



Family Courts Amendment Rules 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 26th day of April 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 16A of the Family Courts Act 1980, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following rules.

Contents

| | | Page |
|---|---|------|
| 1 | Title | 2 |
| 2 | Commencement | 2 |
| 3 | Principal rules amended | 2 |
| 4 | New rule 5A inserted | 2 |
| | 5A Limited application of District Courts Rules 2009 | 3 |
| 5 | New heading and rules 52A to 52D inserted | 3 |
| | <i>Fixing date and time for hearing of application</i> | |
| | 52A Judge may require Registrar to fix date and time for hearing of application | 3 |
| | 52B Parties may require Registrar to fix date and time for hearing of application | 3 |

| | | | |
|----|------|--|---|
| | 52C | Parties to give Registrar information affecting duration of hearing | 4 |
| | 52D | Only certain steps may be taken after notice of hearing date given | 4 |
| 6 | | Order for discovery after proceedings commenced | 5 |
| 7 | | Cross-examination of deponent | 5 |
| 8 | | New rule 179A inserted | 5 |
| | 179A | Settlement conference becomes judicial conference if issues in dispute cannot be settled | 6 |
| 9 | | New rule 292A inserted | 6 |
| | 292A | Mediation conference becomes judicial conference if agreement cannot be reached | 6 |
| 10 | | New rule 349A inserted | 6 |
| | 349A | Mediation conference becomes judicial conference if agreement cannot be reached | 7 |
| 11 | | Fixing date and time for hearing: notice of defence filed | 7 |
| 12 | | Other amendments to principal rules | 7 |
| 13 | | New form G 15 of Schedule 1 substituted | 7 |
| | | Schedule 1 | 8 |
| | | Other amendments to principal rules | |
| | | Schedule 2 | 9 |
| | | New form G 15 of Schedule 1 substituted | |

Rules

- 1 Title**
These rules are the Family Courts Amendment Rules 2010.
- 2 Commencement**
These rules come into force on 27 May 2010.
- 3 Principal rules amended**
These rules amend the Family Courts Rules 2002.
- 4 New rule 5A inserted**
The following rule is inserted after rule 5:

“5A Limited application of District Courts Rules 2009

A rule in the District Courts Rules 2009 does not apply to proceedings in a Family Court unless that rule is specifically applied by these rules.”

5 New heading and rules 52A to 52D inserted

The following heading and rules are inserted after rule 52:

“Fixing date and time for hearing of application

“52A Judge may require Registrar to fix date and time for hearing of application

- “(1) A Judge may, at any time on his or her own initiative, direct the Registrar to fix a date and time for the hearing of an application.
- “(2) After a Judge gives a direction under subclause (1), the Registrar must—
- “(a) make inquiries with the parties to obtain an estimate of the duration of the hearing of the application, if an estimate is required; and
 - “(b) fix a date and time for the hearing of the application; and
 - “(c) give notice of the date and time of the hearing of the application to—
 - “(i) the parties; and
 - “(ii) any person (not being a party) who has filed a notice of intention to appear.

“52B Parties may require Registrar to fix date and time for hearing of application

- “(1) This rule applies if—
- “(a) the time has expired for the filing of—
 - “(i) a notice of defence; or
 - “(ii) a notice of intention to appear; and
 - “(b) a request for the convening of any of the following conferences has been disposed of:
 - “(i) a mediation conference;
 - “(ii) a settlement conference;
 - “(iii) a judicial conference.

- “(2) The Registrar must fix a date and time for the hearing of an application if there is filed an application for fixture in form G 17 that is signed by, or on behalf of, all parties.
- “(3) The Registrar may fix a date and time for the hearing of an application even though the application for fixture is not signed by all of the parties if the Registrar is satisfied that the parties who have not signed the application—
- “(a) have refused to do so; and
 - “(b) have no reasonable reason for that refusal.
- “(4) A Registrar who fixes a date and time under subclause (2) or (3) must note on the application for fixture that he or she has done so.
- “(5) The Registrar must give notice of the date and time of the hearing of the application to—
- “(a) the parties; and
 - “(b) any person (not being a party) who has filed a notice of intention to appear.

“52C Parties to give Registrar information affecting duration of hearing

After receiving a notice under rule 52A(2)(c)(i) or 52B(5)(a), the parties must, without delay, give the Registrar all available information affecting the earlier estimate of the duration of the hearing.

“52D Only certain steps may be taken after notice of hearing date given

- “(1) After the Registrar has given notice of the date and time fixed for the hearing of an application, a party may only do the following:
- “(a) file—
 - “(i) an application for leave under subclause (2):
 - “(ii) an application under rule 14 for directions:
 - “(iii) an application under rule 78 to amend a document:
 - “(b) file and serve—
 - “(i) a notice under rule 169 requiring a deponent to attend the hearing for cross-examination:

“(ii) further particulars in compliance with a notice issued under rule 139:

“(c) comply with any direction or order of the Court.

“(2) No other step in the proceeding may be taken by a party except with the leave of a Judge granted on the application of that party.”

6 Order for discovery after proceedings commenced

(1) Rule 141 is amended by inserting the following subclause after subclause (2):

“(2A) On receipt of an application made in accordance with subclauses (1) and (2), the Court may order the party referred to in subclause (1)(a) to file an affidavit stating—

“(a) whether certain documents or classes of documents are or have been in that party’s possession, custody, or power; and

“(b) if the party had the documents or classes of documents but has now parted with the documents or classes of documents, when the party did so and what became of the documents or classes of documents.”

(2) Rule 141(3) is amended by revoking paragraph (b) and substituting the following paragraph:

“(b) must be served by the applicant on the party against whom the order is made.”

(3) Rule 141(4) is amended by omitting “has been issued” and substitute “is made”.

7 Cross-examination of deponent

Rule 169(3) is amended by omitting “the fourth working day before the hearing” and substituting “5 working days after receiving notice of the date and time fixed for the hearing of the application”.

8 New rule 179A inserted

The following rule is inserted after rule 179:

“179A Settlement conference becomes judicial conference if issues in dispute cannot be settled

- “(1) If the Judge presiding over a settlement conference is satisfied that the issues in dispute between the parties or intended parties cannot be settled, the Judge must, as soon as practicable, indicate to the persons attending the conference that he or she has formed that view.
- “(2) When an indication has been given under subclause (1), the settlement conference becomes a judicial conference and the Judge may make any orders and directions that a Judge may make under rule 175D.”

9 New rule 292A inserted

The following rule is inserted after rule 292:

“292A Mediation conference becomes judicial conference if agreement cannot be reached

- “(1) If the Judge presiding over a mediation conference is satisfied that no agreement can be reached on a solution for the problem in respect of which the exercise of the Court’s jurisdiction is sought, the Judge must, as soon as practicable, indicate to the persons attending the conference that he or she has formed that view.
- “(2) When an indication has been given under subclause (1), the mediation conference becomes a judicial conference and the Judge may make any orders and directions that a Judge may make under rule 295A.
- “(3) When a mediation conference becomes a judicial conference, any of the following persons present must leave the conference room if requested to do so by the Judge:
- “(a) the child or young person who is the subject of the proceedings in respect of which the mediation conference was held:
 - “(b) any other person who is not referred to in rule 294(3).”

10 New rule 349A inserted

The following rule is inserted after rule 349:

“349A Mediation conference becomes judicial conference if agreement cannot be reached

- “(1) If the Judge presiding over a mediation conference is satisfied that no agreement between the parties can be reached on any of the matters in issue, the Judge must, as soon as practicable, indicate to the persons attending the conference that he or she has formed that view.
- “(2) When an indication has been given under subclause (1), the mediation conference becomes a judicial conference and the Judge may make any orders and directions that the Judge may make under rule 175D.”

11 Fixing date and time for hearing: notice of defence filed

Rule 352 is amended by revoking subclause (1) and substituting the following subclauses:

- “(1) This rule applies where a respondent has filed a notice of defence to an application under either of the Acts (except an application under section 32 or 37 of the Family Proceedings Act 1980).
- “(1A) Unless a Judge in a particular case orders otherwise, the Registrar must fix a date and time for the hearing of an application if there is filed in the court an application for a fixture in form G 17 signed by or on behalf of all parties.”

12 Other amendments to principal rules

The principal rules are amended in the manner indicated in Schedule 1 of these rules.

13 New form G 15 of Schedule 1 substituted

Schedule 1 is amended by revoking form G 15 and substituting the form G 15 set out in Schedule 2 of these rules.

Schedule 1

r 12

Other amendments to principal rules**Rule 38(a)**

Omit “15A(3)(a)” and substitute “15A(3)(a)”.

Rule 139(5)(a)

Omit “particular” and substitute “particulars”.

Rule 171(2)

Omit “DCR 50” and substitute “rule 50”.

Rule 172(1)(c)

Omit “desposition” and substitute “deposition”.

Rule 175D(2)(l)

Omit “fix a time” and substitute “direct the Registrar to fix a date, time,”.

Form G 6 of Schedule 1

Omit “*maybe*” and substitute “*may be*”.

Form CS 16 of Schedule 3

Paragraph (a): omit “a annual value” and substitute “an annual value”.

Form DV 22 of Schedule 5

Under the heading “**Important information for respondent**” omit from the third paragraph “(*If” and substitute “*If”.

Schedule 2

r 13

New form G 15 of Schedule 1 substituted

Form G 15

r 141(3)(a)

Order for discovery of documents

(General heading—Form G 2)

To [*name of applicant or respondent*]

- 1 You are ordered to file an affidavit stating—
 - (a) whether certain documents or certain classes of documents are or have been in your possession, custody, or power; and
 - (b) if you had the documents or classes of documents but have now parted with the documents or classes of documents, when you did so and what became of the documents or classes of documents.
- 2 The documents or classes of documents in relation to which discovery is required are as follows: [*specify*].
- 3 You must file the affidavit within 10 days of being served with this order.
- 4 You must serve a copy of the affidavit on [*full name and address for service of all other parties who have filed an address for service*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one

Rebecca Kitteridge,
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 27 May 2010, amend the Family Courts Rules 2002 (the **principal rules**).

The amendments—

- confirm that the application of the District Courts Rules 2009 to proceedings in a Family Court is limited to those provisions that are specifically applied:
- provide that a Judge may at any time on his or her own initiative direct a Registrar to fix a date and time for the hearing of an application (*new rule 52A*):
- specifically provide for the parties (or a party) to file an application for fixture for the hearing of an application (*new rule 52B*):
- require the parties to provide the Registrar with information affecting the estimated duration of a hearing (*new rule 52C*):
- provide that, after the Registrar has given notice of the date and time fixed for the hearing of an application, a party may only take certain specified steps in the proceeding without the leave of a Judge (*new rule 52D*):
- amend rule 141 of the principal rules to specify the order for discovery that may be made by the court on an application by a party:
- amend rule 169(3) of the principal rules to provide that notice requiring a deponent to attend the hearing for cross-examination must be given by a party not later than 5 working days after the party is notified of the date and time fixed for the hearing of the application:
- provide that if at a settlement conference or mediation conference the Judge indicates that he or she is satisfied that no resolution can be reached, the conference becomes a judicial conference and the Judge may make various orders and directions (*new rules 179A, 292A, and 349A*):
- make consequential and technical changes to other provisions of the principal rules.

2010/97

Family Courts Amendment Rules 2010

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

Date of notification in *Gazette*: 29 April 2010.

These rules are administered by the Ministry of Justice.
