (xxv) Secondhand Dealers and Pawnbrokers Act 2004:
 - (xxvi) Sharebrokers Act 1908:
 - (xxvii) section 199 of the Summary Proceedings Act 1957:
 - (xxviii) section 16 of the Tuberculosis Act 1948:
 - (b) an application under any provision if the relevant enactment expressly provides for the application to be made by originating application:
 - (c) any other proceeding that the Court, in the interests of justice, permits to be commenced by the filing of an originating application.
- (2) The provisions of this Part are, in their application to any originating application, subject to the Act under which the application is made and any regulations or rules made under that Act.
- (3) Despite subclause (1)(a)(iii), a second or subsequent application to the Court under the Arbitration Act 1996 with respect to the same arbitration, whether brought by the plaintiff or the defendant, must be made by interlocutory application in the same proceeding as the first application.

Compare: High Court Rules r 458D.

Rule 452 was substituted, as from 1 March 2001, by rule 22 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclause (1)(a)(vi) was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). See subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subclause (1)(a)(via) was inserted, as from 1 February 2005, by rule 9 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Subsection (1)(a)(xxi) was revoked, as from 1 April 2005, by section 89 Secondhand Dealers and Pawnbrokers Act 2004 (2004 No 70).

Rule 452(1)(a)(xxiii): substituted, on 1 January 2008, by rule 5 of the District Courts (Property Law Act 2007) Amendment Rules 2007 (SR 2007/387).

Subsection (1)(a)(xxv) was amended, as from 1 April 2005, by section 89 Secondhand Dealers and Pawnbrokers Act 2004 (2004 No 70) by substituting the words "Secondhand Dealers and Pawnbrokers Act 2004" for the words "Secondhand Dealers Act 1963".

453 Originating applications

- (1) Any proceeding to which this Part applies may be commenced by the filing of an originating application in the proper Court, as determined in accordance with rule 113(1).
- (2) Rule 43 shall apply in relation to any proceeding commenced by the filing of an originating application.
- (3) Subject to rule 7, the proper heading of a document presented for filing in a proceeding commenced by the filing of an originating application shall,—
 - (a) Where there is a defendant or respondent to the application, be in form 1; and
 - (b) In any other case, be as follows:

In the Matter of

[*Short Title of Act*]

And

In the Matter of

[*Full name*],

[*Place of residence*]

[*Occupation*]

- (4) This rule has effect notwithstanding anything in rule 112 or Part 5.

Compare: High Court Rules, r 458E(1), (3), (4), (5); SR 1987/169 r 12

454 Application of provisions relating to interlocutory applications

- (1) In relation to originating applications, the provisions of rules 256, 257, 260, 263, 266, 267, 270, 271, 275, 278, 279, 280, 281, 282, 283, 284, 285, 286, and 292 shall apply, subject to this Part and to all necessary modifications, as they apply in relation to interlocutory applications.
- (2) Notwithstanding anything in subclause (1), the provisions of rule 286 shall, in their application to any originating applica-

tion, be subject to the Act under which the originating application is made.

Compare: High Court Rules, r 458F; SR 1987/169 r 12

455 Date of hearing

In the case of an *inter partes* application, the date shown on the notice of application as the date for the hearing of the application shall be that allocated by the Registrar when the notice of application is filed and the Registrar shall enter the application on the list for that date without any further request.

Compare: High Court Rules, r 458G; SR 1987/169 r 12

456 Directions as to service

- (1) In relation to a proceeding commenced by the filing of an originating application, the provisions of subclauses (1), (2), (4), and (5) of rule 444 shall apply, subject to this Part and to all necessary modifications, as they apply in relation to a proceeding to which Part 5 applies.
- (2) The effect of every order for directions as to service or for representation made pursuant to subclause (1) or subclause (5) of rule 444 (as applied by subclause (1) of this rule) shall be set out in the notice of originating application as if that notice were a notice of proceeding to which rule 127(3) applied.

Compare: High Court Rules, r 458H; SR 1987/169 r 12

457 Directions before hearing

- (1) At any time before the hearing of an originating application—
 - (a) the Court may, of its own motion, give any directions regarding the proceeding commenced by the filing of the application that the Court thinks fit;
 - (b) any party may file an interlocutory application for directions regarding the proceeding commenced by the filing of the application.
- (2) In relation to an interlocutory application made under subclause (1), subclauses (2) to (7) of rule 433 shall apply, subject to this Part and to all necessary modifications, as they apply in relation to an interlocutory application made under rule 433(1).

Compare: High Court Rules, r 458I; SR 1987/169 r 12

Subclause (1) was substituted, as from 1 March 2001, by rule 23 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

458 Directions affecting the hearing

- (1) At any time after the filing of an originating application, any party may apply to the Court for an order for directions affecting the hearing, stating the directions sought.
- (2) In relation to a proceeding commenced by the filing of an originating application, the provisions of subclauses (2) to (4) of rule 434 shall apply, subject to this Part and to all necessary modifications, as they apply in relation to a proceeding commenced by the filing of a statement of claim.
- (3) Any order or direction made or given pursuant to this rule may, if justice so requires, be varied or revoked (in whole or in part) by the Court at the hearing.

Compare: High Court Rules, r 458J; SR 1987/169 r 12

459 Court may convene conference of parties

The Court may, at any time before or during the hearing, require the parties to attend in Chambers with a view to making any order or giving any directions which might be made or given on an application under rule 458 and may, after hearing the parties, make any order or give any directions which might be made or given pursuant to rule 458.

Compare: High Court Rules, r 458K; SR 1987/169 r 12

460 Evidence

Notwithstanding the provisions of rules 270 and 271 (as applies by rule 454), in the case of a proceeding commenced by the filing of an originating application evidence may be taken orally on oath if the Court, on any application before or at the hearing, so directs.

Compare: High Court Rules, r 458L; SR 1987/169 r 12

461 Cross-examination of deponent

Rule 506 shall apply in relation to any proceeding commenced by the filing of an originating application.

Compare: High Court Rules, r 458M; SR 1987/169 r 12

Part 6A

Proceedings under Harassment Act 1997

General

461A Application of Part

- (1) This Part applies to every proceeding under the Harassment Act 1997.
- (2) To avoid any doubt, the term **proceeding** in subclause (1) has the same meaning as in rule 3(1).

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461B Interpretation

In this Part, unless the context otherwise requires,—

The Act means the Harassment Act 1997

Associated respondent means—

- (a) A person against whom a restraining order applies by virtue of a direction made under section 18 of the Act; or
- (b) A person against whom such a direction is sought:

Interlocutory application does not include a main application; but includes an application that is ancillary to a main application

Main application means—

- (a) An application, under section 9 of the Act, for a restraining order;
- (b) An application, under section 22 of the Act, for a variation of a restraining order;
- (c) An application, under section 23 of the Act, for a discharge of a restraining order:

Protected person means a person for whose protection a restraining order is made.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461C Construction

This Part must be so construed as—

- (a) To ensure that the object of the Act (as set out in section 6) is attained; and

- (b) To secure the just, speedy, simple, and inexpensive determination of every proceeding under the Act.

Compare: 1996/148 r 4

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461D Procedure and practice

- (1) No practice that is inconsistent with this Part may prevail in any proceeding under the Act.
- (2) When a Judge hears or determines a proceeding under the Act, the Judge may from time to time give such directions, not inconsistent with the Act or this Part, as the Judge thinks proper for regulating the business of the Court over which he or she presides.

Compare: SR 1996/148 r 5

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461E Application of rules in other Parts

- (1) The provisions of rules 4, 8, 9, 30 to 32, 88B, 98, 103, 112, 113, 126, 127, 130 to 132, 151 to 167, 208, 250 to 253, 258, 259, 300 to 341, 425 to 430, 435, 437, 483, and 531 do not apply to proceedings under the Act.
- (2) The provisions of a rule that is contained in a Part other than this Part and that is not excluded by subclause (1) apply, so far as they are applicable, and with all necessary modifications, to proceedings under the Act.
- (3) When the Court applies the provisions of a rule of the kind referred to in subclause (2), the Court must do so in such manner and with such modifications (if any) as the Court thinks best calculated—
- (a) To ensure that the object of the Act (as set out in section 6) is attained; and
- (b) To promote the ends of justice.

Compare: SR 1996/148 rr 6(1), (2), 7

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause (1) was amended, as from 24 August 2007, by rule 15 District Courts Amendment Rules 2007 (SR 2007/205) by substituting “88B, 98” for “88, 89”.

461F Cases not provided for

- (1) The Court may give directions with respect to the procedure and practice to be followed in a particular case where the Court is satisfied, in the circumstances of the particular case,—
 - (a) That the provisions of the Act, or of these rules, or the practice of the Court, do not make adequate provision for procedure or practice; or
 - (b) That difficulties arise or doubt exists as to the appropriate procedure or practice.
- (2) The directions that a Court gives under subclause (1) must be such as the Court thinks necessary—
 - (a) To ensure that the object of the Act (as set out in section 6) is attained; and
 - (b) To promote the ends of justice.

Compare: SR 1996/148 r 6(3)

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Forms

461G Forms

- (1) Any form authorised or directed to be used by this Part may be varied if the circumstances of a particular case require.
- (2) Without limiting the generality of subclause (1),—
 - (a) Where a form authorised or directed to be used by this Part contains or specifies material that is inapplicable in the circumstances of a particular case, that material may be deleted or omitted from the completed form:
 - (b) Where a form authorised or directed to be used by this Part contains explanatory material intended only for the information of a particular person, that material need not be included in a copy of the form that is required to be served on or given to another person to whom that material is not relevant.
- (3) Where these rules do not authorise or direct the use of a particular form, the parties or the Court may devise an appropriate form, using forms that are authorised or directed to be used by these rules as guides.

Compare: SR 1996/148 r 9

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461H Headings

- (1) Every application, notice, or order, must have, on the first page, a general heading (which may be in form 40A) that shows—
 - (a) The office of the Court in which the application or other matter is proceeding; and
 - (b) The distinguishing number of the application or other matter, and
 - (c) The name of the Act; and
 - (d) Subject to subclause (2) and to rule 461N, the full name, address, and occupation of each party, so far as they are known to the party presenting the document for filing.
- (2) Unless any form authorised or directed to be used by these rules otherwise requires, and subject to rule 461N, all other documents that are filed, issued, or served in a proceeding under the Act must have on the first page a general heading that complies with subclause (1), except that, where it is not necessary to distinguish between 2 or more persons,—
 - (a) Given names may be indicated by initials only;
 - (b) Addresses and occupations may be omitted.

Compare: 1996/148 r 12

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Main applications

461I Commencement of proceedings

- (1) Every proceeding under the Act must be commenced by filing a main application in the proper Court as determined by rule 461O.
- (2) Every main application must be made on notice to every person intended to be affected by the order sought by the application.

Compare: SR 1996/148 r 13

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461J Form of application for main applications

- (1) Every application for a restraining order must be in form 40B.
- (2) Every application, under section 22 of the Act, for a variation of a restraining order must be in form 40C.
- (3) Every application, under section 23 of the Act, for a discharge of a restraining order must be in form 40C.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461K Documents accompanying main applications

- (1) Every main application must be accompanied by—
 - (a) A notice of proceeding in form 40D, which must be signed by the applicant or the applicant's solicitor or counsel; and
 - (b) An affidavit by or on behalf of the applicant, and containing (where applicable) the matters specified in rule 461L.
- (2) If a restraining order made by a Court is to be used in support of a main application filed in another Court, a copy of the order, or a copy of a copy of the order, must be filed with the application, unless the Registrar otherwise directs.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461L Supporting affidavits

- (1) Every affidavit accompanying a main application must set out the matters on which the application is based.
- (2) An affidavit accompanying an application for a restraining order must contain sufficient particulars—
 - (a) To show the grounds on which the applicant claims to be entitled to the order; and
 - (b) To inform the Court of the facts relied on in support of the application.
- (3) An affidavit to which subclause (2) relates must, in particular,—
 - (a) Indicate the nature and history of the harassment that the applicant alleges that the respondent has engaged in, including—

- (i) An outline of the current situation or most recent incident:
- (ii) An outline of the behaviour that forms part of a pattern of behaviour from which protection is needed:
- (iii) Details of any contact with police about the behaviour from which protection is needed:
- (b) Where special conditions are sought, show why they are regarded as necessary to protect the applicant from further harassment:
- (c) Where the application seeks a direction that the restraining order apply against an associated respondent, show why the direction is sought, including—
 - (i) Details of the way in which the respondent is encouraging or has encouraged the associated respondent's behaviour; and
 - (ii) An outline, similar to that required by paragraph (a), of the nature and history of the harassment that the applicant alleges that the associated respondent has engaged in.
- (4) Where an application is made under section 13 of the Act by a representative, an affidavit containing the matters specified in subclauses (2) and (3) may be made by any person who has knowledge of the relevant facts.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461M Number of copies to be filed

There must be filed with every main application such number of copies of the application and the accompanying documents as the Registrar directs as being required for service.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461N Request that residential address be kept confidential

- (1) In this rule, the term **applicant** means—
 - (a) A person who applies for a restraining order; and
 - (b) A protected person who is a party to a proceeding under the Act.

- (2) If an applicant wishes his or her residential address to be kept confidential from the other party or parties, the applicant must file a notice in form 40E—
 - (a) Stating the applicant’s residential address; and
 - (b) Requesting that the address be kept confidential.
- (3) On filing the notice in accordance with subclause (2), the applicant is not required to disclose the applicant’s residential address in a document that is available to another party (despite any other rule).
- (4) Where the applicant’s solicitor has instructed another solicitor (**the agent**) to act as the agent of the applicant’s solicitor in the proceeding, the applicant may also request in the notice filed in accordance with subclause (2) that the name and address of the applicant’s solicitor be kept confidential, and in that case,—
 - (a) If the name of the agent is disclosed in a document that is available to another party, the name of the applicant’s solicitor is not required to be disclosed in that document; and
 - (b) Any rule requiring disclosure of the applicant’s solicitor in a document that is available to another party may be complied with by disclosing the name of the agent.
- (5) To the extent that a document discloses any matter that is to be kept confidential in accordance with this rule, the document may not be searched, inspected, or copied under rule 69, unless the Court otherwise directs.
- (6) Where the applicant changes his or her address as shown in a notice filed in accordance with subclause (2), he or she may, by notice in form 40E, notify that change of address to the Registrar.
- (7) This rule does not affect the obligation to state an address for service in accordance with rule 43.

Compare: SR 1996/148 r 22

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461O Proper Court for filing main application

- (1) The proper Court, for the purposes of rule 461I, is—
 - (a) The Court nearest to the place where the applicant or 1 of the applicants resides; or

- (b) The Court nearest to the place specified by the applicant or 1 of the applicants as his or her address for service; or
 - (c) The Court nearest to the place where the respondent or an associated respondent resides; or
 - (d) With the written consent of every respondent and every associated respondent, any other Court.
- (2) Written consent given under subclause (1)(d) must be filed with the application.

Compare: SR 1996/148 r 27

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461P Proceedings commenced in wrong Court

- (1) The Registrar may refuse to file a proceeding which, in the Registrar's opinion, is tendered for filing in the wrong Court.
- (2) If the Registrar refuses to file a proceeding, the applicant may apply to a Judge for a direction that the applicant is entitled to file the proceeding in that Court.
- (3) Where a proceeding is commenced in the wrong Court, a Judge may, on such terms and conditions as the Judge considers appropriate,—
 - (a) Transfer the proceeding to the Court in which it ought to have been commenced; or
 - (b) Order that the proceeding continue in the Court in which it was commenced.
- (4) No objection may be taken at the hearing or at a subsequent proceeding on the ground that the proceeding was filed in the wrong Court.
- (5) Subclause (4) does not limit subclause (3).

Compare: SR 1996/148 r 28

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461Q Procedure on filing main applications

Where a main application is filed, the Registrar must—

- (a) Enter the application in the records of the Court; and
- (b) Fix a date and time for the hearing of the application, which must be as soon as practicable; and

- (c) Inform all parties to the proceeding of the date and time fixed for the hearing; and
- (d) Ensure that the respondent and any associated respondent is served with copies of—
 - (i) The application; and
 - (ii) The notice of proceeding; and
 - (iii) The affidavit accompanying the application.

Compare: SR 1996/148 r 29(1)

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Notice of defence

461R Notice of defence or address for service

- (1) Subject to any directions given by a Judge in relation to any particular case, a respondent or an associated respondent who intends to defend a main application must, not fewer than 5 clear days before the date set for the hearing, file in Court—
 - (a) A notice of defence in form 40F; and
 - (b) An affidavit setting out sufficient particulars to indicate the grounds on which the defence is based, and sufficient information to inform the Court of the facts relied on in support of the defence.
- (2) Subject to any directions given by a Judge in relation to any particular case, the notice of defence and affidavit required to be filed in Court under subclause (1) must be served on the applicant not fewer than 5 clear days before the date set for the hearing.
- (3) If a respondent or an associated respondent fails to comply with subclause (1) or subclause (2), the Court may—
 - (a) Strike out the defence; or
 - (b) Allow the respondent or associated respondent to defend the application, or appear at the hearing, only on such terms as the Court considers appropriate.
- (4) Subclause (3) does not limit any other power the Court may exercise where a party fails to comply with these rules.
- (5) A respondent who does not intend to defend a main application may give an address for service by filing in Court a notice of

that address and serving a copy on every other party to the proceeding.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Representatives

461S Appointment of representative of certain minors

- (1) This rule applies to a minor who—
 - (a) is under 16 years of age; or
 - (b) is 16 years of age and elects under section 11(2A) of the Act to make an application for a restraining order by a representative.
- (2) For the purposes of section 11 of the Act, a representative of a minor to whom this rule applies must be appointed as a litigation guardian of the minor under rule 88C.
- (3) Rules 88C, 88D, and 92 to 95 apply to the minor and every reference in those rules to an incapacitated person must be read as if it was also a reference to a minor.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Rule 461S was substituted, as from 24 August 2007, by rule 16 District Courts Amendment Rules 2007 (SR 2007/205).

461SA Applications against minors

A minor who is aged 17 or over, or who has been married or in a civil union or de facto relationship, who wishes to defend an application against him or her for a restraining order must defend the application on his or her own behalf, without a litigation guardian.

Rule 461SA was inserted, as from 24 August 2007, by rule 16 District Courts Amendment Rules 2007 (SR 2007/205).

461T Appointment of representative of person unable or unwilling to take proceeding

Rules 92 to 96 apply to a representative appointed under section 13 of the Act and to the person on whose behalf the representative was appointed as if each reference in those rules—

- (a) To a guardian *ad litem* were a reference to the representative; and

- (b) To an incapacitated person were a reference to the person on whose behalf the representative was appointed.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Rule 461T was amended, as from 24 August 2007, by rule 17(1) District Courts Amendment Rules 2007 (SR 2007/205) by substituting “92 to 96” for “85(3), 86, and 87”.

Paragraph (b) was amended, as from 24 August 2007, by rule 17(2) District Courts Amendment Rules 2007 (SR 2007/205) by substituting “an incapacitated person” for “a minor”.

461U Effect of minor turning 17, marrying, or entering into civil union

- (1) If a minor in relation to whom a representative has been appointed turns 17 years, or marries or enters into a civil union before turning 17, all subsequent steps must be taken in the minor’s name.
- (2) If the minor continues to prosecute or defend the proceeding, he or she is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced it or had become a party to it at a time when he or she was not a minor.

Compare: SR 1996/148 r 41

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

The heading to rule 461U was substituted, as from 24 August 2007, by rule 18(1) District Courts Amendment Rules 2007 (SR 2007/205).

Subclause (1) was amended, as from 1 July 2005, by rule 7 District Courts Amendment Rules (No 2) 2005 (SR 2005/149) by substituting the words “, or marries or enters into a civil union” for the words “or marries”.

Subclause (2) was amended, as from 24 August 2007, by rule 18(2) District Courts Amendment Rules 2007 (SR 2007/205) by substituting “minor” for “child”.

461V Effect of ceasing to be unable or unwilling to take proceedings

- (1) If a party on whose behalf a representative was appointed under section 13 of the Act ceases to be a person to whom that section applies, the party must take all subsequent steps in the proceeding in the party’s own name.

- (2) If the party continues to take steps in the proceeding after he or she ceases to be a person to whom section 13 of the Act applies, the party is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced it or had become a party to it when he or she was not a person to whom that section applied.

Compare: SR 1996/148 r 42

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Service

461W Personal service of applications

- (1) Except as provided by rule 461Z, every main application and the documents required by the Act or by this Part to accompany such an application must be served personally on every person who is required to be served with the application and those documents.
- (2) Service of every such application must be effected—
- (a) Not fewer than 10 clear days before the day of the hearing of the application, if service is effected in New Zealand; or
 - (b) Not fewer than 21 clear days before the day of the hearing of the application, if service is effected out of New Zealand.

Compare: SR 1996/148 r 52(2)

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461X Main applications to be served by Registrar

- (1) Except as otherwise provided by this Part, the Registrar must serve or cause to be served, without delay, every main application under the Act.
- (2) The Registrar may also in his or her discretion, and must on the direction of a Judge, serve or cause to be served any other document required to be served for the purpose of any proceeding under the Act.
- (3) In the case of a document that the Registrar is required to serve or cause to be served under this rule, the Registrar may authorise service to be effected by—

- (a) A bailiff; or
- (b) A member of the police, where—
 - (i) No bailiff is available to serve the document; or
 - (ii) The Court or the Registrar considers it appropriate in the circumstances; or
- (c) A solicitor for a party; or
- (d) A solicitor acting as agent for that solicitor; or
- (e) A person employed or engaged by a party or by either solicitor.

Compare: SR 1996/148 r 43

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461Y Parties may not effect service

Personal service of a document may not be effected by a party to the proceeding, but the party may be present when service is effected.

Compare: SR 1996/148 r 51

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461Z Substituted service

Where for any sufficient reason service of a document cannot be effected in the manner specified in relation to that document by these rules, the Court or a Registrar may give any direction provided for by rule 239 or make any order provided for by that rule.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Interlocutory applications

461ZA Interlocutory applications

The provisions of rules 255 to 257 and 260 to 299 apply, with all necessary modifications, to interlocutory applications made in any proceeding under the Act.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461ZB Applications for enlarging time used as delaying tactic

No order enlarging time may be made under rule 6 if it appears to the Court or the Registrar, as the case may be, that the application for the order is made with the principal object of delaying the proceeding to the detriment of the other party.

Compare: SR 1981/261 r 56(4)

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

*Conferences***461ZC Power of Judge to call conference**

- (1) For the purpose of ensuring that every application under the Act may be determined in a just, expeditious, and economical manner, a Judge may at any time, either on the application of either party or their solicitors or counsel or without such application, on such terms as the Judge thinks fit, direct the holding of a conference of—
 - (a) Parties; or
 - (b) The solicitors or counsel representing the parties.
- (2) The Judge must preside over the conference and may adjourn the conference from time to time and from place to place.
- (3) If the conference is held under subclause (1)(a), the solicitor or counsel representing any party may attend either in the place of the party or with the party.
- (4) If the conference is held under subclause (1)(b), any party who is not represented by a solicitor or counsel may attend the conference.

Compare: SR 1996/148 r 71

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461ZD Orders and directions

- (1) At any conference held under rule 461ZC the Judge presiding may make such orders and give such directions as appear best adapted—
 - (a) To ensure that the object of the Act (as set out in section 6) is attained; and
 - (b) To secure the just, expeditious, and economical disposal of the application under the Act.

- (2) Without limiting the generality of subclause (1), the Judge may—
- (a) Settle the issues to be determined:
 - (b) Direct by whom and within what time any affidavit or other document must be filed:
 - (c) Require any party to make admissions in respect of questions of fact, and, if that party refuses or fails to make an admission in respect of any such question, require that party (subject to the direction of the Judge hearing the application) to bear the costs of proving that question at the hearing:
 - (d) Abridge, extend, or fix a time for the filing of any document or the doing of any other thing:
 - (e) Require further or better particulars of any facts or other circumstances connected with the application:
 - (f) Fix a time and place for the hearing of the proceeding:
 - (g) Give such consequential directions as may be necessary.
- (3) Where a party fails to comply with an order or a direction given or made under this rule, the Court may—
- (a) If the party failing to comply with the order or direction is the applicant, order the proceeding to be dismissed or stayed until the order is complied with:
 - (b) If the party failing to comply with the order or direction is not the applicant, order that the party be allowed to defend or to appear at the hearing only on such terms as the Court considers appropriate:
 - (c) Take the failure into account in exercising the Court's power to make an order as to costs.
- (4) Subclause (3) does not limit any other power the Court may exercise where a party fails to comply with an order or direction.

Compare: SR 1996/148 r 72

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

*Amendments***461ZE Amendment before service**

- (1) The Registrar may, on the written request of the applicant at any time before the service of an application, amend the application filed in the Court.
- (2) The Registrar may, on the written request of the respondent, or any associated respondent, at any time before service of a notice of defence or a notice of opposition, amend the notice filed in Court.

Compare: SR 1996/148 r 67

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

*Transfer of proceeding or hearing***461ZF Transfer of proceeding**

A Court or Registrar may order that a proceeding in that Court be transferred to another Court if the Court or, as the case requires, the Registrar is satisfied that the proceeding can be more conveniently or fairly dealt with in that other Court.

Compare: SR 1996/148 r 78

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461ZG Transfer of hearing

A Court or Registrar may order that the hearing of an application filed in that Court be transferred to another Court if the Court or, as the case requires, the Registrar is satisfied that the application can be more conveniently or fairly heard in that other Court.

Compare: SR 1996/148 r 79

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461ZH Transfer with or without application

- (1) A Court or Registrar may order a transfer under rule 461ZF or rule 461ZG—
 - (a) On the Court's or, as the case requires, the Registrar's own motion; or

- (b) On the application of a party on not fewer than 3 clear days' notice.
- (2) Where a Registrar declines an application to transfer a proceeding or hearing, the applicant may ask the Court to review that decision; and in that case the Court may make such decision on the application as it thinks fit.
- (3) Where an order is made for transfer of a proceeding or hearing,—
 - (a) The order must be endorsed on the application; and
 - (b) The Registrar must cause notice of the transfer to be given to all parties.

Compare: SR 1996/148 r 80

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461ZI Procedure on transfer of proceeding

- (1) Where an order is made under rule 461ZF for the transfer of a proceeding,—
 - (a) The Registrar of the Court in which the order is made must send to the Registrar of the other Court all the documents in his or her custody relating to the proceeding; and
 - (b) The Registrar of the Court to which the proceeding is transferred must enter the proceeding in the records of that Court.
- (2) On transfer, the proceeding continues as if it had been originally filed in the Court to which it has been transferred.
- (3) This rule applies with any necessary modifications to the transfer of a proceeding to the High Court under section 43 of the District Courts Act 1947.

Compare: SR 1996/148 r 81

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

461ZJ Procedure on transfer of hearing

- (1) Where an order is made under rule 461ZG for the transfer of a hearing,—
 - (a) The Registrar of the Court in which the application is pending must—

- (i) Send to the Registrar of the other Court all the documents in his or her custody relating to the proceeding; and
 - (ii) Note the records of the Court accordingly; and
 - (b) The Registrar of the Court in which the proceeding is to be heard must make an appropriate entry in the records of the Court.
- (2) For the purposes of the hearing, the application must be dealt with as if it had been filed in the Court of hearing.
- (3) When the hearing is concluded,—
- (a) The Registrar of the Court of hearing must return all the documents relating to the proceeding, including every order that has been made in that proceeding, to the Registrar of the Court from which the documents were sent; and
 - (b) The Registrar to whom the documents are returned must record every order made in the proceeding in the records of the Court.

Compare: SR 1996/148 r 82

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Form of restraining order

461ZK Form of restraining order

A restraining order must be in form 40G.

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Availability of records for criminal proceedings

461ZL Transfer of information to criminal Court

- (1) In this rule the term **harassment offence** means an offence against—
- (a) Section 8 of the Act; or
 - (b) Any other enactment in any case where the offence—
 - (i) Is committed by a person against whom a restraining order is in force, or in respect of whom a proceeding on an application for a restraining

- order is pending, at the time the offence is committed; and
- (ii) Is committed against a person for whose protection the restraining order was made or has been applied for, as the case may be; and
 - (iii) Consists of or includes a specified act within the meaning of section 4 of the Act.
- (2) This rule applies where, in the course of a criminal proceeding in respect of an harassment offence, there is reason to believe that—
- (a) The defendant in that criminal proceeding is or has been a respondent or an associated respondent to a proceeding (**the civil proceeding**) under the Act for a restraining order; and
 - (b) Information relating to the civil proceeding may be relevant to the criminal proceeding, including (without limitation) for the purposes of assisting with the preparation of a probation officer's report under section 26 of the Sentencing Act 2002.
- (3) Where this rule applies, the Court dealing with the criminal proceeding, or a Registrar of that Court, may request the Registrar of the Court in which the civil proceeding was brought to supply—
- (a) Information about the current status of the civil proceeding;
 - (b) A copy of any order made in the civil proceeding.
- (4) A Registrar to whom a request is made under subclause (3) must, without delay, provide to the requesting Court or Registrar as much of the information requested as the requested Registrar has available to him or her.

Compare: SR 1996/148 r 96

Part 6A, comprising rules 461A to 461ZL, was inserted, as from 1 May 1998, by rule 4 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause (2)(b) was amended, as from 30 June 2002, by rule 3 District Courts Amendment Rules (No 2) 2002 (SR 2002/184) by substituting the words “section 26 of the Sentencing Act 2002” for the words “section 15 of the Criminal Justice Act 1985”.

Part 6B

Proceedings under subpart 6 of Part 8 of Local Government Act 2002

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

The heading to Part 6B was substituted, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63). The previous heading read “Proceedings under Part 43C of the Local Government Act 1974”.

461ZM Application of Part

This Part applies to every proceeding under subpart 6 of Part 8 of the Local Government Act 2002.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Rule 461ZM was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “subpart 6 of Part 8 of the Local Government Act 2002” for the words “Part 43C of the Local Government Act 1974”.

461ZN Interpretation

In this Part, unless the context otherwise requires,—

The Act means the Local Government Act 2002

The Act: this definition was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “Local Government Act 2002” for the words “Local Government Act 1974”.

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
- (b) A day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

461ZO Application of rules in other Parts

- (1) The provisions of rules 112, 113, 131, 132, 151 to 167, 208, 258, 259, 300 to 341, 425 to 430, and 531 do not apply to proceedings under subpart 6 of Part 8 of the Act.

- (2) The provisions of a rule that is contained in a Part other than this Part and that is not excluded by subclause (1) apply, so far as they are applicable, and with all necessary modifications, to proceedings under subpart 6 of Part 8 of the Act.
- (3) For the purpose of applying the provisions of a rule in accordance with subclause (2), the term **pleading** includes an application for a removal order and a notice of objection.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Subclauses (1) and (2) were amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “subpart 6 of Part 8” for the expression “Part 43C”.

Removal orders

461ZP Commencement of proceeding

- (1) Every proceeding to which this Part applies must be commenced by filing an application for a removal order under section 215 of the Act in the Court that is nearest to the property to which the application relates.
- (2) Subject to rule 7, the proper heading of an application must be in form 1.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause (1) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the expression “section 215” for the expression “section 692ZD”.

461ZQ Application for removal order

- (1) An application for a removal order must be in form 40H.
- (2) Every application must state whether the applicant seeks—
 - (a) Removal or alteration of all or part of the fence, vegetation, or structure:
 - (b) A consequential order, including an order that entry be made onto any portion of land adjoining the property to which the application relates:
 - (c) Directions as to service under clause 2 of Schedule 14 of the Act.
- (3) If alteration of all or part of the fence, vegetation, or structure is sought, the application—

- (a) Must state the nature of that alteration; and
 - (b) May have a drawing or plan of the alteration attached to it.
- (4) An affidavit made by or on behalf of the applicant, setting out the matters on which the application is based, must be filed with every application for a removal order.
- (5) The affidavit must contain sufficient information to inform the Court of—
- (a) The grounds on which the application is based; and
 - (b) The facts relied on in support of the application; and
 - (c) Where removal of all or part of the fence, structure, or vegetation is sought, the reasons for seeking the proposed removal; and
 - (e) Where alteration of all or part of the fence, structure, or vegetation is sought, the reasons for seeking the proposed alteration; and
 - (f) Where entry is sought onto a portion of land adjoining the property to which the application relates, the reasons why entry onto the adjoining land is necessary to enforce the removal or alteration sought.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause (2)(c) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “clause 2 of Schedule 14” for the expression “section 692ZD(4)”.

461ZR Procedure on applications for removal order

- (1) If an appearance is necessary or required for an application for a removal order, the Registrar must fix a date and time for a hearing and must inform the applicant accordingly.
- (2) If an order is made on an application for which no appearance is necessary or required, the Registrar must immediately inform the applicant of the terms of the order

Compare: SR 1992/58 r 17

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

461ZS Removal orders

A removal order must be in form 40I.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

461ZT Service of removal order on respondent

- (1) After a removal order is made, the respondent must, without delay, be served with a copy of—
 - (a) The removal order; and
 - (b) The application for the order; and
 - (c) A copy of the affidavit or affidavits filed in support of the application.
- (2) Despite subclause (1), a Judge or Registrar may direct that the removal order is to be served on the respondent without either or both of the documents referred to in paragraphs (b) and (c) of that subclause, and in that case the Judge or Registrar must direct that the respondent be given an opportunity to collect the documents not served on the respondent from a specified place.
- (3) Subclause (1) is subject to any direction given by the Court under clause 2 of Schedule 14 of the Act.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause (3) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “clause 2 of Schedule 14” for the expression “section 692ZD(4)”.

461ZU Service of removal order on other parties

- (1) After a removal order is made, all persons (other than the respondent) entitled to object under section 217(1) of the Act must, without delay, be served with a copy of—
 - (a) The removal order; and
 - (b) A notice in form 40J.
- (2) A copy of the application for the order and the affidavit or affidavits filed in support of the application need not be served on a person to whom subclause (1) applies, but the Registrar must, on request, make copies of those documents available to that person.
- (3) Subclause (1) is subject to any direction given by the Court under clause 2 of Schedule 14 of the Act.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause (1) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the expression “section 217(1)” for the expression “section 692ZG(1)”.

Subclause (3) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “clause 2 of Schedule 14” for the expression “section 692ZD(4)”.

461ZV Mode of service of removal order

- (1) Subject to subclauses (2) and (3), a removal order must be served personally.
- (2) A removal order may be served on a respondent who is the occupier of the property to which the order relates by leaving a copy of the order in a prominent position at the property.
- (3) Where for any sufficient reason service of a removal order cannot be effected in the manner specified by this rule, the Court or a Registrar may give any direction provided for by rule 239 or make any order provided for by that rule.
- (4) This rule is subject to any direction given by the Court under clause 2 of Schedule 14 of the Act as to the manner in which service is to be effected on a specified party.
- (5) This rule does not apply to service of an order that confirms, varies, or discharges the removal order following the making of an objection.

Compare: SR 1996/148 r 53

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause (4) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “clause 2 of Schedule 14” for the expression “section 692ZD(4)”.

Notices of objection

461ZW Notice of objection

- (1) A notice of objection must be in form 40K.
- (2) A notice of objection must state whether the objector seeks a discharge of the removal order or whether a specified variation of the order would meet the objector’s concerns.
- (3) An affidavit must accompany every notice of objection and must contain sufficient information to inform the Court of—
 - (a) The facts relied on in support of the objection; and

- (b) Where a variation of the order is sought, the facts relied on in support of the proposed variation.
- (4) If a party who wishes to object to a removal order fails to file a notice of objection in form 40K accompanied by an affidavit described in subclause (3), the Court may—
 - (a) Strike out the objection; or
 - (b) Where an oral hearing is to be held to decide the objection, allow the party wishing to object to appear at the hearing only on such terms as the Court considers appropriate.
- (5) Subclause (4) does not limit any other power the Court may exercise where a party fails to comply with these rules.

Compare: 1996/148 r 31(1)(b)

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

461ZX Manner in which notice of objection to be dealt with

- (1) If, under clause 7 of Schedule 14 of the Act, an oral hearing is to be held to decide an objection, the Registrar must notify every person who has been served with a copy of the removal order that he or she is entitled—
 - (a) To appear at the hearing, either in person or by his or her solicitor or counsel; or
 - (b) To make submissions in writing in relation to the objection.
- (2) Where the Court has determined to decide an objection made by a person described in clause 3(a)(iii) to (v) of Schedule 14 of the Act without an oral hearing, the Registrar must notify the applicant and every other person entitled to object under section 217(1) of the Act that he or she may make written submissions in relation to the objection.
- (3) A written submission made in response to a notice given under subclause (1)(b) or subclause (2) must be lodged with the Court within 5 working days after the date on which the Registrar notifies the objector under either of those subclauses, or within such longer period as the Court may specify in the notice.
- (4) If a copy of the objection has not been previously served on a person to whom notice is given under subclause (1) or sub-

clause (2), the Registrar must ensure that a copy of the objection accompanies the notice.

- (5) A Registrar may exercise the powers of the Court under—
- (a) clause 7(3) of Schedule 14 of the Act (to determine if objections by persons other than the respondent or the owner are to be decided with or without an oral hearing); and
 - (b) clause 7(4) of Schedule 14 of the Act (to decide whether hearings are to be heard together).

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Subclause (1) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “clause 7 of Schedule 14” for the words “section 692ZG(3) or section 692ZG(4)(a)”.

Subclause (2) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “clause 3(a)(iii) to (v) of Schedule 14” for the words “subparagraph (iii), (iv), or (v) of section 692ZD(5)(a)”.

Subclause (2) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the expression “section 217(1)” for the expression “section 692ZG(1)”.

Subclause (5)(a) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “clause 7(3) of Schedule 14” for the expression “Section 692ZG(4)”.

Subclause (5)(b) was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “clause 7(4) of Schedule 14” for the expression “Section 692ZG(5)”.

Interlocutory applications

461ZY Interlocutory applications

The provisions of rules 255 to 257 and 260 to 299 apply, with all necessary modifications, to interlocutory applications made in proceedings under subpart 6 of Part 8 of the Act.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Rule 461ZY was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “subpart 6 of Part 8” for the expression “Part 43C”.

461ZZ Applications for enlarging time used as delaying tactic

No order enlarging time may be made under rule 6 if it appears to the Court or the Registrar, as the case may be, that there is no genuine reason or excuse for the application.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Entry of land to enforce removal orders

461ZZA Notice where land entered to enforce removal order

- (1) The notice of entry required to be given under section 221(1)(d) of the Act by an applicant to the relevant owner and occupier,—
 - (a) Following entry of the property to which the order relates, must be in form 40L:
 - (b) Following entry of a property adjoining the property to which the order relates, must be in form 40M.
- (2) A notice referred to in subclause (1) may be served—
 - (a) On the occupier by leaving the notice in a prominent position on the property that was entered:
 - (b) Where the owner is not the occupier, by posting the notice to the owner's address.

Part 6B (comprising rules 461ZM to 461ZZA) was inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Rule 461ZZA was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the expression "section 221(1)(d)" for the expression "section 692ZK(4)(d)".

Part 6C
Proceedings under Construction
Contracts Act 2002

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

General

461ZZB Interpretation

- (1) In this Part, unless the context otherwise requires,—
Act means the Construction Contracts Act 2002

application for an adjudicator's determination to be enforced—

- (a) means an application for an adjudicator's determination to be enforced by entry as a judgment in accordance with subpart 2 of Part 4 of the Act; and
- (b) if the adjudicator has recorded in the adjudicator's determination his or her approval for the issue of a charging order in respect of a construction site, includes an application, under section 76(2)(a) of the Act, for the issue of that charging order

application for review means an application made by an owner who is not a respondent under section 52 of the Act for a review of—

- (a) an adjudicator's determination that the owner is jointly and severally liable with the respondent to make a payment to the claimant; and
- (b) an adjudicator's approval for the issue of a charging order in respect of the construction site

party to the relevant adjudication proceedings—

- (a) means the claimant or the respondent in those proceedings; and
- (b) if the context requires, includes the owner of the construction site who was not a respondent in, but was a party to, those proceedings

Regulations means the Construction Contracts Regulations 2003

relevant adjudication proceedings means the adjudication proceedings that relate to, as the context requires,—

- (a) an application for review; or
- (b) an application for an adjudicator's determination to be enforced.

- (2) Unless the context otherwise requires, any term or expression that is defined in the Act and used, but not defined, in this Part has the same meaning as in the Act.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZC Application of Part

This Part applies to—

- (a) an application for review; and
- (b) an application for an adjudicator's determination to be enforced.

Part 6C (comprising rr461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZD Application of other rules and practice of Court

The provisions of the other parts of these rules, the provisions of the District Courts Act 1947, and the general practice of the Court (including the procedure and practice in Chambers) apply if this Part applies except in so far as they are modified by, or inconsistent with, the Act or this Part.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Review of adjudicator's determination in respect of owner who is not respondent

461ZZE Form of application for review

An application for review must be made by filing a notice in form 4 of Schedule 1 of the Regulations within the time set out in section 53(2) of the Act.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZF Where to file application for review

An application for review must be filed in the Court nearest to the place at which the relevant adjudication proceedings were held.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZG Procedure after filing of application for review

- (1) After an application for review is filed,—
 - (a) the Registrar must—
 - (i) enter the application in the records of the Court; and
 - (ii) refer the application to a Judge without delay; and

- (iii) endorse on the copy of the application to be served by the applicant under paragraph (b) the date and time that has been fixed for the hearing;
 - (b) the applicant must serve a copy of the application that is endorsed with the date and time fixed for the hearing, and of any accompanying documents, on—
 - (i) the respondent; and
 - (ii) any other party to the relevant adjudication proceedings.
- (2) Unless the Court directs otherwise, it is not necessary to serve a copy of the application for review on the adjudicator whose determination is the subject of the application.

Part 6C (comprising rr461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZH Notice of opposition to application for review

- (1) If a party to the relevant adjudication proceedings intends to oppose the application for review, that party must, within 10 working days after being served with the application,—
 - (a) file in the Court a notice of opposition; and
 - (b) serve a copy of the notice and of any accompanying documents on—
 - (i) the applicant; and
 - (ii) any other party to the relevant adjudication proceedings.
- (2) The notice must state—
 - (a) the party's intention to oppose the application; and
 - (b) the grounds of opposition.
- (3) Unless the Court directs otherwise, it is not necessary to serve a copy of the notice on the adjudicator whose determination is the subject of the application.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZI Adjudicator must forward documents relating to adjudication proceedings on request

An adjudicator whose determination is the subject of an application for review must, on the request of the Registrar, forward to the Court all documents in his or her custody relating

to the determination within 5 working days after receiving the request.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Enforcement of adjudicator's determination

461ZZJ Application for adjudicator's determination to be enforced

- (1) An application for an adjudicator's determination to be enforced—
 - (a) must be in form 40N; and
 - (b) must be accompanied by a copy of the adjudicator's determination that is sought to be enforced.
- (2) The application must be filed in the Court nearest to the place at which the relevant adjudication proceedings were held.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZK Service

Either before or immediately after the filing of an application for an adjudicator's determination to be enforced, the plaintiff must serve a copy of the application and of any accompanying documents on—

- (a) the defendant; and
- (b) any other party to the relevant adjudication proceedings.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZL Opposition to application for adjudicator's determination to be enforced

- (1) If the defendant wishes to oppose the application for an adjudicator's determination to be enforced, the defendant must, within 15 working days after the date on which the defendant is served a copy of the application,—
 - (a) file an application in the Court seeking an order that enforcement of the adjudicator's determination be refused; and
 - (b) serve a copy of the application and of any accompanying documents on—

- (i) the plaintiff; and
 - (ii) any other party to the relevant adjudication proceedings.
- (2) The application must be in form 400.

Part 6C (comprising rr 461ZZB to 461ZZL) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Part 6D

Proceedings in Admiralty

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZM Application of Part

This Part applies to every proceeding in any District Court in its admiralty jurisdiction.

Compare: SR 1976/195 r 3

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZN Interpretation

- (1) In this Part, unless the context otherwise requires,—
Act means the Admiralty Act 1973
Registrar means the Registrar of a District Court; and includes a Deputy Registrar.
- (2) Unless the context otherwise requires, any word or expression used in this Part, but not defined in these rules, has the same meaning as it has in the Act.

Compare: SR 1976/195 r 2

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZO Application of other rules and practice of Court

The provisions of the other Parts of these rules, the provisions of the District Courts Act 1947, and the general practice of the Court (including the course of procedure and practice in chambers) apply where this Part applies except so far as they are modified by, or inconsistent with, the Act or this Part.

Compare: SR 1976/195 r 4(2); High Court Rules r 766

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZP Preliminary acts to be filed in collision cases

- (1) In an action arising out of a collision between ships, unless the Court otherwise orders on the application of any intended party to the proceedings,—
 - (a) the plaintiff must file a preliminary act when he or she files the statement of claim and the notice of proceeding;
 - (b) the defendant must file a preliminary act when he or she files the statement of defence.
- (2) A preliminary act is a document containing a statement of the following particulars:
 - (a) the names of the ships that came into collision and their ports of registry;
 - (b) particulars (referring to the period immediately before the collision) of the person in command, the persons on the bridge, and the persons keeping a lookout on the plaintiff's ship (if the plaintiff is filing a preliminary act) and on the defendant's ship (if the defendant is filing a preliminary act);
 - (c) the date and time of the collision;
 - (d) the place of the collision;
 - (e) the direction and force of the wind;
 - (f) the state of the weather, including visibility;
 - (g) the state, direction, and force of the tidal or other current;
 - (h) the ship's course and speed through the water when the other ship was first seen or immediately before any measures were taken in connection with its presence, whichever was the earlier;
 - (i) the lights (if any) carried by the ship;
 - (j) the distance and bearing of the other ship if and when its echo was first observed by radar;
 - (k) the distance, bearing, and approximate heading of the other ship when first seen;
 - (l) the other ship's light or combination of lights (if any) when first seen:

- (m) the other lights or combination of lights (if any) of the other ship that were subsequently seen before the collision, and the time of the sighting:
 - (n) the alterations (if any) made to the ship's course and speed after the earlier of the 2 times referred to in paragraph (h) up to the time of the collision, and the times of those alterations, and the measures (if any), other than alterations of course or speed, taken to avoid the collision, and the times of those measures:
 - (o) the parts of each ship that first came into contact and the approximate angle between the 2 ships at the moment of contact:
 - (p) the sound signals or other signals (if any) given, and the times of those sound signals or other signals:
 - (q) the sound signals or other signals (if any) heard or seen from the other ship, and the times of hearing or seeing those sound signals or other signals.
- (3) Every party filing a preliminary act must, within 3 days of filing, serve notice of the filing on every other party.

Compare: High Court Rules r 785(1), (2), (4)

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZQ Registrar to seal and file preliminary acts

- (1) The Registrar must seal every preliminary act and file it in a closed envelope (which must be sealed with the official stamp of the Court and show the date of filing), and, unless the Court otherwise orders, the envelope must not be opened until a date has been fixed for a hearing and a consent to the opening of the preliminary acts is filed.
- (2) The consent must be signed by each of the parties who has filed a preliminary act.

Compare: High Court Rules r 785(3)

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZR Failure to lodge preliminary act

If, in any proceeding referred to in rule 461ZZP(1), a defendant fails within the prescribed period to lodge a preliminary

act and the plaintiff has lodged a preliminary act, rules 462 to 474 apply as if the defendant's failure to lodge a preliminary act within that period were a failure to file and serve a statement of defence within the period fixed by or under these rules for doing those things.

Compare: High Court Rules r 786

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZS Actions for limitation of liability

- (1) If in any proceeding in the admiralty jurisdiction of the Court a party seeks relief under Part 7 of the Maritime Transport Act 1994, that relief must be sought in the High Court under rule 792 of the High Court Rules.
- (2) The Court may—
 - (a) proceed to a hearing on liability; or
 - (b) stay the proceeding pending the outcome of proceedings in the High Court; or
 - (c) order that the proceeding be transferred to the High Court.
- (3) Any order for the transfer of proceedings to the High Court may be made subject to any conditions that the Court thinks fit requiring that the defendant give security for the costs of the proceeding in the High Court.

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

461ZZT Inspection of ship or other property

Without limiting its powers under the District Courts Act 1947 or these rules, the Court may, on the application of any party, make an order for the inspection by a Court expert, or by any party or witness, of any ship or other property, whether real or personal, if the inspection is necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the proceeding.

Compare: SR 1976/195 r 18; High Court Rules r 793

Part 6D (comprising rr 461ZZM to 461ZZT) was inserted, as from 1 February 2005, by rule 10 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Part 7 Disposal of proceedings

Judgment by default

462 Application where appearance

- (1) Rules 463 to 474 shall not apply where the defendant has filed an appearance under rule 139(1).
- (2) Where an appearance has been filed under rule 140 to rule 141(1), rules 463 to 474 shall apply subject thereto.

Compare: High Court Rules, r 459

463 Liquidated demand

- (1) If the relief claimed by the plaintiff is payment of a liquidated demand in money and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding, the plaintiff may at once seal final judgment for any sum not exceeding the sum claimed in the plaintiff's statement of claim, together with—
 - (a) Interest (if any) payable as of right, if such interest has been specifically claimed in the statement of claim, calculated up to the date of judgment; and
 - (b) costs and disbursements of an amount fixed by the Registrar.
- (2) If the plaintiff claims costs and disbursements, the plaintiff must file a memorandum setting out the amount claimed and how that amount is calculated, together with any submissions in support of the claim.
- (3) Every Registrar has the jurisdiction and powers of the Court under these rules to fix costs and disbursements under subclause (1)(b).

Compare: SR 1948/197 r 125(1); SR 1968/183 r 7(1); SR 1980/55 r 8; High Court Rules, r 460

Subclause (1)(b) was substituted, as from 23 May 2005, by rule 3(1) District Courts Amendment Rules 2005 (SR 2005/119).

Subclauses (2) and (3) were inserted, as from 23 May 2005, by rule 3(2) District Courts Amendment Rules 2005 (SR 2005/119).

464 Land

If the relief claimed by the plaintiff is the recovery of land, and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding or if the statement of defence is limited to part only of the land claimed, the plaintiff may at once seal judgment that the person whose title is asserted in the statement of claim do recover possession of the land claimed, or any party to which the statement of defence does not apply, together with judgment for the costs of the proceeding up to the date of sealing judgment.

Compare: High Court Rules, r 461

465 Chattels

- (1) If the relief claimed by the plaintiff is the recovery of chattels and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding or if the statement of defence is limited to part only of the chattels claimed, the plaintiff may seal judgment that the plaintiff do recover possession of the chattels claimed, or any of them to which the statement of defence does not apply, or the value thereof, together with judgment for the costs of the proceeding up to the date of sealing of judgment.
- (2) If the possession of any chattels claimed is not recovered, the plaintiff may have the proceeding heard for the purpose of assessing the value of those chattels.

Compare: High Court Rules, r 462

466 Hire purchase or conditional purchase agreement

- (1) Where the relief sought is the recovery of goods and money payable under a hire purchase or conditional purchase agreement, the Court may enter a judgment for possession and reserve leave to the plaintiff to apply on notice for such further relief as the plaintiff may be entitled to.
- (2) An application for further relief under this rule may be heard and determined by the Judge by whom leave was so reserved or by any other Judge.

Compare: SR 1948/197 r 215; SR 1952/242 r 21

467 Unliquidated demand

If the relief claimed by the plaintiff is payment of an unliquidated demand in money and the defendant does not file a statement of defence within the number of days stated for that purpose in the notice of proceeding, the proceeding shall be heard for the purpose of assessing damages.

Compare: High Court Rules, r 463

468 Evidence at hearing

- (1) At any hearing for assessment of damages under rule 465(2) or rule 467, no defendant shall, except by leave of the Court, adduce evidence, save in mitigation of damages.
- (2) The plaintiff shall adduce, by affidavit, evidence of such aspects of the defendant's liability as are required to be shown and evidence of the plaintiff's damages unless the Court directs otherwise.

Compare: High Court Rules, r 464

469 Other proceedings

- (1) Subject to rule 474, in all other proceedings in which the defendant or any defendant has not filed a statement of defence within the number of days stated for that purpose in the notice of proceeding, the plaintiff may apply on due notice to the defendant for such judgment against the defendant who has not filed a statement of defence as the plaintiff considers himself or herself entitled to and on such application judgment may be given for such relief as the plaintiff may be entitled to on the facts set out in the statement of claim.
- (2) Where justice so requires, the Court may, subject to rule 474, dispense with the giving of notice to the defendant under subclause (1).
- (3) In lieu of applying under subclause (1), the plaintiff may set the case down for hearing and judgment may be given for such relief as the plaintiff shall be entitled to.
- (4) Where the plaintiff sets the case down for hearing under subclause (3), the plaintiff shall adduce, by affidavit, evidence of such aspects of the defendant's liability as are required to

be shown and evidence of the plaintiff's damages, unless the Court directs otherwise.

Compare: High Court Rules, r 465

470 Where several causes of action

Where the plaintiff's statement of claim contains more than one cause of action, the plaintiff may proceed separately under rules 463 to 469 in respect of any or each cause of action to which no statement of defence has been filed.

Compare: High Court Rules, r 466

471 Where several defendants

Where there are several defendants, the plaintiff may proceed against any one or more of the defendants under rules 463 to 470 and may, notwithstanding any judgment given under those rules, continue the proceeding against any other defendant in respect of whom the cause of action subsists.

Compare: High Court Rules, r 467

472 Affidavits to be filed

Before judgment by default can be sealed, there must be filed—

- (a) An affidavit of service of the statement of claim and notice of proceeding; and
- (b) If the statement of claim and notice of proceeding have not been served personally on the defendant or on a solicitor accepting service on the defendant's behalf, an affidavit verifying the statement of claim.

Compare: High Court Rules, r 468

473 Judgment may be set aside or varied

Any judgment obtained by default may be set aside or varied by the Court on such terms as it thinks fit if it appears to the Court that there has been, or may have been, a miscarriage of justice.

Compare: High Court Rules, r 469

474 Crown

Judgment by default under rules 463 to 471 shall not be entered against the Crown except by leave of the Court obtained on an application notice of which has been served at least 7 days before the time specified in the notice for hearing the application.

Compare: High Court Rules, r 470

*Judgment on admission***475 Admission of claim or cause of action**

- (1) A party who admits any claim or cause of action alleged in any proceeding served upon that party may at any time thereafter file an admission thereof and serve a copy thereof on the other party.
- (2) Where an admission is filed and served under subclause (1), the party on whom the admission is served may thereupon seal judgment on the claim or cause of action so admitted, without prejudice to that party's right (if any) to proceed on any other claim or cause of action.
- (3) An admission under subclause (1) with regard to any cause of action in which a sum of money is claimed shall state the exact amount admitted.
- (4) Any judgment entered on an admission filed and served under subclause (1) may, upon application, be set aside by the Court if—
 - (a) The plaintiff, being under a duty or obligation to the defendant not to enter judgment on the admission, acted contrary to that duty or obligation in entering judgment; or
 - (b) The plaintiff, in entering judgment, acted fraudulently, unconscionably, or in wilful or reckless disregard of the defendant's rights.
- (5) Upon any application under subclause (4), the Court may direct that a proceeding be brought in order to determine whether judgment was wrongfully entered.

Compare: SR 1948/197 r 112; SR 1968/183 r 7(1); High Court Rules, r 471

476 Admission of defence

- (1) Where a party in his or her original or amended statement of defence alleges any ground of defence that goes to the whole of any cause of action alleged by the other party, the other party, if he or she admits that ground of defence, may file and serve an admission of that ground of defence.
- (2) If the ground of defence so admitted arose after the filing of the pleading containing the cause of action to which it refers, the party filing and serving the admission shall be entitled to an order for his or her costs in respect of the cause of action to which the admission applies, up to the time of filing such statement of defence, unless the Court otherwise orders.
- (3) Subject to subclause (2), a party on whom an admission has been served under subclause (1) may at any time thereafter seal judgment upon the cause of action to which it relates.

Compare: High Court Rules, r 472

477 Certain rules not affected

Nothing in rules 475 and 476 affects the operation of—

- (a) Rule 314 (Judgment on admission of facts); or
- (b) Rule 366(3) (relating to sealing of judgment on admission of part of relief claimed).

Compare: High Court Rules, r 473

Discontinuance

478 Interpretation

For the purposes of rules 479 to 480E, a reference to discontinuing a proceeding means discontinuing a proceeding against 1 or more defendants.

Rule 478(2) was inserted, as from 1 February 1996, by rule 18 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

Rules 478 to 480 were substituted, as from 1 February 2003, by rule 12 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

479 Right to discontinue proceeding

- (1) A plaintiff may, at any time before the giving of judgment or a verdict, discontinue a proceeding by—
 - (a) filing a notice of discontinuance and serving a copy of the notice on every other party to the proceeding; or

- (b) orally advising the Court at the hearing of the discontinuance.
- (2) A notice of discontinuance under subclause (1)(a) must be in form 40AA.
- (3) This rule is subject to rule 480.

Rules 478 to 480 were substituted, as from 1 February 2003, by rule 12 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

480 Restrictions on right to discontinue proceeding

- (1) A plaintiff may discontinue a proceeding only with the leave of the Court if a party to the proceeding has given an undertaking to the Court.
- (2) A plaintiff to whom an interim payment has been made, whether voluntarily or under an order made under rule 355C or rule 355D, may discontinue the proceeding only with the written consent of the party by whom the payment was made or with the leave of the Court.
- (3) A plaintiff may discontinue a proceeding in which there is more than 1 plaintiff only with the consent of every other plaintiff or with the leave of the Court. If the plaintiff files a notice of discontinuance under rule 479(1)(a), the consent of every other plaintiff must be in writing.
- (4) If there is more than 1 defendant in a proceeding, a plaintiff may discontinue a proceeding against a particular defendant only with the consent of every other defendant or with the leave of the Court. If the plaintiff files a notice of discontinuance under rule 479(1)(a), the consent of every other defendant must be in writing.

Rules 478 to 480 were substituted, as from 1 February 2003, by rule 12 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

480A Effect of discontinuance

- (1) A proceeding ends against a defendant or defendants, as the case may be, on—
 - (a) the filing and service of a notice of discontinuance under rule 479(1)(a); or
 - (b) the giving of oral advice of the discontinuance at the hearing under rule 479(1)(b); or
 - (c) the making of an order under rule 480.

- (2) The discontinuance of a proceeding does not affect the determination of costs.
- (3) This rule is subject to rule 480B.

Rules 480A to 480E were inserted, as from 1 February 2003, by rule 12 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

480B Court may set discontinuance aside

- (1) The Court may, on the application of a defendant against whom a proceeding is discontinued, make an order setting the discontinuance aside if it is satisfied that the discontinuance is an abuse of the process of the Court.
- (2) An application under subclause (1) must be made within 30 days after discontinuance under rule 479(1).

Rules 480A to 480E were inserted, as from 1 February 2003, by rule 12 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

480C Costs

Unless the defendant otherwise agrees or the Court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

Rules 480A to 480E were inserted, as from 1 February 2003, by rule 12 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

480D Restriction on subsequent proceedings

A plaintiff who discontinues a proceeding (**proceeding A**) against a defendant may not commence another proceeding (**proceeding B**) against the defendant if proceeding B arises out of facts that are the same or substantially the same as those relating to proceeding A unless the plaintiff has paid any costs ordered to be paid to the defendant under rule 480C relating to proceeding A.

Rules 480A to 480E were inserted, as from 1 February 2003, by rule 12 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

480E Certain remedies not affected

If a plaintiff discontinues a proceeding in which a defendant has issued a third party notice under rules 177 to 185 or has filed a notice under rules 186 to 191, the discontinuance does

not affect the continuation of the proceeding in relation to the third party notice or the notice filed under rules 186 to 191.

Rules 480A to 480E were inserted, as from 1 February 2003, by rule 12 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

Stay or dismissal

481 Summary stay or dismissal

Where in any proceeding it appears to the Court that in relation to the proceeding generally or in relation to any claim for relief in the proceeding—

- (a) No reasonable cause of action is disclosed; or
- (b) The proceeding is frivolous or vexatious; or
- (c) The proceeding is an abuse of the process of the Court,—

the Court may order that the proceeding be stayed or dismissed generally or in relation to any claim for relief in the proceeding.

Compare: High Court Rules, r 477

482 Application to dismiss for want of prosecution

Where the plaintiff fails to prosecute his or her proceeding or any part thereof, or the defendant fails to prosecute his or her counterclaim or any part thereof, to hearing and judgment, any opposite party may apply to have the proceeding or counterclaim, or such part thereof as aforesaid, dismissed, and the Court may, on such application, make such order as may be just.

Compare: High Court Rules, r 478

Hearing

483 Change of venue

- (1) Notwithstanding the provisions of rule 129 specifying, in respect of any proceeding, the place where the proceeding is to be heard, where—

- (a) The parties to the proceeding consent to the proceeding being heard at any other place where sittings are held; or

(b) It appears to the Court that the proceeding can be more conveniently or more fairly heard at any other place where sittings are held,—

the Court may at any time order that the proceeding be heard there.

(2) Where the Court makes an order under subclause (1) it may direct that all subsequent steps in the proceeding be taken at the place where the hearing is to take place.

Compare: SR 1948/197 r 175; High Court Rules, r 479

484 Adjournment of hearing

The Court or the Registrar may, before or at the hearing, if it appears expedient in the interests of justice to do so, postpone or adjourn the hearing for such time, to such place, and upon such terms as the Court or the Registrar thinks fit.

Compare: SR 1948/197 r 146; SR 1956/81 r 8; High Court Rules, r 480

485 Where neither party appears

(1) If neither party appears when the proceeding is called, the Court may order it to be struck out.

(2) Where a proceeding is struck out under subclause (1), the Court may order it to be reinstated on good cause shown by either party and on such terms as it thinks just.

Compare: SR 1948/197 rr 200, 227; High Court Rules, r 483

486 Where only plaintiff appears

If the plaintiff appears and the defendant does not, the plaintiff shall prove his or her cause of action so far as the burden of proof lies on him or her.

Compare: High Court Rules, r 484

487 Where only defendant appears

If the defendant appears but the plaintiff does not, the defendant,—

(a) If he or she does not admit the claim, shall be entitled to judgment dismissing the proceeding; and

(b) If he or she has a counterclaim, shall prove it so far as the burden of proof lies on him or her.

Compare: SR 1948/197 r 201; High Court Rules, r 485

488 Judgment following non-appearance may be set aside

Any verdict or judgment obtained where one party does not appear at the hearing may be set aside or varied by the Court on such terms as may seem just if it appears to the Court that there has, or may have been, a miscarriage of justice.

Compare: High Court Rules, r 486

489 Where both parties appear

- (1) If both the plaintiff and the defendant appear, the plaintiff or such other party as has the right to begin shall state his or her case and adduce evidence in support thereof.
- (2) When the party who begins has closed his or her case, the other party shall state his or her case and adduce evidence in support thereof.
- (3) After the evidence has been taken, the party who did not begin may address the Court generally on the case, and after him or her the other party may address the Court in reply; but if the party who did not begin has not adduced evidence in support of his or her case, the opposite party shall address the Court on the case, and after that the party who did not begin may address the Court in reply.
- (4) This rule applies subject—
 - (a) To any directions given under rule 433 or rule 434; and
 - (b) To the provisions of any Act.

Compare: SR 1948/197 r 203; High Court Rules, r 487

Nonsuit

This heading was revoked, as from 1 February 2003, by rule 13 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

490 Nonsuit

[Revoked]

Rules 490 to 492 were revoked, as from 1 February 2003, by rule 13 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

491 Defendant may be put to election as to evidence

[Revoked]

Rules 490 to 492 were revoked, as from 1 February 2003, by rule 13 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

492 Costs to be paid before again setting down

[Revoked]

Rules 490 to 492 were revoked, as from 1 February 2003, by rule 13 District Courts Amendment Rules (No 4) 2002 (SR 2002/411).

Rehearing

493 Power to order rehearing

- (1) A rehearing may be ordered only where, in the opinion of the Court, there has been a miscarriage of justice that justifies a rehearing.
- (2) An order under subclause (1) may be made on such terms as the Court thinks fit.
- (3) Without limiting the circumstances in which the Court may hold that there has been a miscarriage of justice that justifies a rehearing, it is hereby declared that the Court may hold that there has been such a miscarriage of justice if—
 - (a) The judgment has been obtained by any unfair or improper practice of the successful party to the prejudice of the opposite party; or
 - (b) Material evidence has been discovered since the hearing which could not reasonably have been foreseen or known before the hearing; or
 - (c) Any witness has been guilty of such misconduct as to effect the result of the hearing.
- (4) If it appears to the Court that the miscarriage of justice affects part only of the matter in dispute, the Court may give final judgment as to the part not so affected, and direct a rehearing as to the affected part only:

Provided that no rehearing shall be ordered as to the affected part if the amount of damages awarded in respect thereof can be separately ascertained, and the plaintiff consents to reduce the whole sum awarded to him or her by that amount.
- (5) A hearing may be ordered on any question in a proceeding, whatever be the grounds on which a rehearing is applied for, without interfering with the decision upon any other question.
- (6) Where there is more than one defendant, a rehearing may be ordered against any one or more of them.

Compare: High Court Rules, r 494

494 Application for rehearing

- (1) Application for a rehearing shall be made by interlocutory application filed within 14 days from the date of delivery of judgment.
- (2) The application shall state the circumstances alleged to have resulted in a miscarriage of justice and no other circumstances will be considered by the Court.
- (3) The application shall not operate as a stay of proceeding unless the Court so orders.
- (4) The Court shall not receive—
 - (a) Any affidavit of any witness to explain or add to evidence given by the witness at the hearing; or
 - (b) An affidavit of any facts which might have been given in evidence at the hearing.
- (5) Notwithstanding subclause (4), the Court may receive an affidavit from a material witness showing that he or she made a serious mistake in giving his or her testimony.

Compare: High Court Rules, r 495(1)-(5)

*Evidence at hearing***495 Evidence to be given orally**

Except where otherwise directed by the Court or required or authorised by these rules or by any Act, disputed questions of fact arising at the hearing of any proceeding shall be determined on evidence given by means of witnesses examined orally in open Court.

Compare: SR 1948/197 r 189; High Court Rules, r 496

496 Witness summons

- (1) Where any party to any proceeding desires a person to be summoned as a witness to give oral evidence at the hearing in Court or to produce at the hearing in Court any document in his or her possession or control, the Registrar shall, on the request of the party, issue a witness summons in form 41 together with a copy thereof.
- (2) The summons shall be served on the witness personally at a reasonable time before the day fixed for the hearing.

- (3) There shall be paid or tendered to the witness at the time of the service of the summons the sum estimated to be payable to that witness for allowances and travelling expenses, but not fees, pursuant to the Witnesses and Interpreters Fees Regulations 1974.

Compare: SR 1948/197 r 193; SR 1956/81 r 14(2); High Court Rules, r 497

497 Evidence of person in custody

- (1) An application for an order under section 26 of the Penal Institutions Act 1954 may be made *ex parte*.
- (2) The applicant, in addition to proving the grounds necessary under subsection (2) of that section to entitle the applicant to the order, shall satisfy the Court or the Registrar that he or she has deposited with the Superintendent of the relevant institution the sum required to be deposited under subsection (3) of that section.

Compare: High Court Rules, r 499

498 Evidence by affidavit by agreement

- (1) In any proceeding the parties may file an agreement signed by the parties, that the evidence, or any part of the evidence, shall be given by affidavit.
- (2) Notwithstanding any agreement filed under subclause (1), the Court may direct that evidence of any disputed fact or issue be given in accordance with rule 495.

Compare: High Court Rules, r 500

499 Evidence by affidavit pursuant to order of Court

- (1) The Court may, even though no agreement for the giving of evidence by affidavit has been made, at any time for sufficient reason order, on such conditions as the Court thinks reasonable,—
- (a) That any particular fact or facts may be proved by affidavit; or
- (b) That the evidence of any witness may be given by affidavit read at the hearing, or on any application for judgment.

- (2) Notwithstanding subclause (1), but subject to any order made under rule 434, where—
- (a) An opposite party desires the production of a witness for cross-examination; and
- (b) The witness can be produced,—
- an order shall not be made authorising the evidence of the witness to be given by affidavit.

Compare: High Court Rules, r 501; SR 1986/228 r 7

500 Agreed statement of facts

- (1) Where the parties so agree, the evidence at the hearing of any proceeding or any issue therein, may be given, without examining any witnesses or filing any affidavits, by a statement of facts agreed upon by them:

Provided that, notwithstanding such agreement, the Court may direct that evidence of any fact or issue be given in accordance with rule 495 or rule 499.

- (2) Every agreement under subclause (1) shall be in writing signed by the parties and shall be filed.
- (3) The agreement shall set out the facts agreed upon and the Court shall be entitled to draw any necessary inferences from the agreed facts.

Compare: High Court Rules, r 502

Evidence in trans-tasman proceedings

500A Interpretation

In rules 500B to 500E, unless the context otherwise requires, terms that are defined in the Evidence Amendment Act 1994 have the meanings given to them by that Act.

Rules 500A to 500E and heading were inserted, as from 1 April 1995, by rule 2 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

500B Issue of subpoenas for service in Australia

- (1) A subpoena issued by the Court for service on a witness in Australia that requires the witness to testify, whether or not it also requires the witness to produce documents or things, shall be in form 41A.

- (2) A subpoena issued by the Court for service on a witness in Australia that requires the witness to produce documents or things, but does not require the witness to testify, shall be in form 41B.
- (3) A subpoena referred to in subclause (1) or subclause (2) may be obtained in the same manner and subject to the same conditions as a witness summons under rule 496.

Rules 500A to 500E and heading were inserted, as from 1 April 1995, by rule 2 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

500C Service of subpoena on witness in Australia

Every statement that, in accordance with section 7(2) of the Evidence Amendment Act 1994, is required to accompany a subpoena that is served on a witness in Australia shall be in form 41C.

Rules 500A to 500E and heading were inserted, as from 1 April 1995, by rule 2 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

500D Failure to comply with subpoena

A certificate under section 12 of the Evidence Amendment Act 1994 shall be in form 41D

Rules 500A to 500E and heading were inserted, as from 1 April 1995, by rule 2 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

500E Evidence and submissions by video link and telephone conference

- (1) An application under section 19 of the Evidence Amendment Act 1994 for a direction that evidence be given from Australia or submissions be made from Australia by video link or telephone conference may be made ex parte and shall be accompanied by an affidavit containing the following matters:
 - (a) The nature of the evidence or the submissions:
 - (b) The place in Australia from which the evidence is to be given or the submissions are to be made:
 - (c) If it is proposed that evidence be given or submissions be made by video link, particulars of the video link facilities available at the courtroom or other place where the Court is to sit in New Zealand and at the place where

- the evidence is to be given or the submissions are to be made in Australia:
- (d) If it is proposed that evidence be given or submissions be made by telephone conference, particulars of the telephone conference facilities available at the courtroom or other place where the Court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:
 - (e) In a case where evidence is proposed to be given, an estimate of the time that the examination of the witness will take:
 - (f) Whether issues of character or credibility are likely to be raised:
 - (g) In a case where submissions are proposed to be made, an estimate of the time that will be required to make the submissions.
- (2) Where the Court gives a direction under section 19(1) of the Evidence Amendment Act 1994, the Court shall instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions which the Court may make.
- (3) Without limiting the generality of subclause (2), the Court may—
- (a) Direct that the evidence be given or the submissions be made at an Australian Court or at another place in Australia:
 - (b) Request that an officer of an Australian Court or other person approved by the Judge be present to assist in the transmission of evidence or submissions, and in particular to—
 - (i) Introduce witnesses giving evidence or a barrister or solicitor, or both, making submissions:
 - (ii) Assist with the administration of oaths:
 - (iii) Assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions:
 - (c) Direct that the evidence or the submissions be heard at a location other than the precincts of the Court.

Rules 500A to 500E and heading were inserted, as from 1 April 1995, by rule 2 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

Procedure when evidence given by affidavit

501 Application of rules 502 to 507

The provisions of rules 502 to 507 shall apply subject to any direction of the Court and to any rule affecting any particular class of proceeding.

Compare: SR 1948/197 r 199; High Court Rules, r 503

502 Time for filing plaintiff's affidavits

(1) In this rule, **the prescribed date** means,—

(a) Where the parties have agreed under rule 498 that evidence be given by affidavit, the date when the agreement was filed:

(b) Where these rules provide that the evidence be given by affidavit, the date when the proceeding is set down for hearing.

(2) Within 14 days after the prescribed date the plaintiff shall, subject to rule 449, file his or her affidavits and serve copies on the defendant and on any other party.

Compare: High Court Rules, r 504

503 Time for filing defendant's affidavits

Within 14 days after service on the defendant of the plaintiff's affidavits, the defendant shall file the defendant's affidavits and serve copies thereof on the plaintiff and on any other party.

Compare: High Court Rules, r 505

504 Time for filing affidavits in reply

Within 10 days after service on the plaintiff of the defendant's affidavits, the plaintiff shall file the plaintiff's affidavits in reply and serve copies thereof on the defendant and on any other party.

Compare: High Court Rules, r 506

505 Use of affidavits

(1) No affidavit shall be read or used until it has been filed.

- (2) When an affidavit has been filed, it may be used by any party.
- (3) No affidavit shall be taken off the file without the leave of the Court.

Compare: High Court Rules, r 507

506 Cross-examination of deponent

- (1) Any party desiring to cross-examine a deponent who has sworn an affidavit on behalf of an opposite party may serve on that opposite party a notice in writing (which may be by letter addressed to the opposite party's solicitor) requiring the production of the deponent for cross-examination before the Court at the hearing.
- (2) The notice shall be served, and copies thereof filed in the Court and delivered to all other parties who have taken any step in the proceeding, not less than 3 clear days before the day fixed for the hearing.
- (3) Unless the deponent is produced accordingly, his or her affidavit shall not be used as evidence except by the special leave of the Court.
- (4) The party to whom the notice is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he or she might compel the attendance of a witness to be examined.

Compare: High Court Rules, r 508

507 Person refusing to make affidavit

- (1) If any person having knowledge of facts relevant to a proceeding or interlocutory application refuses to make an affidavit as to those facts, any party may apply for an order to such person to appear and be examined on oath before the Court, or such person as the Court appoints, as to the matters concerning which he or she has refused to make an affidavit.
- (2) Upon any application under subclause (1), the Court may—
 - (a) Make such orders, as the Court thinks just, for the attendance of that person before the Court, or before the person therein named, for the purpose of being examined as aforesaid, and for the production of any documents specified in the order; and

- (b) Impose such terms, as the Court thinks just, as to the examination and the costs of and incidental to the application and examination.
- (3) Any person who disobeys any order made under subclause (2) shall be liable to proceedings for contempt.
Compare: High Court Rules, r 509; SR 1986/228 r 8

508 Form and contents of affidavits

- (1) Every affidavit—
 - (a) Shall be expressed in the first person; and
 - (b) Shall state the deponent's full name, occupation, and place of residence; and
 - (c) Shall either—
 - (i) Be signed by the deponent; or
 - (ii) If the deponent cannot write, have the deponent's mark set to it by the deponent; and
 - (d) Shall be confined—
 - (i) To such matters as would be admissible if given in evidence at the hearing by the deponent; and
 - (ii) If in reply, to matters strictly in reply.
- (2) The Court—
 - (a) May refuse to read an affidavit that—
 - (i) Unnecessarily sets forth any argumentative matter or copies of or extracts from documents; or
 - (ii) Being in reply, introduces new matter; and
 - (b) May order the costs incurred in respect of or occasioned by an affidavit to which paragraph (a) applies be paid by the party filing the affidavit.
- (3) The date and place of swearing an affidavit shall be stated in the jurat, which shall be signed by the person before whom the affidavit is sworn.
- (4) Where an affidavit has more than one page,—
 - (a) The deponent shall initial or set the deponent's mark on each page, except the cover sheet, that precedes the page on which the jurat appears; and
 - (b) The person before whom the affidavit is sworn shall initial each page, except the cover sheet, that precedes the page on which the jurat appears.

- (5) Nothing in this rule limits the extent to which rules 21 to 35 apply in respect of affidavits.

Compare: High Court Rules, r 510; SR 1990/66 r 11

Subclause (4) was amended, as from 24 August 2007, by rule 19 District Courts Amendment Rules 2007 (SR 2007/205) by inserting “, except the cover sheet,” after “each page” in both places it appears.

509 Exhibits to affidavits

- (1) Exhibits to an affidavit—
- (a) Shall be marked, in each case, with a distinguishing letter or number; and
 - (b) Shall be annexed to the affidavit— if this is practicable; and
 - (i) If this is practicable; and
 - (ii) If none of them exceed International size A4; and
 - (c) Shall, in each case, be identified by a note made thereon and signed by the person before whom the affidavit is sworn.
- (2) Exhibits that are not annexed to the affidavit shall, subject to subclause (3), be filed with the affidavit in a separate bundle, which bundle shall—
- (a) Be securely bound; and
 - (b) Include a sheet bearing a proper heading, endorsement, and subscription.
- (3) Where the size, shape, or nature of an exhibit makes it impracticable to comply with subclause (1)(b) or subclause (2), that exhibit shall have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.

Compare: High Court Rules, r 511

Rule 509 was substituted, as from 1 April 1996, by rule 19 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

510 Affidavit in language other than English

- (1) An affidavit in a language other than English (**non-English-language affidavit**) may be filed in a proceeding.
- (2) The non-English-language affidavit must be accompanied by an affidavit by an interpreter to which is exhibited—
- (a) a copy of the non-English-language affidavit; and

- (b) the interpreter's translation of the non-English language affidavit.

Rule 510 was substituted, as from 1 June 2006, by rule 11 District Courts Amendment Rules 2006 (SR 2006/97). See rule 14 of those rules as to the transitional provision relating to costs.

511 Interlineation, alteration, or erasure in affidavit

No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall, without leave of the Court, be read or made use of in any proceeding unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the person before whom it is sworn, or, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the person taking it.

Compare: High Court Rules, r 513

512 Irregularity in form of affidavit

The Court may receive any affidavit sworn for the purpose of being used in any proceeding, notwithstanding any defect by misdescription of parties in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

Compare: High Court Rules, r 514

513 Service copies of affidavits

Every service copy of an affidavit shall be legible and shall, where practicable, include legible copies of all exhibits.

Compare: High Court Rules, r 515

514 Affidavit may be sworn on Sunday

An affidavit may be sworn on any day, including Sunday.

Compare: High Court Rules, r 516

515 Affidavits made on behalf of corporation

A person may make an affidavit on behalf of a corporation or body of persons empowered by law to sue or be sued (whether

in the name of the body or in the name of the holder of an office) if the person—

- (a) knows the relevant facts; and
- (b) is authorised to make the affidavit.

Compare: High Court Rules r 517.

Rule 515 was substituted, as from 1 March 2001, by rule 24 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

516 Affidavit by 2 or more deponents

In every affidavit made by 2 or more deponents the names of all the deponents shall be inserted in the jurat, but if the affidavit of all the deponents is sworn at the one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of **the above-named deponents**.

Compare: High Court Rules, r 518

517 Affidavit by blind or illiterate deponent

Where it appears to the person before whom an affidavit is sworn that the deponent is wholly or partially blind, or (whether because of physical handicap or otherwise) is unable to read or has severe difficulty in reading, that person shall certify in the jurat—

- (a) That the affidavit was read and explained by him or her to the deponent; and
- (b) That the deponent appeared perfectly to understand the affidavit; and
- (c) That the deponent wrote his or her signature or made his or her mark in the presence of that person.

Compare: High Court Rules, r 519

518 Swearing of affidavits

An affidavit or an affirmation may be read and used in a proceeding only if the affidavit or affirmation is sworn or made—

- (a) in accordance with the Oaths and Declarations Act 1957; and
- (b) before a person authorised to administer oaths and affirmations—
 - (i) under the Oaths and Declarations Act 1957; or

- (ii) under section 56 of the District Courts Act 1947;
or
- (iii) under rule 519.

Rules 518 to 521 were substituted, as from 1 November 2004, by rule 6 District Courts Amendment Rules 2004 (SR 2004/321).

519 Authority to take affidavits in places outside New Zealand

- (1) An affidavit may be sworn in a place outside New Zealand before—
 - (a) a Commissioner of the High Court of New Zealand who has authority in that place; or
 - (b) a person who is authorised to administer oaths by the law of that place; or
 - (c) a person who is authorised by a Judge to administer the oath required for the affidavit.
- (2) The person administering an oath under subclause (1) must state in the jurat of the affidavit that he or she is—
 - (a) a Commissioner of the High Court of New Zealand who has authority in the place where the affidavit is sworn; or
 - (b) a person authorised to administer oaths by the law of the place where the affidavit is sworn; or
 - (c) a person who is authorised by a Judge to administer the oath.
- (3) An affidavit that appears to comply with subclauses (1) and (2) must be taken to have been properly sworn unless the Court requires verification by evidence or other means of any matter affecting compliance with either of those subclauses.
- (4) Nothing in this rule affects the administering of oaths under the Oaths and Declarations Act 1957.

Compare: High Court Rules r 523

Rules 518 to 521 were substituted, as from 1 November 2004, by rule 6 District Courts Amendment Rules 2004 (SR 2004/321).

520 Meaning of authenticated deposition

In rules 521 and 521A, **authenticated deposition** means a written statement—

- (a) made in a place outside New Zealand before a court or a judicial or other authority or person; and

- (b) the maker of which is, under the law in force in the place in which the statement is made, liable to imprisonment or a fine or to some other punishment if the statement is false; and
- (c) that purports to be—
 - (i) signed by a person holding judicial office or by an official exercising authority under the law in force in the place in which the statement is made; or
 - (ii) sealed with an official or public seal or with the seal of a Minister of State, or of a department or an official of the government exercising authority in the place in which the statement is made; or
 - (iii) endorsed with or accompanied by a certificate given by a person having authority under the law in force in the place in which the statement is made to give the certificate that the statement complies with the requirements of the law in force in that place and that, under that law, the maker of the statement is liable to imprisonment, or a fine or to some other punishment if the statement is false.

Compare: High Court Rules r 522

Rules 518 to 521 were substituted, as from 1 November 2004, by rule 6 District Courts Amendment Rules 2004 (SR 2004/321).

521 Admissibility of authenticated deposition

Evidence that may, under these rules, be given by affidavit, may be given in an authenticated deposition.

Compare: High Court Rules r 524

Rules 518 to 521 were substituted, as from 1 November 2004, by rule 6 District Courts Amendment Rules 2004 (SR 2004/321).

521A Application of other rules

Rules 502 to 508 apply with such modifications as may be necessary in relation to an authenticated deposition as if the deposition were an affidavit.

Compare: High Court Rules r 524A(1)

Rule 521A was inserted, as from 1 November 2004, by rule 6 District Courts Amendment Rules 2004 (SR 2004/321).

Judgments

522 Final judgment of judgment directing account

- (1) A judgment may be either—
 - (a) A final judgment; or
 - (b) A judgment directing such accounts to be taken, inquiries made or other acts done, and steps instituted under rules 386 to 405, as the Court giving judgment considers necessary.
- (2) The Court may give the conduct of the proceeding after judgment to such party to the proceeding as the Court thinks proper.
Compare: High Court Rules, r 531

523 Procedure when accounts, etc, not proceeded with

- (1) If any party having the conduct of the proceeding does not proceed with the accounts, inquiries, acts, or steps ordered, or does not take all necessary steps to have the same completed, the opposite party may apply to dismiss the proceeding.
- (2) On an application under subclause (1), the Judge may make such order as he or she thinks proper, being—
 - (a) An order as to the prosecution of the account, inquiries, acts, or steps; or
 - (b) An order for the dismissal of the proceeding; or
 - (c) An order giving the conduct of the proceeding to some other party.
Compare: High Court Rules, r 532

524 Judgment directing sale of property

- (1) Where by any judgment or order any property is directed to be sold, it shall, unless the Court otherwise directs, be sold in such manner as will ensure that the best price therefor will be obtained.
- (2) The Court may, either at the time of giving the judgment or making the order or at any time thereafter, give directions as to the mode of the sale and as to terms and conditions of sale, including, where the sale is by auction, fixing a reserve price, if thought advisable, and defining the rights of parties to bid at the sale.

- (3) All parties shall co-operate in effecting the sale of the property and do all things necessary to give effect thereto, including signing any documents required to transfer or assure the property to the purchaser.
- (4) For the purpose of giving effect to the sale of the property, the Court—
 - (a) May give all necessary directions, including directions in relation to the transfer or assurance of the property sold; and
 - (b) May appoint a person to sign any documents required to transfer or assure to the purchaser the property sold.

Compare: High Court Rules, r 533

525 Judgment for balance of claim over counterclaim

If a counterclaim to any cause of action is proved to an amount less than that recovered on that cause of action, the plaintiff shall have judgment on that cause of action for the balance of his or her claim, after deducting the amount of the counterclaim proved by the defendant.

Compare: SR 1948/197 r 214(1)(a); High Court Rules, r 534

526 Judgment for balance of counterclaim

If a counterclaim to any cause of action is proved to an amount exceeding that recovered on that cause of action, the defendant shall have judgment for the excess.

Compare: SR 1948/197 r 214(1)(b); High Court Rules, r 535

527 Cross judgments

- (1) Where there are cross judgments for money between the same parties, whether for debt, or damages, and costs, or for costs alone, the one may be set off against the other by leave of the Court.
- (2) Leave shall not be granted under subclause (1) if the set-off would prejudice any solicitor's lien for costs in the particular proceeding against which the set-off is sought.

Compare: High Court Rules, r 536

528 Judgment when third party defends

- (1) When a third party has filed his or her statement of defence pursuant to the third party notice, then either at or after the hearing of the proceeding or (whether the proceeding is decided by hearing or otherwise) on application, the Court may—
- (a) Order such judgment as the nature of the case may require to be entered for or against the defendant giving the notice against or for the third party; and
 - (b) Grant to the defendant or to the third party any relief or remedy which might properly have been granted if the third party had been made a defendant to a proceeding duly instituted against him or her by the defendant; and
 - (c) Make such further or other order as the nature of the case may require.
- (2) This rule shall apply, with all necessary modifications, whenever a fourth or subsequent party notice has been issued.

Compare: High Court Rules, r 537

529 Judgment and reasons for judgment defined

In rules 530 to 540—

Judgment includes any decree or order of the Court

Reasons for judgment means—

- (a) The written reasons given by the Judge for his or her decision; or
- (b) Where the Judge gives reasons orally, means a proper report, approved by the Judge, of the oral statement made by him or her of the reasons for his or her decision.

Compare: High Court Rules, r 539

530 Time and mode of giving judgment

- (1) A Judge may give a judgment orally or in writing.
- (2) Except in the case of a judgment on an ex parte application, a Judge may give a judgment orally only if the affected parties or their counsel have been given a reasonable opportunity to—
 - (a) be present when the judgment is given; or
 - (b) hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.

- (3) A judgment is given orally when the Judge pronounces it, with or without reasons.
- (4) On receiving a written judgment from the Judge responsible for it, the Registrar must endorse the judgment with a date and time directed by the Judge or, if no direction is given, with a date and time nominated by the Registrar (the **delivery time**). The date and time nominated by the Registrar must be subsequent to the date and time the Registrar endorses the judgment.
- (5) A written judgment must for all purposes be treated as having been given at the delivery time directed or nominated under subclause (4).
- (6) Immediately after endorsing a judgment, the Registrar must attempt to notify the parties, by telephone or otherwise, of the delivery time.
- (7) A party may request the Registrar to—
 - (a) send the party, immediately after the delivery time, a copy of the written judgment by email or facsimile; or
 - (b) make a copy of the written judgment available, immediately after the delivery time, for uplifting from the Registry.
- (8) If a party who has given an address for service does not make a request under subclause (7), the Registrar must immediately after the delivery time post a copy of the written judgment to that party.
- (9) A failure by the Registry to comply with any of subclauses (6) to (8) does not affect the validity of a judgment or its delivery time.

Compare: High Court Rules r 540

Rule 530 was substituted, as from 1 March 2001, by rule 25 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclauses (4) to (6) were substituted, as from 1 November 2004, by rule 7 District Courts Amendment Rules 2004 (SR 2004/321).

Subclauses (7) to (9) were inserted, as from 1 November 2004, by rule 7 District Courts Amendment Rules 2004 (SR 2004/321).

531 Judgments to be sealed, dated, and served

- (1) Every judgment shall be drawn up in a form approved by the Registrar, who shall seal it with the seal of the Court.

- (2) Forms 42 and 44 may be used.
- (3) A judgment may be sealed—
 - (a) in accordance with any direction given by the Judge relating to the sealing of the judgment; or
 - (b) if no direction is given, at any time after the judgment has been given.
- (3A) Except with the leave of the Court, a judgment may not be sealed until any application under rule 533 for the recall of the judgment has been determined
- (4) A sealed judgment must state—
 - (a) the date on which, in accordance with rule 530, the judgment is given; and
 - (b) the date on which it is sealed.
- (5) A party who has a judgment sealed must forthwith serve a sealed copy of the judgment on—
 - (a) every other party who has given an address for service; and
 - (b) any other person who, although not a party, is affected by the judgment.

Compare: SR 1948/197 r 212, r 213; SR 1970/60 r 4(2); High Court Rules, r 541; SR 1988/269 r 17

The heading to rule 531 was substituted, as from 1 November 2004, by rule 8(1) District Courts Amendment Rules 2004 (SR 2004/321).

Subclauses (3) and (4) were substituted, as from 1 March 2001, by rule 26 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Subclause (3A) was inserted, as from 1 November 2004, by rule 8(2) District Courts Amendment Rules 2004 (SR 2004/321).

Subclause (5) was inserted, as from 1 November 2004, by rule 8(3) District Courts Amendment Rules 2004 (SR 2004/321).

532 Duplicate judgments

Duplicates of any judgment, en faced with the word “duplicate”, may be issued to any party.

Compare: High Court Rules, r 541; SR 1985/328 r 16

533 When judgment takes effect

- (1) A judgment takes effect when it is given.
- (2) Unless the Judge otherwise directs, no step may be taken on a judgment before it has been sealed.

- (3) A judgment, whether given orally or in writing, may be recalled by the Judge at any time before a formal record of it has been drawn up and sealed.
- (4) A party may bring an appeal under rule 706 of the High Court Rules even though the judgment appealed against has not been sealed, as long as the party takes steps to ensure that the judgment is sealed promptly after the appeal is brought.
- (5) In this rule—
 - (a) subclause (2) overrides subclause (1):
 - (b) subclause (4) overrides subclause (2).

Compare: High Court Rules r 542

Rule 533 was substituted, as from 1 March 2001, by rule 27 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Rule 533 was substituted, as from 1 November 2004, by rule 9 District Courts Amendment Rules 2004 (SR 2004/321).

534 Time for doing any act to be stated

Every judgment requiring any person to do an act, other than the payment of money or costs, shall state the time within which the act is to be done.

Compare: SR 1948/197 r 216

535 Where deed directed to be prepared

Where a judgment directs any deed to be prepared and executed it may state by which party and at whose expense the deed shall be prepared, and to whom it shall be submitted for approval, and, if the parties cannot agree upon the form of the deed, the Court may, upon the application of any party on notice, settle the deed itself.

Compare: SR 1948/197 r 220

536 Certificate of judgment or order

- (1) Any party to any proceeding who requires a certificate of any judgment or order shall state in writing whether it is required for the purposes of section 66 or section 69 of the Act or for evidential purposes.
- (2) Where a person applying for a certificate of any judgment or order is not a party to the proceedings in which the judgment or order was given or made, that person shall state in writing, with

particulars, the purpose for which the certificate is required and the capacity in which he or she applies for it, and shall satisfy the Registrar that the application may properly be granted. The Registrar may, if the Registrar thinks fit, refer the application to the Judge.

- (3) The certificate of any judgment or order shall be in form 45 and shall be signed by the Registrar and sealed with the seal of the Court.
- (4) There shall be annexed to the certificate a true copy of the judgment or order endorsed “This is the judgment (*or* order) marked ‘A’ referred to in the annexed certificate given by my hand and the seal of the Court at this day of..... 19.....” The endorsement shall be signed and sealed with the seal of the Court.

Compare: 1948/197 r 223(1)-(4); SR 1970/60, r 4(2)

Rule 536 was substituted, as from 1 August 1995, by rule 11 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

537 Where amount payable in excess of jurisdiction

Where a certificate is issued under section 68 of the Act and the sum of money payable under the judgment is in excess of the jurisdiction of the Court, there shall be filed with the certificate an affidavit verifying the amount due under the judgment and, where necessary, stating that the excess has been abandoned.

Compare: SR 1948/197 r 223A(2); SR 1952/242 r 22; SR 1973/244 r 13

538 Further proceedings after issue of certificate

Where under the provisions of rule 536 a certificate of judgment is issued for the purposes of section 66 or section 69 of the Act, no further proceedings shall be had in the Court from which the certificate is issued unless the party taking out the certificate returns it to the Registrar or satisfies the Registrar that it has not been filed in the High Court or in another District Court:

Provided that a judgment removed into one District Court may later be removed into any other District Court, including the District Court in which the judgment was first given, and for

the purposes of the removal the provisions of section 69 of the Act and of this and rule 536 shall apply.

Compare: SR 1948/197 r 224

539 Death, etc, of Judge before judgment

- (1) Where a Judge who has signed a judgment or reasons for judgment dies or retires or becomes otherwise incapable before the judgment is given or the reasons are delivered, any other Judge or the Registrar may give that judgment or deliver those reasons.
- (2) Where subclause (1) does not apply and a Judge dies or retires or otherwise becomes incapable of giving judgment, the proceeding or issue shall be reheard.

Compare: High Court Rules, r 543(1), (3)

540 Satisfaction of judgment

- (1) As soon as any judgment has been satisfied by payment, levy, or in any other manner, the party against whom the judgment has been given shall be entitled to have satisfaction of the judgment entered up.
- (2) For the purposes of subclause (1), the party against whom the judgment has been given shall produce and file in the office of the Court an acknowledgment of satisfaction signed by the party obtaining judgment or on his or her behalf.
- (3) Notwithstanding subclause (2), the Court may order satisfaction to be entered upon proof that the judgment has been satisfied.

Compare: SR 1948/197 r 225; High Court Rules, r 544

Part 8 Appeals to High Court

541 Agreement not to appeal

An agreement not to appeal shall be in form 46, and shall be filed in the Court before the hearing of the proceeding.

Compare: SR 1948/197 r 232

542 Leave to appeal

- (1) An application under section 71A(1)(b) of the Act for leave to appeal may be made to the Court immediately after delivery of the judgment, without notice, if the opposite party is present or represented. In any other case the application shall be made on notice in form 47.
- (2) Where an application to fix security for appeal is made on notice, the amount for which security is to be given may be fixed by the Registrar.

Compare: SR 1948/197 r 233; SR 1956/81 r 9; SR 1973/244 r 15(2), (3)

543 Security for appeal

- (1) The amount of security for appeal which the appellant is required to give pursuant to section 73(2) of the Act shall be \$750.
- (2) In all cases where security is to be given it may be given in accordance with rule 62.

Compare: SR 1948/197 r 234; SR 1973/244 r 15(1); SR 1986/358 r 10

Part 9
Appeals to District Courts

544 Application of this Part

- (1) This Part shall apply to all appeals to a District Court under any enactment.
- (2) This Part shall apply subject to any specific provision contained in the Act conferring the right of appeal.

Compare: High Court Rules, r 701; SR 1991/132 r 20(1)

545 Interpretation

In this Part,—

Appropriate officer, in relation to a tribunal, means the Registrar or the Secretary or the clerk or such other officer of the tribunal who is responsible for the administration of the tribunal

Appropriate Court means the Court at which the appeal is, in accordance with rule 550, to be filed

Decision, includes any order made by a tribunal or person

Tribunal, includes any person or body of persons exercising a power of decision conferred by or under any Act, in respect of which there is a right of appeal to the Court.

Compare: High Court Rules, r 702; SR 1991/132 r 20(1)

546 Mode of bringing appeal

Every appeal to which this Part applies shall be instituted by the appellant—

- (a) Filing a notice of appeal in the appropriate Court; and
- (b) Serving a copy of the notice of appeal on the appropriate officer of the tribunal, by which the decision was made, or if there is no such appropriate officer, on the person by whom the decision was made.

Compare: High Court Rules, r 703; SR 1991/132 r 20(1)

546A Power of Judge to call conference and give directions

- (1) For the purpose of ensuring that any appeal or intended appeal may be determined in a convenient and expeditious manner, and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or intended party or without any such application, and on such terms as that Judge thinks fit, direct the holding of a conference of parties or their counsel presided over by a Judge.
- (2) At any such conference the Judge presiding may—
 - (a) Settle the issues to be determined;
 - (b) Direct what persons shall be cited, or need not be cited, as respondents to the appeal, or direct that the name of any party be added or struck out;
 - (c) Fix a time by which any affidavits or other documents shall be filed;
 - (d) Fix a time and place for the hearing of the appeal;
 - (e) Make an order in accordance with rule 556;
 - (f) Give such other directions as may be necessary for the proper determination of the appeal.
- (3) Notwithstanding any of the following provisions of this rule, a Judge may, at any time before the hearing of an appeal has been commenced, exercise any of the powers specified in subclause (2) without holding a conference under subclause (1).

Rule 546A was inserted, as from 1 February 1996, by rule 20 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

547 Time for appeal

Unless otherwise provided in any enactment, the notice of appeal shall be filed and served in accordance with rule 546 within one month after the date of the decision.

Compare: High Court Rules, r 704; SR 1991/132 r 20(1)

548 Extension of time for appeal

- (1) The Court may extend the time prescribed for appeal, or for taking any step in relation to an appeal, if the enactment conferring the right of appeal—
 - (a) Permits the extension; or
 - (b) Does not limit the time prescribed for appeal.
- (2) Any such extension shall be sought by way of interlocutory application upon notice to all other parties who may be affected by the appeal.
- (3) An application under subclause (2) may be made before or after the expiration of the time prescribed for appeal or for taking any step in relation to the appeal.

Compare: High Court Rules, r 705; SR 1991/132 r 20(1)

549 Contents of notice of appeal

- (1) Unless the Court otherwise directs, the notice of appeal must—
 - (a) bear a heading in form 1, referring to the Act under which the appeal is brought and referring to the matter as being in the matter of an appeal from a decision of a tribunal or person (which decision-maker must be named); and
 - (b) specify the decision or the part of the decision appealed from; and
 - (c) specify any error of law alleged by the appellant; and
 - (d) specify any question of law to be resolved; and
 - (e) specify the grounds of the appeal, which grounds must be specified with reasonable particularity so as to give full advice of the issues involved to—
 - (i) the Court; and
 - (ii) the other parties; and

- (iii) the tribunal that, or person who, made the decision appealed from; and
 - (f) specify the relief sought.
- (2) The grounds of the appeal may be amended by leave of the Court.
- (3) The notice of appeal must not name as a respondent the tribunal that, or person who, made the decision appealed from.
- (4) Nothing in subclause (3) limits or affects rule 560(9) (which relates to the entitlement of a decision-maker to be represented and heard).

Compare: High Court Rules r 706.

Rule 549 was substituted, as from 1 March 2001, by rule 28 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

550 Place for filing notice of appeal

- (1) The appropriate Court for the purposes of this Part shall be—
 - (a) The Court nearest to the place where the decision appealed from was made; or
 - (b) Any other Court in which the parties agree that the notice of appeal may be filed.
- (2) In any case to which subclause (1)(b) applies, the parties shall endorse on or lodge with the notice of appeal a memorandum of their agreement to the notice of appeal being filed in the Court in which it is filed.
- (3) In any case to which subclause (1)(a) applies, if it appears to the Court or the Registrar, on application, that the notice of appeal has been filed in the wrong Court or that any other Court would be more convenient to the parties, the Court or Registrar, as the case may be, may direct that the notice of appeal be filed in such other Court, or that all documents filed in the appeal be transferred to the proper Court or (as the case may be) to such other Court.

Compare: High Court Rules, r 707; SR 1991/132 r 20(1)

551 Service of copies of notice of appeal on other parties

- (1) Either before or immediately after the filing and service of the notice of appeal under rule 546, the appellant shall serve a copy of the notice of appeal on every other party to the matter in which the decision was given.

- (2) Where the matter in which the decision was made involved the hearing of a charge against any person under any Act, the person or body by whom or by which that charge was prosecuted under that Act shall, for the purposes of subclauses (1) and (3), be deemed to be a party to that matter.
- (3) Every party to the matter in which the decision was made who is served under subclause (1) with a copy of the notice of appeal shall, for the purposes of rule 558, be deemed to be a respondent to the appeal.

Compare: High Court Rules, r 708; SR 1991/132 r 20(1)

Rules 551(1) and (2) were inserted, as from 1 February 1996, by rule 21 District Courts Rules 1992, Amendment No 3 (SR 1995/319).

552 Power to dispense with service

- (1) Notwithstanding rule 551, the Court may, on sufficient cause being shown, dispense with service of a copy of the notice of appeal on any party to the matter in which the decision was given.
- (2) Any dispensation under subclause (1) may be on such terms as the Court thinks fit.

Compare: High Court Rules, r 709; SR 1991/132 r 20(1)

553 Appeal not to operate as stay

Except as otherwise provided in any enactment, the bringing of an appeal shall not operate as a stay of proceedings on the decision against which the appeal is brought unless the Court, or the tribunal or person by which or by whom the decision was given, so orders.

Compare: High Court Rules, r 710; SR 1991/132 r 20(1)

554 Cross-appeal

Where any person other than the appellant wishes to contend on the hearing of an appeal that the decision appealed from should be varied or discharged, that person shall, at least 10 working days before the day fixed for hearing the appeal, file and serve a notice of cross-appeal, and this Part shall apply accordingly with all necessary modifications.

Compare: High Court Rules, r 711; SR 1991/132 r 20(1)

555 Documents to be lodged by tribunal with Registrar

- (1) Except where the Court otherwise directs, the appropriate officer of the tribunal, or the person by whom the decision was made, shall, as soon as possible after being served with the notice of appeal, send to the Registrar at the appropriate Court—
 - (a) Two copies of any application, documents, written submissions, statements, reports, and other papers lodged with the tribunal or person and relating to the decision appealed from or such greater number of copies as is required by subclause (3); and
 - (b) Any exhibits in the custody of the tribunal or person; and
 - (c) Two copies of the whole of the decision appealed from or such greater number of copies as is required by subclause (3).
- (2) Where there has been a hearing before the tribunal or person, there shall also be sent to the Registrar two copies of such notes of any evidence given at the hearing and made for the purposes of or under the direction of the tribunal or person as have been transcribed or such greater number of copies as is required by subclause (3). If the transcript is certified to be correct by the appropriate officer of the tribunal by which, or the person by whom, the decision was made, no further verification of its contents shall be required.
- (3) Where any enactment provides for the appointment of persons other than Judges to sit with the Court or as members of the Court to hear any specified appeal, the number of copies of documents (including notes of evidence) required, by subclauses (1)(a), (1)(c), and (2), to be sent to the Registrar at the appropriate Court shall be increased to a number sufficient to provide one copy for the Court records and one copy for the Judge and every other person required to hear the appeal.
- (4) The provisions of subclause (2) shall not apply to any notes made personally by the members of the tribunal or the person who made the decision.

Compare: High Court Rules, r 712; SR 1991/132 r 20(1)

556 Order for transcription of evidence

- (1) Where there has been a hearing before the tribunal by which, or the person by whom, the decision was made and the evidence given at the hearing was recorded but has not been transcribed, the Court may order, subject to such conditions as it thinks fit, that a transcript of the whole of the evidence be made and sent to the Registrar at the appropriate Court.
- (2) No application for an order under this rule for the transcription of evidence shall be made, except by leave of the Court,—
 - (a) By the appellant after the expiry of one month after the date of the lodging of the notice of appeal; or
 - (b) By any other party to the appeal after the expiry of one month after the date of service on that party of a copy of the notice of appeal.
- (3) The Court shall, before making an order under this rule for the transcription of evidence, give notice to the tribunal which, or person who, made the decision that is the subject of the appeal.
- (4) If the tribunal which, or person who, made the decision appealed from wishes to appear and be heard before any order under this rule for the transcription of evidence is made, the tribunal or person shall, within 14 days after the date of the service on that person of a notice under subclause (3) of this rule, file a notice of intention to appear and be heard, and the tribunal or person and every party to the appeal shall then be entitled to be heard before any such order is made.
- (5) On any application for an order under this rule for the transcription of evidence, the Court may if it thinks fit, instead of requiring a transcript of evidence to be made, require a report to be made and lodged under rule 557.
- (6) The tribunal which, or person who, made the decision that is the subject of the appeal may, at any time, make application to the Court for an order that the cost of making any transcript in accordance with this rule be paid by any of the parties to the appeal.
- (7) The Court may, in its discretion, make an order accordingly, notwithstanding that the appeal has been abandoned or the appeal has been dismissed for want of prosecution.

- (8) A sealed copy of every order under this rule for the transcription of evidence shall be served forthwith upon the appropriate officer of the tribunal which, or upon the person who, made the decision that is the subject of the appeal.
- (9) Whenever an order under this rule requires a transcript to be made, the appropriate officer of the tribunal which, or the person who, made the decision shall certify as to the correctness of the transcript and send a copy of it to the Registrar at the appropriate Court. No further verification of the contents of the transcript shall be required.

Compare: High Court Rules, r 713; SR 1991/132 r 20(1)

557 Power of tribunal to file report

- (1) The tribunal which, or person who, made the decision shall, if the Court so directs, lodge with the Registrar a report setting out—
 - (a) Any considerations (other than findings of fact) to which the tribunal or that person had regard in making the decision but which are not set out in the decision; and
 - (b) Any material indicating the effect that the decision might have on the general administration of the enactment under which the decision was made; and
 - (c) Any other matters relevant to the decision or to the general administration of the enactment to which the attention of the Court ought to be drawn.
- (2) Where any such report is so lodged, the Court may direct that a further report be lodged by the tribunal or person.
- (3) A copy of every report lodged pursuant to subclause (1) or subclause (2) shall be supplied forthwith by the tribunal or person to every party to the appeal, and any such party shall be entitled to be heard and to tender evidence on any matter referred to in the report.

Compare: High Court Rules, r 715; SR 1991/132 r 20(1)

558 Right of respondent to be heard

- (1) Any respondent to an appeal who wishes to appear and be heard on the hearing of the appeal shall, within 14 days after the date of the service on that person of a copy of the no-

tice of appeal, file in the appropriate Court a notice of the respondent's intention to appear and be heard (which notice is required by rule 43(1) to bear a memorandum stating (among other things) an address for service).

- (2) The parties to an appeal shall be—
 - (a) The appellant; and
 - (b) Any respondent who gives a notice of intention to appear and be heard as a respondent.
- (3) The parties to the appeal shall be entitled—
 - (a) To be served with every document thereafter filed or lodged with the Registrar relating to the appeal; and
 - (b) To receive a notice of the date set down for the hearing of the appeal; and
 - (c) To apply for an order for security for costs of the appeal.
- (4) Where the tribunal which, or person who, made the decision appealed from is entitled to be heard under rule 560(9), the tribunal or person shall give notice under this rule and shall thereafter be entitled to be served with documents and to be given notice as if the tribunal or person was a respondent to the appeal.
- (5) Either before or immediately after filing a notice under this rule, the person filing the notice shall serve a copy of it—
 - (a) On every other party to the matter in which the decision was given; and
 - (b) In the case of a notice served under subclause (1), on the appropriate officer of the tribunal or on the person who made the decision appealed from.

Compare: High Court Rules, r 716; SR 1991/132 r 20(1)

559 Setting down appeal for hearing

At any time after—

- (a) Copies of the notice of appeal have been served in accordance with rule 551; and
- (b) Any documents required to be sent to the Court in accordance with rule 555 or rule 556 have been supplied to the Registrar at the appropriate Court,—

the appellant, or any party to the appeal who has filed a notice under rule 558(1), may set the appeal down for hearing by filing an application for a fixture in form 38. Rules 426, 427,

428, and 429 shall apply thereto and thereafter rules 430 to 432 shall apply with all necessary modifications.

Compare: High Court Rules, r 717; SR 1991/132 r 20(1)

560 Hearing of appeal

- (1) Unless provided otherwise in any enactment, every appeal shall be by way of rehearing.
- (2) In every appeal that requires for its determination consideration of all or some of the evidence taken before the tribunal or person from whose decision the appeal has been brought, the evidence shall, subject to any special order, be brought before the Court as follows:
 - (a) As to any evidence given orally, by the production of—
 - (i) The transcript thereof forwarded to the Court by the appropriate officer of the tribunal by which or the person by whom the decision appealed from was made; or
 - (ii) A written statement read by a witness while under oath; or
 - (iii) Such other materials as the Court thinks expedient;
 - (b) As to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as have been forwarded to the Court by the tribunal or person; and by the production by the parties to the appeal of such exhibits as are in their custody.
- (3) Notwithstanding anything in subclause (2),—
 - (a) The Court may rehear the whole or any part of the evidence; and
 - (b) The Court shall rehear the evidence of any witness if the Court has reason to believe that any note of the evidence of that witness made by direction of the tribunal or person is or may be incomplete in any material particular.
- (4) The Court shall have full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit.
- (5) The Court shall also have regard to any report lodged by the tribunal or person under rule 557 and to any matters referred

to therein and any evidence tendered thereon, whether or not such matters would be otherwise admissible in evidence.

- (6) In the exercise of its powers under this rule, the Court may receive as evidence any statement, document, information, or matter that the tribunal or person would have been entitled to receive at the hearing at first instance.
- (7) In any appeal, the Court shall have all the powers and discretions of the tribunal or person whose decision is appealed from—
 - (a) To hold the hearing or any part of it in private; and
 - (b) To make orders prohibiting the publication of any report or description of the proceedings or any part of them.
- (8) In any appeal, the Solicitor-General shall, at the request of the Court, appoint counsel to appear and be heard as counsel assisting the Court.
- (9) At the hearing of any appeal from a decision made arising from a contested application, the tribunal which, or person who, made the decision appealed from shall, if the leave of the Court is first obtained, be entitled to be represented and heard on—
 - (a) Any issue relating to the procedure followed in the course of reaching the decision appealed from; or
 - (b) Any issue relating to the members of the tribunal or the person making the decision appealed from; or
 - (c) Any matter which the tribunal or person appealed from has referred to in a report made under rule 557,—
but on no other matter arising in the appeal.
- (10) At the hearing of any appeal against a decision made arising from an uncontested application, the tribunal which, or person who, made the decision appealed from shall be entitled to be represented and heard on all matters arising in the appeal.

Compare: High Court Rules, r 718; SR 1991/132 r 20(1)

561 Powers of Court hearing appeal

- (1) In allowing an appeal, the Court may, unless expressly provided otherwise in any other enactment,—
 - (a) Set aside or quash the decision appealed from:

- (b) Substitute any decision which ought to have been given by the tribunal or person whose decision is appealed from:
 - (c) Make such further or other orders as the case may require.
- (2) Notwithstanding subclause (1), the Court may remit to the tribunal or person whose decision is appealed from, for further consideration and determination by the tribunal or person, the whole or any part of the matter to which the appeal relates.
- (3) In remitting any matter to the tribunal or person under this rule the Court shall—
 - (a) Advise the tribunal or person of its reasons for so doing; and
 - (b) Give to the tribunal or person such direction as it thinks just as to any rehearing or to the reconsideration or determination of the whole or any part of the matter that is so referred.
- (4) The Court or the Registrar may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.
- (5) The Court shall not be bound to allow the appeal on the ground merely of the improper admission or rejection of evidence, unless in the opinion of the Court a substantial wrong or miscarriage of justice has been thereby occasioned.
Compare: High Court Rules, r 718A; SR 1991/132 r 20(1)

562 Dismissal of appeal

- (1) If the appellant does not appear at the time appointed for hearing the appeal, the Court may dismiss the appeal.
- (2) If the appellant does not prosecute the appeal with due diligence, the Court may, on the application of any other party or of the tribunal or person whose decision is appealed from, dismiss the appeal.

Compare: High Court Rules, r 718B; SR 1991/132 r 20(1)

563 Registrar to notify decision of Court

On the determination of any appeal, the Registrar shall send to the appropriate officer of the tribunal or the person whose decision is appealed from—

- (a) A memorandum of the Court's decision; and
- (b) Any application, papers, and exhibits forwarded to the Registrar pursuant to rule 555 or rule 556.

Compare: High Court Rules, r 718C; SR 1991/132 r 20(1)

**Part 10
Execution**

Generally

564 Payment in reduction of amount

A person liable to pay money under a judgment or order may at any time pay money into Court in reduction of the amount payable by that person.

Compare: SR 1948/197 r 217

565 Sale of personal property

- (1) Where an order directs any personal property to be sold, the property may be sold by public auction or private contract as the Judge directs.
- (2) Where any personal property is directed to be sold by public auction or to be detained or preserved, the Registrar shall, if the Judge so directs, superintend the sale, detention, or preservation; and, where any such property is directed to be sold by private contract it shall be the duty of the Registrar, unless the Judge otherwise directs, to see that the directions of the Judge are carried out.
- (3) This rule shall not apply to an execution issued under section 79(1)(a) of the Act.

Compare: SR 1948/197 r 221

566 Examination of any party

Where any difficulty arises in or about the execution or enforcement of any judgment or order for some relief other than the payment of money, the Judge or Registrar may on the application of any party interested make such order for the at-

tendance and examination of any party or otherwise as may be just.

Compare: SR 1948/197 r 237

567 Applications under section 26 of Partnership Act 1908

- (1) An application by a separate judgment creditor of a partner for an order charging the partner's interest in the partnership property and profits under section 26 of the Partnership Act 1908 (as amended by section 46 of the Statutes Amendment Act 1947), and for such other orders as are thereby authorised to be made, shall be made to the Court on notice. The notice and any order made on the application shall be served on the judgment debtor and his or her partners, or such of them as are in New Zealand.
- (2) Any application by a partner of the judgment debtor under the said section 26 shall be made to the Court on notice. The notice shall be served on the judgment creditor, the judgment debtor, and such of the partners as do not concur in the application and are in New Zealand.

Compare: SR 1948/197 r 238

568 Change of parties after judgment

- (1) Where any change has taken place after judgment, by death, assignment, or otherwise, in the parties entitled to enforce a judgment or order or in the parties liable under a judgment or order, the party claiming to be entitled to enforce the judgment or order may apply *ex parte* to the Court or the Registrar for leave to issue the necessary process, and the Court or the Registrar may—
 - (a) If satisfied that the party so applying is entitled to issue the process, make an order to that effect:
 - (b) If not so satisfied, order that any issue or question necessary to determine the rights of the parties be tried and determined in such manner as the Court or the Registrar thinks fit.
- (2) Notwithstanding anything contained in rule 113, the hearing of any issue or question referred to in subclause (1)(b) may, unless the Court or the Registrar otherwise orders, be commenced in the Court in which the order was made.

- (3) Any order made under subclause (1) shall be in form 48, and shall be served on the persons affected, and no process shall issue until the expiration of 7 days after the day of service, except with the leave of the Court or the Registrar.
- (4) Where a party claims to be entitled, by reason of one and the same change, to enforce more judgments or orders than one, that party may make one application in respect of all the judgments or orders, specifying them in a schedule, and in the notice of any order made on the application it shall be sufficient to set out only that part of the order which affects the person on whom the notice is to be served.

Compare: SR 1948/197 r 239

569 Change of name, etc, of party after judgment

Where the name, address, or occupation of any party to any judgment or order, as given in any application for any process for the enforcement of the judgment or order, differs from the name, address, or occupation in the judgment or order, and the applicant satisfies the Registrar that the amended name, address, or occupation is applicable to that party, both names, addresses, or occupations, as the case may require, shall be specified in the process applied for.

Compare: SR 1948/197 r 239A; SR 1956/81 r 10(1)

570 Application to Registrar for suspension of judgment, etc

Where any person desires to make an application to the Court to suspend or stay any judgment, order or execution, or order of committal, that person may, in the absence of the Judge, apply to the Registrar, who may suspend or stay the judgment, order, or execution until application can be made to the Judge.

Compare: SR 1948/197 r 240

571 Stay of judgment, etc

- (1) An order to suspend or stay any judgment, order, execution, order of committal, or order for the discharge of a person, under the Act shall be in form 49.
- (2) Where an order suspending or staying a judgment, order or execution has been made and execution has issued, the warrant shall be recalled, but the Judge may order the person named

therein to pay the costs of the warrant and any fees or expenses incurred by the bailiff before the recall of the warrant, and may authorise the bailiff to sell a portion of the goods seized sufficient to realise those costs, fees, and expenses and the expenses of the sale; and any such warrant may be reissued by leave of the Judge.

- (3) Where an order has been made under section 98 of the Act for the discharge of any person arrested or confined in prison under subsection (2) or subsection (4) of section 79 of the Act, the following provisions shall apply:
- (a) The Registrar of the Court which made the order shall sign a sealed copy of the order, and if the person named therein was arrested by an officer of another Court, shall send the copy to the Registrar of the other Court. The Registrar of the Court making the order, or, as the case may be, of the other Court, shall deliver the copy by post or otherwise to the Superintendent or bailiff in whose custody the person is, and the Superintendent or bailiff shall forthwith discharge the person:
 - (b) If the person is ordered to be discharged on terms which include liability to rearrest if the terms are not complied with, the party entitled to the benefit of the judgment or order may, if the terms are not complied with, apply to the Judge on notice, and the Judge may order the person to be rearrested and imprisoned for such portion of the term of imprisonment as remained unserved at the time of that person's discharge:
 - (c) Where an order is made under paragraph (b), an order shall be issued and delivered to the bailiff, and the order so issued shall be an authority to the bailiff to rearrest the person, and to the Superintendent to receive and detain that person for the remainder of the term of imprisonment or until that person shall be sooner discharged in due course of law.

Compare: SR 1948/197 r 219

572 Execution of processes

- (1) The Registrar shall hand every warrant, writ, or other process issued for execution to the bailiff of his or her Court or to a constable for execution or service.
- (2) Where a warrant, writ, or other process is required to be executed or served by the bailiff of another Court, the Registrar of the Court from which the process was issued may cause it to be sent to the Registrar of the other Court, and the Registrar of that other Court shall endorse thereon the time when it was received by him or her, and shall forthwith deliver it to the bailiff of the other Court or to a constable.
- (3) The last-mentioned bailiff or constable shall certify to the Registrar of the other Court what he or she has done, and if that bailiff or constable has received any money or fees shall, after deducting therefrom the fees allowed to him or her, pay over the balance to that Registrar, who shall, unless the warrant or writ has been retained by the Superintendent, forthwith return the process to the Registrar of the Court from which the process was issued, together with any money paid to the Registrar of the other Court as aforesaid.

Compare: SR 1948/197 r 241

573 Receipt to be attached to warrant

- (1) The Registrar shall prepare and attach an official receipt to every warrant under which any money is payable and which is issued for execution to a constable (or other person who is acting for the particular occasion as bailiff under section 15(2) of the Act). When any money is paid on the warrant, the constable or other person shall forthwith complete and sign that receipt and hand it to the defendant or to the person paying the money.
- (2) Every bailiff (other than a constable or any such other person) shall, when executing a warrant under which any money is payable, carry with him or her a book of official receipts which shall be issued to the bailiff by the Registrar. When any money is paid to any such bailiff on such a warrant, the bailiff shall forthwith complete and sign a receipt from that book of official receipts and hand that receipt to the defendant or to the person paying the money.

- (3) If a receipt attached to a warrant pursuant to subclause (1) is not used by the constable (or other person) he or she shall endorse on it a short statement of what was done under the warrant (for example, *Nulla bona*; “defendant left district” or “cannot be found”; “withdrawn at request of plaintiff”), and the date, sign the endorsement, and return the receipt to the Registrar who issued it. The receipt shall then be securely attached to the duplicate thereof in the receipt book.

Compare: SR 1948/197 r 242; SR 1965/210 r 2(1)

574 Bailiff to execute warrants, etc

- (1) The bailiff must—
- (a) keep and maintain, in an appropriate form, a record of all warrants, writs, and other processes that the bailiff has received for execution or service; and
 - (b) include in the record the date that each process was received.
- (2) The bailiff shall execute or serve all processes promptly and shall make periodic reports, as required by the Registrar, with respect to each warrant or writ issued to that bailiff, either from his or her own or from any other Court.

Compare: SR 1948/197 r 243

Rule 574(1): substituted, on 1 March 2008, by rule 5 of the District Courts Amendment Rules (No 2) 2007 (SR 2007/383).

575 Return of unexecuted warrants to other Court

Where a warrant, writ, or other process has been received by a Registrar from another Court for execution or service, the Registrar shall return the process to that Court when requested by the execution creditor or the Registrar of that Court to do so, or, if the process has not been executed or served during the time it is in force, within 24 hours after the expiration of that time, endorsed with the reason for non-execution or non-service.

Compare: SR 1948/197 r 244

576 New order for payment of unsatisfied judgment

- (1) Where there is an unsatisfied judgment or order, the party entitled to enforce it may apply on notice, in form 50, to the Court

in which it was given or made, for an order that the amount due and unpaid be paid by instalments, or, if already payable by instalments, by the same or smaller instalments, and the Court may thereupon make an order accordingly.

- (2) Where a judgment has been given or an order made for the payment of any sum of money, and it appears to the Court that the person liable under the judgment or order is unable to pay, in one sum, the sum ordered to be paid, the Court may, on the application of that person made on notice in form 50, order the amount unpaid under the judgment to be paid by instalments, and may from time to time vary any such order.
- (3) If it appears to the Court that the person liable under any order for payment by instalments is able to pay the sum ordered to be so paid either in one sum or by larger or earlier instalments than those ordered, the Court may, on the application of the person entitled to enforce the order, made on notice in form 50, order the amount unpaid to be paid in one sum, or by larger or earlier instalments than those previously ordered, and may from time to time vary any such order.

Compare: SR 1948/197 r 218(1)-(3)

Discovery in aid of execution

577 Financial statements

- (1) Every notice under section 84A(1) of the Act requiring a judgment debtor to complete a financial statement shall be in form 51.
- (2) Every financial statement required to be completed under section 84A(1) of the Act shall be in form 52.

Compare: 1948/197 r 236A; SR 1989/363 r 3

578 Order for examination of judgment debtor

- (1) Every order under section 84B of the Act for examination of a judgment debtor or, if the judgment debtor is a corporation, an officer of a judgment debtor, shall be in form 53.
- (2) Where 2 or more judgment debtors are liable under the same judgment or order, the judgment creditor may apply for an order for examination in respect of any one or more of them. A separate application shall be filed in respect of each debtor

whom the judgment creditor wishes to be examined, and fees shall be paid and costs allowed in respect of each such application.

- (3) Where the judgment creditor wishes to apply for an examination in respect of a judgment debtor that is a company, it shall not be necessary to name in the application a particular officer who is to appear at the examination.

Compare: SR 1948/197 r 236B; SR 1989/363 r 3

579 Examination of judgment debtor outside Court district

- (1) Where the judgment debtor neither resides nor carries on business within 35 kilometres of the Court in which the application for the order of examination is made, the order may provide for the attendance and examination of the judgment debtor before the Court for the district in which he or she resides or carries on business.

- (2) Where a direction is made under subclause (1),—

- (a) The Registrar of the Court in which the order was made shall send all documents in his or her custody relating to the proceeding to the Registrar of the Court where the examination is to take place; and
- (b) The Registrar of the Court where the examination is to take place shall appoint a date and time for the examination and arrange for service of the notice in accordance with section 84B of the Act; and
- (c) The Court or the Registrar where the examination takes place may, on completion of the examination, exercise any of the powers referred to in section 84E of the Act; and
- (d) On completion of the examination, all documents relating to the proceeding shall be returned to the Court which made the order for examination unless, at the examination, an order has been made for the transfer of the proceeding under Part 3.

Compare: SR 1948/197 r 236C; SR 1989/363 r 3

580 Non-appearance of judgment creditor or witness at examination

- (1) Subject to subclause (2), where the judgment creditor does not appear at an examination, the Court or the Registrar may, on the application of the judgment debtor, conduct the examination and make such order or give such directions as are authorised by section 84E of the Act.
- (2) Where it appears to the Court or the Registrar that the examination cannot fairly proceed owing to the absence through illness, accident, or other reasonable cause of either the judgment creditor or a witness, the Court or the Registrar may adjourn the examination, subject to the payment of such costs and travel expenses as the Court or the Registrar thinks just.
- (3) In no case shall an adjournment of an examination be made *sine die*.

Compare: SR 1948/197 r 236D; 1989/363 r 3

581 Record of examination

- (1) The Court or the Registrar shall make or cause to be made a written record of the date and time of each examination and of the terms of anything done by the Court or the Registrar under section 84E of the Act upon completion of the examination.
- (2) The Court or the Registrar shall, at the conclusion of the examination, provide every party to the proceeding who is present at the examination with a copy of the record made under subclause (1) in respect of that examination.
- (3) The Registrar shall also send a copy of that record to every party to the proceeding who is not present at the examination.

Compare: SR 1948/197 r 236E; SR 1989/363 r 3

582 Warrant of arrest

Every warrant to arrest a judgment debtor issued under section 84C of the Act shall be in form 54.

Compare: SR 1948/197 r 236F; SR 1989/363 r 3

583 Review of Registrar's decision

- (1) Every notice of application under section 84N of the Act for review of any order or direction made by a Registrar shall be in form 55.
- (2) Every such application shall specify the grounds on which it is made in sufficient detail to fully advise both the Court and other parties of the issued involved.

Compare: SR 1948/197 r 236G; SR 1989/363 r 3

*Contempt***584 Contempt procedures**

- (1) Every application under section 84O(1) of the Act for an order that the judgment debtor undergo community work shall be in form 56.
- (2) Every supporting affidavit under section 84O(2) of the Act shall be in form 57.
- (3) Every such application shall specify the grounds on which it is made in sufficient detail to fully advise both the Court and other parties of the issues involved.
- (4) The application shall be signed by the judgment creditor or by the judgment creditor's solicitor, or by an agent duly authorised in writing by the judgment creditor to sign the application. The supporting affidavit shall be made by any such person who is conversant with the facts required to be stated in the affidavit.
- (5) If the application is signed by an agent, an authority in form 58 shall be filed with the application. No fee shall be payable on the filing of any such authority.
- (6) On the filing of the application, the Registrar shall—
 - (a) Fix a date and time for the hearing of the application; and
 - (b) Notify the applicant of the date and time fixed for the hearing of the application.
- (7) A copy of the application and supporting affidavit shall, not less than 14 days before the date of the hearing, be served personally on the judgment debtor, and shall be accompanied by a summons in form 59 requiring the attendance of the judgment debtor at the hearing of the application.

- (8) Every order for community work issued under section 84O(1) of the Act shall be in form 60.
- (9) Every warrant to arrest a judgment debtor issued under section 84O(4) of the Act shall be in form 61.

Compare: SR 1948/197 r 236H; SR 1989/363 r 3

Subclause (1) was amended, as from 30 June 2002, by rule 4(1) District Courts Amendment Rules (No 2) 2002 (SR 2002/184) by substituting the words “community work” for the words “periodic detention”.

Subclause (8) was amended, as from 30 June 2002, by rule 4(2) District Courts Amendment Rules (No 2) 2002 (SR 2002/184) by substituting the words “community work” for the words “periodic detention”.

585 Hearing of contempt proceeding where judgment debtor outside Court district

- (1) Where the judgment debtor neither resides nor carries on business within 35 kilometres of the Court in which the application for an order that the judgment debtor undergo community work is made, the Court or the Registrar may direct that the hearing should take place before the Court for the district in which the judgment debtor resides or carries on business.
- (2) Where a direction is made under subclause (1),—
 - (a) The Registrar of the Court in which the summons is issued shall send all documents in his or her custody relating to the proceeding to the Registrar of the Court where the hearing is to take place; and
 - (b) The Registrar of the Court where the hearing is to take place shall appoint a date and time for the hearing and arrange for service of the summons and accompanying documentation in accordance with rule 584(7); and
 - (c) The Court where the hearing takes place may, on completion of the hearing, exercise any of the powers of the Court which issued the summons; and
 - (d) On completion of the hearing, all documents relating to the proceeding shall be returned to the Court which issued the summons unless, at the hearing, an order has been made for the transfer of the proceeding under Part 3.

Compare: SR 1948/197 r 236I; SR 1989/363 r 3

Subclause (1) was amended, as from 30 June 2002, by rule 5 District Courts Amendment Rules (No 2) 2002 (SR 2002/184) by substituting the words “community work” for the words “periodic detention”.

Charging orders

586 Applications for charging orders

- (1) Any person who has obtained a judgment or order for the payment of money (in rules 587 to 608 referred to as the judgment creditor) may make application to the Court or the Registrar *ex parte* for an order under section 96A of the Act (in rules 587 to 608 referred to as a charging order).
- (2) The application shall be in form 62 and shall be accompanied by an affidavit in form 63.
- (3) The property in respect of which the charging order is sought shall be specified in the application in such manner as to identify it.
- (4) That property shall be property of any of the following kinds:
 - (a) Any estate, right, title, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land held by the judgment debtor in the judgment debtor’s own name:
 - (b) Any right or interest of the judgment debtor in any partnership:
 - (c) Any shares held by the judgment debtor in any company incorporated in New Zealand, or having an office in New Zealand in which transfers of shares may be registered:
 - (d) Any estate, right, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land, or in any money, shares, or other chattels, held under or by virtue of any express or implied trust for the judgment debtor.

Compare: SR 1948/197 r 244A; SR 1988/277 r 3

587 Filing of application

- (1) Every application under rule 586(1) shall be filed in the office of the Court in which the judgment was obtained.
- (2) No application for a charging order shall be filed until the expiration of 48 hours after the time of the entering of the judg-

ment or the making of the order, unless a Judge gives leave for immediate execution. Rule 14 shall not apply to this rule.

- (3) The Registrar shall note on the application and on the charging order the precise time when the application for the charging order was made.
- (4) The judgment creditor shall prepare the file with the application a draft order and a copy for every person it is intended to affect thereby.
- (5) The Registrar shall notify the judgment creditor, as soon as practicable after the application has been heard, of the outcome of the hearing.

Compare: SR 1948/197 r 244B; SR 1988/277 r 3

588 Value of property exceeding \$200,000

An application for a charging order may be filed, and a charging order may be made, notwithstanding that the property to which the application or the charging order relates has a value exceeding \$200,000.

Compare: SR 1948/197 r 244C; SR 1988/277 r 3; SR 1989/363 r 2(1)(e)

589 Charging order where amount involved small

Where it appears that the amount involved is so small that the making of a charging order is vexatious or worthless, the Court or the Registrar may refuse the application for a charging order, or, if the charging order has been made (whether as of right or on application), discharge the charging order.

Compare: SR 1948/197 r 244D; SR 1988/277 r 3

590 Form of charging order

A charging order shall be in form 64 or form 65 or form 66, as is appropriate.

Compare: SR 1948/197 r 244E; SR 1988/277 r 3

591 Application for relief by persons prejudicially affected

- (1) Any person alleging that that person is prejudicially affected by any charging order may at any time apply to the Court for relief in accordance with this rule.
- (2) On an application under subclause (1) the Court may—

- (a) Vary or discharge the order; or
 - (b) Cancel the registration or modify the effect of registration of any order affecting land.
- (3) The powers of the Court under this rule are in addition to its powers under rules 298 and 493.

Compare: SR 1948/197 r 244F; SR 1988/277 r 3

592 Claim of third person on property charged

- (1) Where it is alleged that the land or other property affected by a charging order belongs to some third person or that some third person has a claim thereon by way of lien, charge, or otherwise, the Registrar shall issue a summons in form 67 together with a copy thereof.
- (2) The summons shall be served on the third person a reasonable time before the day fixed for the hearing.
- (3) If the third person does not appear at the hearing of the matter, the Court, upon proof of service, may make such order as the Court may think just.
- (4) Such third person may also attend without special order on the application to make the order absolute, or on any application to set aside or vary the same, on giving 24 hours' notice of that person's intention to do so, unless a Judge gives leave for attendance without such notice having been given.

Compare: SR 1948/197 r 244G; SR 1988/277 r 3

593 Apportionment when more than one charging order

Where more than one charging order has been made against the same person, the Court may at any time, on the application of that person, or any other person claiming to be affected, determine how much or what part of the property affected by such order or paid into Court shall be for the separate use of each party who has obtained a charging order.

Compare: SR 1948/197 r 244H; SR 1988/277 r 3

*Charging orders affecting land in name of
judgment debtor*

594 Order absolute in first instance

Where the property sought to be charged is an estate, right, title, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land held by the judgment debtor in that judgment debtor's own name, the charging order shall be absolute in the first instance.

Compare: SR 1948/197 r 244I; SR 1988/277 r 3

595 Registration of charging order under Land Transfer Act 1952

- (1) A charging order which is made under rule 594 and which is in respect of land that is under the Land Transfer Act 1952 shall be registered against the certificate of title to the land under that Act.
- (2) Such a charging order—
 - (a) Shall—
 - (i) Contain a description of the land affected sufficient to identify that land; or
 - (ii) Refer to a certificate of title or other instrument containing such a description; and
 - (b) Unless the land is the whole of the land comprised in a certificate or certificates of title, or is shown separately on a plan deposited under the provisions of the Land Transfer Act 1952, shall also have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.
- (3) When the charging order is presented for registration, a duplicate of it shall be deposited with the District Land Registrar.

Compare: SR 1948/197 r 244J; SR 1988/277 r 3

596 Registration of charging order under Deeds Registration Act 1908

- (1) A charging order which is made under rule 594 and which is in respect of land that is not under the Land Transfer Act 1952 shall be registered with the Registrar of Deeds for the district in which the land is situated according to the law in force for the time being for the registration of deeds.

- (2) Such a charging order—
- (a) Shall contain a description of the land affected, or shall refer to the Crown grant or other instrument, sufficient to identify that land; and
 - (b) Shall also have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

Compare: SR 1948/197 r 244K; SR 1988/277 r 3

597 Lodging of charging order under Mining Act 1971

- (1) A charging order which is made under rule 594 and which is in respect of a mining privilege within the meaning of the Mining Act 1971 shall be lodged with the District Land Registrar in whose office the mining privilege is recorded.
- (2) Such a charging order—
- (a) Shall—
 - (i) Contain a description of the land affected sufficient to identify that land; or
 - (ii) Refer to a document granting or issuing the mining privilege, or to such other instrument by virtue of which the mining privilege was acquired, containing such a description; and
 - (b) Unless the land affected comprises the whole of the land to which the mining privilege relates, or is shown separately on a plan deposited under the provisions of the Mining Act 1971, shall also have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.
- (3) When the charging order is lodged, a duplicate of it shall be deposited with the chief executive of the department of State that is for the time being responsible for the administration of the Mining Act 1971.
- (4) The District Land Registrar with whom the charging order is lodged shall not be required to enquire whether a duplicate of the charging order has been deposited with the chief executive specified in subclause (3).

Compare: SR 1948/197 r 244L; SR 1988/277 r 3

598 Sale before registration of charging order

Until registration of a charging order in respect of land, or the lodging of a charging order with the District Land Registrar in respect of a mining privilege, no sale or transfer of the land or of any part thereof or of the mining privilege under a writ of sale shall have any effect as against a purchaser for valuable consideration, notwithstanding that the writ of sale may have been actually delivered for execution at the time of purchase, and that the purchaser may have had actual or constructive notice of the delivery of the writ of sale for execution.

Compare: SR 1948/197 r 244M; SR 1988/277 r 3

599 Registration of satisfaction

Upon registration with the District Land Registrar or Registrar of Deeds (as the case may be) of—

- (a) A memorandum of satisfaction of the judgment in the proceeding in which the charging order has been issued, or other sufficient evidence of satisfaction; or
- (b) An order of the Court to the effect that the land or mining privilege shall be discharged from the charging order; or
- (c) The consent of the person who registered the charging order to the discharge of the land or mining privilege from the charging order—

the land or mining privilege, as the case may be, shall be discharged from the charging order.

Compare: SR 1948/197 r 244N; SR 1988/277 r 3

Rule 599 was substituted, as from 1 August 1995, by rule 12 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

600 Lapse of charging order after 2 years

- (1) Unless an instrument of transfer or a deed of conveyance or assignment consequent upon a writ of sale of the land or mining privilege affected by a charging order is registered or lodged within 2 years after the date of the charging order, the charging order shall, subject to subclause (2) of this rule, cease to bind the land or mining privilege, as the case may be, and shall be deemed to have been discharged.

- (2) The Court or the Registrar may, where justice so requires, extend the effect of a charging order for such period as may be necessary.

Compare: SR 1948/197 r 244O; SR 1988/277 r 3

Charging orders affecting other property

601 Property other than land

A charging order may charge property, other than land referred to in rule 594, as follows:

- (a) The right or interest of the judgment debtor in any partnership:
- (b) Any shares held by the judgment debtor in any company incorporated in New Zealand, or having an office in New Zealand in which transfers or shares may be registered:
- (c) The estate, right, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land, or in any money, shares or other chattels, held under or by virtue of any express or implied trust for the judgment debtor.

Compare: SR 1948/197 r 244P; SR 1988/277 r 3

602 Order *nisi* in first instance

- (1) A charging order under rule 601 shall be a charging order limited until sufficient cause is shown to the contrary and such a charging order, so limited, is hereafter referred to in this rule and in rules 603 to 606 as a charging order *nisi*.
- (2) A charging order *nisi* shall be served on the person it is intended to affect thereby.
- (3) Where a charging order *nisi* is intended to affect an estate, right, or interest in land held under or by virtue of any trust, that charging order *nisi* may also be registered against the land or a caveat may be entered in respect of the charging order *nisi*.

Compare: SR 1948/197 r 244Q; SR 1988/277 r 3

603 Effect of order *nisi*

A charging order *nisi* shall restrain the person served with it—

- (a) From making, or concurring in making or permitting any conveyance, transfer, assignment, or disposition of any estate, right, or interest, or of any share in a partnership or company, of the judgment debtor; or
- (b) From paying over any income, interest, dividends, bonus, profits, or other money due or accruing due to the judgment debtor,—

except in accordance with these rules or by leave of the Court or the Registrar.

Compare: SR 1948/197 r 244R; SR 1988/277 r 3

604 Liability of persons contravening charging order *nisi*

Where any person, who has been served with a charging order *nisi*,—

- (a) Pays over any money in contravention of the terms of the order; or
- (b) Makes or concurs in making, or permits any conveyance, transfer, assignment, or disposition in contravention of the terms of the order,—

that person, in addition to, or in lieu of, any penalty that may be imposed upon that person under any other rule, may be ordered to pay to the party obtaining the order the amount of money so paid, or the value of the property disposed of, or a sufficient part thereof to satisfy the judgment or order that the party obtaining the order has obtained in the proceeding.

Compare: SR 1948/197 r 244S; SR 1988/277 r 3

605 Money may be paid into Court

Any person affected by a charging order *nisi* may pay into Court any money to abide the order of the Court.

Compare: SR 1948/197 r 244T; SR 1988/277 r 3

606 Application to make order absolute

- (1) At any time after a judgment creditor has obtained a charging order *nisi*, the judgment creditor may apply to the Court on notice to have that charging order *nisi* made absolute.
- (2) The application shall be in form 68.
- (3) On an application under subclause (1), the Court or the Registrar may make such orders and give such directions for the

disposal of money paid into Court pursuant to rule 605 as may be just.

Compare: SR 1948/197 r 244U; SR 1988/277 r 3

Miscellaneous provisions relating to charging orders

607 Costs of charging orders

The judgment creditor may, unless the Court or the Registrar otherwise directs, recover from the judgment debtor against whom a charging order has been made, the fees, costs, and expenses incurred in respect of, and incidental to, the making of the charging order.

Compare: SR 1948/197 r 244V; SR 1988/277 r 3

608 Removal of charging order absolute to High Court

- (1) A judgment creditor who has obtained a charging order absolute may apply to the Registrar of the District Court for the removal of that charging order into the High Court in order that the charging order may be enforced in the High Court in the same way as if the charging order had been issued by the High Court.
- (2) After an order has been made for the removal of a charging order into the High Court any matter raised relating to the charging order shall be determined by the High Court in the same way as if the charging order had been issued by the High Court.

Compare: SR 1948/197 r 244W; SR 1988/277 r 3

Distress warrants

609 Application for distress warrant

- (1) A judgment creditor who desires the issue of a distress warrant shall file an application in form 69.
- (2) No application for a distress warrant shall be filed until the expiration of 48 hours after the time of giving judgment or making the order, unless a Judge gives leave for immediate execution. Rule 14 shall not apply to this rule.

- (3) The Registrar shall note on the application and on the distress warrant the precise time when application is made to issue the warrant.

Compare: SR 1948/197 r 245(1)-(3); SR 1952/242 r 23; SR 1956/81 r 10(2)

610 Order of priority

Where more than one distress warrant is issued against the same person, the warrants shall be executed in the order of the times noted under rule 609(3).

Compare: SR 1948/197 r 246

611 Issue, duration, and renewal

- (1) A distress warrant shall be issued by the Registrar in form 70. It may be addressed to any bailiff or constable either by name or by his or her official designation, or generally to a bailiff or constable of any named town or district.
- (2) A distress warrant shall, if unexecuted, remain in force for one year from and exclusive of the day of issue, but before its expiration it may, by leave of the Court or the Registrar, be renewed for one year, and may in like manner be renewed from time to time during the currency of the renewed warrant.
- (3) A note of every renewal shall be endorsed on the warrant, which shall have effect and be entitled to priority according to the time of its original issue.

Compare: SR 1948/197 r 247(1)-(3); SR 1956/81 r 12(6)

612 Execution against a firm

- (1) Where a judgment or order is against a firm, execution may issue—
- (a) Against any property of the partnership:
 - (b) Against any person who has admitted in the proceeding that he or she was a partner when the cause of action arose, or who has been adjudged to be liable as a partner:
 - (c) Against any person who was individually served with the summons as a partner or a person sought to be made liable and—
 - (i) Against whom judgment was entered on a summary judgment application where that person failed to file and serve a statement of defence; or

- (ii) Who, if there was a hearing, failed to appear at the hearing.
- (2) If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as a partner, that party may apply to the Court for leave so to do, and the following provisions shall apply:
 - (a) The party shall give to the alleged partner not less than 3 clear days' notice of the application:
 - (b) The notice shall be served on the alleged partner personally:
 - (c) On the hearing of the application the Court may, if liability is not disputed, give leave to issue execution. If liability is disputed, the Court may order the issue of liability to be heard in such manner as it thinks fit and may give all necessary directions for that purpose.
- (3) Except as against property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any partner who was out of New Zealand when the summons was issued, unless that partner has been individually served with the summons.

Compare: SR 1948/197 r 248

613 Concurrent distress warrants

Distress warrants may be issued concurrently for execution in one or more Courts, but the costs of more than one warrant shall not be allowed against the execution debtor except by order of the Court or the Registrar.

Compare: SR 1948/197 r 249

614 Costs of distress warrants

Except as otherwise provided by these rules, the costs of distress warrants, whether executed or unexecuted or unproductive, shall be allowed against the execution debtor, unless the Court or the Registrar otherwise directs.

Compare: SR 1948/197 r 250

615 Holding over execution and withdrawing from possession

- (1) At any time prior to execution the execution creditor may, in writing, require the bailiff to return a warrant to the Court,

and in such case the warrant shall not be reissued until after an application in writing is lodged by the execution creditor. The Registrar shall note on the application and the warrant the date and the precise time of the application to reissue, and the warrant shall thereafter be deemed for the purposes of rules 609(3) and 610 to have been applied for at the time so noted.

- (2) Where an execution creditor requests the bailiff to withdraw from possession, the execution creditor shall, except in a case to which subclause (3) applies, be deemed to have abandoned the execution, and the bailiff shall mark the warrant as withdrawn by request of the execution creditor:

Provided that where the request is made in consequence of a claim having been made under rule 649 to the goods seized, the execution shall be deemed to be abandoned in respect only of the goods so claimed.

- (3) Where an execution creditor requests the bailiff to withdraw from possession and at the same time files in the Court office an authority in form 71, signed by the execution debtor, authorising the bailiff to re-enter, the bailiff shall mark the warrant as suspended by request of the execution creditor. The execution creditor may subsequently apply in writing for the warrant to be reissued. The Registrar shall note the precise time and date of the receipt of the application on the application and the warrant, and the warrant shall thereafter be deemed for the purposes of rules 609(3) and 610 to have been applied for at the time so noted.
- (4) Nothing in this rule shall prejudice any right of the execution creditor to apply for a fresh warrant to be issued, or shall authorise the reissue of a warrant which has been withdrawn or has expired or has been superseded by the issue of a fresh warrant.

Compare: SR 1948/197 r 251

616 Possession fees

No possession fee shall be payable where an execution is paid out at the time of the seizure, but if the bailiff necessarily places any person in possession and the execution is paid out on the day of the levy, the possession fee shall be charged.

Compare: SR 1948/197 r 252

617 Bailiff to make inventory

- (1) Where goods are seized in execution, the bailiff shall give to the execution debtor a sufficient inventory of the goods seized, and notice, in form 72, of the time when and the place where the goods will be sold.
- (2) The inventory and notice shall be given to the execution debtor personally, or sent by post to the place of residence of the execution debtor or, if his or her residence is not known, may be left at or sent by post addressed to the execution debtor at the place at which the goods were seized.
- (3) The inventory shall be given or sent at the time of or immediately after the seizure of the goods, and the notice shall be given or sent at least 24 hours before the time fixed for the sale.
Compare: SR 1948/197 r 253

618 Accounts of sale

Where goods are sold under an execution, the bailiff shall, on the request of the execution debtor, furnish the execution debtor with a detailed account in writing of the sale and of the application of the proceeds thereof.
Compare: SR 1948/197 r 254

619 Bailiff to furnish statements to Registrar

- (1) The bailiff shall deliver to the Registrar immediately after seizure an inventory of all cheques, bills of exchange, promissory notes, bonds, or other securities for money which have been seized or taken by the bailiff under a warrant of distress.
- (2) The bailiff shall also, when returning a warrant after execution, deliver therewith a copy of the inventory of the goods signed by him or her, and, if the goods have been sold, a statement setting out opposite each article the price realised at the sale thereof, together with a general balance sheet in respect of the proceeds of the warrant and the expenses thereon in form 73.
- (3) Where after diligent search the bailiff is unable to find any goods on which to levy, the bailiff shall endorse on the warrant his or her return of *nulla bona* in form 74, and sign the same, and shall also make a short report setting out the facts, as ascertained by him or her, upon which the *nulla bona* return

is founded. If there are goods which are protected by a bill of sale, all available particulars of the bill of sale must be given.

- (4) The Registrar shall require the bailiff to deliver to the Registrar the various statements, reports, and balance sheets required by these rules, accompanied by vouchers for all disbursements, and shall examine them.
- (5) Subject to subclause (6), no execution may be had on a warrant after a return has been made in accordance with the foregoing provisions of this rule.
- (6) Where, after a warrant has been returned in accordance with subclause (2) or subclause (3), the Court is satisfied—
 - (a) That there are reasonable grounds to believe that there are in the possession or under the control of the execution debtor, or of any person on behalf of the execution debtor, goods on which distress could have been levied under the warrant; and
 - (b) That no bankruptcy petition based on the execution or on the return has been filed,—

the Court may in its discretion, unless pursuant to rule 611 the warrant would have expired, order that execution be levied under the warrant on any goods referred to or specified in the order, being goods on which distress could have been levied as aforesaid; and on the making of the order the warrant shall continue in force for the purposes of the order and shall have the same duration and the same priority in respect of execution as it had under these rules when it was originally issued.

Compare: SR 1948/197 r 255; SR 1956/81 r 11

620 Application for private sale

- (1) An application under section 89 of the Act for an order that a sale under a distress warrant may be made otherwise than by public auction shall be made on not less than 48 hours' notice.
- (2) Notice shall be served on the bailiff and on all other parties having an interest in the execution.
- (3) The Court or the Registrar may direct that the costs of any party attending be borne by any other party, or otherwise as may be just.

Compare: SR 1948/197 r 256

*Attachment orders***621 Attachment orders**

Every attachment order made under section 84G of the Act shall be in form 75.

Compare: SR 1948/197 r 256A; SR 1989/363 r 4

*Delivery of chattels***622 Warrant for recovery of chattels**

A plaintiff who has obtained a judgment or order for the delivery of specific chattels may apply to the Registrar in form 69, whereupon the Registrar may issue a warrant, in form 76, to the bailiff requiring the bailiff to demand and seize the specific chattels if they can be found by him or her, and to deliver them to the plaintiff.

Compare: SR 1948/197 r 257

623 Warrant of committal

Any application for a warrant of committal to enforce any such judgment or order as aforesaid shall be made and dealt with in accordance with rule 628.

Compare: SR 1948/197 r 258

624 Distress warrant for value of chattels and for damages, etc

(1) If the Court has not fixed the value of the chattels at the hearing, the plaintiff may apply to the Court on notice to fix that value.

(2) When the value has been fixed, and if possession has not been obtained under a warrant issued under rule 622, the Registrar may issue a distress warrant, in form 77, to recover the value so fixed and any costs and any damages awarded at the hearing for detention (unless separate execution has been issued therefor):

Provided that this subclause shall not prejudice the right of the plaintiff to obtain execution, concurrently or at any earlier or later time, for the plaintiff's costs of suit and any damages awarded to the plaintiff for the detention of the goods.

Compare: SR 1948/197 r 259; SR 1952/242 r 24

625 Where possession ordered to be taken until security given

- (1) Where a warrant directs the bailiff to take possession of any goods until security is given by some party for the safe keeping of the goods, or for the payment of their value in default of safe keeping, but does not specify the amount of the security, the bailiff shall cause to be made an inventory and appraisalment of the goods of which the bailiff takes possession.
- (2) Upon receiving as a deposit the amount of the appraisalment, or sufficient security, to be approved by the Registrar, for the safe keeping of the goods, and for the delivery up of possession thereof upon request, the bailiff shall relinquish possession thereof on condition that the goods shall be redelivered to the bailiff on request, or held to abide the order of the Court.

Compare: SR 1948/197 r 222

Recovery of land

626 Issue of warrant

On application made in form 69, a warrant for the recovery of land may be issued by the Registrar after the expiration of the day on which the defendant is required, by the judgment, to give possession of the land.

Compare: SR 1948/197 r 260

627 Form of warrant

- (1) Where the order was made under paragraph (a) or paragraph (b) or paragraph (d) of section 31(1) of the Act, the warrant shall be in form 78. If in the proceeding judgment has been given for rent or mesne profits or damages or costs, any amount due for the rent, mesne profits, damages, or costs may be recovered under the warrant in that form, or by warrant of distress.
- (2) Where the order was made under section 32 of the Act the warrant shall be in form 79. If possession is given no subsequent execution shall be issued on the order, but a proceeding may be brought to recover any amount owing.

Compare: SR 1948/197 r 261

*Warrant of committal***628 Application for warrant**

- (1) When a judgment or order enforceable by committal has been made for the benefit of one party (in this rule called the applicant) against another party (in this rule called the respondent), the Registrar shall, if the judgment or order is in the nature of an injunction, at the time when the judgment or order is drawn up, and in any other case on the request of the applicant, issue a copy of the judgment or order endorsed with a notice in form 80, and the copy so endorsed shall be served on the respondent in the manner prescribed by rule 219.
- (2) If the respondent fails to obey the judgment or order, the Registrar, on the request of the applicant, shall issue a notice in form 81 not less than 2 clear days after service of the endorsed copy of the judgment or order, unless the Judge gives leave for the notice to be issued sooner, and the notice shall be served on the respondent in such manner as aforesaid.
- (3) On the day named in the notice the Judge, on being satisfied that the respondent has failed to obey the judgment or order and, if the respondent does not appear, that the endorsed copy of the judgment or order and the notice have been served upon the respondent, may order a warrant of committal to issue.
- (4) The order for the issue of the warrant shall be in form 82, and the warrant, which shall be signed by the Registrar, shall be in form 83. A copy of the order shall be served on the respondent either before or at the time of the execution of the warrant, unless the Judge otherwise orders.

Compare: SR 1948/197 r 262

629 Discharge of person in custody

- (1) Where any person in custody under a warrant desires to apply for his or her discharge, that person shall file an affidavit specifying the grounds on which he or she applies for discharge, and shall, not less than 24 hours before the application is made, serve on the party (if any) at whose instance the warrant of committal was issued a copy of the affidavit, together with notice of his or her intention to make the application.

- (2) If the order of committal directs that the application for discharge shall be made to the Judge, it may be made at any place which the Judge may appoint.
- (3) If the order of committal does not direct that the application shall be made to the Judge, it may be made to the Registrar.
- (4) The order for discharge shall be in form 84.

Compare: SR 1948/197 r 263

630 Release on bail pending hearing of application for discharge from custody

- (1) Where any person in custody under a warrant intends to make an application for discharge from custody pursuant to rule 629(1), that person may, at the time when the affidavit specifying the grounds on which that person applies for discharge is filed, apply to the Judge to be released on bail pending the hearing of the application for discharge from custody.
- (2) An application made pursuant to subclause (1) shall be served on the party (if any) at whose instance the warrant of committal was issued, at the same time as the affidavit specifying the grounds on which the applicant applies for discharge is served.
- (3) The order for release on bail pending the hearing of the application for discharge from custody may be made subject to such conditions as the Judge may impose.

Compare: SR 1948/197 r 263A, SR 1986/358 r 11

Garnishee proceedings

631 Garnishee proceeding

Any person who has obtained a judgment or order (in rules 632 to 648 referred to as the judgment creditor) for the payment of money may take a garnishee proceeding in accordance with rules 632 to 648 in the Court in which that person has judgment, to obtain payment to him or her of the amount of any debt owing or accruing to the judgment debtor from any other person (in rules 632 to 648 referred to as the sub-debtor) or so much thereof as may be sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

Compare: SR 1948/197 r 264

632 Where debt exceeds \$200,000

A garnishee proceedings may be taken notwithstanding that the debt owing or accruing from the sub-debtor to the judgment debtor exceeds \$200,000.

Compare: SR 1948/197 r 265; SR 1989/363 r 2(1)(f)

633 Commencement of proceeding

- (1) When a judgment creditor desires to take a garnishee proceeding, the judgment creditor shall file in the Court in which he or she has the judgment or order an affidavit in form 85.
- (2) On the filing of the affidavit the Registrar shall issue a garnishee summons to the sub-debtor in form 86 and a notice to the judgment debtor in form 87.

Compare: SR 1948/197 r 266

634 Service, and effect of service

The summons shall be served on the sub-debtor personally, and the notice shall be served on the judgment debtor personally, in each case not less than 10 clear days before the day of hearing. When served on the sub-debtor, it shall bind in the hands of the sub-debtor so much of the debts owing or accruing from the sub-debtor to the judgment debtor as will satisfy the debt due under the judgment or order and the costs entered on the summons.

Compare: SR 1948/197 r 267

635 Statement to be filed by sub-debtor in respect of deposit or other accounts

If the debt alleged to be due from any sub-debtor comprises a sum which stands to the credit of the judgment debtor with the sub-debtor and which is on deposit with the sub-debtor or is held by the sub-debtor in a current or other account (including a deposit account) and it is a condition of the deposit or account that a deposit book, receipt for money paid, or other like document must be produced before any money is withdrawn the sub-debtor shall, as soon as practicable after the service of the summons on the sub-debtor and at least 3 days before the

date of hearing, file in the Court office and serve on the judgment creditor and the judgment debtor a statement in form 88.

Compare: SR 1948/197 r 267A; SR 1973/244 r 16(1)

636 Payment into Court by sub-debtor

- (1) The sub-debtor may, at any time before the day of hearing, pay into Court—
 - (a) The amount admitted to be due from the sub-debtor to the judgment debtor; or
 - (b) If the amount admitted is more than sufficient to satisfy the amount due under the judgment or order and the costs entered on the summons, a sum sufficient to satisfy that amount and those costs.
- (2) If the amount admitted to be due from the sub-debtor to the judgment debtor is less than the amount claimed to be owing under the summons, the judgment creditor may file in the Court and serve on the judgment debtor and sub-debtor a notice that the judgment creditor accepts the amount, and the sub-debtor shall then be deemed to be discharged from the proceeding.

Compare: SR 1948/197 r 268

637 Payment out of Court of money paid by sub-debtor

Money paid into Court by the sub-debtor may be paid out before the day of hearing by the Registrar on production of the consent in writing of the judgment debtor. In the absence of such consent the Court may, on the day of the hearing, after hearing the judgment creditor and the judgment debtor, if he or she appear, make such order in the proceedings, including an order as to costs, as may be just.

Compare: SR 1948/197 r 269

638 Garnishee order where sub-debtor does not pay into Court or appear

- (1) If the sub-debtor—
 - (a) Does not, before the day of hearing, pay into Court the amount admitted to be due from the sub-debtor to the judgment debtor, or so much thereof as is sufficient to satisfy the amount in respect of which the judgment or

order is unsatisfied and the costs entered on the garnishee summons; and

- (b) Does not, on the day of hearing, appear and dispute the debt alleged to be due from the sub-debtor to the judgment debtor,—

the Court may, if the judgment debtor does not appear and show cause to the contrary, make an order for the payment by the sub-debtor to the judgment creditor of the amount due from the sub-debtor to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment or order against the judgment debtor, and for costs, and an entry thereof shall be made in the civil record book.

- (2) Every such garnishee order may be enforced as a judgment of the Court.

Compare: SR 1948/197 r 270

639 Order in other cases

- (1) Where the sub-debtor disputes liability, the sub-debtor shall, within 7 days after the service of the summons on the sub-debtor inclusive of the day of service, file in the Court office a notice in form 89, and serve a copy thereof on the judgment creditor and on the judgment debtor. No fee shall be payable for filing the notice.
- (2) Subject to subclause (4), where notice has been given to the judgment creditor as aforesaid, or where the amount paid into Court under rule 636 is not accepted, the Court may, after hearing the judgment creditor, the sub-debtor, and the judgment debtor, or such of them as appear,—
- (a) Determine the question of the liability of the sub-debtor, and make such order as to the payment to the judgment creditor of any sum found to be due from the sub-debtor to the judgment debtor, and as to costs, as may be just; or
- (b) Order that any issue necessary for determining the question of the liability of the sub-debtor be tried in such manner as the Court thinks fit, and direct which of the persons interested, including such a third person as is referred to in the next succeeding rule, shall be plaintiff and which shall be defendant; or

- (c) Order that the judgment creditor be at liberty to sue the sub-debtor for the amount alleged to be due by the sub-debtor to the judgment debtor, if it is less than the judgment debt, or, if it is greater, then for the amount of the judgment debt with costs of suit.
- (3) Every order for payment made under this rule may be enforced as a judgment of the Court.
- (4) Where the sub-debtor disputes the debt and the debt claimed exceeds \$200,000, no order shall be made under this rule.
- (5) Notwithstanding anything contained in the foregoing provisions of this rule, the sub-debtor may at any time before the hearing apply to the Court for an order—
 - (a) That the garnishee proceeding be transferred, under Part 3, to any Court in which it would have been commenced if it were a proceeding brought against the sub-debtor by the judgment debtor to recover the debt; or
 - (b) That the garnishee proceeding be referred to the Registrar of any Court for inquiry and report under rule 386 to 416,—and on any such application as aforesaid the Court may make such order as it thinks fit.

Compare: SR 1948/197 r 271; SR 1952/242 r 25; SR 1968/183 r 7(1); SR 1989/363 r 2(1)(g)

640 Where debt is stated to belong to third party

- (1) If in a garnishee proceeding it is suggested that the debt belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge upon it, the Court may order the third person to appear and state the nature and particulars of his or her claim to the debt.
- (2) After hearing the third person, if the third person appears, the Court may bar the claim of the third person or may order an issue to be heard between the third person and the judgment creditor, or make such other order, including an order as to costs as may be just.

Compare: SR 1948/197 r 272

641 Garnishee orders in respect of deposit and other accounts

- (1) Where a garnishee order is sought in respect of any sum which stands to the credit of a judgment debtor with any sub-debtor (including a bank or savings bank) and which is on deposit with the sub-debtor or is held by the sub-debtor in a current or other account (including a deposit account) and it is a condition of the deposit or account that a deposit book, receipt for money deposited, or other like document must be produced before any money is withdrawn, a garnishee order shall not be made until the deposit book, receipt, or other like document has been produced to the sub-debtor.
- (2) Where it appears to the Court that the production of any such deposit book, receipt, or like document is required, the Court may, by order in form 90, require any person (including the judgment debtor) who has in his or her possession or knows the whereabouts of any such deposit book, receipt, or other like document to deliver the deposit book, receipt, or other document to the Court within 7 days after the service of the order on that person or within such other time as the Court may specify in the order or to disclose its whereabouts to the Court within that time.
- (3) An order under subclause (2) may be made on the *ex parte* application of the judgment creditor.
- (4) Where disclosure is required pursuant to an order under subclause (2) it shall be effected by the person against whom the order is made filing in the Court an affidavit in form 91; and a copy of that affidavit shall be served on the judgment creditor within 7 days after the service of the order.
- (5) Any deposit book, receipt, or other like document which is delivered to the Court pursuant to an order under subclause (2) shall, subject to any directions of the Court, be produced by the Registrar of the Court to the sub-debtor and, except where the sub-debtor pays into Court the full amount in respect of which an order is sought, then be retained by the Registrar until the garnishee proceeding is disposed of.

Compare: SR 1948/197 r 272A; SR 1973/244 r 17(1)

642 Discharge of sub-debtor as against judgment debtor

Payment made by or execution levied upon the sub-debtor under a garnishee proceeding, otherwise than in respect of any costs ordered to be paid by the sub-debtor personally, shall be a valid discharge to the sub-debtor as against the judgment debtor to the amount so paid or levied, notwithstanding that the proceeding may thereafter be set aside or the judgment or order reversed.

Compare: SR 1948/197 r 273

643 Court may refuse order

- (1) The Court may hear evidence as to the circumstances of the judgment debtor, and, if it appears that the whole or any part of the money sought to be attached is reasonably required by the judgment debtor for the maintenance and support of the judgment debtor and his or her family, the Court may refuse to make a garnishee order and may make such order as to the disposal of any money paid into Court as it thinks fit.
- (2) The Court may refuse to make a garnishee order if in its opinion an order should not be made owing to the smallness of the amount to be recovered or of the debt sought to be attached.

Compare: SR 1948/197 r 274

644 Where money due by sub-debtor under judgment or order

Where the amount due from the sub-debtor to the judgment debtor is due under a judgment or order obtained by the judgment debtor against the sub-debtor, the following provisions shall apply:

- (a) Unless the Court otherwise orders, the sub-debtor shall not be liable to pay to the judgment creditor the amount due from the sub-debtor to the judgment debtor by any larger instalments than those by which the sub-debtor is liable to pay the amount under the judgment or order obtained by the judgment debtor against the sub-debtor:
- (b) The Registrar shall enter in the books of the Court relating to the judgment or order obtained by the judgment debtor against the sub-debtor a note of—

- (i) The amounts paid or ordered to be paid by the sub-debtor in the garnishee proceeding, otherwise than in respect of costs ordered to be paid by the sub-debtor personally:
- (ii) Any costs which the sub-debtor is, by order of the Court, allowed to deduct from the amount due from the sub-debtor to the judgment debtor.

Compare: SR 1948/197 r 275

645 Money in Court

- (1) Where money is standing to the credit of the judgment debtor in any Court, the judgment creditor shall not be entitled to take a garnishee proceeding in respect thereof, but may apply to the Court on notice for an order that the money or so much thereof as may be necessary to satisfy the judgment debt and costs may be paid to the judgment creditor.
- (2) On receipt of notice of the application the Registrar shall retain the money in Court until the application has been heard.
- (3) On the hearing of the application the Court may make such order as to the money in Court as may be just, and shall have regard to the matters mentioned in rule 643.
- (4) A note of the order shall be made in the books of the Court relating to the money so standing to the credit of the judgment debtor.

Compare: SR 1948/197 r 276

646 Debts owing by firm

Rules 632 to 648 shall apply to debts owing by or accruing from a firm carrying on business within New Zealand, although one or more members of the firm may be resident abroad.

Compare: SR 1948/197 r 277

647 Costs

- (1) The Court may award costs to any sub-debtor attending under rules 632 to 648, or attending to give evidence under rules 378 to 383.

- (2) If within a reasonable time the judgment creditor fails to give notice under rule 636(2), the Court may award the sub-debtor the costs incurred by the sub-debtor at the hearing.
- (3) The Court may, if the proceeding is abandoned by the judgment creditor or for any other reason that the Court thinks sufficient, also award costs, including expenses as aforesaid, to a judgment debtor attending to give evidence in a garnishee proceeding.
- (4) No fee shall be payable in respect of any order of the Court for the payment out of Court of any money paid into Court in any garnishee proceeding.
- (5) Any costs allowed to the judgment creditor which are not ordered to be paid by the sub-debtor personally shall, unless it is otherwise ordered, be retained by the judgment creditor out of money recovered by the judgment creditor in the garnishee proceeding, in priority to the amount due under the judgment or order.

Compare: SR 1948/197 r 278

648 Garnishee proceeding against the Crown

In the case of a garnishee proceeding against the Crown as sub-debtor, the provisions of rules 632 to 648 shall have effect subject to the following modifications:

- (a) Rules 632 to 648 shall not apply to any debt that is excepted by the proviso to section 26 of the Crown Proceedings Act 1950:
- (b) The affidavit to be filed pursuant to rule 633 shall be filed in triplicate and shall give, in addition to the particulars prescribed by form 85, particulars of the circumstances in which it is alleged that the liability of the Crown has arisen, and of the Government department or officer of the Crown concerned:
- (c) The garnishee summons to be served on the sub-debtor pursuant to rule 634 shall be served on the Crown, together with a copy of the affidavit filed in support of the summons, not less than 35 clear days before the day of hearing:

- (d) The time within which, under rule 639(1), there may be filed a notice in form 89 that the sub-debtor disputes the debt claimed shall be 28 days:
- (e) The provisions of rule 638(2) and rule 639(3) shall have effect subject to section 24 of the Crown Proceedings Act 1950.

Compare: SR 1948/197 r 278A; SR 1952/242 r 14; SR 1967/46 r 3

Interpleader proceedings under executions

649 Notice of claim

- (1) Any claim under section 93 of the Act to or in respect of the goods seized in execution shall be in form 92, and shall be delivered to the bailiff holding the distress warrant or to the person in charge of the goods.
- (2) The bailiff shall lodge the claim in the Court of which he or she is the bailiff.

Compare: SR 1948/197 r 279

650 Notice to execution creditor

On receipt of the claim the Registrar shall send notice thereof to the execution creditor in form 93.

Compare: SR 1948/197 r 280

651 Appraisement

- (1) If the value of any goods so claimed is disputed, the Registrar may, at the request of the claimant, appoint some person to fix by appraisement the value of the goods claimed, and may fix the remuneration to be paid for the appraisement. The claimant shall pay into Court the amount so fixed which shall be paid to the appraiser.
- (2) The Registrar may revoke the appointment of any appraiser and appoint another person in the place of that appraiser.
- (3) The remuneration so fixed shall be costs in the interpleader proceeding if the Court so orders.

Compare: SR 1948/197 r 281

652 Admission of claim

- (1) If the execution creditor gives notice to the Registrar, in form 94, that the execution creditor admits the title of the claimant, or requests that the bailiff withdraw from possession, the Registrar shall forthwith notify the bailiff, and the proceeding shall be stayed; and the execution creditor shall not be liable to the bailiff for any possession fees or expenses incurred after the receipt by the bailiff of notice from the Registrar.
- (2) The Judge may, on application by the bailiff on not less than one clear day's notice in writing to the execution creditor, order the execution creditor to pay any fees or expenses for which the execution creditor is liable under this rule.

Compare: SR 1948/197 r 282

653 Order protecting bailiff

Where the execution creditor gives notice in accordance with rule 652(1), the bailiff shall withdraw from possession and may apply to the Judge, on not less than one clear day's notice in writing to the claimant, for an order protecting the bailiff from any action in respect of the seizure and possession of the goods, and on the hearing of the application the Judge may make such order as may be just.

Compare: SR 1948/197 r 283

654 Commencement of proceeding

Where the execution creditor does not give notice in accordance with rule 652(1), the Registrar, at the request of the bailiff, shall, unless the claimant has withdrawn his or her claim, fix a day for the hearing, and prepare and issue for service interpleader summonses to the execution creditor and the claimant in such of forms 95 to 98 as are applicable to the case.

Compare: SR 1948/197 r 284

655 Claim for rent under section 95 of Act

Where, in accordance with section 95 of the Act, the landlord of a tenement in which goods are taken in execution, or the agent of the landlord, claims rent, the bailiff shall give notice and particulars of the claim to the execution creditor

and the tenant. If the execution creditor or the tenant disputes the claim, and the execution is not withdrawn, the bailiff shall obtain from the Registrar interpleader summonses against the landlord and the tenant and the execution creditor.

Compare: SR 1948/197 r 285

656 Service

Every summons under rule 654 or rule 655 shall be served in accordance with rules 572, 574, and 575 but service shall be effected not less than 7 clear days before the day of hearing:

Provided that in the case of a claim under section 93 of the Act, where the claimant has not made a deposit or given security in accordance with that section, the summons may, if the Registrar thinks fit, be served at any time before the day of hearing.

Compare: SR 1948/197 r 286; SR 1968/183 r 7(1)

657 Security for costs where claimant does not reside in New Zealand

- (1) Where it appears that the claimant does not reside in New Zealand, the execution creditor may apply to the Judge on not less than one clear day's notice in writing, for an order directing the claimant to give security for costs.
- (2) Where such an order is made and is not obeyed, the claimant shall be debarred from being heard in support of his or her claim, unless the Judge otherwise orders.

Compare: SR 1948/197 r 287

658 Particulars and grounds of claim to be lodged

- (1) The claimant shall within 5 days after the service of the summons on the claimant inclusive of the day of service or, if the time for service has been abridged, then within such reasonable time before the day of hearing as the time of service permits, serve on the execution creditor and file in the office of the Court particulars of any goods alleged to be the claimant's property and of the grounds for his or her claim to the goods, or, in the case of a claim for rent, particulars stating the amount thereof, and the period and the premises in respect of which the rent is claimed to be due.

- (2) The claimant shall include in the particulars a statement of his or her full name, address, and occupation.
Compare: SR 1948/197 r 288; SR 1968/183 r 7(1)

659 Withdrawal or admission

Where, before the day of hearing,—

- (a) The claimant serves on the execution creditor and files in the office of the Court a notice that the claimant withdraws his or her claim; or
(b) The execution creditor serves on the claimant and files in the office of the Court an admission of the title of the claimant,—

the goods seized, or the proceeds of the sale, or the money paid into Court, as the case may be, shall be dealt with as if the claim had not been made or as if the execution had been withdrawn, and the Judge may make such order as to costs, fees, charges and expenses, as may be just.

Compare: SR 1948/197 r 289

660 Claim for damages by claimant

Where in the interpleader proceeding the claimant claims damages from the execution creditor or from the bailiff in respect of the seizure of the goods, the claimant shall, in the particulars of his or her claim to the goods, state the amount he or she claims for damages, and the grounds on which those damages are claimed.

Compare: SR 1948/197 r 290

661 Claim for damages by execution creditor

Where in the interpleader proceeding the execution creditor claims damages against the bailiff arising out of the execution, the execution creditor shall, within the time limited by rule 658(1), give to the bailiff and file in the office of the Court, notice in writing of his or her claim, stating the grounds and amount thereof.

Compare: SR 1948/197 r 291

662 Payment into Court where damages claimed

Where in the interpleader proceeding the claimant claims damages from the bailiff or from the execution creditor, or the execution creditor claims damages from the bailiff, the person from whom damages are claimed may pay money into Court in satisfaction of that claim, and the payment shall be made in the same manner and shall have the same effect as if the person claiming damages were the plaintiff in a proceeding and the person from whom damages are claimed were the defendant.

Compare: SR 1948/197 r 292

*Writs of arrest***663 Application for writ**

- (1) An application for a writ of arrest and an affidavit in support thereof shall be in form 99.
- (2) The applicant shall deposit such sum as the Judge or Registrar may think reasonable to cover the costs and expenses of arrest. Such costs and expenses shall be costs in the proceeding.

Compare: SR 1948/197 r 300

664 Form of writ, and procedure

- (1) A writ of arrest shall be in form 100, and may be addressed to any bailiff of the Court, or to any constable, either by name or by official designation.
- (2) The bailiff or constable shall, on executing the writ, deliver to the defendant a notice, signed by the Judge or Registrar, in form 101.
- (3) If the defendant gives bail for his or her attendance at the hearing, it may be by bond in form 102. In default of bail being given, the warrant of remand may be in form 103. If the defendant consents to a summary hearing the consent may be in form 104.

Compare: SR 1948/197 r 301

Proceedings by and against executors and administrators

665 Costs where executor sues and fails

In a proceeding by an executor or administrator, if the plaintiff fails, costs awarded to the defendant shall, unless the Court otherwise orders, be levied on the goods of the plaintiff.

Compare: SR 1948/197 r 302

666 Judgment and execution against executor or administrator

- (1) Where the Court gives judgment against an executor or administrator sued in his or her capacity as such executor or administrator, a note shall be made on the judgment that judgment is given against the defendant in that capacity.
- (2) Subject to the provisions of this rule, execution on any such judgment shall be limited to assets of the estate of the deceased in the hands of the executor or administrator.
- (3) In any case where the executor or administrator satisfies the Court that the executor or administrator has no assets, or insufficient assets, in his or her hands to satisfy the claim, the Court may give judgment that the amount or, as the case may require, the balance of the amount, be levied on the assets of the estate which thereafter come into the hands of the executor or administrator.
- (4) In any case where the executor or administrator unnecessarily denies the claim or unsuccessfully alleges that he or she has no assets, then, in addition to the other remedies available, the Court may order that the amount awarded for costs be levied against the executor or administrator personally.

Compare: SR 1948/197 r 303

667 Assets after judgment

Where judgment has been given against an executor or administrator that the amount be levied upon assets of the estate which should thereafter come into the hands of the defendant, as executor or administrator, to be administered, the plaintiff may make an application to the Court on notice, and, if it appears that since the judgment any assets of the estate

have come into the hands of the executor or administrator, the Court may make an order in form 105. A copy of the order shall be served on the executor or administrator.

Compare: SR 1948/197 r 304

668 Form of distress warrant

A distress warrant against the assets of the estate of a deceased person shall be in form 106, and shall be issued by the Registrar.

Compare: SR 1948/197 r 305

Part 11

Penal and disciplinary provisions

669 Proceedings on complaint of assault or rescue

- (1) Where it is alleged that any person has assaulted an officer of the Court while in the execution of that officer's duty, or has rescued or attempted to rescue any goods seized under process of the Court, then, if the alleged offender has not been taken into custody and brought before the Judge, the Registrar shall issue a summons in form 107, which shall be served on the alleged offender personally not less than 2 clear days before the day of hearing appointed in the summons.
- (2) An order made under section 18 or section 87 of the Act shall be in form 108.

Compare: SR 1948/197 r 306

670 Misconduct or neglect of officers

- (1) Where a complaint is made against an officer of the Court under section 19 or section 105 of the Act, the Registrar shall issue a summons in form 109 or form 110, which shall be served on the officer personally not less than 10 clear days before the day of hearing appointed in the summons.
- (2) An order made under section 19 of the Act shall be in form 111, and an order made under section 105 of the Act shall be in form 112.

Compare: SR 1948/197 r 307

671 Witnesses and costs

On the hearing of a summons or a summary hearing under section 18, section 19, section 87, or section 105 of the Act, witnesses may be summoned and their attendance enforced in like manner as on the hearing of a proceeding, and the Judge may make such order as to costs as he or she thinks fit.

Compare: SR 1948/197 r 308

672 Non-attendance, etc, of witness

An order made under section 54 of the Act imposing a fine on a person summoned as a witness, or on a person in Court who refuses to be sworn or give evidence, shall be in form 113.

Compare: SR 1948/197 r 309

673 Notice before imposing or enforcing fine

- (1) In any case to which section 54 of the Act applies, the Court may peremptorily impose the penalty provided for in that section.
- (2) Before or after imposing a fine on any person under section 54 of the Act the Judge may direct the Registrar to give notice to that person stating that if that person has any cause to show why a fine should not be or should not have been imposed he or she may show cause in person or by affidavit or otherwise on a day to be named in the notice; and the Court, after considering the cause shown, may make such order as it thinks fit.

Compare: SR 1948/197 r 310

674 Contempt of Court

A warrant committing an offender to prison under section 112 of the Act shall be in form 114. An order imposing a fine on that offender shall be in form 115.

Compare: SR 1948/197 r 311

675 Enforcement of fine

- (1) Where a fine is not paid in accordance with the order of a Judge, the Registrar shall forthwith report the matter to the Judge.

- (2) An order of a Judge under section 114 of the Act for the enforcement of a fine under the provisions of the Summary Proceedings Act 1957, shall be in form 116.

Compare: SR 1948/197 r 312

Part 12

Revocations, transitional provisions, and savings

676 Revocations

The rules specified in Schedule 3 to these rules are hereby revoked.

677 Transitional provision

- (1) Subject to the provisions of subclause (2) and subclause (3), all officers, appointments, records, accounts, books, seals, certificates, complaints, summonses, applications, notices, documents, warrants, writs, judgments, orders, decisions, directions, appeals, and generally all acts of authority that originated under any of the provisions of the rules hereby revoked by rule 676 and are subsisting or in force at the commencement of these rules shall enure for the purposes of these rules as if they had originated under the corresponding provisions of these rules, and accordingly shall, where necessary, be deemed to have so originated.
- (2) All proceedings in any Court commenced before and pending or in progress on the commencement of these rules may be continued, completed, and enforced under these rules, and accordingly these rules shall, so far as practicable, apply to those proceedings. In so far as it is not practicable for any provision of these rules to be applied to any such proceedings the rules hereby revoked shall, to such extent as may be necessary, continue to apply to those proceedings.
- (3) If in any proceedings to which subclause (2) applies any question arises as to the application of any provision of these rules or of the rules hereby revoked, the Court or the Registrar may, either on the application of any party to the proceedings or of

its own motion, determine the question and make such order thereon as it thinks fit.

Compare: SR 1948/197 rr 3(2), 4(2), (3)

Schedule 1

Rule 3(3)(c)

Forms

Form 1

Rule 30

General heading for documents filed in a proceeding

In the District Court

No.

at

Under the

Act 19

[Where appropriate]

In the Matter of

[Where appropriate]

Between *[Full name]*, of *[Place of residence]*, *[Occupation]*,
Plaintiff

And *[Full name]*, of *[Place of residence]*, *[Occupation]*,
Defendant

And *[Where counterclaim against plaintiff and oher person]*

Between *[Full name]*, of *[Place of residence]*, *[Occupation]*,
Defendant

And *[Full name]*, of *[Place of residence]*, *[Occupation]*,
Plaintiff

And *[Full name]*, of *[Place of residence]*, *[Occupation]*,
Counterclaim
Defendant

Form 2
Memorandum to be subscribed to first document
filed by party

Rule 43

THIS document is filed by the above-named plaintiff (*or* defendant, etc) in person. The address for service of the above-named plaintiff (*or* defendant, etc) is

OR

This document is filed by AB, solicitor for the above-named plaintiff (*or* defendant, etc), of the firm of XYZ. The address for service of the above-named plaintiff (*or* defendant, etc) is

Documents for service on the above-named plaintiff (*or* defendant, etc) may be left at that address for service or may be—

- (a) Posted to the solicitor at [*Insert Post Office box address*]; or
- (b) Left for the solicitor at a document exchange for direction to [*Insert document exchange box number*]; or
- (c) Transmitted to the solicitor by facsimile to [*Insert facsimile number*].

OR

This document is filed by AB, solicitor for the above-named plaintiff (*or* defendant, etc), of the firm of XYZ, whose postal address is

The solicitor's agent in the proceeding is

The address for service of the above-named plaintiff (*or* defendant, etc) is

Documents for service on the above-named plaintiff (*or* defendant, etc) may be left at that address for service or may be—

- (a) Posted to the solicitor at [*Insert Post Office box address*]; or
- (b) Left for the solicitor at a document exchange for direction to [*Insert document exchange box number*]; or
- (c) Transmitted to the solicitor by facsimile to [*Insert facsimile number*].

Form 3
Notice of change of representation or address
for service

Rule 44

(General heading—Form 1 and endorsement)

Form 3—*continued*

TAKE notice that—

- * the solicitor for the plaintiff (*or defendant or third party*) is now [*name and address of new solicitor and the solicitor's firm, if any*].
- * the plaintiff (*or defendant or third party*) now acts in person in place of [*name and address of previous solicitor and the solicitor's firm, if any*].
- * the address for service of the plaintiff (*or defendant or third party*) is now [*address complying with the definition of the term address for service in rule 3 of the District Courts Rules 1992*].

Dated this day of 20 .

.....
Plaintiff or Defendant or
Third Party

[*If this document notifies a
change of solicitor, it must
be signed by the party
personally or by the party's
attorney.*]

To: The Registrar of the District Court at
and to [*name of other party to proceeding*].

*Delete if inapplicable

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 3 was substituted, as from 1 July 2002, by rule 4 District Courts Amendment Rules 2000 (SR 2002/133).

Form 3A
Notice of intention to speak Maori

r 68A(4)

(General heading as in form 1)

Form 3A—continued

Take notice that, [**full name*] of [*address*] intends to speak Maori at—

†all conferences and hearings relating to the above proceeding

†all conferences and hearings relating to the above proceeding held after
[*specify particular conference or hearing after which the person wishes to
speak Maori*]

†the conference/†hearing relating to the above proceeding to be held at
[*specify details of the particular conference or hearing at which the
person wishes to speak Maori*].

*Insert name of party, counsel, or witness intending to speak Maori.

†Delete if inapplicable.

Dated at this day of 20

.....
Signature of person intending to speak
Maori or party (or solicitor)

Form 3A—*continued*

To the Registrar of the District Court at [*place*]

and

To [*names of parties to be served*]

Notes

- 1 The Maori Language Act 1987 entitles certain persons to speak Maori in legal proceedings. They include the parties to the proceedings, witnesses, counsel and, with the leave of the Court, other persons.
- 2 If a person intends to speak Maori at all conferences and hearings relating to a proceeding or application, the person, or if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the first conference or hearing, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.
- 3 If a person intends to speak Maori at all conferences and hearings after a particular conference or hearing, the person, or if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the first conference or hearing at which the person intends to speak Maori, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.
- 4 If a person intends to speak Maori at a particular conference or hearing, the person, or if the person is a witness, the party intending to call the person as a witness, must, at least 10 working days before the conference or hearing, file this notice in the office of the Court and serve a copy of the notice on every other party to the proceeding or application.
- 5 Failure to give notice of intention to speak Maori does not prevent a person speaking Maori at a conference or hearing, but the Court may—
 - (a) adjourn the conference or hearing to enable the Registrar to arrange for an interpreter to be available at the adjourned conference or hearing; and
 - (b) treat the failure to give notice as a relevant consideration in an award of costs.

Form 3A was inserted, as from 1 June 2006, by rule 6 District Courts Amendment Rules 2006 (SR 2006/97). See rule 14 of those rules as to the transitional provision relating to costs.

Form 4 Rules 127(2), 173(4)
Notice of proceeding (general)

(General heading-Form 1 and endorsement)

Form 5
Memorandum (general form)

Rule 127(4)

Advice

1. Although it is not essential for you to employ a solicitor for the purpose of this proceeding, you are recommended to consult a solicitor in this matter without delay.

Legal aid

2. If you wish to apply for legal aid, you should contact the staff at the District Court, a Citizens' Advice Bureau, community law centre, or a solicitor for assistance.
3. The plaintiff is in receipt of (*or* is not in receipt of *or* has applied for) legal aid for the purpose of this proceeding.

Statement of defence

4. If the last day for filing your statement of defence falls on a day on which the office of the Court is closed, you may file your statement of defence on the next day on which that office is open.
5. In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January. [*This paragraph must be deleted if it conflicts with a direction by the Court.*]
6. If you file a statement of defence, you must also, within the time limited for filing it in the office of the Court, serve a copy of the statement on the plaintiff and on any other defendant who has given an address for service.

Counterclaim

7. If you have a counterclaim against the plaintiff, you should, within the time limited for filing your statement of defence,—
 - (a) File in the office of the Court; and
 - (b) Serve on the plaintiff and on any other person against whom the same claim is made,—a statement of the counterclaim.

Witnesses

14. Summonses for the attendance of witnesses will be issued on application at the office of the Court.

Office hours

15. The office hours of the Court are from 9 am to 5 pm Monday to Friday inclusive.

Date:

.....
(Deputy) Registrar

Form 5 was amended, as from 1 March 2001, by rule 29 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting, in the section headed

Form 5—*continued*

“*Office hours*”, the expression “8.30 am to 5 pm” for the expression “9.30 am to 4 pm”.

Form 5 was amended, as from 1 February 2003, by rule 16 District Courts Amendment Rules (No 4) 2002 (SR 2002/411) by substituting the expression “9 am to 5 pm” for the expression “8.30 a.m. to 5 p.m.”.

Form 5 clause 5 was substituted, as from 1 October 2001, by rule 7 District Courts Amendment Rules 2001 (SR 2001/221).

Form 5 the headings above clauses 8, 9, and 12 were revoked, as from 1 June 2006, by rule 12 District Courts Amendment Rules 2006 (SR 2006/97). *See* rule 14 of those rules as to the transitional provision relating to costs.

Form 5 cls 8 to 13 were revoked, as from 1 June 2006, by rule 12 District Courts Amendment Rules 2006 (SR 2006/97). *See* rule 14 of those rules as to the transitional provision relating to costs.

Form 6

Rule 127(4)

Memorandum to be endorsed on form 4 in
proceeding under the Family Protection Act
1955*[Revoked]*

Form 6 was amended, as from 1 March 2001, by rule 30 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting, in the section headed “*Office hours*”, the expression “8.30 am to 5 pm” for the expression “9.30 am to 4 pm”.

Form 6 was amended, as from 1 February 2003, by rule 15 District Courts Amendment Rules (No 4) 2002 (SR 2002/411) by substituting the expression “9 am to 5 pm” for the expression “8.30 a.m. to 5 p.m.”.

Form 6 was revoked, as from 3 February 2003, by rule 14(a) District Courts Amendment Rules (No 3) 2002 (SR 2002/394).

Form 7

Rules 127(4), 244

Notice to defendant served overseas

Form 7—*continued*

To be added to form 5, as appropriate

The foregoing notice is the usual notice given to every defendant but as you are resident out of New Zealand you are further notified as follows:

1. These documents are documents by which the above-named plaintiff has commenced a proceeding against you in the District Court at in New Zealand. In that proceeding the plaintiff claims against you the relief specified in the attached statement of claim.
2. Although you are resident outside New Zealand, the plaintiff claims that he or she can bring this proceeding against you in a District Court in New Zealand.
3. By New Zealand law, a District Court may exercise jurisdiction in a case even though the defendant is resident outside New Zealand, if the case comes within the class or classes in which that Court has jurisdiction.
4. One (two, etc) of the classes of case in which a District Court may exercise jurisdiction is (or are) where:
[Here specify the particular provision of rule 242 on which the plaintiff relies to serve the proceeding overseas.]
5. In this case the plaintiff claims:
[Here specify the facts alleged by the plaintiff to confer jurisdiction.]
6. Notwithstanding that the Court may have jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied—
 - (a) That in all the circumstances some country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and
 - (b) That the plaintiff will have a fair opportunity to prove his or her claim and receive proper justice in that other country.
7. If you wish to dispute the jurisdiction of the Court in this proceeding, you must, within the time specified for filing a statement of defence and instead of filing and serving a statement of defence,—
 - (a) File in this Court an appearance in the form required by the rules of this Court stating your objection to the Court's jurisdiction and the grounds thereof; and
 - (b) Serve a copy of that appearance on the plaintiff.
Such an appearance will not be or be deemed to be a submission to the jurisdiction of the Court in this proceeding.
8. If you desire to protest at the jurisdiction of a 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:

.....
(Deputy) Registrar

Form 7—*continued*

Form 7 was amended, as from 3 February 2003, by rule 14(b) District Courts Amendment Rules (No 3) 2002 (SR 2002/394), by omitting the words “or form 6”.

Form 8 Rule 142
Appearance under protest to jurisdiction

(General heading—Form 1 and endorsement)

1. The defendant, CD, appears under protest to object to the jurisdiction of the Court to hear and determine this proceeding.
2. The defendant’s objection is based on the following grounds:
 - (1)
 - (2)

Dated this day of 19 .

.....
(Solicitor *or* Counsel for)
Defendant

[*Subscribe memorandum in form 2.*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 9 Rule 142
Appearance for ancillary purpose

(General heading—Form 1 and endorsement)

THE defendant, CD, does not oppose the plaintiff’s claim but appears so that he or she may be heard on the following matters:

- (1)
- (2)

Dated this day of 19 .

.....
(Solicitor *or* Counsel for)
Defendant

[*Subscribe memorandum in form 2.*]

Form 9—*continued*

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 10
Appearance reserving rights

Rule 142

(General heading—Form 1 and endorsement)

THE defendant, CD, does not oppose the plaintiff’s claim but appears in order to reserve his or her rights in the event that any other person may become a party to this proceeding or that any person, already a party, may take some step in the proceeding adverse to the interests of this defendant.

Dated this day of 19 .

.....
(Solicitor *or* Counsel for)
Defendant

[*Subscribe memorandum in form 2.*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 11
Notice of proceeding when summary judgment
sought by plaintiff

r 154

(General heading—Form 1 and endorsement)

Form 11—*continued*

To the above-named defendant(s)

Take notice—

- (a) That a claim, a copy of which is served herewith, has been filed in this Court by the plaintiff; and
- (b) That the plaintiff has also applied to this court for immediate judgment against you (thereon *or, if judgment is not sought on the full claim*, to the extent stated in the notice of application for summary judgment also served herewith) 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

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 herewith,—

- (a) File in the office of this Court at [*Place*]—
 - (i) A notice of opposition; and
 - (ii) An affidavit sworn by you or on your behalf setting out your defence to the plaintiff's claim; and
- (b) Serve a copy of that notice of opposition and a copy of that affidavit on the plaintiff.

If you fail—

- (a) To file both a notice of opposition and the affidavit and to serve copies of them on the plaintiff; or
 - (b) To appear personally or by counsel on the date of hearing in opposition to the plaintiff's application,—
- the Court may give such judgment on the plaintiff's claim against you as may be just.

Statement of Defence

You may, in addition to filing a notice of opposition and such an affidavit, file a statement of defence.

If you wish to file a statement of defence,—

- (a) You must file it in the office 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 so file it and so serve it not less than 3 days before the date for the hearing of the application.

Dated this day of 19.....

Form 11—*continued*

.....
(Solicitor for) Plaintiff

Your attention is particularly directed to the Memorandum endorsed hereon or attached hereto.

MEMORANDUM

Advice

1. [As in form 5.]

Legal aid

2. } [As in form 5.]
3. }

Appearance objecting to jurisdiction of Court

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 office of the Court, instead of a notice of opposition and an affidavit, an appearance stating your objection and the grounds thereof; and
 - (b) Serve a copy of the appearance on the plaintiff.
5. Such an appearance will not be deemed to be a submission to the jurisdiction of the Court.

Office hours

6. The office hours of the Court are from 9 am to 5 pm Monday to Friday inclusive.

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
 - (b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year.

Date:

.....
(Deputy) Registrar

Form 11—*continued*

[Where the defendant is to be served overseas add the following notice]

NOTICE TO DEFENDANT SERVED OVERSEAS

The foregoing memorandum is the usual memorandum given to every defendant against whom summary judgment is sought but as you are resident out of New Zealand you are further notified as follows:

1. These documents are documents by which the above-named plaintiff has commenced a proceeding against you in the District Court at in New Zealand. In that proceeding the plaintiff claims against you 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 in New Zealand.
3. By New Zealand law the District Court may exercise jurisdiction in a case even though the defendant is resident outside New Zealand, if the case comes within the class or classes in which that Court has jurisdiction.
4. One (two, etc) of the classes of case in which the District Court may exercise jurisdiction is (or are) where:
[Having regard to rule 151, here specify the particular provision of rule 242 on which the plaintiff relies to serve the proceeding overseas.]
5. In this case the plaintiff claims:
[Having regard to rule 151, here specify the facts alleged by the plaintiff to confer jurisdiction.]
6. Notwithstanding that the Court may have jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied—
 - (a) That in all the circumstances some country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and
 - (b) That the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive proper justice in that other country.
7. If you desire to protest at 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:

.....
(Deputy) Registrar

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 11—*continued*

The heading to Form 11 was substituted, as from 1 March 2001, by rule 31(1) District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Form 11 was amended, as from 1 March 2001, by rule 31(2) District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting, at the top of the form, the expression “r 154” for the expression “r 156”.

Form 11 was further amended, as from 1 March 2001, by rule 31(3) District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting, in the section headed “*Notice of opposition and affidavit setting out defence*”, the expression “3 working days” for the expression “3 days”.

Form 11 was further amended, as from 1 March 2001, by rule 31(4) District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting the second para (a) in the section headed “*Notice of opposition and affidavit setting out defence*”.

Form 11 was further amended, as from 1 March 2001, by rule 31(5) District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting, in the section of the memorandum headed “*Office hours*”, the expression “8.30 am to 5 pm” for the expression “9.30 am to 4 pm”.

Form 11 was further amended, as from 1 March 2001, by rule 31(6) District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by inserting, after the section of the memorandum headed “*Office hours*”, the heading “*Working days*” and section 7.

Form 11 was amended, as from 1 February 2003, by rule 15 District Courts Amendment Rules (No 4) 2002 (SR 2002/411) by substituting the expression “9 am to 5 pm” for the expression “8.30 a.m. to 5 p.m.”.

Form 12
Third party notice

Rule 177

(General heading—Form 1 and endorsement)

Form 12—*continued*

To [*Full name, address, and occupation*]

Claim by plaintiff against defendant

Take notice that this proceeding has been brought by the plaintiff against the defendant. In the proceeding the plaintiff claims the relief set out in the plaintiff's statement of claim, a copy of which is delivered herewith. The defendant has (*or has not*) filed a statement of defence to the claim.

(*A copy of that statement of defence is delivered herewith.)

Claim by defendant against you

The defendant claims against you relief or remedy in respect of, or arising out of, the plaintiff's claim. Both the relief or remedy claimed against you by the defendant and the grounds on which that relief or remedy is claimed are set out in the defendant's statement of claim, a copy of which is also delivered herewith.

Your right to dispute claims

If you wish to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must, within 30 days after the day on which this notice is served upon you,—

- (a) File in the office of this Court at [*Place*] a statement of your defence to the plaintiff's claim or the defendant's claim, or both, as the case may be; and
- (b) Serve a copy of that statement of your defence on the plaintiff and the defendant and on the other parties to the proceeding.

Consequences of failure to dispute claims

In default of your so doing—

- (a) You will be deemed to admit—
 - (i) The plaintiff's claim against the defendant; and
 - (ii) The defendant's right to the relief or remedy that the defendant claims against you; and
 - (iii) The validity of any judgment that may be given in the proceeding, whether by consent, default, or otherwise; and
- (b) You will be bound by any judgment so given, which judgment may be enforced against you pursuant to the rules of Court.

Hearing of proceeding

The hearing of the proceeding, if a hearing is necessary, will take place at [*Here specify place*] at a time to be fixed by the Court.

(*This notice is issued pursuant to an order of the Court made on the day of 19 .)

Form 12—*continued*

Dated this day of 19 .

.....
(Solicitor for) Defendant

*Delete if inapplicable

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 13
Notice to other defendant

Rule 189

(General heading—Form 1 and endorsement)

To the above-named defendant, [*full name*].

Claim against you

Take notice that the above-named defendant, [*full name*], claims against you the relief or remedy set out in the annexed statement of claim. The grounds on which the relief or remedy is sought appear in that statement of claim.

Your right to dispute claim

If you dispute the claim, you may, within 10 days after the day on which this notice is served upon you,—

- (a) File in the office of this Court a statement of your defence to the claim; and
- (b) Serve a copy of that statement of your defence on—
 - (i) The above-named defendant [*full name*]; and
 - (ii) The plaintiff; and
 - (iii) Any other party who has filed an address for service.

Dated this day of 19 .

.....
(Solicitor for) Defendant

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 14
Affidavit of service

Rule 218

(General heading—Form 1 and endorsement)

I, *[full name]*, of *[place of residence]*, *[occupation]*, swear:

1. On day, the day of 20 , I served the above-named defendant, *[full name]*, with the following documents:

[Describe each document served, eg, statement of claim and notice of proceeding. If under rule 218(2) of the District Courts Rules 1992, a copy of any document served is not to be annexed to the affidavit, the description of the document—

(a) must be sufficient to enable the document to be identified; and

(b) must include the date of the document (if the document bears a date).]

2. I served the documents on the above-named defendant at *[place]* in New Zealand by delivering the documents personally to the defendant *[or as the case may be]*.
3. I believe it was the defendant that I served because—

**(a) the defendant acknowledged that he/she is the defendant*

**(b) I know the defendant*

**(c) other [please state]*

*Delete inapplicable paragraphs

- **4. True copies of the documents served are annexed to this affidavit and marked “A” and “B”.

**Delete if inapplicable (see rule 218(2))

Signature of Deponent:

Form 14—*continued*

I, [full name], of [place of residence], [occupation], swear:

Sworn at before me— this day of 20 ,

.....
(Deputy) Registrar.

A solicitor of the High Court
of New Zealand.

Form 14 was substituted, as from 1 August 1995, by rule 13 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319) by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 14 was further substituted, as from 1 March 2001, by rule 32 District Courts Amendment Rules (No 2) 2000 (SR 2000/282).

Form 15
Request for service abroad

Rule 246

(General heading—Form 1 and endorsement)

I hereby request that the statement of claim and notice of proceeding in this proceeding be transmitted through the proper channel to [Name of country] for service (or substituted service) on the above-named defendant [Name of defendant] at [Here specify place] or elsewhere in [Name of country], such service to be effected directly through a New Zealand or British consular officer (or by the competent authority of that country).

And I hereby personally undertake—

- (a) To be responsible for all expenses of effecting or endeavouring to effect service incurred by the Government of New Zealand and by any British Government acting in the matter or by any officer thereof respectively; and
- (b) On receiving due notification of the amount of those expenses,—
 - (i) To pay the same forthwith to the Crown Bank Account; and
 - (ii) To produce evidence of the payment to the Registrar.

Dated this day of 19 .

.....
(Solicitor for) Plaintiff

Form 15—*continued*

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 16

Rule 252(1)

Notice requiring proceeding to be transferred
to High Court

(General heading—Form 1 and endorsement)

Take notice that I,, the above-named defendant, object to this proceeding being heard in a District Court, and I apply for an order that the proceeding be transferred to the High Court.

Dated at, this day of, 19.....

.....
(Solicitor for) Defendant

To the Registrar of the District Court at

and

To the Plaintiff.

Add, where no document previously filed by defendant:

This notice is filed by, whose address for service is at

[Not printed]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 17

Rule 252(2)

Notice of application for proceeding to be
transferred to High Court

(General heading—Form 1 and endorsement)

Form 17—*continued*

Take notice that I,, the above-named defendant, object to this proceeding being heard in a District Court, and that I will apply to the District Court at on day, the day of, 19...., at o'clock in the forenoon, for an order that the proceeding be transferred to the High Court on the grounds that an important question of law (fact) is likely to arise (*or* that a question of title to [*Description of hereditament*] is likely to arise otherwise than incidentally.

Dated at, this day of, 19.....

.....
(Solicitor for) Defendant

To the Registrar of the District Court at

and

To the Plaintiff.

Add, where no document previously filed by defendant:

This notice is filed by, whose address for service is at

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 18

Rule 252(3)

Order transferring proceeding to High Court

(General heading—Form 1 and endorsement)

IT is ordered that (on payment by the defendant of the sum of \$..... into Court (*or* upon the defendant entering into a bond in the sum of \$..... in a form to be settled by the Registrar) as security for the costs of the proceeding in the High Court this proceeding be transferred, pursuant to section of the District Courts Act 1947, to the High Court of New Zealand at

Date:

.....
(Deputy) Registrar

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22

Form 18—*continued*

District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 19

Rule 252(3)

Notice of hearing of proceeding transferred
from the High Court to a District Court

[Revoked]

Form 19 was revoked, as from 1 August 1995, by rule 14 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

Form 20

Rule 257(1)

Notice of interlocutory application

Inter partes

(General heading—Form 1 and endorsement)

Take notice that on the day of 19....., at am (*or pm*) or as soon thereafter as counsel (*or parties*) may be heard the [*Party applying*] will move the District Court at [*Place*] for [*Here specify the order or orders sought, numbering them if more than one is sought*] upon the grounds [*State concisely the grounds in respect of each order sought*].

This application is made in reliance on [*State any statutory provision, regulation, rule, or principle of law relied upon*].

Dated this day of 19.....

.....
(Solicitor *or* Counsel for)
[*Party applying*]

To the Registrar of the District Court at
And to [*Names of parties to be served*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 21
Notice of interlocutory application

Rule 257(1)

Ex parte

(General heading—Form 1 and endorsement)

Take notice that the [*Party applying*] will move the Court at for
[*Here specify the order or orders sought, numbering them if more than one is
sought*] upon the grounds [*State concisely the grounds in respect of each order
sought*]

This application is made in reliance on [*State any statutory provision,
regulation, rule, or principle of law relied upon*]

Certified pursuant to the rules of Court to be correct.

Dated this day of 19.....

.....
(Solicitor or Counsel for)
[*Party applying*]

To the Registrar of the District Court at

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79,
81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22
District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting
the expression “(General heading-Form 1 and endorsement)” for the expression
“(General heading-Form 1)”.

Form 22
Notice of opposition

Rule 267

(General heading—Form 1 and endorsement)

Form 22—*continued*

TAKE notice that the [*Party opposing*] intends to oppose the interlocutory application by the [*Plaintiff, defendant, etc*] dated the day of 19..... and for hearing on the day of 19.....

The [*Party opposing*] is opposed to the making of the orders numbered in the notice of application.

The grounds on which the [*Party opposing*] opposes the making of the orders are [*State concisely*].

The [*Party opposing*] relies upon [*State statutory provision, regulation, rule, or principle of law relied upon*].

Dated this day of 19.....

.....
(Solicitor or Counsel for)
[*Party opposing*]

To: The Registrar of the District Court at
And to: [*Party applying and any other party served with notice of application*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 23
Order made by the Court

Rule 290

(General heading—Form 1 and endorsement)

Form 23—*continued*

BEFORE Judge

Upon reading (the statement of claim and) the interlocutory application of the [Party applying] for [State concisely the order or orders sought] and the affidavit(s) of [Full name(s)] [Refer also to any other relevant document] and upon hearing (or, if no appearance, upon the application of) [Name], counsel (or solicitor) on behalf of the [Applicant] and [Name], counsel (or solicitor) on behalf of the [Other party] this Court orders (by consent, if appropriate): [Here specify the order or orders made. Where more than one order is made, they may be numbered.]

By the Court,

.....

(Deputy) Registrar

Date:

Sealed:

Date:

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 24

Rule 300

Notice to answer interrogatories

(General heading—Form 1 and endorsement)

Form 24—*continued*

TAKE notice that, pursuant to rule 300 of the District Courts Rules, the above-named plaintiff (*or* defendant, etc) requires you, within days after the day on which this notice is served on you,—

- (a) To answer specified interrogatories relating to matters in question in this proceeding between you and him or her; and
- *(b) To verify your answers by affidavit.

The specified interrogatories are as follows:

[*Here set out, and number, the interrogatories*]

Dated this day of 19.....

.....
(Solicitor *or* Counsel for)
[*Party interrogating*]

To the [*Party interrogated*]

*Delete if the party interrogating does not require the answers to be verified by affidavit.

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 25
Notice to admit facts

Rule 313

(General heading—Form 1 and endorsement)

TAKE notice that, pursuant to rule 313 of the District Courts Rules, the above-named plaintiff (*or* defendant, etc) requires you, within 7 days after the date on which this notice is served on you, to admit, for the purpose of this proceeding only, the following facts:

[*Here set out, and number, the facts required to be admitted.*]

Dated this day of 19.....

.....
(Solicitor *or* Counsel for)
[*Party giving notice*]

To the [*Party served*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting

Form 25—*continued*

the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 26
Notice for discovery

Rule 315(1)

(General heading—Form 1 and endorsement)

TAKE notice that, pursuant to rule 315(1) of the District Courts Rules, the above-named plaintiff (*or* defendant, etc) requires you within days after the day on which this notice is served on you,—

- (a) To give discovery of the documents which are or have been in your possession or power relating to any matter in question in this proceeding; and
- * (b) To verify your list of documents by affidavit.

Dated this day of 19.....

.....
(Solicitor *or* Counsel for)
[Party giving notice]

To the [Party served]

*Delete if the party giving notice does not require the list of documents to be verified by affidavit.

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 27
List of documents

Rule 320

(General heading—Form 1 and endorsement)

Form 27—*continued*

- A. Documents which relate to matters in question in this proceeding and which are now in the possession or power of the [*Party giving discovery*]

First Part

[The documents described in this Part must be listed and numbered in a convenient sequence. Do this as shortly as possible but describe each document, or, in the case of a group of documents of the same nature, describe the group sufficiently to enable the document or group to be identified.]

Second Part

[The documents described in this Part must be listed and numbered in accordance with the instructions set out in relation to the first Part.]

The [*Party giving discovery*] objects to produce the documents listed in this Part on the grounds that they are privileged, in that—

- **(a)* As to the document(s) numbered production thereof would tend to incriminate the party [*or as the case may be*].
- **(b)* The document(s) numbered consist of communications between the party and his or her solicitor made after this proceeding was in contemplation and for the purpose of enabling the party's solicitor—
 - **(i)* To advise the party with regard thereto:
 - **(ii)* To conduct the party's claim (*or defence*).
- **(c)* The document(s) numbered comprise counsel's brief and include the names and statements of persons who may be witnesses at the hearing, all of which were prepared after this proceeding was in contemplation and for the purposes thereof.
- (d)* [*Set out any other ground of privilege claimed.*]

*Delete if inapplicable

- B. Documents which relate to matters in question in this proceeding but which are no longer in the possession or power of the [*Party giving discovery*]

[The documents described under this heading must be listed in accordance with the instructions set out in relation to the First Part of A of this list but, in relation to each document under this heading, the party giving discovery must state, in addition, when he or she parted with the document and what has become of it.]

- C. Other relevant documents known to the [*Party giving discovery*]

[The documents described under this heading must be listed in accordance with the instructions set out in relation to the First Part of A of this list.]

Form 27—*continued*

[*For example*]

31. The documents enumerated in the list of [*Other party*].
32. Memorandum of agreement (date unknown) made between [*Other party*] and YZ of [*Address*], [*Occupation*], now believed to be in the possession or power of the said YZ.

I, the above-named [*Party giving discovery*], swear that the foregoing list of documents is complete and correct in every particular and that the statements of fact in relation thereto are true.

Sworn at this day of 19....., before me:

A solicitor of the High Court of New Zealand

[*If verification not required, omit the affidavit, and substitute the following certificate:*]

I, (solicitor for) [*Party giving discovery*] certify that the foregoing list of documents and the statements therein are correct (according to my instructions. *These words may be included only where the certificate is given by a solicitor*) and comply with the requirements of rule 320 of the District Courts Rules.

Dated this day of 19.....

.....
(Solicitor for)
[*Party giving discovery*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 28
Memorandum admitting relief
[*Revoked*]

Rule 366

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Forms 28 to 32 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Form 29 Rule 377
**Notice of payment into court with denial of
liability**
[Revoked]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Forms 28 to 32 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Form 30 Rule 377
**Notice of payment into court of full amount
claimed**
[Revoked]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Forms 28 to 32 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Form 31 Rule 377
**Notice of payment into court with admission
of liability**
[Revoked]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Forms 28 to 32 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Form 32 Rule 377
Notice of acceptance of money paid in
[Revoked]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 32—*continued*

Forms 28 to 32 were revoked, as from 1 February 2005, by rule 5 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Form 33

Rule 378

Notice of time and place for examination

(General heading—Form 1 and endorsement)

TAKE notice that the defendant (plaintiff) has given notice that the defendant (plaintiff) desires to have the examination of (himself or herself and), of, and, of, taken at at

And take notice that shall examine the defendant (plaintiff) on day, the day of 19...., at the hour of in the noon, at and that you may appear alone or with your solicitor and cross-examine the person or persons there examined.

Date:

.....
(Deputy) Registrar

To the above-named

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 34

Rule 380

Evidence of witness(es) examined by deposition

(General heading—Form 1 and endorsement)

Form 34—*continued*

EVIDENCE of witness(es) taken at, on day, the day of 19....., before the undersigned.

.....
Examiner

..... appears for the plaintiff.
..... appears for the defendant.

(NOTE—*The deposition(s) should be typewritten on separate sheets, which should be attached securely to this form. Commence the evidence of each witness with the words: "This deponent, on oath says:" Each page must be signed by the witness and the Examiner.*)

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression "(General heading-Form 1 and endorsement)" for the expression "(General heading-Form 1)".

Form 35
Report of examiner

Rule 380

THE attached depositions of, written on sheets of paper, numbered consecutively from 1 to, and now fixed together and signed by me were taken and sworn before me in accordance with the District Courts Rules, at on this day of 19.....

.....
Examiner

(NOTE—*This form should be attached securely to form 34 and the depositions.*)

Form 36
Certificate of costs

Rule 381

(General heading—Form 1 and endorsement)

Form 36—continued

IT is hereby certified that the following are the costs allowed to the
on the examination of witnesses at, this day of
19.....

.....
Examiner

Plaintiff's costs, viz,—	\$	Defendant's costs, viz,—	\$
.....		
Solicitor's fee	.....	Solicitor's fee	.....
Witness	.....	Witness	.....
Witness	.....	Witness	.....
Witness	.....	Witness	.....
Total	.....	Total	.....

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79,
81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22
District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting
the expression “(General heading-Form 1 and endorsement)” for the expression
“(General heading-Form 1)”.

Form 37
Certificate of non-appearance

Rule 382

(General heading—Form 1 and endorsement)

IT is hereby certified that the application of the plaintiff (defendant) to take the
evidence of was called in Court this day, but neither of the parties
having appeared, the application was struck out (*or* the only having
appeared, the application was struck out, with costs, as in the certificate annexed
hereto).

Dated at, this day of, 19.....

.....
Examiner

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79,
81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22
District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting
the expression “(General heading-Form 1 and endorsement)” for the expression
“(General heading-Form 1)”.

Form 38
Application for fixture

Rules 426, 559

(General heading—Form 1 and endorsement)

PLEASE set this proceeding down for hearing on the first available date after [State date].

The length of time required for the hearing is estimated—

- (a) By counsel (or solicitor) for the Plaintiff to be days:
- (b) By counsel (or solicitor) for the Defendant to be days:
- (c) By counsel (or solicitor) for the [Additional party] to be days.

Counsel for the plaintiff is [State name].

Counsel for the defendant is [State name].

*A fixture is not desired during the period to

We (or I) certify that this proceeding is in all respects ready for hearing.

.....
(Counsel or Solicitor for)
Plaintiff

.....
Date

.....
(Counsel or Solicitor for)
Defendant

.....
Date

.....
(Counsel or Solicitor for)
[Additional Party]

.....
Date

To the Registrar of the District Court at

*I certify that the [Other party] has failed to sign and return this application in terms of rule 429(2).

.....
(Counsel or Solicitor for)
(Plaintiff or Defendant)

*Proceeding set down for hearing

.....
(Deputy) Registrar

*Delete if inapplicable

Form 38—*continued*

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 39

Rule 429

Notice that application for fixture filed

(General heading—Form 1 and endorsement)

TAKE notice that the application to set this proceeding down for hearing was filed today.

.....
(Deputy) Registrar

.....
Date

TO [*Here set out the name and postal address of each party or solicitor on the record to whom the notice is sent.*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 40

Rule 430

Notice that proceeding set down for hearing

(General heading—Form 1 and endorsement)

Form 40—*continued*

TAKE notice that this proceeding has been set down for hearing at the District Court at on the [*State date or dates*] at the hour of in the noon.

.....
(Deputy) Registrar

.....
Date

TO [*Here set out the name and postal address of each party or solicitor on the record to whom the notice is sent.*]

Notice to Parties

If you are a defendant, failure to attend may mean that judgment will be entered against you.

If you are a plaintiff, failure to attend may mean that the proceeding will be struck out.

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 40AA
Notice of discontinuance

r 479

(General heading—Form 1 and endorsement)

Take notice that [*name of plaintiff discontinuing proceeding*] discontinues this proceeding against [*name of the defendant or, if there is more than 1 defendant, the names of the defendants or the names of the defendants against whom the plaintiff discontinues the proceeding*].

*Copies of the written consents of the plaintiffs who are required under rule 480(3) of the District Courts Rules to consent to this discontinuance are attached to this notice.

*Copies of the written consents of the defendants who are required under rule 480(4) of the District Courts Rules to consent to this discontinuance are attached to this notice.

Form 40AA—*continued*

*The District Court has granted leave to the plaintiff to
discontinue this proceeding.

*Delete if inapplicable.

Dated this day of 20

(Solicitor for)

Plaintiff

To the Registrar of the District Court at and to [*name of other
parties to proceeding*].

Form 40AA was inserted, as from 1 February 2003, by rule 14 District Courts
Amendment Rules (No 4) 2002 (SR 2002/411).

Form 40A

Rule 461H

Heading for applications, notices, and orders
under Harassment Act 1997

No

In the District Court
at

HARASSMENT ACT 1997

Applicant

[*Give full name, *address, and occupation*]

Respondent

[*Give full name, *address, and occupation*]

*Associated Respondent

[*Give full name, address, and occupation*]

*Delete or omit if inapplicable

NOTE

Rule 461N of the District Courts Rules 1992 permits the residential address of
an applicant for a restraining order or of a protected person to be omitted from
this heading if he or she wants the address to be kept confidential from the other
parties.

Form 40A—*continued*

Forms 40A to 40G were inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Form 40B

Rule 461J(1)

Application for restraining order

Section 9, Harassment Act 1997

(General heading—Form 40A and endorsement)

Form 40B—continued

*I, [Full name], apply for a restraining order against [Full name], the respondent.

OR

*I, [Full name of appointed representative], the appointed representative of [Full name of the applicant], the applicant, apply on behalf of the applicant for a restraining order against [Full name], the respondent.

*The proposed duration of the order sought is a period of[State period if the order is sought for a period of more or less than 1 year].

***Request for protection from respondent's associates**

I seek a direction that the restraining order apply against [Full name], the associated respondent.

***Request for special conditions**

*I request that the following special conditions be part of the restraining order: [Set out in sufficient detail the nature of the special conditions sought].

Affidavit in support

I rely on the content of the affidavit dated [Specify date] (* of [Name of deponent if deponent is not the applicant]) filed in support of this application.

.....
Applicant

.....
Date

**Delete or omit if inapplicable*

Date of hearing

(To be completed by the Registrar)

I appoint [Date] at am (pm) at the District Court at for the hearing of this application.

.....
Registrar

.....
Date

Form 40B—*continued*

NOTES

Affidavit in support

An affidavit must be filed with this application. The affidavit must contain sufficient particulars to show the grounds on which you claim to be entitled to the order and to inform the Court of the facts relied on. In particular it must state the matters required to be stated by rule 461L of the District Courts Rules 1992.

Where the application is made by a representative, the accompanying affidavit or affidavits can be made by anyone with knowledge of the relevant facts.

Other accompanying documents

A notice of proceeding in form 40D must also be filed with this application.

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from to on Mondays to Fridays inclusive.

Forms 40A to 40G were inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Form 40C

Rule 461J(2) and (3)

Application for *variation *discharge of
restraining order

(General heading Form—40A and endorsement)

Form 40C—continued

*I, [Full name], apply for an order that the restraining order made in the District Court aton [State date of order] be varied by [State precisely the nature of the variation sought by referring to section 22(1) of the Act].

*I, [Full name], apply for an order discharging the restraining order made in the District Court at on [State date of order].

on the following grounds:
[State grounds]

Affidavit in support

I rely on the content of the affidavit dated [Specify date] (* of [Name of deponent if deponent is not the applicant]) filed in support of this application.

.....
Applicant

.....
Date

**Delete if inapplicable*

Date of hearing

(To be completed by the Registrar)

I appoint [Date] at am (pm) at the District Court at for the hearing of this application.

.....
Registrar

.....
Date

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from to on Mondays to Fridays inclusive.

Forms 40A to 40G were inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Form 40D
Notice of proceeding

Rule 461K

Sections 9, 22, and 23 of the Harassment Act 1997

(General heading—Form 40A and endorsement)

To: [..... the respondent]
*[..... the associated respondent]

***Notification of application for restraining order**

[Full name] has filed an application for a restraining order against *you/*the abovenamed respondent.

***Notification of application for variation of restraining order**

[Full name] has filed an application for variation of the restraining order made in the District Court at on between [Full name], the protected person, and [Full name], the respondent, *and [Full name], the associated respondent.

***Notification of application for discharge of restraining order**

[Full name] has filed an application for discharge of the restraining order made in the District Court at on between [Full name], the protected person, and [Full name], the respondent, *and [Full name], the associated respondent.

***Notification of application for variation or discharge of restraining order by associated respondent**

[Full name], the associated respondent, has filed an application for *variation discharge of the restraining order made in the District Court at on between [Full name], the protected person, and [Full name], the respondent, and [Full name], the associated respondent, in so far as the order affects *him *her.

A copy of the application is attached. The nature of the order or orders sought is specified in the application which also states the date of the hearing.

The applicant's address for service is:

.....
*Applicant /
*Applicant's Solicitor
.....
Date

**Delete or omit if inapplicable*

Form 40D—*continued*

GENERAL INFORMATION

Notice of Defence

If you wish to defend the application, you may file a notice of defence in the office of this Court at least 5 clear days before the date of the hearing. An affidavit must be filed with the notice of defence. A copy of the notice of defence must be served on the other party. That copy may be delivered to the address for service given by that person.

If you do nothing, the hearing may proceed and the Court can make an order in your absence.

Address for service

If you do not wish to defend the application but you do wish to know what is happening, you should—

- (a) File in this office of the Court a notice giving the address of a place in New Zealand at which documents can be left for you; and
- (b) Serve a copy of the notice on the other party to the proceeding. That copy may be delivered to the address for service given by that person.

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from to on Mondays to Fridays inclusive.

Forms 40A to 40G were inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Form 40E

Rule 461N

Notice of residential address and request for confidentiality

(General heading—Form 40A and endorsement)

Form 40E—continued

To: The Registrar
District Court
.....

*I, [Full name], am applying for a restraining order against [Full name], the respondent.

*I, [Full name], am a party to an application for a *variation *discharge of a restraining order made for my protection.

My residential address is [Address].

My contact telephone number(s) *is *are:

..... Home Work

I request that my residential address and telephone numbers be kept confidential from the other *party *parties.

I have provided an address for service.

If your solicitor is using another solicitor as an agent to file the proceedings

*I also request that the name and address of my solicitor be kept confidential from the other *party *parties.

My solicitor's name and address is: [Name and address].

.....
Applicant

.....
Date

**Delete or omit if inapplicable*

Forms 40A to 40G were inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Form 40F
Notice of defence

Rule 461R

(General heading—Form 40A and endorsement)

Form 40F—*continued*

I, [*Full name*], of [*Address*], [*Occupation*], the (*respondent) (*associated respondent) give notice that I intend to defend the application for [*Specify the order*].

Affidavit in support

I rely on the content of the affidavit dated [*Specify date*] filed in support of this notice.

.....
(*Respondent)
(*Associated Respondent)
.....
Date

To: The Registrar
The Applicant
(*The Respondent)
(*The Associated Respondent)

This notice is filed by whose address for service is at

**Delete or omit if inapplicable*

Forms 40A to 40G were inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Form 40G
Restraining order

Rule 461ZK

Section 16, Harassment Act 1997

(General heading—Form 40A and endorsement)

Form 40G—*continued*

Upon application, the Court makes a restraining order against [*Full name*], the respondent.

*The Court also directs that the order applies against the following person/s: [*Full name of each person in respect of whom the Court makes a direction under section 18(1) of the Act*].

The order expires on [*Date*] unless earlier extended.

CONDITIONS OF ORDER

This order protects [*Name of protected person*], the protected person. The conditions of the order are as follows:

Standard conditions prohibiting harassment and contact

It is a condition of this order that—

1. The respondent, and any associated respondent, must not—
 - (a) Do, or threaten to do, any specified act (set out below) to the protected person; or
 - (b) Encourage any person to do any specified act to the protected person, where the act, if done by the respondent or any associated respondent, would be prohibited by this order.

A “specified act” is any 1 of the following acts:

- Watching, loitering near, or preventing or hindering access to or from, the protected person’s place of residence, business, employment, or any other place that the protected person frequents for any purpose; or
- Following, stopping, or accosting the protected person; or
- Entering, or interfering with, property in the possession of the protected person; or
- Making contact with that person (whether by telephone, correspondence, or in any other way); or
- Giving offensive material to the protected person, or leaving it where it will be found by, given to, or brought to the attention of, that person; or
- Acting in any other way—
 - (i) That causes the protected person to fear for his or her safety; and
 - (ii) That would cause a reasonable person in that person’s particular circumstances to fear for his or her safety.

A specified act is regarded as being done to the protected person if—

- (a) It is done to a person with whom the protected person is in a family relationship; and
- (b) The doing of the act is due wholly or partly to the protected person’s family relationship with that person.

Form 40G—*continued*

***Special conditions**

The Court also imposes the following special conditions: [*Set out any special conditions imposed*].

Unless otherwise stated, these special conditions last until the order expires.

.....
Registrar

.....
Date

***IMPORTANT INFORMATION FOR RESPONDENT/ASSOCIATED
RESPONDENT**

Effect of restraining order

This order prohibits you from having contact with the protected person in any of the ways specified above. The order may also contain special conditions relating to contact between you and a protected person. You should read the terms of the order very carefully to find out what contact you may not have with a protected person and persons with whom the protected person has a family relationship.

Duration of restraining order

Unless the order states that this restraining order lasts for a different period, it will remain in force for 1 year from the date on which it was made.

Modification or discharge of this order

You (or any other party) can apply to the Court at any time—

- (a) For a variation or discharge of any special conditions of this order, or for the imposition of a new special condition;
- (b) For the duration of this order to be varied;
- (c) For this order to be discharged.

Consequences of a breach of this order

If, without reasonable excuse, you—

- (a) Contravene this order; or
 - (b) Fail to comply with any condition of this order,—
- you commit an offence. The maximum penalty for this offence is imprisonment for 6 months or a \$5000 fine, or both. However, in the case of certain repeat offences, the maximum penalty for this offence increases to imprisonment for 2 years.

Form 40G—*continued***Advice**

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from to on Mondays to Fridays inclusive.

IMPORTANT INFORMATION FOR PROTECTED PERSON*Effect of restraining order**

The effect of this order is to prohibit the respondent or associated respondent from having contact with you in any of the ways set out in the order. This order may also contain special conditions relating to contact between you and the respondent or associated respondent.

The order also prevents the respondent or associated respondent from having contact with anyone with whom you have a family relationship if that contact is due partly or wholly to that relationship.

Duration of restraining order

Unless the order states that this restraining order lasts for a different period, it will remain in force for 1 year from the date on which it was made.

Modification or discharge of this order

You (or any other party, including the respondent or any associated respondent) can apply to the Court at any time—

- (a) For a variation or discharge of any special conditions of this order, or for the imposition of a new special condition;
- (b) For the duration of this order to be varied, if the Court is satisfied that an extension is necessary to protect you from further harassment;
- (c) For this order to be discharged.

If the respondent or associated respondent makes any of these applications, you will be notified and have an opportunity to dispute the application.

Consequences of a breach of this order

If, without reasonable excuse, the respondent or associated respondent—

- (a) Contravenes this order; or
- (b) Fails to comply with any condition of this order,—

he or she commits an offence. The maximum penalty for this offence is

Form 40G—*continued*

imprisonment for 6 months or a \$5000 fine, or both. However, in the case of certain repeat offences, the maximum penalty for this offence increases to imprisonment for 2 years.

**Delete or omit if inapplicable*

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

Forms 40A to 40G were inserted, as from 1 May 1998, by rule 5 District Courts Amendment Rules 1998 (SR 1998/63).

Form 40H

Rule 461ZQ

Application for removal order

Section 215, Local Government Act 2002

(General heading—Form 1 and endorsement)

Form 40H—*continued*

I, [Full name and description of applicant], apply for a removal order against
[Full name, address and occupation, if known], the respondent.

Property

1. The order is sought in respect of the property at
[Give street address or other locality description in sufficient detail to
enable it to be clearly identified].

Nature of order sought

2. The *removal *alteration is sought of the *fence *structure *vegetation
located on [Specify the location of the particular fence, structure, or
vegetation on the property in sufficient detail to enable it to be clearly
identified].
- *3. The following alterations are sought to the *fence *structure *vegetation:
[Specify the nature of the alterations sought. Where removal is sought of
one part of the fence and alteration of another, specify the proposal in
sufficient detail to inform the Court. A drawing or diagram may be
attached to explain the orders sought.]
- *4. The following further orders are sought:
[State—
(a) Any order sought that any thing attached to the fence, structure, or
vegetation is to be removed as a consequence of the removal or
alteration:
(b) Any other consequential order sought.]

Entry onto adjoining land

- *5. A further order is sought authorising entry onto [Identify any adjoining
land that would need to be entered to enforce the removal order sought].

Costs and expenses of complying with order sought

- *6. A direction is sought that the respondent not be required to pay the costs
and expenses of complying with the removal order sought.
[Note that section 220 of the Local Government Act 2002 provides that,
unless a removal order directs otherwise, the respondent must pay all the
costs and expenses of complying with the order.]

Form 40H—*continued*

8. In addition to the respondent, the following persons will also be served with a copy of the order:
- * (a) The owner of the property whose name and address is:
[*Complete where respondent is not owner*]
 - * (b) The mortgagee(s) of the property whose name(s) and address(es) *is
*are:
[*Complete where the property is subject to a mortgage*]
 - * (c) The owners of any property adjoining the property to which the
application relates whose names and addresses are:
- *9. A direction as to service is sought in respect of the following *person
*persons who are likely to be affected by the outcome of the proceeding:
[*If known give names and addresses of persons concerned and indicate the
way in which they are likely to be affected.*]

OR

- *9. Apart from the persons listed in paragraph 8, there do not appear to be any
persons who are likely to be affected by the outcome of the proceeding.
- *10. Directions are sought on the manner in which the following persons are to
be served:
[*Specify person concerned and the proposed nature of the direction
sought.*]

Affidavit in support

I rely on the content of the *affidavit *affidavits dated [*Specify date or dates*]
filed in support of this application.

I *wish *do not wish to be heard in support of this application.

.....
Applicant or person
authorised to sign on behalf
of applicant

.....
Date

**Delete or omit if inapplicable*

Forms 40H to 40M were inserted, as from 1 May 1998, by rule 6 District Courts
Amendment Rules (No 2) 1998 (SR 1998/73).

Form 40H was amended, as from 7 July 2004, by section 31 Local Government
Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “Sec-
tion 215, Local Government Act 2002” for the words “Section 692ZD, Local
Government Act 1974”.

The note after paragraph 6 was amended, as from 7 July 2004, by section 31
Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substitut-

Form 40H—*continued*

ing the words “section 220 of the Local Government Act 2002” for the words
“section 692ZK(1)(d) of the Local Government Act 1974”.

Form 40I
Removal order

Rule 461ZS

Clause 6, Schedule 14, Local Government Act 2002

(General heading—Form 1 and endorsement)

Form 40I—*continued*

To: The Respondent
[*Full name and address*]

Reasons for removal order

The Court makes this removal order because it is satisfied that the property at [*Give street address or other locality description in sufficient detail to enable it to be clearly identified*] is occupied, or regularly used, by persons who *have been convicted of *have committed, *are committing, *are likely to commit offences and the *fence, *structure, *vegetation described below—

- * (a) Has facilitated or contributed to, is facilitating or contributing to, or is intended to facilitate or contribute to,—
 - * (i) The concealment on the property of any unauthorised weapon or any controlled drug or any tainted property or any property that is stolen or obtained by a crime involving dishonesty [*State reasons why this ground applies*]; or
 - * (ii) The avoidance of detection or arrest of any person or persons believed or reasonably suspected to have committed any offence or offences [*State reasons why this ground applies*]; or
 - * (iii) The commission of any offence or offences by any person or persons on or from the property [*State reasons why this ground applies*]; or
- * (b) The fence, structure, or vegetation is intended to injure any person [*State reasons why this ground applies*]

Action required to be taken

The Court makes the following *order *orders against the respondent:

1. The respondent must *remove *alter the *fence, *structure, or vegetation as follows:
[*Identify, either in the order itself or by reference to documents attached to the order, the location of any fence, structure, or vegetation to be removed or altered; and specify the action required to be taken*].
- *2. The respondent must also remove the following attachments from the *fence, *structure, or *vegetation:
[*List attachments (such as video cameras, sensors, barbed wire) to be removed as a consequence of the removal or alteration referred to above*].
- *3. The Court also makes the following consequential orders *and gives the following directions:
*If this removal order needs to be enforced, entry may be made onto [*Identify portion of land adjoining property to which the order relates*] in accordance with section 221 of the Local Government Act 2002.
*[*Here set out any other consequential orders made, any directions as to service, and any direction relating to the costs of compliance.*]

Form 40I—*continued***Period within which action must be taken**

The respondent must comply with this order within [*Specify period*]. [*The period must be a reasonable period, having regard to the circumstances giving rise to the removal order*]

.....
Registrar

.....
Date

**Delete or omit if inapplicable*

IMPORTANT INFORMATION FOR RESPONDENT

Right to object

You may object to the making of this order. Every other person on whom this order is served may also object. A notice of objection must be in writing and contain certain information. (You can see an example of the form of the notice of objection at any office of the District Court.) It must be lodged with the Court and served on the applicant within 15 working days from the date on which the removal order is served on you (or within such further time as the Court may allow).

If a notice of objection is lodged, the removal order cannot be enforced until the Court has made its decision on the objection.

The Court may confirm, vary, or discharge the order. If the order is confirmed or varied, the Court will specify the date by which you must comply with the order.

Consequences if notice of objection not filed and order not complied with

If no objection is made to the order and you do not comply with this order within the period specified in the order for compliance, the applicant may enter the property without further notice and may use reasonable force to remove or alter the fence, structure, or vegetation in accordance with the terms of the order.

Any materials salvaged in removing or altering the fence, structure, or vegetation will be sold to recover the applicant's costs. If this does not cover all the costs, the applicant can recover the outstanding costs from you.

Assistance

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from to on Mondays to Fridays inclusive.

Form 40I—*continued*

Forms 40H to 40M were inserted, as from 1 May 1998, by rule 6 District Courts Amendment Rules (No 2) 1998 (SR 1998/73).

Form 40I was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “Clause 6, Schedule 14, Local Government Act 2002” for the words “Section 692ZF, Local Government Act 1974”.

Paragraph 3 was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “section 221 of the Local Government Act 2002” for the words “section 692ZK(4) of the Local Government Act 1974”.

Form 40J

Rule 461ZU

Notice of making of removal order

Clause 6, Schedule 14, Local Government Act 2002

(General heading—Form 1 and endorsement)

Form 40J—*continued*

To: [*Names of persons other than respondent who are entitled to be served*].

The Court has made a removal order in respect of the property at [*Give street address or other locality description*]. A copy of the order is attached for your information.

You have been served with a copy of this order because you are—

*the owner of the property

*the owner of an adjoining property

*the mortgagee of the property

*a person who is likely to be affected by the outcome of the proceeding

Right to object

You may object to the order. A notice of objection must be in writing and contain certain information. (You can see an example of the form of the notice of objection at any office of the District Court.) The objection must be lodged with the Court and served on the applicant within 15 working days from the date on which the removal order is served on you (or such further time as the Court may allow).

If an objection is lodged, the removal order cannot be enforced until the Court has made its decision.

If you object, you can tell the Court whether you (or your lawyer) wish to have an oral hearing.

*[*Delete in the case of owner*] The Court can decide to deal with your objection without an oral hearing.

Objection decided with oral hearing

If there is to be an oral hearing at which you (or your lawyer) can appear, you will be notified. You can make a written submission to the Court instead of appearing at the hearing. A written submission must be lodged with the Court within 5 days after you are notified of the hearing or within any longer period specified in the notice.

Objection decided without oral hearing

If there will not be an oral hearing to decide the objection, the Registrar will notify you that you can make a written submission to the Court. A written submission must be lodged with the Court within 5 days after you are notified or within any longer period specified in the notice.

Other objections

Certain other people may also be able to object to the order. If so, all the objections may be dealt with together. If those other people do not wish to

Form 40J—*continued*

object they may nevertheless be given an opportunity to comment on your objection before the Court makes its decision.

After considering any objection to a removal order, the Court may confirm the order, vary the order, or discharge the order.

Assistance

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from to on Mondays to Fridays inclusive.

.....
Registrar

.....
Date

**Delete or omit if inapplicable*

Forms 40H to 40M were inserted, as from 1 May 1998, by rule 6 District Courts Amendment Rules (No 2) 1998 (SR 1998/73).

Form 40J was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “Clause 6, Schedule 14, Local Government Act 2002” for the words “Section 692ZF, Local Government Act 1974”.

Form 40K

Rule 461ZW

Notice of objection to removal order

Clause 7, Schedule 14, Local Government Act 2002

(General heading—Form 1 and endorsement)

I, *[Full name]*,

*the respondent

*the owner of the property to which the removal order relates

*a mortgagee of the property to which the removal order relates

*the owner of any property adjoining the property to which the removal order relates

*a person who has been served with the removal order in accordance with a direction given by the Court

OBJECT to the removal order made on *[Date]* in favour of *[Full name]*, the applicant, against *me *[Full name of respondent if objection made by a person other than the respondent]*, the respondent, in respect of *[Give street address or other locality description, so as to enable it to be clearly identified]*.

The reasons for my objection are *[State sufficient particulars to indicate your reasons]*.

I rely on the content of the *affidavit *affidavits dated *[Specify date or dates]* filed in support of this objection.

I request that—

*(a) The order be discharged:

*(b) The terms of the order be varied as follows: *[Give a detailed specification of the variation sought. The supporting affidavit must set out the facts relied on in support of the proposed variation]*.

*I wish to appear at a hearing before the Court.

*I do not wish to appear before the Court.

.....
Objector

.....
Date

To: The Registrar
District Court

.....

and

To: The Applicant/*Respondent *[If the objector is not the respondent]*.

***Date of hearing**

The Registrar is to complete the following appointment for hearing if an appearance is required.

Form 40K—*continued*

I appoint [*Date*] at ... am (pm) at the District Court at for the hearing of this objection.

.....
Registrar

.....
Date

**Delete or omit if inapplicable*

NOTES

Lodging notice of objection

This notice must be lodged in Court within 15 working days of the date on which the removal order was served on you (or such further time as the Court may allow).

Affidavit

This notice must be accompanied by an affidavit that contains sufficient information to inform the Court of the facts relied on in support of the objection; and where a variation of the order is sought, the facts relied on in support of the proposed variation.

Service

You must serve a copy of this notice on the person who applied for the removal order, and if you are not the respondent, on the respondent. Service may be effected at the respondent's address for service.

***Hearing of objection made by respondent or owner of property**

If you lodge a notice of objection, you are entitled to appear before the Court either in person or by your lawyer but you must notify the Court if you wish to do so.

***Hearing of objection made by persons other than respondent or owner of property**

If you lodge a notice of objection, you may advise the Court that you wish to be heard orally either in person or by your lawyer. The Court will then decide whether or not to hold an oral hearing and will notify you accordingly.

Notification of outcome

Whether or not there is an oral hearing on your objection, you will be notified

Form 40K—continued

of the outcome. After considering all objections to a removal order, the Court may confirm the order, vary the order, or discharge the order.

Assistance

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from to on Mondays to Fridays inclusive.

Forms 40H to 40M were inserted, as from 1 May 1998, by rule 6 District Courts Amendment Rules (No 2) 1998 (SR 1998/73).

Form 40K was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “Clause 7, Schedule 14, Local Government Act 2002” for the words “Section 692ZG, Local Government Act 1974”.

Form 40L

Rule 46IZZA(1)(a)

**Notice of entry to owner or occupier of property
to which removal order relates****Section 220, Local Government Act 2002**

(General heading—Form 1 and endorsement)

Form 40L—*continued*

TO:[*Full name*] the *occupier *owner of the property at [*Give street address or other locality description*].

TAKE NOTICE that the property at [*Give street address or other locality description*] that you *occupy *own was entered on [*Date of entry*] to *remove *alter the *fence, *structure, *vegetation which [*State full name of respondent*] has failed to remove or alter in accordance with the removal order made against [*State name of respondent*], the respondent, by the District Court at on [*Date of order*] a copy of which is attached.

.....
Applicant

.....
Date

NOTES

Costs

Any materials salvaged in removing or altering the fence, structure, or vegetation will be sold to recover the applicant's associated costs. If this does not cover all the costs the applicant can recover the outstanding amount from the respondent and may register a charge against the property under the Statutory Land Charges Registration Act 1928.

Forms 40H to 40M were inserted, as from 1 May 1998, by rule 6 District Courts Amendment Rules (No 2) 1998 (SR 1998/73).

Form 40L was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words "Section 220, Local Government Act 2002" for the words "Section 692ZK, Local Government Act 1974".

Form 40M

Rule 461ZZA(1)(b)

Notice of entry to owner or occupier of property
adjoining property to which removal order
relates

Section 221(1)(d), Local Government Act 2002

(General heading—Form 1 and endorsement)

Form 40M—continued

TO:[Full name] the *occupier *owner of the property at [Give street address or other locality description].

TAKE NOTICE that the property at [Give street address or other locality description] that you *occupy *own was entered on [Date of entry] for the purpose of enforcing a removal order made in respect of the property at [Give street address or other locality description] adjoining your property.

A copy of the removal order made against [State name of respondent], the respondent, by the District Court at on [Date of order] is attached.

The removal order authorises entry on your property for the purpose of enforcing the order.

It was necessary to enter your property because the respondent failed to *remove *alter the *fence, *structure, *vegetation in accordance with the removal order.

.....
Applicant

.....
Date

Forms 40H to 40M were inserted, as from 1 May 1998, by rule 6 District Courts Amendment Rules (No 2) 1998 (SR 1998/73).

Form 40M was amended, as from 7 July 2004, by section 31 Local Government Act 2002 Amendment Act 2004 (2004 No 63) by substituting the words “Section 221(1)(d), Local Government Act 2002” for the words “Section 692ZK, Local Government Act 1974”.

Form 40N r 461ZZJ
Application for adjudicator's determination to
be enforced by entry as judgment

(General heading—Form 1 and endorsement)

Take notice that the plaintiff seeks—

(a) to enforce the determination made by [*name of adjudicator*] on [*date*] by entry as a judgment:

* (b) the issue of a charging order in respect of a construction site.

This application is made under subpart 2 of Part 4 of the Construction Contracts Act 2002 and is accompanied by a copy of the adjudicator's determination.

.....
Plaintiff

.....
Date

*Delete if inapplicable.

To the defendant and [*names of other parties to be served*]

Note to the defendant—

- You should immediately seek legal advice about this application.
- If you wish to oppose this application, you must, within 15 working days after this application is served on you, file in the Court and serve on the plaintiff and all other parties to the relevant adjudication proceedings an application for an order that this application be refused.
- Your application may be made only on the following grounds:
 - that the amount payable under the adjudicator's determination has been paid to the plaintiff;
 - that the contract to which the adjudicator's determination relates is not a construction contract to which the Construction Contracts Act 2002 applies;
 - that a condition imposed by the adjudicator in his or her determination has not been met.
- If you do not file and serve an application within that period, the Registrar, at the request of the plaintiff, will proceed to—
 - (a) enter the adjudicator's determination as a judgment; and
 - (b) if applicable, issue a charging order in respect of the construction site.

Forms 40N and 40O were inserted, as from 1 February 2005, by rule 13 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Form 40O

r 461ZZL

Application to oppose entry of adjudicator's
determination as judgment

(General heading—Form 1 and endorsement)

Take notice that—

- 1. I, *[full name, address, and description of defendant]* intend to oppose the application for an order that the adjudicator's determination be enforced by entry as a judgment.
- 2. I intend to oppose the application on the following ground(s):
 - *(a) that the amount payable under the adjudicator's determination has been paid to the plaintiff:
 - *(b) that the contract to which the adjudicator's determination relates is not a construction contract to which the Construction Contracts Act 2002 applies:
 - *(c) that a condition imposed by the adjudicator in his or her determination has not been met.

.....
Defendant

.....
Date

*Delete if inapplicable.

To the plaintiff and *[names of other parties to be served]*

Forms 40N and 40O were inserted, as from 1 February 2005, by rule 13 District Courts Amendment Rules (No 2) 2004 (SR 2004/467).

Form 41
Witness summons

Rule 496

(General heading—Form 1 and endorsement)

Form 41—*continued*

TO [*Name, place of residence, occupation*]

You are ordered to attend at the District Court at [*Place*] on the day of 19..... atam (*or pm*) and from day to day thereafter until you are discharged from attendance, to give evidence on behalf of the [*State party*] in the above-named proceeding.

*And you are ordered to bring with you and produce at the same time and place [*Set out details of the documents to be produced*].

This summons is issued by [*Full name*] (*solicitor for) the [*State party*].

Date:

.....
(Deputy) Registrar

*Delete if inapplicable

NOTES—

Allowances and travelling expenses

- You are entitled to have tendered or paid to you, at the time of the service of this order on you or at some other reasonable time before the hearing, a sum in respect of your allowances and travelling expenses.
- The scale of allowances and travelling expenses applicable is that prescribed for the time being by the Witnesses and Interpreters Fees Regulations 1974.

Failure to appear

- If, having been tendered or paid allowances and travelling expenses at the appropriate rate, you fail to attend, the Court may issue a warrant to arrest you and bring you before the Court.
- The penalty for failing to attend without just excuse is a fine not exceeding \$300.

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 41A Rule 500B(1)
Subpoena to give evidence for service in
australia

(General heading—Form 1 and endorsement)

Form 41A—continued

TO [*Name, place of residence, occupation*]

You are ordered to attend at [*Here state the District Court and the place of the Court or, if the witness is required to attend at a place other than the District Court, that other place*] on theday of 19..... atam (or pm) and from day to day thereafter until you are discharged from attendance, to give evidence on behalf of the [*State party*] in the above-named proceeding.

*And you are ordered to bring with you and produce at the same time and place [*Set out details of the documents or things to be produced*].

This subpoena is issued by [*Full name*] (*solicitor for) the [*State party*] under the Seal of the District Court at [*Place*] thisday of19.....

*Delete if inapplicable.

.....
Deputy) Registrar

Full name of (Deputy) Registrar:
Postal address of Court:
Telephone:
Facsimile:

Forms 41A to 41D were inserted, as from 1 April 1995, by rule 3 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 41B Rule 500B(2)
Subpoena for production only for service in
australia

(General heading—Form 1 and endorsement)

Form 41B—*continued*

TO [*Name, place of residence, occupation*]

You are ordered to produce this subpoena and the documents or things set out in the Schedule at the District Court at [*Place*] on theday of 19..... atam (or pm).

You may comply with this subpoena by producing the documents or things at any registry of an Australian Court authorised by the law of the Commonwealth of Australia to receive such documents or things not later than 10 days before the above date.

SCHEDULE
(*Description*)

This subpoena is issued by [*Full name*] (*solicitor for) the [*State party*] under the Seal of the District Court at [*Place*] thisday of 19.....

*Delete if inapplicable.

.....
(Deputy) Registrar

Full name of (Deputy) Registrar:
Postal address of Court:
Telephone:
Facsimile:

Forms 41A to 41D were inserted, as from 1 April 1995, by rule 3 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 41C Rule 500C
Statement of rights and obligations of person
served in Australia with subpoena issued by
District Court

(General heading—Form 1 and endorsement)

Form 41C—*continued*

THIS STATEMENT IS IMPORTANT PLEASE READ THIS STATEMENT
AND THE ATTACHED DOCUMENT OR DOCUMENTS CAREFULLY

IF YOU ARE IN ANY DOUBT ABOUT THIS STATEMENT OR THE
ATTACHED DOCUMENT OR DOCUMENTS, YOU SHOULD GET LEGAL
ADVICE IMMEDIATELY

Attached to this statement is a subpoena issued by the District Court at [*Insert place*]. A subpoena is a summons to a witness to give evidence or produce documents. The subpoena attached to this statement requires you to [*Here state whether the witness is required to attend at the District Court or some other place to give evidence or give evidence and produce documents or is required only to produce documents*].

The subpoena may be served in Australia under section 19 of the Evidence and Procedure (New Zealand) Act 1994.

This statement sets out your rights and obligations relating to the subpoena.

YOUR RIGHTS

You are entitled to have paid or tendered to you at the time the subpoena is served on you or at some other reasonable time before you are required to comply with the subpoena, allowances and travelling expenses or vouchers in substitution for allowances and travelling expenses that are sufficient to meet your reasonable expenses of complying with the subpoena.

You are not required to comply with the subpoena unless those allowances and travelling expenses or vouchers are paid or tendered to you.

You are also entitled to be paid any reasonable expenses you incur in complying with the subpoena in addition to any expenses tendered or paid to you. You may apply to the District Court for an order specifying such an amount.

You may apply to the High Court of New Zealand to have the subpoena set aside. If you wish to have the subpoena set aside, you should get legal advice as soon as possible.

An application to set the subpoena aside can be made and determined without you having to go to New Zealand. You are entitled to have Australian solicitors act for you.

The High Court of New Zealand may determine the application without a hearing if neither you nor the party who requested the issue of the subpoena require a hearing. The Court may hold a hearing by video link or telephone conference if the Court thinks fit. If a party applies to the Court for a direction to hear the application by video link or telephone conference, the Court is required to hear it by video link or telephone conference.

Form 41C—*continued*

[Note: Details of the grounds on which a subpoena can be set aside and the procedure for setting aside a subpoena are referred to later in this statement.]

YOUR OBLIGATIONS

Unless the subpoena is set aside, you must comply with it if:

- (a) When the subpoena was served on you, or at some reasonable time before the time specified for compliance, there have been paid or tendered to you allowances and travelling expenses or vouchers in substitution for them sufficient to meet your reasonable expenses of complying with the subpoena; and
- (b) A copy of the order of the Judge of the High Court of New Zealand granting leave to serve the subpoena was served on you with the subpoena;
- (c) The subpoena was served on you not later than the date specified by the Judge of the High Court who granted leave to serve the subpoena; and
- (d) Any other conditions relating to the service of the subpoena have been complied with; and
- (e) You have attained 18 years of age.

If the subpoena only requires you to produce documents or things, you may comply with the subpoena by producing the documents or things at any registry of an Australian Court that is authorised by the law of the Commonwealth of Australia to receive them not later than 10 days before the date specified in the subpoena for producing them in the District Court. If you produce the documents or things at a registry of an Australian Court, you will be required to produce the subpoena and to pay the cost of sending the documents or things to the District Court. You are entitled to have the costs of producing the documents or things and of sending them to the New Zealand court paid or tendered to you before you are required to comply with the subpoena.

FAILURE TO COMPLY WITH THE SUBPOENA

Failure to comply with the subpoena constitutes contempt of the Federal Court of Australia, and unless you establish that the failure to comply should be excused, is punishable accordingly.

SETTING SUBPOENA ASIDE

You are entitled to apply to the High Court of New Zealand to have this subpoena set aside. An application to do so must be made under section 11 of the Evidence Amendment Act 1994. Section 11 provides that the High Court must set the subpoena aside if—

Form 41C—*continued*

- (a) The subpoena requires the witness to attend at a sitting of a District Court and the High Court is satisfied that—
 - (i) The witness does not have, and cannot by the exercise of reasonable diligence within the time required for compliance obtain, the necessary travel documents; or
 - (ii) The witness is liable to be detained in New Zealand for the purpose of serving a sentence; or
 - (iii) The witness is liable to prosecution for an offence, or is being prosecuted for an offence, in New Zealand; or
 - (iv) The witness is liable to the imposition of a civil penalty in civil proceedings in New Zealand, not being proceedings for a pecuniary penalty under the Commerce Act 1986; or
- (b) The witness is subject to a restriction on his or her movements, imposed by law or by order of a court, that would prevent the witness complying with the subpoena.

Section 11 further provides that the High Court may set a subpoena aside if it is satisfied that—

- (a) The evidence of the witness could be obtained satisfactorily without significantly greater expense by other means; or
- (b) Compliance with the subpoena would cause hardship or serious inconvenience to the witness; or
- (c) In the case of a subpoena that requires a witness to produce documents or things, whether or not it also requires the witness to give oral evidence, the documents or things should not be taken out of Australia and that satisfactory evidence of the contents of the documents or evidence of the things can be given by other means.

An application to set the subpoena aside must be filed in the office of the High Court of New Zealand in which leave to serve the subpoena was given together with any affidavit setting out the grounds on which you rely.

The application and the affidavit may be sent by facsimile. The facsimile number of the office of the Court is [*Specify facsimile number*].

The application must contain an address for service in New Zealand or Australia and may also state a facsimile number in New Zealand or Australia to which documents relating to the application may be sent.

The Registrar of the High Court will arrange for service of the application and any affidavit.

The High Court can decide the application without a hearing if neither you nor the party who requested the issue of the subpoena state that a hearing is required. If there is to be a hearing, the hearing may, if the Court thinks fit, be by video link or telephone conference. You may, however, either in your

Form 41C—*continued*

application to set the subpoena aside or within a reasonable time after filing the application, request that the Court direct that the hearing be by video link or telephone conference. If you make such a request, the Court will direct that the hearing be by video link or telephone conference.

Forms 41A to 41D were inserted, as from 1 April 1995, by rule 3 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 41D

Rule 500D

Certificate of non-compliance with subpoena
for service in Australia

(General heading—Form 1 and endorsement)

To: The Federal Court of Australia
[Place]

The District Court at [Specify place] hereby certifies that on the day of 19 the Honourable Justice gave leave to serve a subpoena, being a subpoena to which Part 3 of the Evidence and Procedure (New Zealand) Act 1994 applies, on [Specify name of person subpoenaed] and that [Specify name of person subpoenaed] has failed to comply with the subpoena in that [State particulars of the failure to comply].

Dated at this.....day of.....19.....

.....
(Deputy) Registrar

Forms 41A to 41D were was inserted, as from 1 April 1995, by rule 3 District Courts Rules 1992, Amendment No 1 (SR 1995/64).

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 42

Rule 531

Judgment by default in case of liquidated
demand

(General heading—Form 1 and endorsement)

Form 42—*continued*

THE defendant not having filed a statement of defence herein, it is this day adjudged that the plaintiff recover against the said defendant \$ _____ and \$ _____ for costs.

Date:

.....
(Deputy) Registrar

Sealed:

Date:

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 43

Rule 531

Judgment by default in proceeding for recovery
of land

(General heading—Form 1 and endorsement)

THE defendant not having filed a statement of defence herein, it is this day adjudged that the plaintiff recover possession of the land mentioned in the plaintiff’s statement of claim and \$ _____ for costs.

Date:

.....
(Deputy) Registrar

Sealed:

Date:

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 44

Rule 531

Judgment after hearing

(General heading—Form 1 and endorsement)

Form 44—*continued*

THIS proceeding coming on for a hearing on the day of 19
, before Judge [*State surname*] at [*Place*], after hearing [*State name*] of counsel
for the plaintiff and [*State name*] of counsel for the defendant, and the evidence
then adduced, it is adjudged that [*State the terms of the judgment*].

Date:

.....
(Deputy) Registrar

Sealed:

Date:

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79,
81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22
District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting
the expression “(General heading-Form 1 and endorsement)” for the expression
“(General heading-Form 1)”.

Form 45
Certificate of judgment or order

Rule 536

No.....

In the District Court
at.....

Between
.....
of [Occupation]
Plaintiff

and

.....
of [Occupation]
Defendant

I hereby certify that the document annexed hereto and marked "A" (*issued for the purposes of section 66 (or 69) of the District Courts Act 1947) is a true copy of the judgment (or order) in the above case, and that the amount of \$..... as set out below is now due upon such judgment (or order).

	\$
Amount of judgment or order, including costs	.....
Subsequent costs	.....
Costs of this certificate	.....
Paid into Court	.....

(†This certificate is issued under rule 536 for evidential purposes only.)

Date:

Sealed:

Date:

.....
(Deputy) Registrar

*Delete if certificate issued for evidential purposes only.

†Delete if certificate issued for the purposes of section 66 (or 69) of the District Courts Act 1947

Form 45 was amended, as from 1 August 1995, by rule 15 District Courts Rules 1992, Amendment No 2 (SR 1995/130) by omitting from the first paragraph the words "according to the records of this office," and by omitting from the second paragraph the line "Total sum now due".

Form 46
Agreement not to appeal

Rule 541

(General heading—Form 1 and endorsement)

WE, the undersigned, the plaintiff and defendant in this action, do hereby agree that the judgment of the Court in this cause shall be final and than no appeal shall be taken against that judgment.

Dated at, this day of, 19.....

.....
(Solicitor for) Plaintiff

.....
(Solicitor for) Defendant

[Not printed]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 47
Notice of application for leave to appeal

Rule 542

(General heading—Form 1 and endorsement)

TAKE notice, that I, the above-named plaintiff (*or defendant, or as the case may be*), will apply to the Court at on day, the day of 19....., at the hour of in the noon for leave to appeal against [*Specify, giving date of nonsuit, final determination or direction of the Court against which leave to appeal is sought*].

.....
(Solicitor for) Plaintiff (Defendant)

To the Registrar of the District Court at
and
To the above-named Defendant (Plaintiff).

[Not printed]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 48 Rule 568
Order to proceed where change of parties after
judgment

(General heading—Form 1 and endorsement)

IT is ordered that, of [*Occupation*], the of
....., the plaintiff (defendant) in this proceeding be substituted as plaintiff
(defendant) for the original plaintiff (defendant) and that the said
be at liberty to issue execution against the said or to take such
proceeding as the said would have been entitled to take against the
said for the amount of the unsatisfied judgment and costs in this
proceeding.

(*or that the question whether, of, the
of, the original plaintiff in this proceeding, is entitled to recover
the amount of the judgment obtained against the defendant in
this action, and costs, shall be heard in a proceeding wherein the said
..... shall be plaintiff and the said shall be defendant.*)

(*or that the question whether, the plaintiff in this proceeding, is
entitled to recover the amount of the judgment obtained against,
the original defendant in this proceeding, and costs, from of
....., [*Occupation*],, the of the said
shall be heard in a proceeding wherein the said shall be plaintiff
and the said shall be defendant.*)

Date:

.....
(Deputy) Registrar

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79,
81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22
District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting
the expression “(General heading-Form 1 and endorsement)” for the expression
“(General heading-Form 1)”.

Form 49 Rule 571
Order suspending judgment, order, execution,
or order of committal, or for discharge of debtor

(General heading—Form 1 and endorsement)

Form 49—*continued*

ON the application of, and the Court being satisfied that the defendant is unable to pay and discharge the sum recovered against the defendant in this proceeding (*or* the instalments due under the judgment [*or* order] in this proceeding), it is ordered that the judgment [*or* order] be suspended (*or* that the execution issued in this proceeding be suspended) (*or* that the order of committal made in this proceeding be suspended) for [*State time*], upon the following terms, namely: [*State Terms*].

(*or* that the defendant be discharged from custody under the order of committal issued in this proceeding upon the following terms, namely: [*State terms, including, if so ordered, liability to rearrest if the terms are not complied with*]).

Date:

.....
(Deputy) Registrar

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 50 Rule 576(1)
Application for new order for payment
(General heading—Form 1 and endorsement)

Form 50—*continued*

TAKE notice that the above-named plaintiff (defendant) will apply to the District Court at on day, the day of 19....., at o'clock in the noon, for an order that the amount due and unpaid upon the judgment (*or order*) in this proceeding be paid by instalments of \$..... for every (*or that the amount due and unpaid under the judgment (or order) in this action be paid in one sum forthwith (or as the case may be)*).

Date of Judgment (or Order)	How Payment Ordered	Amount of Debt and Costs	Amount Remaining Due
		\$	\$

Dated at, this day of 19.....

.....
(Solicitor for) Plaintiff (Defendant)

To the Registrar of the District Court at
and
To the Defendant (Plaintiff).

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 51
Notice to judgment debtor requiring completion
of financial statement

Rule 577

In the District Court
at.....

No
Warrant No

Between
.....
of [*Occupation*],
Judgment Creditor (Plaintiff)
and
.....
of [*Occupation*],
Judgment Debtor (*Defendant*)

On the day of 19....., in the District Court at, the
above-named judgment creditor obtained a judgment (*or* order) in this
proceeding for the payment of the sum of \$....., including costs.

The judgment creditor is entitled to enforce payment of this sum by you.

You are required, pursuant to section 84A of the District Courts Act 1947, to
complete and return the attached statement about your financial position within
14 days after the date on which this notice is served on you.

You should send the completed form to this address—

.....
.....

[*State Address*]

Dated at, this day of 19.....

.....
(Solicitor for)
Judgment Creditor

To the Judgment Debtor

NOTES—

1. Attendance at Court

You may be required to attend before the Court for oral examination about
your income and expenditure, assets and liabilities, and whether and how you
can pay the amount owed to the judgment creditor.

2. Payment

If you pay the amount due within 14 days after the date on which this notice
is served on you, you need not complete or return the attached statement.

You should pay the amount due to the judgment creditor at the address
shown or you may instead pay it at any office of the District Court. The

Form 51—*continued*

office hours of the Court are from 9 am to 5 pm Monday to Friday inclusive.

3. Help or information

If you need any help to complete the attached statement, you should consult your solicitor or a Citizens' Advice Bureau or community law centre if one is operating in your district, or talk to the staff at the District Court.

Form 51 was amended, as from 1 March 2001, by rule 33 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in paragraph 2 of the notes the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 51 was amended, as from 1 February 2003, by rule 15 District Courts Amendment Rules (No 4) 2002 (SR 2002/411) by substituting the expression "9 am to 5 pm" for the expression "8.30 a.m. to 5 p.m".

Form 52

Rule 577(2)

Statement of financial means of judgment debtor

(Heading—As in form 51)

Form 52—continued

I,, of, [*Occupation*], the above-named judgment debtor,
state as follows:

1. My income before tax for the 52 weeks before the date of this statement was
as follows: [*Use "Nil" where applicable*]

<i>Item</i>	<i>Particulars</i>	\$
(a)	Salary, wages, or other personal earnings from [<i>State name and address of employer</i>]:	.....
(b)	Superannuation, pension, or benefit (including any from overseas) [<i>State name of payer and benefit number</i>]:	.....
(c)	Accident compensation:	.....
(d)	Interest and dividends:	.....
(e)	Amount received from boarders (including children over 16 years of age):	.....
(f)	All other sources of income [<i>Specify</i>]	.....
	Total income in the 52 weeks	\$.....

2. My present weekly income (before tax) from all sources is \$.....

3. My expenses for the 52 weeks before the date of this statement were as follows:

<i>Item</i>	<i>Particulars</i>	\$
(a)	Income tax:	.....
(b)	Rent [<i>State name and address of landlord</i>]:	.....
(c)	Rates:	.....
(d)	Mortgage payments [<i>State name and address of mortgagee</i>]:	.....
(e)	Repairs on home:	.....
(f)	Car maintenance, running, and registration:	.....
(g)	Food and household supplies:	.....
(h)	Insurance and superannuation:	.....
(i)	Medical and hospital benefits:	.....
(j)	Electricity, gas, and fuel:	.....
(k)	Telephone:	.....
(l)	Clothing:	.....
(m)	Child maintenance, care, and education:	.....
(n)	Maintenance for previous marriage partner:	.....
(o)	Entertainment:	.....
(p)	Fares:	.....
(q)	Hire purchase payments [<i>State name of person to whom paid, and amount outstanding</i>]:	.....
(r)	Other expenses [<i>Specify</i>]:	.....

Form 52—continued

- Total expenses in the 52 weeks \$.....
4. My present weekly expenses are \$.....
5. The following people live with me and their expenses are included in the total in clause 3 of this statement:
[List full names, ages, and relationship of all such members of household]
6. My assets (both in New Zealand and elsewhere) are as follows:
- | <i>Item</i> | <i>Particulars</i> | <i>\$</i> |
|-------------|---|-----------|
| (a) | Land and buildings [State address and capital value]: | ..... |
| (b) | Motor vehicles [State make, year, and value]: | ..... |
| (c) | Money in bank accounts [Specify banks]: | ..... |
| (d) | Money not in bank or invested: | ..... |
| (e) | Money lent or in hands of any person [State name and address]: | ..... |
| (f) | Government stock, shares, debentures, or bonds [State details]: | ..... |
| (g) | Livestock [State details]: | ..... |
| (h) | Interest in business, stock in trade, or venture of any kind [State details]: | ..... |
| (i) | Any other property or assets not specified above, including interest in any estate [State details]: | ..... |
| | Total assets | \$..... |
7. The property specified in items [Specify] of clause 6 of this statement is mortgaged or otherwise secured to [Full name] of [Address] for the sum of \$.....
8. My unsecured debts are as follows:
- | <i>Amount of debt</i> | <i>Name and address of person to whom owed</i> |
|-----------------------|--|
| | |
| | |
9. I expect to have to meet the following liabilities within the next 6 months:
- | <i>Nature of liability</i> | <i>Amount liability</i> | <i>Name and address of person to whom owed</i> |
|----------------------------|-------------------------|--|
| | | |
| | | |

All the information given in this statement is true and correct.

I am aware that I may have to show in Court that the information is true.

Dated at, this day of 19.....

.....

Judgment Debtor

Form 53
Order for examination of judgment debtor

Rule 578

(Heading—As in form 51)

On the application of [*State name of applicant*], the Court orders that you (*or where debtor is a company, an officer of the company*) do attend at the District Court at, at the date and time specified below, to be examined as to your income, expenditure, assets, liabilities, and generally as to your means for satisfying the judgment debt.

The Court also orders that you do produce—

Amount owing on judgment	\$.....
Subsequent Court fees and solicitor's costs	\$.....
Fees and costs of this examination	\$.....
Total amount now payable	\$.....

Date:

.....
(Deputy) Registrar

You are required to attend for the examination at the District Court at, on day, the day of 19..... at o'clock in the fore/after noon.

.....
(Deputy) Registrar
of Court of Examination

To the Judgment Debtor

NOTES FOR JUDGMENT DEBTOR—

1. Attendance at Court

You **MUST** attend at the District Court for an examination at the time and place shown above. You may be represented at the examination by a barrister or solicitor if you wish.

2. Warrant for arrest

If you do not attend at that time and place, or at any subsequent time and place to which the examination is adjourned, a warrant may be issued for your arrest.

3. Payment

If you pay the amount due (which is shown above) before the date of the examination, you need not attend.

You should pay the amount due to the judgment creditor at the address shown or you may instead pay it at any office of the District Court. The office hours of the Court are from 8.30 am to 5pm Monday to Friday inclusive.

Form 53—*continued***4. Help or information**

If you need any help or information about the examination, you should consult your solicitor or a Citizens' Advice Bureau or community law centre if one is operating in your district, or talk to the staff at the District Court.

NOTES FOR JUDGMENT CREDITOR—

[Delete if application made by judgment creditor]

1. Application by judgment debtor

This order for examination has been made on the application of the judgment debtor.

2. Attendance at Court

As judgment creditor, you are entitled to appear at the examination at the time and place shown above and to examine the debtor about his or her means.

If you do not attend, an order relating to enforcement of the judgment may still be made. The Court can stay any proceeding for enforcement or make an order varying an existing order.

3. Help or information

If you need any help or information about the examination, you should consult your solicitor or a Citizens' Advice Bureau or community law centre if one is operating in your district, or talk to the staff at the District Court.

Form 53 was amended, as from 1 March 2001, by rule 34 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in paragraph 3 of the notes for judgment debtor the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 54

Rule 582

Warrant to arrest judgment debtor for attendance
at examination

(Heading—As in form 51)

Form 54—*continued*

To a Bailiff at the District Court at
(or To a Constable at)

WHEREAS the District Court at made on the day of
..... 19..... an order for the examination of [*State name of judgment
debtor*] of [*Address*].

And whereas—

- * The order could not be served:
- * The judgment debtor did not appear at the examination:
- * The examination was adjourned to the day of..... 19..... at
the District Court at and the judgment debtor failed to appear.

Now, therefore, I do command you, by virtue of the powers given to me by
section 84C of the District Courts Act 1947, that, unless the total amount stated
below is sooner paid, you do arrest the judgment debtor and bring the judgment
debtor before the Court as soon as possible to enable the examination to take
place.

Amount owing on judgment	\$.....
Subsequent Court fees and solicitor's costs	\$.....
Total amount now payable	\$.....

Date:

.....
District Court Judge/(Deputy) Registrar

*Delete if inapplicable

Form 55 Rule 583
Notice of application for review of registrar's
decision

(Heading—As in form 51)

Form 55—continued

TAKE notice that the above-named judgment creditor (judgment debtor, *or as the case may be*) will apply to a District Court Judge at on [*To be filled in by the Registrar*] day the day of 19....., at o'clock in the fore/after noon, for a review of the order (*or direction*) of the Registrar in this proceeding made at the District Court at on the day of 19....., relating to [*Specify order or direction to be reviewed*].

The grounds on which this application is made are—
.....[*Specify grounds*]

.....
(Solicitor for) Judgment
Creditor (Judgment Debtor)

To the Registrar of the District Court at
and
To the Judgment Debtor (Judgment Creditor).

This application is filed by
whose address for service is at

Form 56
Application for order that debtor undergo
community work

Rule 584(1)

(Heading—As in form 51)

I,, the above-named judgment creditor, hereby apply for an order that, the above-named judgment debtor (*or one of the above-named judgment debtors*) undergo [community work] on the grounds that the judgment debtor is in contempt of Court because—

- (a) The judgment debtor has sufficient means to pay the judgment debt but refuses to do so; and
- (b) All other methods of enforcing the judgment have been considered or tried and are inappropriate or unsuccessful.

Dated at, this day of 19.....

.....
(Solicitor for)
Judgment Creditor

To the Registrar of the District Court at
and
To the Judgment Debtor.

Form 56—*continued*

Form 56 was amended, as from 30 June 2002, by rule 6 District Courts Amendment Rules (No 2) 2002 (SR 2002/184) by substituting the words “community work” for the words “periodic detention”.

Form 57

Rule 584(2)

**Affidavit in support of application for order that
debtor undergo community work**

(Heading—As in form 51)

Form 57—*continued*

I,, of, [*Occupation*], swear—

- (1) That, on the day of 19....., in the District Court at, I, [*or where affidavit not made by judgment creditor, state name of judgment creditor*], the above-named judgment creditor obtained a judgment in this proceeding against the above-named judgment debtor for the sum of \$....., (including costs).
- (2) That the debtor is also liable for further costs of \$..... resulting from [*Specify nature of costs*].
- (3) That the judgment (*or* the sum of \$....., part of the said judgment) is still unsatisfied.
- (4) That, on the day of 19....., in the District Court at, the judgment debtor was, pursuant to section 84B of the District Courts Act 1947, examined as to his or her income, expenditure, assets, and liabilities and generally as to his or her means for satisfying the judgment debt.
- (5) That I believe that the judgment debtor has sufficient means to pay the judgment debt but refuses to do so. The grounds for my belief are [*State concisely the reasons for that belief*].
- (6) That the following methods of enforcing the judgment have been tried [*State methods tried and why unsuccessful*].
- (7) That the following other methods of enforcing the judgment have been considered [*State other methods considered*] but I believe they are inappropriate because [*Give reasons for belief*].
- * (8) That I am duly authorised by the judgment creditor to make this affidavit on the judgment creditor's behalf.

.....
[Signature of Deponent]

Sworn at, this day of 19....., before me—

.....
(Deputy) Registrar.
Solicitor.
Justice of the Peace.

*Note: Add where judgment creditor does not make the affidavit.

Form 57 was amended, as from 30 June 2002, by rule 6 District Courts Amendment Rules (No 2) 2002 (SR 2002/184) by substituting the words “community work” for the words “periodic detention”.

Form 58
Agent's authority to sign application

Rule 584(5)

(Heading—As in form 51)

Form 58—*continued*

I,,the above-named judgment creditor, hereby authorise
..... of [*Occupation*] to sign on my behalf an application
under section 84O of the District Courts Act 1947 for an order that the above-
named judgment debtor (*or* one of the above-named judgment debtors) do
undergo [community detention] for contempt of Court.

Dated at, this day of 19.....

.....
Judgment Creditor

To the Registrar of the District Court at

Form 58 was amended, as from 30 June 2002, by rule 6 District Courts Amend-
ment Rules (No 2) 2002 (SR 2002/184) by substituting the words “community
work” for the words “periodic detention”.

Form 59

Rule 584(7)

Summons to judgment debtor requiring
attendance at hearing of application for
community work

(Heading—As in form 51)

Form 59—*continued*

WHEREAS the judgment creditor has applied for an order that you undergo [community work] for contempt of Court.

And whereas a copy of that application and a copy of the supporting affidavit, setting out the grounds for the application, are attached to this summons.

You are hereby summoned to attend at the District Court at, at the date and time specified below, to show cause why an order requiring you to undergo [community work] should not be made.

Date:

.....
District Court Judge/(Deputy) Registrar

You are required to attend for the hearing at the District Court at, on day, the..... day of 19..... at o'clock in the fore/after noon.

.....
(Deputy) Registrar
of Court of Hearing

To the Judgment Debtor.

NOTES—

1. Attendance

You MUST attend at the District Court at the time and place shown above.

2. Warrant for arrest

If you do not attend at that time and place, a warrant may be issued for your arrest.

3. Payment

If you pay the total amount due before the date of hearing, you need not attend.

You should pay the amount due to the judgment creditor at the address shown or you may instead pay it at any office of the District Court. Court offices are open to the public from 8.30 am to 5 pm Monday to Friday inclusive.

Form 59—*continued*

4. [Community work]

The Court can make an order that you undergo [community work] if it is satisfied beyond reasonable doubt that—

- (a) You have sufficient means to pay the judgment debt but refuse to do so; and
- (b) All other methods of enforcement have been considered or tried and are inappropriate or unsuccessful.

5. Examination as to income, etc

You may be asked questions about your income and expenditure, assets and liabilities, and generally as to your means for satisfying the judgment debt. You should bring with you any information that may help the Court decide if you are able to pay.

6. Legal Aid

You are also entitled to apply for criminal legal aid if you wish to have legal representation but cannot afford it otherwise. The Registrar can help you to apply.

7. Help or information

If you need any help or information, you should consult your solicitor or a Citizen's Advice Bureau or community law centre if one is operating in your district, or talk to the staff at the District Court.

Form 59 was amended, as from 1 March 2001, by rule 35 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in paragraph 3 of the notes the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 59 was amended, as from 30 June 2002, by rule 6 District Courts Amendment Rules (No 2) 2002 (SR 2002/184) by substituting the words "community work" for the words "periodic detention".

Form 60
Order for community work

r 584(8)

No:

In the District Court

at [*place*]Between [*name of judgment creditor*] of [*address*]and [*name of judgment debtor*] of [*address*]

You, [*judgment debtor's full name*], [*judgment debtor's current occupation*] owe a judgment debt of \$[*total amount covered by this order*] to the judgment creditor, [*full name of judgment creditor*].

You have not paid this amount.

The Court is satisfied that—

- (a) you are able to pay the judgment debt but refuse to do so; and
- (b) all other methods of enforcing the judgment have been considered or tried and are inappropriate or unsuccessful.

Because of this, on [*date of order*], a District Court Judge ordered you to do [*hours of community work*] hours of community work for contempt of court.

*You must report to a probation officer in the probation area in which you reside as soon as practicable, and not later than 72 hours, after [*date of order*].

*The start of your sentence is deferred until [*sentence start date*]. You must report to a probation officer in the probation area in which you reside on that date.

*Delete whichever is inapplicable.

*The probation officer may allow you to complete up to 20% of your sentence as training in basic work and living skills.

*Delete if inapplicable.

If you pay \$[*total amount owing*] to the judgment creditor or the Court before or during your community work sentence, you are no longer required to report for community work. (If you pay the judgment creditor, you must notify the Court.)

Form 60—*continued*

Date:

.....

District Court Judge/Registrar

Order served on judgment debtor at [*time*] am/pm* on [*date*].

*Delete whichever is inapplicable.

.....

Bailiff/Registrar/Court Officer

I, the judgment debtor, have received a copy of this order.

Date:

.....

Judgment debtor

Department of Corrections advised of order on [*date*].

Important information

Community work conditions

- 1 You **must** comply with the following community work conditions:
 - (a) you must report to a probation officer whenever you are directed to do so during your sentence:
 - (b) you must work as directed by a probation officer until you have completed your sentence:
 - (c) if you move to a new residential address, you must advise a probation officer within 72 hours:
 - (d) if the probation officer is not satisfied with the quality of your work, he or she can refuse to count these hours towards your sentence. This means that you could be required to complete further hours of up to 10% of your total sentence:
 - (e) a probation officer may remit up to 10% of your sentence if he or she is satisfied with your compliance with your sentence.

Form 60—*continued***Your sentence**

- 2 The following conditions apply to your sentence:
- (a) you may have to work a maximum of 10 hours in 1 day and a maximum of 40 hours in 1 week:
 - (b) if you are sentenced to 100 hours or less of community work, you must serve your sentence within 6 months of its start date:
 - (c) if you are sentenced to more than 100 hours of community work, you must serve at least 100 hours in every 6-month period from your sentence's start date until all the hours in it are served:
 - *(d) if you fail, without reasonable excuse, to complete training in basic work and living skills, the hours that you spent undertaking that training will not be counted towards your sentence.

*Delete if inapplicable.

Warning: *If you do not comply with these conditions without reasonable excuse, you could be arrested and prosecuted. You could be liable to imprisonment for a term not exceeding 3 months or be liable to a fine not exceeding \$1,000.*

Variation or cancellation of sentence

- 3 Your sentence can be varied or cancelled by the Court following an application from you or a probation officer under section 68 of the Sentencing Act 2002.

Schedule 1 form 60: substituted, on 1 March 2008, by rule 6 of the District Courts Amendment Rules (No 2) 2007 (SR 2007/383).

Form 60 was substituted, as from 30 June 2002, by rule 7 District Courts Amendment Rules (No 2) 2002 (SR 2002/184).

Form 60, paragraph 3 was substituted, as from 1 August 1995, by rule 16 District Courts Rules 1992, Amendment No 2 (SR 1995/130).

Form 60 paragraph 3 was amended, as from 1 March 2001, by rule 36 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 61

Rule 584(9)

Warrant to arrest judgment debtor for attendance
at contempt proceedings

(Heading—As in form 51)

Form 61—*continued*

To a Bailiff at the District Court at
(or To a Constable at).

WHEREAS on the day of 19..... the above-named judgment creditor applied for an order that [*State name of judgment debtor*] of [*Address*] undergo [community work] for contempt of Court.

And whereas—

* A copy of the application could not be served:

* The judgment debtor did not appear at the hearing of the application:

Now, therefore, I do command you be virtue of the powers given to me by section 84O (4) of the District Courts Act 1947, that, unless the total amount stated below is sooner paid, you do arrest the judgment debtor and bring the judgment debtor before the Court as soon as possible to enable the application to be heard.

Amount owing on judgment	\$.....
Subsequent Court fees and solicitor's costs	\$.....
Total amount now payable	\$.....

Dated at, this day of, 19.....

.....
District Court Judge

*Delete if inapplicable.

Form 61 was amended, as from 30 June 2002, by rule 6 District Courts Amendment Rules (No 2) 2002 (SR 2002/184) by substituting the words "community work" for the words "periodic detention".

Form 62

Rule 586

Ex parte application for a charging orderIn the District Court
at

No:

Between

....., Judgment Creditor,
and

....., Judgment Debtor

The above-named judgment creditor (*or* the duly authorised agent of the above-named judgment creditor), hereby applies to the District Court at for the making of a charging order under section 96A of the District Courts Act 1947.

The charging order sought is a charging order *nisi* (*or* absolute, *as the case may be*) affecting the property of the judgment debtor known as [*Here state, in such manner as to identify it, the nature and location of the property to be the subject of the charging order*].

The order is sought upon the grounds set out in the affidavit appended hereto.

Dated at, this day of 19.....

.....
Signature

To the Registrar of the District Court at

This application is filed by, whose address for service is at

	Date	Time	Initials
Application filed
Order made

Form 63

Rule 586

Affidavit in support of application for charging
order

(Heading—As in form 62)

Form 63—*continued*

I,, of, [*Occupation*], swear:

- (1) That on the day of 19....., in the District Court at, the above-named judgment creditor, obtained a judgment (or order) in this proceeding against the above-named judgment debtor for the payment of the sum of \$....., including costs.
- (2) That the said judgment (*or order*) (*or* the sum of \$....., part of the said sum adjudged (*or ordered*) to be paid) is still unsatisfied.
- (3) That I verily believe that the judgment debtor is beneficially entitled to the following property:

[*Specify type of property, following the wording of rule 586(4) as closely as possible, including,—*

- (a) *In the case of land,—*
 - (i) *The alleged estate, right, title, or interest of the judgment debtor; and*
 - (ii) *In such manner as to identify it, the nature, location, and description of the property:*
- (b) *In the case of any right or interest in a partnership, the name and business address of the partnership and the extent of the alleged interest:*
- (c) *In the case of shares, the name of the company, the address of its registered office, and the alleged number and denomination of the shares:*
- (d) *In the case of any estate, right, or interest in any land, or in any money, shares, or other chattels, held under or by virtue of any trust for the judgment debtor, the name and address of the trustee or trustees of the trust.]*

.....
[*Signature of Deponent*]

Sworn at, this day of 19....., before me—

.....
(Deputy) Registrar.
Solicitor.
Justice of the Peace.

Form 64
Charging order on land

Rule 590

(Heading—As in form 62)

Form 64—*continued*

ON the application of the judgment creditor, it is ordered that the estate, right, title, or interest of the [*State party*] in [*Here describe the land intended to be affected*] do stand charged with payment of the amount of \$....., being the amount, or part of the amount, for which the judgment creditor has obtained a judgment (*or order*) in this proceeding.

Date:

.....
(Deputy Registrar)

NOTICE—Application was made to the Registrar of the Court for the making of this order at minutes past the hour of in the noon of the day of 19...., by, Agent for the judgment creditor.

.....
(Deputy Registrar)

Form 65
Charging order *nisi*

Rule 590

(Heading—As in form 62)

On the application of the judgment creditor, it is ordered that, until sufficient cause is shown to the contrary, the interest of the [*State party*] in [*Here describe the property intended to be affected*] do stand charged with payment of the amount of \$....., being the amount, or part of the amount, for which the judgment creditor has obtained a judgment or order in this proceeding.

Date:

.....
(Deputy Registrar)

NOTICE—Application was made to the Registrar of the Court for the making of this order at minutes past the hour of in the noon of theday of 19...., by, Agent for the judgment creditor.

.....
(Deputy Registrar)

Form 66
Charging order absolute

Rule 590

(Heading—As in form 62)

Form 66—*continued*

Upon reading the order *nisi* made herein on the day of 19...., and the affidavits of [State name] file herein and upon hearing [State name] of counsel for the judgment creditor and [State name] of counsel for the judgment debtor, it is ordered that [Here specify the property intended to be charged] do stand charged with \$....., being the amount, or part of the amount, for which the judgment creditor has obtained a judgment or order in this proceeding.

Date:

.....
(Deputy) Registrar

Form 67 Rule 592
Summons to persons claiming land or other
property subject to charging order

(Heading—As in form 62)

To [Name, address, and occupation]

WHEREAS a charging order, a copy of which is hereunto annexed, has been made by this Court on day, the day of 19...., in respect of land (or other property) [Here describe land or other property affected]:

AND WHEREAS it has been alleged that the land (or other property) the subject of that charging order belongs to you [or that you have a claim by way of lien, charge, or otherwise on the land (or other property) the subject of that charging order]:

You are hereby summoned to attend at the District Court at on day, the day of 19...., at o'clock in the noon, when you will be ordered to state the nature and particulars of your claim.

Date:

.....
(Deputy) Registrar

The following information is to be written in the left-hand margin of the form:

The office of the Court is open to the public from 9 am to 5 pm Monday to Friday inclusive.

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

Form 67 was amended, as from 1 March 2001, by rule 37 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in the section headed "*The following information is to be written in the left hand margin of*

Form 67—*continued*

the form” the expression “8.30 am to 5 pm” for the expression “9.30 am to 4 pm”.

Form 67 was amended, as from 1 February 2003, by rule 15 District Courts Amendment Rules (No 4) 2002 (SR 2002/411) by substituting the expression “9 am to 5 pm” for the expression “8.30 a.m. to 5 p.m.”.

Form 68

Rule 606

Notice of application for A charging order
absolute

(Heading—As in form 62)

TAKE notice that the above-named judgment creditor (*or* the duly authorised agent of the above-named judgment creditor), will apply to the District Court at on [*To be filled in by the Registrar*] day the day of 19.... at o'clock in the noon, for the making of a charging order absolute under section 96A of the District Courts Act 1947.

The charging order sought is a charging order absolute affecting the property of the judgment debtor known as [*Here state, in such manner as to identify it, the nature and location of the property to be the subject of the charging order*].

.....
Signature

To the Registrar of the District Court at

and

To the above-named

This notice of application is filed by whose address for service is at

The following information is to be written in the left-hand margin of the form:

If in doubt, consult a solicitor or the staff of the District Court immediately.

Form 69 Rules 609, 622, 626
Application for warrant of execution

No.....
Warrant No.....

In the District Court
at

Between
....., of [*Occupation*],
Judgment Creditor (Plaintiff)
and
....., of [*Occupation*],
Judgment Debtor (Defendant)

I REQUEST that the judgment (*or* order) of the District Court at, dated the day of 19....., be enforced by the issue of a warrant of (for) [*State type of warrant applied for*] against, of, the above-named judgment debtor, for the sum of \$....., being the unpaid portion (as per subjoined statement) of the sum (*viz*, \$....., including costs), which the said judgment debtor was adjudged (ordered to pay to me.

(*or* for the return of the following specific goods, *viz*: ordered to be returned to me.)

(*or* for the recovery of [*Describe land*]), possession of which was ordered to be given to me forthwith (*or* on the day of 19.....) (together with the sum of \$..... for rent or mesne profits, *or* rent and mesne profits, *or* damages, and \$..... for costs as per the subjoined statement.)

(*or as the case may be*)

	\$	\$
Amount of judgment (order), including costs	.....
Subsequent costs	.....
Solicitor's fee	.....

Amount paid in part satisfaction of above judgment (order)	.....
Balance still unpaid, for which distress is requested	.....
Total	.....

Dated at, this day of 19.....
.....
Applicant

Witness to signature:
To the Registrar of the District Court at

	Date	Time	Initials
Application filed
Warrant issued

NOTE—Where the application is signed by the solicitor for the judgment creditor it shall not be necessary for the signature of the applicant to be witnessed.

Form 70
Distress warrant

Rule 611

(Heading—As in form 69)

To a Bailiff of the District Court at (*or* To a Constable at).
WHEREAS the above-named judgment debtor was, on the day of,
19....., duly adjudged (*or* ordered) by the District Court sitting at to pay
the sum of \$..... (including costs and expenses) claimed by the above-named
judgment creditor, to the Registrar of the said Court forthwith:

And whereas default has been made in payment according to the said judgment
(*or* order):

This is therefore to command you forthwith to levy the sum of \$.....; and the
further expenses incurred herein by distress and sale of the goods and chattels of
the said judgment debtor except the judgment debtor's necessary tools of trade to
a value not exceeding \$500 and the judgment debtor's necessary household
furniture and effects, including the wearing apparel of the judgment debtor and
the judgment debtor's family to a value not exceeding \$2,000; and also to seize
and take away any money, bank notes, bills of exchange, promissory notes,
bonds, specialties, or other securities for money of the said judgment debtor, or
such part or so much thereof as may be sufficient to satisfy this execution, and
the costs of making and executing the same.

And you are hereby commanded to pay what you shall so levy forthwith to the
Registrar of this Court (*or* to the Registrar of the Court at) and to make
return of what you shall do by virtue of this warrant immediately upon the
execution thereof.

Date:

.....
(Deputy) Registrar

	\$
Amount adjudged to be paid	.....
Costs of previous executions	.....
Warrant	.....
Total	.....

NOTICE—Where a person is placed in possession of goods seized, the bailiff is
entitled to demand and levy the cost of keeping possession according to scale.
The goods are not to be sold until after the end of 5 days next following the day
on which they were taken, unless they are of a perishable nature, or at the
request in writing of the judgment debtor.

Application was made to the Registrar of the Court for the issue of this warrant
at minutes past the hour of in the noon of the day of
..... 19....., by, Solicitor for the judgment creditor.

Form 70—*continued*

.....
(Deputy) Registrar

This warrant was received by me on the day of 19....., at
o'clock in the noon.

.....
Bailiff

[Form 74 is to be endorsed hereon.]

Form 71
Request to suspend execution and authority to
re-enter

Rule 615

(Heading—As in form 69)

IN accordance with an agreement made between myself and the execution
debtor that you shall be at liberty to re-enter, I hereby request you to withdraw
from the possession of the goods taken in execution herein.

Dated this day of 19.....

.....
Execution Creditor

In consideration of your withdrawing from possession of my goods taken in
execution herein, I hereby authorise you to re-enter and take possession of the
same or any other of my goods and chattels at any time while the execution
remains unsatisfied.

Dated this day of 19.....

.....
Execution Debtor

To the Bailiff of the District Court at

[Not printed]

Form 72
Notice of time when and place where goods will
be sold under warrant of distress

Rule 617

(Heading—As in form 69)

Form 72—continued

TAKE notice that your goods taken in execution herein will be sold by
at on the day of 19...., at the hour of in the
..... noon unless the amount to be levied under the warrant, together with the
fees for the execution thereof incurred to the time of payment, be paid to me
before the time mentioned.

Dated at, this day of 19....

.....
Bailiff

To the Execution Debtor.

[Not printed]

Form 73 Rule 619(2)
Balance sheet of bailiff after executing warrant
of distress

(Heading—As in form 69)

RETURN to warrant of distress from the Bailiff of the District Court at
to the Registrar of the District Court at

Voucher

	\$
Gross amount seized or received as per inventory attached	.....
Payments in deduction	.....
Net amount payable to credit of execution creditor	.....

Dated at, this day of 19....

.....
Bailiff

I hereby certify that the above charges are correct, that all disbursements are
supported by vouchers, and that the sum of \$ was paid into Court this day
of 19....

.....
(Deputy) Registrar

Form 74

Rule 619(3)

Return of *nulla bona* on distress warrant

In the District Court at

I,, of, do hereby certify unto the District Court at
that, by virtue of this warrant, I have made diligent search for the goods and
chattels of the within-named, and that I can find no sufficient goods and
chattels of the said whereon to levy the sums within mentioned.

[The facts upon which the above return is founded to be set out here.]

.....
Bailiff

[Endorsed on Forms 70, 77, 78, 106.]

Form 75
Attachment order

Rule 621

No:

In the District Court

at [*place*]Between [*name of judgment creditor*]and [*name of judgment debtor*]**To** [*full name of employer*][*full address of employer*]

The Court is satisfied that you are the employer of the judgment debtor, [*full name*] of [*address*].

The judgment debtor owes \$[*total amount covered by the attachment order*] to the judgment creditor, [*full name of judgment creditor*]. The judgment debtor has not paid this amount.

After examining the judgment debtor's means, the Court has imposed this attachment order on the debtor's salary or wages. This means that, as the employer, you must make the following deductions from the judgment debtor's salary or wages to recover the amount owed to the judgment creditor:

Weekly amount	Number of weeks	Plus final weekly amount	Total
[<i>specify</i>]	[<i>specify</i>]	[<i>specify</i>]	[<i>specify</i>]
1	The specified weekly amount becomes due on each [<i>specify day of the week</i>]. You must deduct all specified weekly amounts that have become due since the date of the last deduction from each amount of salary or wages that becomes payable to the judgment debtor.		
2	You must make the first deduction from the next amount of salary or wages.		
3	You must continue to make deductions until [<i>date</i>],* or until the \$[<i>total amount covered by the attachment order</i>] is paid in full,* or until you are advised by the District Court that this attachment order has been varied, suspended, or cancelled.*		

*Delete whichever is inapplicable.

Form 75—*continued*

- 4 All deductions must be paid by the 20th day of the following month to the judgment creditor by payment to the following bank account: [*name and branch of bank to which judgment creditor wishes payments to be made, plus bank account name and number*].
- 5 However, if the deduction of the specified weekly amount and any deductions of a kind described in paragraph 6 have the combined effect of reducing the judgment debtor's net earnings below the protected earnings rate of \$[*specify protected earnings rate*] per week, you must reduce the amount of the deduction under this order to leave the debtor with the protected earnings rate or, if necessary, cancel the deduction.
- 6 The deductions referred to in paragraph 5 are deductions made—
 - (a) under an attachment order under another Act;
 - (b) under a deduction notice under the Family Proceedings Act 1980;
 - (c) from a benefit under section 86 of the Social Security Act 1964.

Please note that if you have to reduce or cancel the amount of any weekly deductions—

you may need to make more weekly deductions than the number stated above

and

the amount of the final weekly deduction may be different from the amount stated above.

Date:

.....

District Court Judge/Registrar

Form 75—*continued***Notes to employers**

- 1 In this attachment order—
 - (a) the term **salary or wages** includes—
 - (i) a retiring allowance, pension, or other payment of a similar nature;
 - (ii) a bonus or incentive payment;
 - (iii) a payment of commission;
 - (iv) a payment in consideration of work performed under a contract for services;
 - (v) all payments of weekly compensation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001 by the Accident Compensation Corporation;
 - (vi) a benefit within the meaning of the Social Security Act 1964; and
 - (b) the term **employer** includes a person or organisation making the payments referred to above.
- 2 While this order is in force, you must make deductions from all salary or wages due to the judgment debtor, whether or not they are due under an employment contract entered into before or after this order was made.
- 3 This attachment order has priority over any deduction created by the judgment debtor whether before or after the date of this order. For example, deductions under this order from the judgment debtor's salary or wages must be made before or instead of deductions for insurance premiums or loan repayments.
- 4 Only the following have priority over this attachment order:
 - (a) attachment orders and deduction notices under the Family Proceedings Act 1980;
 - (b) attachment orders under the Summary Proceedings Act 1957;
 - (c) deduction notices under the Child Support Act 1991;
 - (d) deduction notices under section 157 of the Tax Administration Act 1994 that relate to student loan debts;
 - (e) in the case of an attachment order against a benefit, any adjustment or deduction to that benefit under section 86 of the Social Security Act 1964.

Form 75—*continued*

Please notify the Court immediately if—

you have to reduce or cancel a deduction

or

the judgment debtor leaves or is dismissed from your employment
(notification is required within 7 days).

- 5 You cannot charge a fee for administering this order.
- 6 If you do not make the required deductions and pay them to the judgment creditor, these amounts become a debt due by you to the judgment creditor. The judgment creditor could take court action against you to recover this debt.
- 7 It is an offence under sections 84J and 84K of the District Courts Act 1947 to—
 - (a) fail to comply with this order without reasonable excuse;
 - (b) dismiss the judgment debtor or alter the judgment debtor's position in your business or undertaking to the judgment debtor's prejudice by reason of your receiving this order.
- 8 If you do not understand your obligations under this order, you should consult a lawyer or the Registrar of the Court immediately.

Schedule 1 form 75: substituted, on 1 March 2008, by rule 6 of the District Courts Amendment Rules (No 2) 2007 (SR 2007/383).

Form 75, salary and wages ; paragraph (b) was substituted, as from 1 July 1999, by section 415(2) Accident Insurance Act 1998 (1998 No 114).

Form 75 was amended, as from 1 March 2001, by rule 38 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in paragraph 9 of the notes the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 75, salary and wages ; paragraph (b) was substituted, as from 1 April 2002, by section 337(2) Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Form 76

Rule 622

Warrant for recovery of specific chattels

(General heading—Form 1 and endorsement)

Form 76—*continued*

To a bailiff of the District Court at
(*or* To a constable at).

WHEREAS, of, the defendant, was on the day of
19...., duly adjudged or ordered by the District Court sitting at to return to
....., of [*Here enumerate goods ordered to be returned*] wrongfully
detained by the said defendant:

And whereas the said goods have not been returned according to the said order:

This is therefore to command you to demand of the said defendant and seize the
said goods, if they can be found by you, and to deliver them to the said,
and to make return of what you shall do by virtue of this warrant immediately on
the execution thereof.

Date:

.....
(Deputy) Registrar

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79,
81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22
District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting
the expression “(General heading-Form 1 and endorsement)” for the expression
“(General heading-Form 1)”.

Form 77

Rule 624

Warrant of distress for value of specific chattels

(General heading—Form 1 and endorsement)

Form 77—continued

To a Bailiff of the District Court at
(or To a constable at)

WHEREAS, of, the defendant, was on the day of, 19...., duly adjudged (or ordered) by the District Court sitting at to return to the plaintiff [*Here enumerate chattels ordered to be returned*] wrongfully detained by the said defendant (*Add, where applicable:* and to pay to the plaintiff the sum of \$..... for damages for the wrongful detention of such chattels):

And whereas the said chattels have not been returned according to the said judgment (order):

And whereas on the day of 19...., a warrant was issued directing the bailiff to seize the said chattels, but the bailiff has certified that he or she has demanded the said chattels, and that the bailiff was unable to find, obtain possession of, or seize the same:

And whereas (*on the application of the plaintiff) the Court has fixed the value of the said chattels at \$.....:

This is therefore to command you forthwith to levy the said sum of \$..... (†together with the sum of \$..... in respect of the judgment for damages for wrongful detention of the said chattels) and the further expenses incurred herein by distress and sale of the goods and chattels of the said defendant except the judgment debtor's necessary tools of trade to a value not exceeding \$500 and the judgment debtor's necessary household furniture and effects, including the wearing apparel of the judgment debtor and the judgment debtor's family to a value not exceeding \$2,000; and also to seize and take away any money, bank notes, bills of exchange, promissory notes, bonds, specialties, or other securities for money of the said defendant, or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same.

And you are hereby commanded to pay what you shall so levy forthwith to the Registrar of this Court (or to the Registrar of the Court at) and to make return of what you shall do by virtue of this warrant immediately upon the execution thereof.

Date:

.....
(Deputy) Registrar

Assessed value of chattels	\$
†Damages	.....

Form 77—*continued*

Costs of previous executions	.....
Warrant	.....
Total	.....

NOTICE—Where a person is placed in possession of goods seized, the Bailiff is entitled to demand and levy the cost of keeping possession according to scale. The goods are not to be sold until after the end of 5 days next following the day on which they were taken, unless they are of a perishable nature, or at the request in writing of the defendant. Application was made to the Registrar of the Court for the issue of this warrant at minutes past the hour of in the noon of the day of 19...., by, Solicitor for the plaintiff.

.....
(Deputy) Registrar

This warrant was received by me on the day of 19...., at o'clock in the noon.

.....
Bailiff

[Form 74 is to be endorsed hereon]

*Add, where applicable.

†Add, where no separate execution has issued.

[Not printed]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 78 Rule 627(1)
Warrant for recovery of land
(General heading—Form 1 and endorsement)

Form 78—continued

To a Bailiff of the District Court at
(or To a Constable at)

WHEREAS on the day of 19...., it was ordered by the District Court at that, of (hereinafter called “the said defendant”) should forthwith (or on or before the day of 19....) give the plaintiff possession of a certain [*House, etc, as in statement of claim*], situate at, and it was adjudged that the plaintiff should recover against the said defendant the sum of \$..... for costs, or the sum of \$..... for rent or mesne profits, or rent and mesne profits, or damages, and \$..... for costs, making together the sum of \$.....:

And whereas such order has not been obeyed:

This is therefore to authorise and require you forthwith to enter, by force if necessary into the said premises, between the hours of 9 in the morning and 4 in the afternoon, and to give possession of such premises to the plaintiff:

If only possession of tenement desired, strike out the words between the 2 asterisks:

And whereas default has been made in payment according to the said judgment: This is therefore to command you forthwith to levy the sum of \$..... and the further expenses incurred herein, by distress and sale of the goods and chattels of the said defendant, except the judgment debtor’s necessary tools of trade to a value not exceeding \$500 and the judgment debtor’s necessary household furniture and effects, including the wearing apparel of the judgment debtor and the judgment debtor’s family to a value not exceeding \$2,000; and also to seize and take away any money, bank notes, bills of exchange, promissory notes, bonds, or other securities for money of the said defendant, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same: And you are hereby commanded to pay what you shall so levy forthwith to the Registrar of this Court (or to the Registrar of the Court at) and to make return of what you shall do by virtue of this warrant immediately upon the execution thereof.

Date:

.....
(Deputy) Registrar
\$

Amount adjudged to be paid	.....
Warrant	.....
Total	.....

Form 78—*continued*

NOTICE—Where a person is placed in possession of goods seized, the Bailiff is entitled to demand and levy the cost of keeping possession of the said goods according to scale. The goods are not to be sold until after the end of 5 days next following the day on which they were taken, unless they are of a perishable nature, or at the request in writing of the defendant.

Application was made to the Registrar of the Court for the issue of this warrant at minutes past the hour of in the noon of the day of 19...., by, Solicitor for the plaintiff.

.....
(Deputy) Registrar

This warrant was received by me on the day of 19...., o'clock in the noon.

.....
Bailiff

[Form 74 is to be endorsed hereon]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 79

Rule 627(2)

Warrant for recovery of land for non-payment
of rent

(General heading—Form 1 and endorsement)

Form 79—continued

To a Bailiff of the District Court at
(or To a Constable at).

WHEREAS on the day of 19...., it was ordered by the District Court at that, of (hereinafter called “the said defendant”), should forthwith (or on or before the day of 19....) give the plaintiff possession of a certain [*House, etc, as described in statement of claim*] *Where execution is under section 32(1):*

(by reason of the rent payable in respect thereof being days in arrear, and the plaintiff being entitled by virtue of section 32(1) of the District Courts Act 1947 to an order for recovery of the land):

Where execution is under section 32(2):

(by reason of the said defendant being in arrear for 2 months in payment of the rent payable in respect thereof and having deserted the premises leaving the same uncultivated or unoccupied so that no sufficient distress can be had to countervail the arrears of rent, and the plaintiff being entitled by virtue of section 32(2) of the District Courts Act 1947 to an order for recovery of the land):

And whereas such order has not been obeyed, and the amount of rent and costs hereinafter mentioned has not been paid:

Now, therefore, unless there shall be paid to you before the execution of this warrant the sum of \$....., being the full amount of the rent owing by the said defendant in respect of the said premises to the date of the judgment, and \$..... for costs, and the further costs of this warrant, this is to command you forthwith to enter, by force if necessary, into the said premises, between the hours of 9 in the morning and 4 in the afternoon, and to give possession of such premises to the plaintiff, and to make return of what you shall do by virtue of this warrant immediately upon the execution thereof.

Date:

.....
(Deputy) Registrar
\$

Rent due to date of judgment	.....
Costs	.....
Warrant	.....
Total	.....

This warrant was received by me on the day of 19...., at o'clock in the noon.

.....
Bailiff

[*This form of warrant is to be used where the proceeding has been taken under*

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 80 Rule 628(1)
Notice as to consequences of disobedience of
order of Court

To, of, [*Occupation*]

TAKE notice that unless you obey the directions contained in this order you will be guilty of contempt of Court and will be liable to be committed to prison.

Date:

.....
(Deputy) Registrar

[*Not printed*]

Form 81 Rule 628(2)
Notice to show cause why order of committal
should not be made

(General heading—Form 1 and endorsement)

TAKE notice that the plaintiff (*or* defendant) will on day, the day of 19...., at the hour of in the noon, apply to this Court for an order for your committal to prison for having disobeyed the order of this Court made on the day of, 19...., enjoining and restraining you from [*Here set out the terms of the injunction*] (*or* for having neglected to obey the order made on the day of 19...., requiring you to [*Here set out the mandatory part of the order*]).

And further take notice that you are hereby required to attend the Court on the first-mentioned day to show cause why an order for your committal should not be made.

Date:

.....
(Deputy) Registrar

To, of, [*Occupation*]

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 82 Rule 628(4)
Order of committal for breach of or neglect to
obey order

(General heading—Form 1 and endorsement)

WHEREAS by an order of this Court, dated the day of 19.....,
[*Here recite the order*]:

Now, upon the application of the, and upon hearing the (*or, as the case may be*, and upon reading the affidavit of showing that a copy of the said order endorsed with a notice in form 80 and notice of this application have been severally served upon the), and upon [*State such evidence as may have been given*], the Court, being of opinion, upon consideration of the facts disclosed by the evidence given, that the said has been guilty of a contempt of this Court by a breach of (*or by neglecting to obey*) the said order—that is to say, by [*Here set out the particular matter of contempt*—orders that the said be committed to the prison at for the term of for his or her contempt, and that a warrant of committal for the arrest of the said be forthwith issued.

And it is ordered that the said do pay the costs of the of this application and of the committal, amounting to \$.....

(*Add, if so ordered*, And it is further ordered that any application for the release of the said from custody shall be made to the District Court Judge at).

Date:

.....
(Deputy) Registrar

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 83 Rule 628(4)
Warrant of committal

(General heading—Form 1 and endorsement)

Form 83—*continued*

To a Bailiff at the District Court at
(*or* To a Constable at),
and To the Superintendent of the prison at

WHEREAS by an order bearing date the day of, 19...., it was ordered that, of, should stand committed to prison for contempt of this Court.

This is therefore to command you, the said, to arrest the said and safely convey and deliver him or her to the Superintendent of the prison at, and you, the said Superintendent, to receive the said and keep him or her safely in the said prison for the term of or until the further order of this Court.

Date:

.....
(Deputy) Registrar

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 84
Order for discharge

Rule 629

(General heading—Form 1 and endorsement)

To the Superintendent of the prison at

YOU are hereby ordered and authorised to release now in your custody under warrant issued out of this Court dated the day of, 19...., if he or she be in your custody under that warrant and no other, and for so doing this shall be your authority.

Date:

.....
(Deputy) Registrar

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 85
Affidavit in support of garnishee summons

Rule 633(1)

In the District Court
at

No:

Between
....., Judgment Creditor,
and
....., Judgment Debtor,
and
....., Sub-debtor.

I,, of, [*Occupation*], swear:

- (1) That on the day of, 19...., in the District Court at, I, the above-named judgment creditor, obtained a judgment in this action against the above-named judgment debtor for the sum of \$....., including costs.
- (2) That the said judgment (*or* the sum of \$....., part of the said judgment) is still unsatisfied.
- (3) That I verily believe that the above-named sub-debtor is (*or* sub-debtors are) indebted to the said judgment debtor in the sum of \$..... or thereabouts.
- (4) That the debt mentioned in paragraph (3) hereof is (*or* is not) in respect of wages.
- * (5) That the debt mentioned in paragraph (3) hereof comprises a sum which stands to the credit of the judgment debtor with the above-named sub-debtor and which is on deposit with the sub-debtor (*or* is held by the sub-debtor in a current account (*or* deposit account *or* as the case may be)) and it is a condition of the deposit (*or* account) that a [*State whether deposit book, receipt, etc*] must be produced before any money is withdrawn.
- * (6) That to the best of my knowledge and belief the deposit book (*or* receipt, etc) is in the possession of [*Give full name and address in any case where the person is not a party to the proceeding*].

OR

- * (6) That I do not know the present whereabouts of the deposit book (*or* receipt, etc).

*Delete if inapplicable.

Signature of Deponent:

Sworn at, this day of 19...., before me—

.....
(Deputy) Registrar.
Solicitor.
Justice of the Peace.

Form 86
Garnishee summons to sub-debtor

Rule 633(2)

(Heading—As in form 85)

WHEREAS the judgment creditor on the day of 19...., obtained judgment (*or* an order) in the District Court at against the judgment debtor for payment of the sum of \$....., including costs, which judgment (*or* order) remains unsatisfied as to the sum of \$.....

And whereas the judgment creditor has filed an affidavit stating that you are indebted to the said judgment debtor in the sum of \$.....

You are hereby summoned to attend at the District Court to be held at on day, the day of, 19...., at the hour of in the fore/afternoon, to show cause why an order should not be made against you for the payment to the judgment creditor of the amount of the debts due and owing or accruing from you to the said judgment debtor or so much thereof as will satisfy the debt due under the said judgment (*or* order), and the costs entered on this summons:

And take notice that from and after the service of this summons upon you so much of the debts owing or accruing from you to the judgment debtor as will satisfy the debt due under the said judgment (*or* order) and the costs entered on this summons is attached to answer the said judgment (*or* order):

And further take notice that if at any time before the date of hearing of this summons you pay to the Registrar of this Court the amount of such debts, or so much thereof as will satisfy the debt due under the said judgment (*or* order) and the costs entered on this summons, you will incur no further costs:

And further take notice that if the debt alleged to be due from you to the judgment debtor comprises a sum which stands to the credit of the judgment debtor with you and which is on deposit with you or is held by you in a current or other account (including a deposit account) and it is a condition of the deposit or account that a deposit book, receipt, or other like document must be produced before any money is withdrawn, you should, as soon as practicable and at least 3 days before the date of hearing, file in the Court office and serve on the judgment creditor and the judgment debtor a statement—

- (a) Showing the sum so held to the credit of the judgment debtor:
- (b) Giving particulars of the deposit book or other document required to be produced before that sum or any part of it is withdrawn:
- (c) Showing (where possible) who is in possession of that deposit book or other document.

Forms will be provided at any office of the Court.

And further take notice that if you dispute the debt alleged to be due from you to the judgment debtor, you should, within 7 days after service of this summons upon you, inclusive of the day of service, file in the Court office and serve on the judgment creditor and the judgment debtor a notice that you dispute the debt claimed.

Form 86—continued

Forms will be provided at any office of the Court. The filing of a notice that you dispute the debt claimed does not relieve you from attendance at the Court on the day named in the summons.

Date:

.....
(Deputy) Registrar

\$

To the above-named Sub-debtor.

Amount remaining due under judgment (order)

Subsequent costs

Costs of summons

Solicitor's costs

Total amount for which summons issued

NOTICES TO SUB-DEBTOR

1. Failure to act in accordance with the directions contained in this summons may add to the costs.
2. If this summons was issued for hearing in a Court other than the Court in which the judgment debtor might have commenced a proceeding against you to recover the debt due by you to him or her, you are entitled to apply to the Court where this summons was issued either for the proceeding to be transferred to the Court in which the judgment debtor might have taken a proceeding against you, or for the proceeding to be referred to the Registrar of that Court for inquiry and report.

This summons is issued at the instance of the judgment creditor, whose address for service is at

[A printed form of statement of service or affidavit of service (see form 14) is to be endorsed hereon.]

The following information is printed in the left-hand margin of the form:

The office of the Court is open to the public from 8.30 am to 5 pm Monday to Friday inclusive.

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

Form 86 was amended, as from 1 March 2001, by rule 39 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in the section headed "The following information is to be written in the left-hand margin of the form" the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 87 Rule 633(2)
**Notice to judgment debtor of issue of garnishee
summons**

(Heading—As in form 85)

TAKE notice that a garnishee summons, a copy of which is hereto annexed, has been issued out of this Court, and that if you have any cause to show why the Court should not order the sub-debtor to pay the judgment creditor the debt alleged to be due from the sub-debtor to you, or so much thereof as may be sufficient to satisfy the sum due to the judgment creditor from you, with the costs entered on the garnishee summons, you must attend at this Court at the time and place fixed for the hearing of the garnishee summons and show such cause accordingly.

Date:

.....
(Deputy) Registrar

To the abovenamed Judgment Debtor.

NOTE

You are entitled to appear at the hearing of the garnishee summons to give evidence as to your circumstances. If it appears to the Court that the whole or part of the money sought to be attached is reasonably required by you for the maintenance and support of yourself and your family, the Court may refuse to make an order attaching the debt, and may make such order as to the disposal of any money paid into the Court as it thinks fit.

This summons is issued at the instance of the judgement creditor, whose address for service is at

[A printed form of affidavit of service (see form 14) is to be endorsed hereon.]

The following information is printed in the left-hand margin of the form:

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

Form 88 Rule 635
**Statement by sub-debtor where money held on
deposit**

(Heading—As in form 85)

Form 88—*continued*

THE above-named sub-debtor states as follows:

1. The debt alleged to be due by me to the judgment debtor comprises a sum of \$..... which stands to the credit of the judgment debtor with me, and which is on deposit with me (*or is held by me in a deposit account (or current account or as the case may be.)*).
2. It is a condition of the deposit (*or account*) that a [*State whether deposit book, receipt, etc, and give full particulars such as its number, etc*] must be produced before that sum or any part of it is withdrawn.
3. The deposit book [*or receipt, etc*] is (*or is not*) in my possession.
- *4. To the best of my knowledge and belief the deposit book (*or receipt, etc*) is in the possession of [*Give full particulars including the full name and address of the person whom the deponent believes to be in possession of the deposit book, etc*].

Dated at, this day of 19.....

.....
(Solicitor for) Sub-debtor

To the Registrar of the District Court at
and

To the above-named Judgment Creditor and Judgment Debtor.

*Delete if the deposit book, receipt, or other like document is in the possession of the sub-debtor.

Form 89
Notice by sub-debtor that sub-debtor disputes
debt claimed

Rule 639

(Heading—As in form 85)

TAKE notice that I, the above-named sub-debtor, dispute the debt claimed to be due from me to the above-named judgment debtor.

Dated at, this day of 19.....

.....
(Solicitor for) Sub-debtor

To the Registrar of the District Court at
and

To the above-named Judgment Creditor and Judgment Debtor.

[*Not printed*]

Form 90 Rule 641(2)
Order for delivery (*or* disclosure of
whereabouts) of deposit book

(Heading—As in form 85)

IT is ordered that the judgment debtor (*or* of) do within 7 days from the service of this order upon him or her—

- (a) Deliver to the Registrar of this Court at the deposit book (*or* receipt *or as the case may be*) in respect of the sum of \$..... which stands to the credit of the judgment debtor and which is on deposit with the above-named sub-debtor (*or* is held by the above-named sub-debtor in a current account (*or* deposit account, *or as the case may be*)) if that deposit book (*or* receipt *or as the case may be*) is in the possession of the judgment debtor (*or* of); *or*
- (b) File in the Court at an affidavit as to the whereabouts of that deposit book (*or* receipt *or as the case may be*) if it is not in the possession of the judgment debtor (*or* of).

Date:

.....
(Deputy) Registrar

To the Judgment Debtor (*or* of).

NOTE—

1. Failure to comply with the order within the prescribed time could lead to your imprisonment.
2. A person, other than the judgment debtor, in possession of the deposit book with a claim to its possession adverse to that of the judgment creditor, must give notice thereof in writing to the Registrar within 7 days of the service of the summons upon him or her.

The following information is printed in the left-hand margin of the form:

The office of the Court is open to the public from 8.30am to 5pm Monday to Friday inclusive.

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

[Not printed]

Form 90 was amended, as from 1 March 2001, by rule 40 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in the section headed "*The following information is to be written in the left-hand margin of the form*" the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 91 Rule 641(4)
Affidavit as to whereabouts of deposit book

(Heading—As in form 85)

I,, of, [*Occupation*], swear:

- (1) That the deposit book (*or receipt or as the case may be*) in respect of the sum of \$..... which stands to the credit of the judgment debtor and which is on deposit with the above-named sub-debtor (*or is held by the above-named sub-debtor*) in a current account (*or deposit account or as the case may be*) is not in my possession.
- (2) That to the best of my knowledge and belief the said deposit book (*or receipt or as the case may be*) is in the possession of [*Give full particulars including the full name and address of the person whom the deponent believes to be in possession of the deposit book, etc.*].

OR

- (2) That I do not know the present whereabouts of the said deposit book (*or receipt or as the case may be*) because [*Give full particulars*].

Signature of Deponent:

Sworn at this day of 19...., before me—

.....
(Deputy) Registrar.
Solicitor.
Justice of the Peace.

Form 92
Interpleader claim

Rule 649

In the District Court
at

No.....

Between
....., Execution Creditor,
and
....., Execution Debtor,
and
....., Claimant.

TAKE notice that I,, of, [*Occupation*], claim certain goods and chattels (*or* money) as specified in the Schedule hereto attached, taken in execution under process issuing out of the District Court at in this proceeding, and that the grounds of my claim are: [*State grounds*].

Dated at, this day of 19....

.....
(Solicitor for) Claimant

To the Bailiff of the District Court at

SCHEDULE
[*Not printed*]

Form 93
Notice of claim to goods taken in execution

Rule 650

(Heading—As in form 92)

TAKE notice that, of, has claimed the goods (*or* certain goods*) taken in execution by a bailiff of the District Court at (*or* by a constable at) under a warrant of execution issued in this proceeding.

If you give notice to me that you admit the title of the said to the said goods, or request me to direct the bailiff (*or* constable) to withdraw from possession, you will not be liable to the bailiff (*or* constable) for any possession fees or expenses incurred after the bailiff (*or* constable) has been so notified by me.

Date:

.....
(Deputy) Registrar

To the Execution Creditor.

*Where some goods only are claimed, here specify them.

[*Not printed*]

Form 94 Rule 652
Notice by execution creditor of admission of
title of claimant

(Heading—As in form 92)

TAKE notice that I admit the title of to the goods (*or* to the following goods (*when part only is admitted*)) seized by the bailiff under the distress warrant issued under the judgment in this proceeding, and I desire the proceeding to be stayed in respect thereof (*or* I request that the bailiff withdraw from possession thereof).

Dated at, this day of 19.....

.....
(Solicitor for)
Execution Creditor

To the Registrar of the District Court at

Received by me, and bailiff notified.

Date:

.....
(Deputy) Registrar

[*Not printed*]

Form 95

Rule 654

Interpleader summons to execution creditor

WHEREAS the claimant has made a claim to certain goods (*or* the proceeds of sale (*or* value) of certain goods) taken in execution under process issuing out of this Court at your instance (*or* certain rent alleged to be due to the claimant in respect of and issuing out of the premises upon which certain goods were taken in execution under process issuing out of this Court at your instance):

You are hereby summoned to attend at the District Court at on day, the day of 19...., at the hour ofin the forenoon, when the said claim will be adjudicated upon and such order made thereon as the Court thinks fit.

Date:

.....
(Deputy) Registrar

To the Execution Creditor.

The address for service of the claimant is at

NOTE—The claimant has been called upon to file in the Court and to serve upon you particulars of his or her claim.

The following information is to be written in the left-hand margin of the form:

The office of the Court is open to the public from 8.30am to 5pm Monday to Friday inclusive.

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

[Not printed]

Form 95 was amended, as from 1 March 2001, by rule 41 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in the section headed "*The following information is to be written in the left-hand margin of the form*" the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 96

Rule 654

Interpleader summons to claimant claiming
goods or rent under an execution

YOU are hereby summoned to attend at the District Court at on day, the day of 19...., at the hour of in the forenoon to support a claim made by you to certain goods (*or* to the proceeds of sale (*or* value) of certain goods) (*or* to certain rent alleged by you to be due to you issuing out of premises where certain goods were) taken in execution under process out of this Court at the instance of the execution creditor, and in default of your then establishing such claim the said goods will be sold and the proceeds thereof paid over (*or* the said proceeds of sale (*or* value) will be paid over) according to the requirements of the said process:

And take notice that you are hereby required within 5 days after service of this summons upon you, inclusive of the day of service (*or, if the time for service has been abridged, within such reasonable time before the date of hearing as the time of service permits*) to file in the Court office and serve on the execution creditor particulars of the goods (*or* proceeds, *or* value) claimed by you (*or* the amount of the rent claimed by you and of the period for which and the premises out of which you claim that such rent issues), and of the grounds of your claim; and in such particulars you must state fully your name, address, and occupation.

And take notice that in the event of your not giving such particulars as aforesaid your claim may not be heard by the Court.

Date:

.....
(Deputy) Registrar

To the Claimant.

The address for service of the execution creditor is at

The following information is to be written in the left-hand margin of the form:

This office of the Court is open to the public from 8.30am to 5pm Monday to Friday inclusive.

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

[Not printed]

Form 96 was amended, as from 1 March 2001, by rule 42 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in the section headed "*The following information is to be written in the left-hand margin of the form*" the expression "8.30 am to 5 pm" for the expression "9.30 am to 4 pm".

Form 97

Rule 654

Interpleader summons to execution creditor
and bailiff where claimant claims goods and
damages

No:

In the District Court
at

Between
A B, Execution Creditor,
and
C D, Execution Debtor,
and between
E F, Claimant,
and
A B (the Execution Creditor)
and

G H, the Bailiff of this Court (*or as the case may be*),
Respondents.

WHEREAS [*Insert name, address, and occupation of claimant*] has made a claim to certain goods (*or to the proceeds of sale (or value) of certain goods*) taken in execution under process issuing out of this Court at your instance, and has also claimed from you (and from the Bailiff of this Court) the sum of for damages arising out of the said execution:

You are therefore summoned to attend at the District Court at on..... day, the..... day of..... 19....., at the hour..... in the..... noon, when the said claim both as to the said goods (*or the proceeds of sale (or value) of the said goods*) and as to the said damages will be adjudicated upon and such order made as the Court thinks fit.

Date:

.....
(Deputy) Registrar

To the Execution Creditor (and the Bailiff).

The address for service of the claimant is at

NOTE—The claimant has been called upon to file in the Court and to serve upon you particulars of his or her claim.

The following information is to be written in the left-hand margin of the form:

The office of the Court is open to the public from 8.30am to 5pm Monday to Friday inclusive.

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

[Not printed]

Form 97—*continued*

Form 97 was amended, as from 1 March 2001, by rule 43 District Courts Amendment Rules (No 2) 2000 (SR 2000/282) by substituting in the section headed “*The following information is to be written in the left-hand margin of the form*” the expression “8.30 am to 5 pm” for the expression “9.30 am to 4 pm”.

Form 98

Rule 654

Interpleader summons to claimant claiming
goods and damages under an execution

(Heading—As in form 97)

YOU are hereby summoned to attend at the District Court at on day, the day of 19...., at the hour of in the noon, to support a claim made by you to certain goods (*or* to the proceeds of sale (*or* value) of certain goods) taken in execution under process issuing out of this Court at the instance of the execution creditor, and also for damages arising out of such execution; and in default of your then establishing such claim the said goods will be sold and the proceeds thereof paid over (*or* the said proceeds of sale (*or* value) will be paid over), according to the requirements of the said process:

And take notice that you are hereby required within 5 days after the service of this summons on you, inclusive of the day of service, (*or, if the time for service has been abridged, within such reasonable time before the date of hearing as the time of service permits*) to file in the Court office and serve on the execution creditor particulars of the goods (*or* proceeds *or* value) claimed by you and of the grounds of your claim, and you must also state in such particulars the amount of damages you claim, and the party from whom you claim the same, and the grounds of your claim; and in such particulars you must state fully your name, address, and occupation.

And take notice that in the event of your not giving such particulars as aforesaid, your claim may not be heard by the Court.

Date:

.....
(Deputy) Registrar

To the Claimant.

The address for service of the execution creditor is at

Form 99
Application for writ of arrest

Rule 663

I,, of, [*Occupation*], the above-named plaintiff (*or* the duly authorised agent of the above-named plaintiff), hereby apply to the District Court at for the issue of a writ of arrest against of, [*Occupation*], the above-named defendant, upon the grounds set out in the affidavit appended hereto.

Dated at, this day of 19....

.....
(Agent for) Plaintiff

I,, of, [*Occupation*], swear:

- (1) That I am the plaintiff in this proceeding (*or* I am the agent of the plaintiff in this proceeding duly authorised by the plaintiff to sue for and recover from the defendant the claim hereinafter mentioned by a power of attorney (*or as the case may be*) under the hand of the plaintiff dated the).
- (2) That the above-named defendant is justly and truly indebted to me (*or* to the plaintiff) in and I have (the plaintiff has) a good cause of action against the defendant for the sum of \$..... for, the particulars whereof are set out in the statement of claim filed herein.
- (3) That the debt was contracted on [*State date*].
- (4) That [*Specify grounds for belief that defendant is about to leave New Zealand and to evade payment.*].
- (5) That for the reason aforesaid, I verily believe that the defendant is about to leave New Zealand immediately, and that the defendant intends thereby to evade the payment of the above sum to me.

.....
Signature of Deponent

Sworn at, this day of 19...., before me—

.....
(Deputy) Registrar.
Justice of the Peace.
Solicitor.

[*Not printed*]

Form 100
Writ of arrest

Rule 664(1)

To a Bailiff of the District Court at
(or To a Constable at).

WHEREAS is has been made to appear to the satisfaction of me, the undersigned District Court Judge, having jurisdiction to the amount of the plaintiff's claim, by the affidavit of the plaintiff (or the duly authorised agent of the plaintiff) in the above proceeding, that the above-named plaintiff has a good cause of action against the above-named defendant for the sum of \$....., for which a summons has been issued out of this Court (or out of the District Court at), and that there is probable cause for believing that the said defendant is about to leave New Zealand with the intention of evading payment of the said sum of \$.....

Now, therefore, I do hereby command you, by virtue of the powers given to me by section 109 of the District Courts Act 1947, that, unless the said defendant deposits with you, or with the Registrar of the District Court before which he or she is brought, the said sum of \$....., together with the costs, \$..... to be paid, applied, and disposed of accordingly to the judgment of the Court in this proceeding, you do immediately bring the defendant before a District Court Judge to be further dealt with according to law.

And I do further command you to certify to me without delay what you shall do under this warrant.

Dated at, this day of 19.....

.....
District Court Judge

Form 101
Notice to defendant arrested under writ

Rule 664(2)

TAKE notice that if you deposit with the officer executing the writ of arrest issued this day out of the District Court at, or with the Registrar of the Court at, the sum of \$....., being the amount claimed, and \$..... for costs, you will be discharged from custody, and the said sum will be paid, applied, and disposed of according to the final judgment of the Court.

Date:

.....
(Deputy) Registrar

To the Defendant.

[Not printed]

Form 102

Rule 664(3)

Bail bond to be given by defendant arrested
under writ of arrest

We,, of, and, of, and, of,
declare that we are jointly and severally held and firmly bound to the Registrar
for the time being of the District Court at in the sum of \$....., to be
paid to the said Registrar, for which payment to be made we bind ourselves and
each and every one of us, jointly and severally, firmly by these presents:

Whereas on the day of 19...., the above-named applied to the
District Court at to recover the sum of \$..... and \$..... for costs
against

And whereas it has been made to appear to, District Court Judge, by the
affidavit of, that there is probable cause for believing that was
about to leave New Zealand with the intention of evading payment of such sum:

And whereas a writ of arrest was issued, and has been arrested, but
desires to be released on bail:

Now, the condition of this obligation is that if shall appear at the District
Court at on day, the day of 19...., at the hour of
in the noon, to answer the demand of the said and shall not depart
until the judgment of the Court has been given, then this obligation shall be
void, but otherwise shall remain in full force.

Signed by at, this }
..... day of 19...., in my presence— }
.....

District Court Judge (or (Deputy) Registrar).
I approve of this bond.

.....
District Court Judge (or (Deputy) Registrar).

[Not printed]

Form 103

Rule 664(3)

Warrant of remand in default of bail being found

To a Bailiff of the District Court at

(or To a Constable at

and To the Superintendent of the Prison at

WHEREAS at a sitting of the District Court at held this day before me, the above-named defendant was brought before me pursuant to a writ of arrest issued at the suit of the above-named plaintiff for the sum of \$..... and costs \$.....: And whereas, acting under the powers vested in me by section 109 of the District Courts Act 1947, I did admit the said defendant to bail by sufficient security, by bond to the Registrar, the said defendant in the sum of \$....., and surety (sureties) in the sum of \$..... (each), and I did thereupon order that in default of the said bail being given or the amount of \$....., with costs \$..... being deposited with the Registrar of the District Court at, the said defendant should be detained in the prison at and be brought from there to the District Court at on day, the day of 19...., at o'clock in the forenoon: And whereas default has been made in the said bail being given, and the said amount (\$.....) and costs (\$.....) has not been deposited as aforesaid: This is therefore to command you, the said Bailiff, to take the said defendant and deliver him or her to the Superintendent of the prison at: And I hereby command you, the said Superintendent, to receive the said defendant into your custody and there to detain the defendant, and bring the defendant to the District Court at, on day, the day of 19...., at o'clock in the forenoon, before me or some other District Court Judge unless the defendant shall sooner give the prescribed security or make the said deposit, or until the defendant shall be sooner discharged by due course of the law.

Dated at, this day of 19....

.....
District Court Judge

[Not printed]

Form 104

Rule 664(3)

Consent for summary hearing

I, the above-named defendant, against whom a writ of arrest has been issued under section 109 of the District Courts Act 1947 do hereby consent that the plaintiff's claim may be summarily heard and finally adjudicated upon forthwith (*or* at the hour of in the noon of the day of 19....).

.....
Defendant

Signed in the presence of—

.....
Justice of the Peace.
(Deputy) Registrar.
Solicitor.

[*Not printed*]

Form 105
Order against executor or administrator in
respect of assets received since judgment

Rule 667

In the District Court
at

No:

Between
A B, Plaintiff,
and
C D, the executor (*or* administrator)
of E F, deceased,
Defendant.

WHEREAS at the hearing of this proceeding on the day of 19...., it was adjudged that the plaintiff should recover against the defendant the sum of \$..... for and \$..... for costs, and it was ordered that the said sums be levied of the assets of the estate of the above-named deceased which should thereafter come into the hands of the defendant as executor (*or* administrator) as aforesaid to be administered:

And whereas, on the application of the plaintiff this day, it appears to the Court that since the said judgment assets of the estate of the deceased have come to the hands of this defendant as executor (*or* administrator) as aforesaid:

It is ordered that the said sums be levied of the assets of the estate of the said deceased which have come to the hands of the defendant as executor (*or* administrator) since the date of the said judgment.

Date:

.....
(Deputy) Registrar

To the Defendant.

[*Not printed*]

Form 106
Distress warrant against goods of estate of
deceased person

Rule 668

(Heading—As in form 105)

Form 106—continued

To a Bailiff of the District Court at
(or To a Constable at)

WHEREAS at the District Court at on the day of, 19....
the above-named plaintiff obtained a judgment against, the above-
named defendant, as executor (or administrator) of, deceased, for the sum
of \$..... for due and owing to the plaintiff by the said deceased in his or
her lifetime, and the sum of \$..... for costs:

And whereas default has been made in payment according to the said judgment:

This is therefore to command you forthwith to levy the amount due to the
plaintiff under the said judgment and the further expenses incurred herein by
distress and sale of the goods and chattels of the said estate in the hands of the
defendant to be administered, and also by seizing and taking any money, bank
notes, bills of exchange, promissory notes, bonds, specialities, or securities for
money forming part of the assets of the said estate, or such part or so much
thereof as may be sufficient to satisfy this execution.

And you are hereby commanded to pay what you shall so levy forthwith to the
Registrar of the District Court at and to make return of what you shall
do by virtue of this warrant immediately upon the execution thereof.

Date:

.....
(Deputy) Registrar

	\$
Amount adjudged to be paid	.....
Costs	.....
Warrant	.....
Total	<u>\$.....</u>

NOTICE—Where a person is placed in possession of goods seized, the Bailiff is
entitled to demand and levy the costs of keeping possession according to scale.
The goods are not to be sold until after the end of 5 days next following the day
on which they were taken, unless they are of a perishable nature, or at the
request in writing of the defendant.

Application was made to the Registrar of the Court for the issue of this warrant
at minutes past the hour of in the noon of the day of
..... 19...., by, Solicitor for the plaintiff.

Form 106—*continued*

.....
(Deputy) Registrar

This warrant was received by me on the day of 19...., at
o'clock in the noon.

.....
Bailiff

[Form 74 is to be endorsed hereon]

[*Not printed*]

Form 107

Rule 669(1)

Summons for assaulting an officer of the Court,
or rescuing goods

In the District Court
at
To, of

You are hereby summoned to attend at the District Court at on
day, the day of 19...., at the hour of in the noon, to
answer a complaint made against you by, an officer of the Court, and to
show cause why an order should not be made against you under the District
Courts Act 1947 for payment of a sum not exceeding \$300 for an assault
committed by you on, the day of 19...., upon the said officer
while in the execution of his or her duty (*or* (and) for rescuing or attempting to
rescue, on the day of 19...., certain goods seized under process of
this Court).

Date:

.....
(Deputy) Registrar

[*Not printed*]

Form 108

Rule 669(2)

Order imposing a fine for assaulting an officer
of the Court, or for rescuing goods

In the District Court
at

IT is adjudged that, of, do forfeit the sum of \$..... for an assault committed by him or her on the day of 19...., upon, an officer of this Court, whilst in the execution of his or her duty (*or* (and) for rescuing or attempting to rescue, on the day of 19...., certain goods seized under process of this Court) and the sum of \$..... for costs, amounting together to the sum of \$.....

And it is ordered that the said do pay the said sum of \$..... to the Registrar of this Court on the day of 19....

Date:

.....
(Deputy) Registrar

[Not printed]

Form 109

Rule 670(1)

Summons for extortion or misconduct

To, of, Bailiff (*or other officer*) of the District Court at

(or To, of, Constable).

YOU are hereby summoned to attend at the District Court at on day, the day of 19...., at the hour of in the noon, to answer a complaint made against you by, of that you have (while acting under colour of the process of the Court) been guilty of extortion (*or* misconduct) in that you [*State or annex particulars of the extortion or misconduct alleged*] (as stated in the particulars annexed) (*or* not duly paid or accounted for certain money levied by you against at the suit of under the authority of the District Courts Act 1947 and to show cause why an order should not be made against you under section 19 of the District Courts Act 1947 for the repayment of the money extorted by you (*or* for the due payment of the money so levied by you), and for the payment of such damages and costs as the District Court Judge shall think just, and for the payment of a fine not exceeding \$300 for each offence so committed by you.

Date:

.....
(Deputy) Registrar

[Not printed]

Form 110

Rule 670(1)

Summons for neglect to levy execution

To, of, Bailiff of the District Court at

(*or*

To, of, Constable).

YOU are hereby summoned to attend at the District Court at on day, the day of 19...., at the hour of in the noon, to answer a complaint made against you by, of, that you, being employed to levy an execution against the goods and chattels of, did by neglect or connivance or omission lose the opportunity of levying such execution, and to show cause why an order should not be made against you under section 105 of the District Courts Act 1947 for payment of such damages as it shall appear that the said has sustained by your neglect or connivance or omission.

Date:

.....
(Deputy) Registrar

[*Not printed*]

Form 111

Rule 670(2)

Order for repayment of money extorted, or
payment of money levied, and for damages,
costs, and fine

In the District Court at

IT is adjudged that, of, a Bailiff (*or other officer*) of the Court, do repay the sum of \$..... extorted by him or her from under colour of the process of this Court (*or do pay the sum of \$..... levied by him or her against, of, at the suit of under the authority of the District Courts Act 1947 and not duly paid over or accounted for by him or her*) and the sum of \$..... for damages sustained by, of, by reason of such extortion (*or the neglect of the said to pay over the said money so levied by him or her*) (*or by reason of the misconduct of the said while acting under colour of the process of the Court in that [Here state particulars of the misconduct proved]*) and the sum of \$..... for costs:

And it is adjudged that the said do forfeit a fine of \$..... for the offence (*or for each offence*) so committed by him or her [*Here state particulars of each offence*] the sums to be paid by the said amounting together to the sum of \$.....

And it is ordered that the said do pay the said sum of \$..... to the Registrar of the Court on the day of 19....

.....
(Deputy) Registrar

[Not printed]

Form 112

Rule 670(2)

Order awarding damages for neglect to levy
execution

In the District Court at

It is adjudged that, of, Bailiff of this Court, do pay the sum of \$..... for damages sustained by, of, by reason of the said having by neglect or connivance or omission lost the opportunity of levying an execution against the goods of and the sum of \$..... for costs, amounting together to the sum of \$.....

And it is ordered that the said do pay the said sum of \$..... to the Registrar of this Court on the day of 19....

.....
(Deputy) Registrar

[Not printed]

Form 113

Rule 672

Order fining a witness for non-attendance

WHEREAS, of, was duly summoned to attend as a witness in this proceeding at the District Court at on the day of 19...., (and to produce) and at the time of being so summoned was paid (*or* tendered) travelling allowances and expenses according to the scale of allowances prescribed by the District Courts Rules:

And whereas he or she has refused or neglected without sufficient cause shown to attend at the Court (*or* to produce):

Or whereas he or she has refused to be sworn (*or* to give evidence) (*or* to produce):

It is hereby ordered that the said do forfeit a fine of \$..... for such refusal or neglect.

And it is ordered that the said do pay the said sum of \$..... to the Registrar of this Court on the day of 19....

Date:

.....
(Deputy) Registrar

[*Not printed*]

Forms 3, 4, 8 to 34, 36 to 40, 40A, 40B, 40C, 40D, 41 to 44, 46 to 50, 76 to 79, 81 to 84, 99 to 104, and 113 were amended, as from 1 April 1996, by rule 22 District Courts Rules 1992, Amendment No 3 (SR 1995/319), by substituting the expression “(General heading-Form 1 and endorsement)” for the expression “(General heading-Form 1)”.

Form 114

Rule 674

Warrant of committal for contempt of Court

In the District Court at

To a Bailiff of the District Court at, and to each and every Constable in New Zealand, and to the Superintendent of the Prison at

WHEREAS on the day of 19...., wilfully insulted, District Court Judge, in Court (*or as the case may be*), and was thereupon ordered to stand committed for days to the prison at for such offence:

This is therefore to command you, the said Bailiff and others, to take the said and to deliver him or her to the Superintendent of the said prison, together with this warrant, and you, the said Superintendent, to receive the said and to keep him or her safely in the said prison for days from the arrest under this warrant, or until he or she shall be sooner discharged by due course of law.

Dated at, this day of 19....

.....
District Court Judge

[Not printed]

Form 115

Rule 674

Order for fine for contempt of Court

In the District Court at

WHEREAS on the day of 19...., wilfully insulted, District Court Judge, in Court (*or as the case may be—reciting the insult or misbehaviour*):

It is ordered that the said do forfeit a fine of \$..... for such offence:

And it is ordered that the said do pay the said sum of \$..... to the Registrar of this Court forthwith, or on the day of 19....

Date:

.....
(Deputy) Registrar

[Not printed]

Form 116
Order for enforcement of payment of fine

Rule 675

In the District Court at

WHEREAS on the day of 19....,, of, was ordered to
forfeit a fine of \$..... for the offence of [*Specify offence*]:

And whereas the said fine has not been paid:

Now, therefore, it is ordered that the payment of the said fine of \$..... be
enforced in like manner as if it had been imposed on summary conviction of the
said under the provisions of the Summary Proceedings Act 1957.

Date:

.....
(Deputy) Registrar

[*Not printed*]

Schedule 2

r 47A

Appropriate daily recovery rates

Item 36 was revoked, as from 1 February 2003, by rule 15 District Courts
Amendment Rules (No 4) 2002 (SR 2002/411).

Schedule 2 was substituted, as from 1 February 2005, by rule 6 District Courts
Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to
the transitional provisions relating to the application of new costs rules.

Schedule 2 was substituted, as from 1 June 2006, by rule 13 District Courts
Amendment Rules 2006 (SR 2006/97). *See* rule 14 of those rules as to the
transitional provision relating to costs.

(*Note: The following are the appropriate daily recovery rates for the
categories of proceedings referred to in rule 47.*)

Category of proceedings referred to in rule 47	Appropriate daily recovery rate
Category 1 proceedings	\$860 per day
Category 2 proceedings	\$1,280 per day
Category 3 proceedings	\$1,900 per day

Schedule 2A

Time allocations

r 47B

Schedule 2A was inserted, as from 1 February 2005, by rule 6 District Courts Amendment Rules (No 2) 2004 (SR 2004/467). *See* rule 7 of those Rules as to the transitional provisions relating to the application of new costs rules.

General civil proceedings		Allocated days or part days		
		A	B	C
1	Commencement of proceedings by plaintiff (receiving instructions, researching facts and law, and preparing, filing, and serving statement of claim and notice of proceeding or equivalent or originating application)	1	2	4
2	Commencement of defence by defendant (receiving instructions, researching facts and law, and preparing, filing, and serving statement of defence or notice of opposition)	1	1.5	3
3	Other pleadings and notices:			
3.1	Counterclaim	0.6	1	2
3.2	Cross-notice between defendants	0.5	1	2
3.3	Commencement of proceedings against third parties, including notice and statement of claim	1	2	3
3.4	Notice of appearance with protest to jurisdiction	0.25	0.4	0.75
3.5	Notice of appearance	0.2	0.2	0.2

General civil proceedings		Allocated days or part days		
		A	B	C
3.6	Pleading in response to other party's amended pleading (payable regardless of outcome except where formal or consented to)	0.3	0.4	0.75
4	Interlocutory proceedings and related steps:			
4.1	Notice to answer interrogatories	0.3	1	2
4.2	Answer to interrogatories	0.3	1	2
4.3	Notice to admit facts	0.3	0.5	1
4.4	Admission of facts	0.3	0.5	1
4.5	List of documents on discovery	0.5	1	4
4.6	Production of documents for inspection	0.5	0.75	2
4.7	Inspection of documents	0.4	1	4
4.8	Filing and serving memorandum in anticipation of judicial conference	0.2	0.25	0.75
4.9	Appearance at judicial conference	0.3	0.3	0.3
4.10	Preparing and filing interlocutory application (excluding summary judgment application) and supporting affidavits	0.25	0.4	1
4.11	Preparing and filing opposition to interlocutory application (excluding summary judgment application) and supporting affidavits	0.25	0.4	1

General civil proceedings		Allocated days or part days		
		A	B	C
4.12	Preparation for hearing of defended interlocutory application (excluding summary judgment application)	The time occupied by the hearing measured in quarter days		
4.13	Appearance at hearing of defended interlocutory application (excluding summary judgment application) for sole or principal counsel	Appearance in Court measured in quarter days		
4.14	Second and subsequent counsel if allowed by Court	Fifty percent of allowance for appearance for principal counsel		
4.15	Sealing order or judgment	0.2	0.2	0.2
5	Summary judgment application (additional to costs in items 1 to 3):			
5.1	Preparing and filing summary judgment application and supporting affidavits	0.25	0.4	1.5
5.2	Preparing and filing opposition and supporting affidavits	0.25	0.4	1.5
5.3	Preparation for hearing of defended summary judgment application	The time occupied by the hearing measured in quarter days		
5.4	Arguing defended summary judgment application for sole or principal counsel	Appearance in Court measured in quarter days		

General civil proceedings		Allocated days or part days		
		A	B	C
5.5	Second and subsequent counsel if allowed by Court	Fifty percent of allowance for appearance of principal counsel		
6	Obtaining judgment without appearance (additional to costs in items 1 to 5):			
6.1	By default/admission	0.2	0.2	0.3
6.2	By formal proof (including affidavit preparations)	0.3	0.3	0.4
7	Preparation for hearing following setting down or direction for trial if trial does not eventuate:			
7.1	Plaintiff's preparation of affidavits or written or oral statements of evidence to be used at hearing	1.25	2.25	3.5
7.2	Plaintiff's preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation	1.25	2.25	3.5
7.3	Defendant's preparation of affidavits or written or oral statements of evidence to be used at hearing	1	2	3

General civil proceedings		Allocated days or part days		
		A	B	C
7.4	Defendant's preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation	1	2	3
8	Preparation:			
8.1	Where case proceeds to hearing	Twice the time occupied by the hearing measured in half days		
8.2	Where case proceeds by formal proof	1 day		
9	Appearance at hearing:			
9.1	For sole or principal counsel	Appearance in Court measured in half days		
9.2	Second and subsequent counsel if allowed for by Court	Fifty percent of allowance for principal counsel		
9.3	Appearance for formal proof	Appearance in Court measured in quarter days		
10	Execution of judgment or order:			
10.1	Application for charging order	0.4	0.4	0.4
10.2	Application for order for examination	0.2	0.2	0.2

General civil proceedings		Allocated days or part days		
		A	B	C
10.3	Each attendance at examination hearing (with or without judgment debtor present)	0.1	0.1	0.1
10.4	Application for arrest warrant if debtor fails to appear at examination or community work order hearing	0.1	0.1	0.1
10.5	Application for community work order	0.2	0.2	0.2
10.6	Each attendance at community work order hearing	0.1	0.1	0.1
10.7	Application for attachment order	0.2	0.2	0.2
10.8	Application for warrant of execution: recovery of chattels/distress/recovery of land	0.2	0.2	0.2
10.9	Application for warrant of committal	0.2	0.2	0.2
10.1	Application for writ of arrest	0.2	0.2	0.2
10.11	Garnishee proceedings	0.4	0.4	0.4
10.12	Interpleader proceedings (including service)	0.4	0.4	0.4
10.13	Other execution process	0.4	0.4	0.4
11	Other steps in the proceeding not specifically mentioned	As allowed by Court		

Ap- peals		Allocated days or part days		
		A	B	C
12	Commencement of appeal (including assessing original decision, noting appealable points, and filing and serving notice of appeal and points of appeal)	0.2	0.4	1
13	Preparation for judicial conference	0.1	0.2	0.4
14	Appearance at judicial conference	0.1	0.2	0.4
15	Preparation for appeal	The time occupied by the hearing measured in quarter days		
16	Appearance at hearing	Appearance in Court measured in quarter days		

Schedule 2A item 10.3: amended, on 1 March 2008, by rule 7 of the District Courts Amendment Rules (No 2) 2007 (SR 2007/383).

Schedule 3
Rules revoked

Rule 676

Title	Statutory Regulations Serial Number
The District Courts Rules 1948	1948/197
The District Courts Rules 1948, Amendment No 2	1956/81
The District Courts Rules 1948, Amendment No 4	1961/22

Title	Statutory Regulations Serial Number
The District Courts Rules 1948, Amendment No 5	1963/64
The District Courts Rules 1948, Amendment No 6	1965/210
The District Courts Rules 1948, Amendment No 7	1967/46
The District Courts Rules 1948, Amendment No 9	1968/183
The District Courts Rules 1948, Amendment No 10	1970/60
The District Courts Rules 1948, Amendment No 11	1971/142
The District Courts Rules 1948, Amendment No 12	1973/244
The District Courts Rules 1948, Amendment No 14	1977/219
The District Courts Rules 1948, Amendment No 16	1980/55
The District Courts Rules 1948, Amendment No 19	1986/358
The District Courts Rules 1948, Amendment No 22	1988/277
The District Courts Rules 1948, Amendment No 24	1989/363
The District Courts Rules 1948, Amendment No 25	1991/195

MARIE SHROFF,

Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 27 May 1992.

Contents

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 - 3 List of amendments incorporated in this eprint (most recent first)
-

Notes

1 General

This is an eprint of the District Courts Rules 1992. It incorporates all the amendments to the rules as at 1 November 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please *see* “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

District Courts Rules 2009 (SR 2009/257): rule 17.1

District Courts (Lawyers and Conveyancers Act 2006) Amendment Rules 2008 (SR 2008/197)

District Courts (Property Law Act 2007) Amendment Rules 2007 (SR 2007/387)

District Courts Amendment Rules (No 2) 2007 (SR 2007/383)
