



## District Courts Amendment Rules 2004

Silvia Cartwright, Governor-General

### Order in Council

At Wellington this 20th day of September 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 122 of the District Courts Act 1947, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Chief District Court Judge and at least 2 members of the Rules Committee (of whom at least 1 was a District Court Judge), makes the following rules.

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## Rules

### 1 Title

- (1) These rules are the District Courts Amendment Rules 2004.
- (2) In these rules, the District Courts Rules 1992<sup>1</sup> are called “the principal rules”.

<sup>1</sup> SR 1992/109

### 2 Commencement

These rules come into force on 1 November 2004.

### 3 New rule 29A substituted

The principal rules are amended by revoking rule 29A, and substituting the following rule:

#### “29A Format of first page

- “(1) The first page 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”.

### 4 New rule 42A inserted

The principal rules are amended by inserting, after rule 42, the following rule:

**“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”.

**5 New rule 307 substituted**

The principal rules are amended by revoking rule 307, and substituting the following rule:

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

Compare: High Court Rules r 285”.

**6 New rules 518 to 521A substituted**

The principal rules are amended by revoking rules 518 to 521, and substituting the following rules:

**“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.

**“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 522

#### “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 523

#### “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

#### “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)”.

### **7 Time and mode of giving judgment**

Rule 530 of the principal rules is amended by revoking subclauses (4) to (6), and substituting the following subclauses:

- “(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.”

## **8 Judgments to be sealed and dated**

- (1) Rule 531 of the principal rules is amended by omitting the heading, and substituting the heading “**Judgments to be sealed, dated, and served**”.
- (2) Rule 531 of the principal rules is amended by inserting, after subclause (3), the following subclause:
- “(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”.
- (3) Rule 531 of the principal rules is amended by adding the following subclause:
- “(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.”

## **9 New rule 533 substituted**

The principal rules are amended by revoking rule 533, and substituting the following rule:

### **“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”.

Diane Morcom,  
Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on 1 November 2004, amend the District Courts Rules 1992 (“the principal rules”).

The rules make a number of miscellaneous changes to the principal rules that have also been made to the High Court Rules. Most of the changes mirror provisions included in the High Court Amendment Rules 2004, which will also come into force on 1 November 2004.

*Rule 3* replaces rule 29A of the principal rules with a new rule relating to the format of the first page of originating documents. In future, the first page of every originating document and notice of interlocutory application will be required to state the “next event date”, that is, the date and nature of a hearing or conference to be held next after filing the document. The first page of the document will also be required to state the name of the Judge to whom the proceeding has been assigned.

*Rule 4* inserts a *new rule 42A*, which provides that a party to a proceeding must be promptly notified by the solicitor on the record of any order or direction that affects the party.

*Rule 5* replaces rule 307 of the principal rules, which relates to defamation proceedings, with a new rule. The corresponding rule in the High Court Rules will be replaced in the same way. An earlier proposal to revoke the corresponding High Court rule altogether and allow the common law rules to apply was not proceeded with. There

are 2 changes to the former rule. The first, which addresses comments made by the Court of Appeal in *Lange v Atkinson* [2000] 3 NZLR 385 at 404 to 405 (paragraphs [55] to [58]) about the absolute nature of the corresponding High Court rule, will allow interrogatories if necessary in the interests of justice. The second is to replace the reference in the current rule to the defence of fair comment with a reference to the defence of honest opinion to bring the rule into line with section 9 of the Defamation Act 1992.

*Rule 6* relates to the taking of affidavits and to giving evidence outside New Zealand by means of an authenticated deposition. The principal changes are—

- inconsistencies between the Oaths and Declarations Act 1957 and the principal rules are removed. Currently, section 10 of the Act authorises a Commonwealth representative to take an affidavit in a foreign country while rule 521 of the principal rules requires that he or she must be authorised under the law of that foreign country to administer an oath. In addition, section 12 of the Act authorises members of the armed forces to take affidavits while the principal rules make no provision for this to occur:
- the distinction between persons authorised to take affidavits in Commonwealth countries and foreign countries is removed. An affidavit may be taken in countries outside New Zealand by a Commissioner of the High Court, a person with authority to administer oaths under the local law, or a person authorised by a Judge:
- new rules provide for the evidence of a witness overseas to be in the form of an authenticated deposition.

*Rule 7* amends rule 530 of the principal rules relating to the giving of written judgments. Written judgments must be endorsed by the Registrar with a date and time directed by the Judge or, in the absence of a direction, with a date and time nominated by the Registrar (**delivery time**). A written judgment is given at the delivery time so endorsed. After a judgment is endorsed, the Registrar must endeavour to notify the parties of the delivery time. Parties may request the Registrar to fax or email the judgment or make a copy available for collection. However, if a party who has given an address for service does not make a request, the Registrar must send a copy of the judgment by post to that party.

*Rule 8* amends rule 531 of the principal rules in 2 respects. First, except with the leave of the Court, a judgment may not be sealed until any application for recall under rule 533 of the principal rules has been determined. Second, the requirement in the current rule 533 (which relates to when a judgment takes effect) to serve a sealed copy of a judgment is brought into rule 531. A sealed copy of the judgment must be served on every party who has given an address for service and on any other person who, although not a party, is affected by the judgment. The heading to the rule is also changed to reflect the requirement for service.

*Rule 9* replaces rule 533 of the principal rules with a new rule. The effect of the new rule is to make 2 exceptions to the principle that no step may be taken on a judgment until it has been sealed. The first is that the Court may direct that a step may be taken before sealing. The second is that a party may commence an appeal under the High Court Rules before sealing as long as the party takes steps to have the judgment sealed promptly after the appeal is brought. The power to recall a judgment before sealing, formerly in rule 530(6), is brought into the new rule.

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These rules are administered in the Ministry of Justice.

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