



High Court Amendment Rules 2002

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 27th day of May 2002

Present:

Her Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Schedule 1

New form 4 substituted in First Schedule of High Court Rules

Schedule 2

New Schedule 4 of High Court Rules

Rules

1 Title

- (1) These rules are the High Court Amendment Rules 2002.
- (2) In these rules, the High Court Rules from time to time set out in the Second Schedule of the Judicature Act 1908¹ are called “the High Court Rules”.

¹ 1908 No 89

2 Commencement

These rules come into force on 1 July 2002.

3 New rule 45 substituted

The High Court Rules are amended by revoking rule 45, and substituting the following rule:

“45 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 44(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 4 may be used for a notice under this rule.”

4 Review of decisions of Masters

Rule 61C of the High Court Rules is amended by revoking subclauses (6) and (7).

5 New heading substituted

The High Court Rules are amended by revoking the heading above rule 324, and substituting the following heading:

“Court appointed experts”.

6 Appointment of Court expert

Rule 324 of the High Court Rules is amended by inserting, after subclause (3), the following subclause:

- “(3A) A person appointed as an independent expert in a proceeding under rule 330B(3)(a) may not be appointed as a Court expert unless the parties to the proceeding agree.”

7 New heading and rules 330A to 330D inserted

The High Court Rules are amended by inserting, after rule 330, the following heading and rules:

“Expert evidence generally

“330A Expert witness to comply with Code of Conduct

“(1) A party to a proceeding who engages an expert witness must give the expert witness a copy of the Code of Conduct set out in Schedule 4.

“(2) An expert witness must—

“(a) state in any written statement of the proposed evidence of the witness served under rule 441B or rule 441C or at the time of giving any oral evidence or in any affidavit containing the evidence of the expert witness that the expert witness has read the Code of Conduct and agrees to comply with it:

“(b) comply with the Code of Conduct in preparing any written statement of the proposed evidence of the witness to be served under rule 441B or rule 441C or in giving any oral or affidavit evidence in any proceeding.

“(3) The evidence of an expert witness who has not complied with subclause (2)(a) may be adduced only with the leave of the Court.

“330B Court may direct conference of expert witnesses

“(1) The Court may, on its own initiative or on the application of a party to a proceeding, direct expert witnesses—

“(a) to confer:

“(b) on the matters on which the expert witnesses must confer:

“(c) to confer in the absence of the legal advisers of the parties:

“(d) to try to reach agreement on matters in issue in the proceeding:

“(e) to prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement:

“(f) to prepare the joint witness statement without the assistance of the legal advisers to the parties.

“(2) The Court may not give a direction under subclause (1)(c) or (f) unless the parties agree.

- “(3) The Court may, on its own initiative or on the application of a party to the proceeding,—
- “(a) appoint an independent expert to convene and conduct the conference of expert witnesses:
 - “(b) give any directions for convening and conducting the conference the Court thinks fit.
- “(4) The Court may not appoint an independent expert or give a direction under subclause (3) unless the parties agree.
- “(5) Subject to any subsequent order of the Court as to costs, the Court may determine the remuneration of an independent expert and the party by whom it must be paid.
- “(6) The matters discussed at the conference of the expert witnesses must not be referred to at the hearing unless the parties by whom the expert witnesses have been engaged agree.
- “(7) An independent expert appointed under subclause (3) may not give evidence at the hearing unless the parties agree.

“330C **Status of joint witness statement by expert witnesses**

- “(1) A joint witness statement prepared by expert witnesses under rule 330B—
- “(a) must be circulated by the parties to the proceeding by whom the expert witnesses have been engaged to every other party who has given an address for service; and
 - “(b) may be produced in evidence by any expert witness who signed the statement as part of his or her evidence; and
 - “(c) may, if the parties to the proceeding agree, be produced in evidence without the need to call any of the expert witnesses who signed the statement.
- “(2) Rules 441D to 441L apply, with all necessary modifications, to a joint witness statement as if the statement were a written statement under rule 441B or rule 441C.
- “(3) An expert witness is not precluded from giving evidence on any matter at the hearing simply because the expert witness has participated in the preparation of a joint witness statement under rule 330B or because the witness statement is evidence at the hearing under rule 441F.

“330D Evidence of expert witnesses at trial

The Court may, at the hearing, direct that the evidence of expert witnesses is given after all or certain factual evidence is given or in an order the Court thinks best suited to the circumstances of the proceeding.”

8 Transitional provision relating to expert evidence

Nothing in rule 330A of the High Court Rules (as inserted by rule 7 of these rules) applies to an expert witness if, on the commencement of these rules,—

- (a) the hearing of a proceeding has commenced; or
- (b) the time for serving a written statement of the proposed evidence of the expert witness under rule 441B or rule 441C has expired.

9 Application of this Part

Rule 458D(1) of the High Court Rules is amended by inserting, after subparagraph (viii), the following subparagraph:

“(viiiia) The Habeas Corpus Act 2001:”.

10 New rule 458N inserted

The High Court Rules are amended by inserting, after rule 458M, the following rule:

“458N Application of this Part to application for writ of habeas corpus

Nothing in rules 458H, 458I, 458J, and 458K applies to an originating application for a writ of habeas corpus under the Habeas Corpus Act 2001.”

11 Time for filing statement of defence

Rule 700Q of the High Court Rules is amended by omitting the words “Subject to rule 129(2), where,”, and substituting the word “If”.

12 Additional and substituted plaintiffs in liquidation proceeding

Rule 700X(5) of the High Court Rules is amended by omitting the words “Subject to rule 129(2), where,”, and substituting the word “If”.

13 Appearance

Rule 773 of the High Court Rules is amended by revoking subclause (14).

14 Statement of defence

Rule 775 of the High Court Rules is amended by revoking subclause (2).

15 New form 4 substituted in First Schedule

The First Schedule of the High Court Rules is amended by revoking form 4, and substituting the form 4 set out in Schedule 1.

16 Notice of proceeding (commercial list)

Form 34A in the First Schedule of the High Court Rules is amended by omitting the words “The plaintiff claims the sum of \$ for costs of and incidental to issuing this proceeding.”

17 Notice of proceeding (being application to commercial list Judge) under section 24C(4) of Judicature Act 1908

Form 34C in the First Schedule of the High Court Rules is amended by omitting the words “The plaintiff claims the sum of \$ for costs of and incidental to issuing this proceeding.”

18 Notice of proceeding for putting company into liquidation (or for order under section 209ZG of the Companies Act 1955) (or for order under section 174 of the Companies Act 1993)

Form 64C in the First Schedule of the High Court Rules is amended by omitting paragraph 7 of the Memorandum to the form, and substituting the following paragraph:

“7 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.]*”

19 Notice of proceeding in personam

(1) Form 67 in the First Schedule of the High Court Rules is amended by omitting paragraph 3.

- (2) Form 67 in the First Schedule of the High Court Rules is amended by omitting paragraph 3 under the heading “**Directions for entering an appearance**”, and substituting the following paragraph:

“3 In calculating the time for filing the memorandum, 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.*]”

20 Notice of proceeding in rem

- (1) Form 69 in the First Schedule of the High Court Rules is amended by omitting paragraph 3.
- (2) Form 69 in the First Schedule of the High Court Rules is amended by omitting paragraph 4 under the heading “**Directions for entering an appearance**”, and substituting the following paragraph:

“4 In calculating the time for filing the memorandum, 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.*]”

21 Notice of proceeding both in rem and in personam

- (1) Form 70 in the First Schedule of the High Court Rules is amended by omitting paragraph 4 under the heading “**Directions for entering an appearance**”, and substituting the following paragraph:

“4 In calculating the time for filing the memorandum, 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.*]”

- (2) Form 70 in the First Schedule of the High Court Rules is amended by omitting the words “The plaintiff also claims against the [*Insert name of ship or describe property*] and against the second defendant the sum of \$[*Insert sum*] for the costs of and incidental to service of this notice of proceeding.”

22 Memorandum of appearance

Form 71 in the First Schedule of the High Court Rules is amended by omitting paragraph 2 under the heading “**Directions**”, and substituting the following paragraph:

“2 Subject to any direction by the Court, in calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.”

23 Creditor’s petition

Form 92 in the First Schedule of the High Court Rules is amended by inserting, below the words “Petitioning Creditor”, the word “Witness:”.

24 Third Schedule amended

The Third Schedule of the High Court Rules is amended by inserting, after item 5.2, the following item:

“5.2A	Preparation for hearing of defended summary judgment application	The time occupied by the hear- ing measured in quarter days”.
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25 New Schedule 4 added

The High Court Rules are amended by adding the Schedule 4 set out in Schedule 2.

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Schedule 1
New form 4 substituted in First Schedule of
High Court Rules

r 45

Form 4

Notice of change of representation or address for service

(General heading—Form 1 and endorsement)

Take notice that—

- * the solicitor for the plaintiff (*or defendant or third party*) is now [*name and address of 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 High Court Rules*].

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 High Court at
and to [*name of other party to proceeding*].

*Delete if inapplicable.

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Schedule 2
New Schedule 4 of High Court Rules

r 330A

Schedule 4
Code of Conduct for expert witnesses

Duty to the Court

- 1 An expert witness has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise.
- 2 An expert witness is not an advocate for the party who engages the witness.

Evidence of expert witness

- 3 In any evidence given by an expert witness, the expert witness must—
 - (a) acknowledge that the expert witness has read this Code of Conduct and agrees to comply with it;
 - (b) state the expert witness' qualifications as an expert;
 - (c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise;
 - (d) state the facts and assumptions on which the opinions of the expert witness are based;
 - (e) state the reasons for the opinions given by the expert witness;
 - (f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness;
 - (g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.
- 4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.

Schedule 4—continued

- 5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

Duty to confer

- 6 An expert witness must comply with any direction of the Court to—
- (a) confer with another expert witness;
 - (b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses;
 - (c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.
- 7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment and must not act on the instructions or directions of any person to withhold or avoid agreement.

Diane Wilderspin,
Acting for Clerk of the Executive Council.

Explanatory note

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

These rules, which come into force on 1 July 2002, amend the High Court Rules.

Rule 3 substitutes a new *rule 45* for the existing rule relating to change of solicitor and change of address for service. The new rule applies to any change of representation whereas the current rule applies only to a change of solicitor. (Rule 44 of the District Courts Rules 1992 is replaced by a new rule 44 in the same terms by the District Courts Amendment Rules 2002.)

Rule 4 revokes subclauses (6) and (7) of rule 61C of the High Court Rules. Rule 61C sets out the procedure for review by a Judge of a decision of a Master in Chambers. Rule 61C(6) requires the leave of a Judge to appeal from a decision of a Judge on a review. Rule 61C(7) requires notice of application for leave to appeal to be filed and served within 7 days after the decision on the review was given. The revocation of subclauses (6) and (7) removes doubt about the validity of those provisions on the basis that a requirement for leave should be imposed by statute.

Rule 5 substitutes a new heading for the existing heading to rules 324 to 330 of the High Court Rules relating to Court experts.

Rule 6 amends rule 324 of the High Court Rules relating to the appointment of Court experts. The effect of the amendment is that, unless the parties agree, a person may not be appointed as a Court expert if the person has been appointed under new *rule 330B* as an independent expert to convene a conference of expert witnesses.

Rule 7 inserts new *rules 330A* to *330D* into the High Court Rules. The new rules relate to giving of evidence by experts.

The new *rule 330A* will require expert witnesses to comply with a Code of Conduct that sets out the obligations of expert witnesses when giving evidence. The Code of Conduct is set out in the new *Schedule 4* of the High Court Rules.

The new *rule 330B* empowers the Court to direct expert witnesses to confer, on the matters on which they are to confer, to try to reach agreement on matters in issue in the proceeding, and to prepare a joint witness statement that sets out the matters on which the expert witnesses agree or disagree, including their reasons for disagreeing. With the agreement of the parties, the Court may direct the expert witnesses to confer in the absence of the legal advisers to the parties and to prepare a joint witness statement without assistance from those advisers. The new rule also allows the Court, with the agreement of the parties, to appoint an independent expert to convene a conference of expert witnesses.

The new *rule 330C* relates to the status of joint witness statements. The new rule provides that rules 441D to 441L of the High Court Rules apply to a joint witness statement as if the statement were a written statement under rule 441B or rule 441C of the High Court Rules. Those rules relate to the exchange of witnesses' statements. It also makes it clear that an expert witness is not precluded from

giving evidence at the hearing merely because he or she has participated in the preparation of a joint witness statement.

The new *rule 330D* allows the Court to direct that evidence of expert witnesses is given after factual evidence or in any other order.

Rule 8 is a transitional rule. It provides that the new *rule 330A* does not apply to an expert witness if the hearing of a proceeding has commenced or if the time for serving a witness statement under rule 441B or rule 441C has expired.

Rule 9 amends rule 458D(1) of the High Court Rules. Rule 458D(1) lists enactments under which applications may be made by way of an originating application. Section 7 of the Habeas Corpus Act 2001 requires an application for a writ of habeas corpus to be made by way of an originating application in the manner provided by the High Court Rules. This amendment brings habeas corpus applications under Part IVA of the High Court Rules.

Rule 10 inserts a new *rule 458N* in the High Court Rules. The new *rule 458N* provides that certain rules in Part IVA (rules 458H, 458I, and 458J relating to directions and rule 458K relating to conferences) do not apply to an originating application for a writ of habeas corpus.

Rules 11 to 14 and *18 to 22* amend a number of rules and forms as a consequence of the substitution, by the High Court Amendment Rules (No 2) 2001, of rule 14 of the High Court Rules. Rule 14 excludes the period 25 December to 15 January in calculating a period in which a particular thing must be done.

Rule 15 substitutes a new *form 4* (Notice of change of representation or address for service) in the First Schedule of the High Court Rules. (A corresponding new form 3 is substituted in the District Courts Rules 1992 by the District Courts Amendment Rules 2002.)

Rules 16, 17, 19, 20, and 21 amend a number of forms to remove references to costs as a consequence of the changes to the costs rules made by Part 1 of the High Court Amendment Rules 1999. In general, costs are assessed according to the new costs rules and the Second and Third Schedules at the completion of a proceeding. The requirement for a plaintiff to claim costs specifically is no longer necessary.

Rule 23 amends form 92 (Creditor's petition for an order of adjudication of a bankrupt) in the First Schedule of the High Court Rules. The amendment aligns the form with form 91 and makes it clear that the signature of the petitioning creditor must be witnessed. The

amendment corrects an anomaly identified by Master Gambrill in *Palmer v Harts Contributory Mortgages Nominee Co Ltd* (HC Auckland, B. No. 297-IM0, 8 August 2001).

Rule 24 inserts into the Third Schedule of the High Court Rules a new item allowing for the recovery of costs for preparation for the hearing of a defended summary judgment application.

Rule 25 adds a new *Schedule 4* to the High Court Rules. The new Schedule sets out the Code of Conduct for expert witnesses.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 30 May 2002.

These rules are administered in the Ministry of Justice and the Department for Courts.
