

RULES COMMITTEE INFORMATION PAPER

DISTRICT COURTS RULES 2009

Preliminary

1. This paper provides an overview of the new procedure under the District Courts Rules 2009 (Rules). The Rules are anticipated to come into force in November 2009.
2. There are comprehensive education programmes running throughout New Zealand. Practitioners are strongly advised to attend such programmes and familiarise themselves with the more detailed material available.
3. Practitioners are also referred to the educative version of the Rules available on the Rules Committee's website at http://www.courtsofnz.govt.nz/about/system/rules_committee/role_powers.
4. This paper first presents the motivation for change and the broad principles of the new regime. It then summarises the front-end process for beginning a civil claim, and lastly outlines the three trial types.

A need for change

5. Less than 10% of proceedings filed in the District Court evoke a formal response. Precious few reach the hearing stage as most claims are settled (usually at a settlement conference) or abandoned. The traditional interlocutory process is cumbersome, time consuming, and comes at a disproportionate cost to most litigation in the District Court.
6. The proportionately few defended cases should be advanced as quickly and efficiently as practicable to the point where the merits of the parties' cases can be objectively assessed.
7. Fundamental to the new Rules is the principle that litigants in the District Court should be able to give notice of their claims and defences simply and economically. They should be empowered readily, easily, and efficiently to receive and obtain from each other relevant evidential and documentary information at the earliest practicable points.
8. The Rules provide a streamlined process with a logically staged exchange of relevant information which is conducive to exploration of settlement. If early settlement is not achieved, a more elaborate 'information capsule' exchange procedure provides adequate foundation for examination of the merits and the parties' needs and interests at an early settlement conference. If settlement is not reached, the dispute can be promptly channelled into a form of adjudication proportionate to the case. It is anticipated the information exchanged by that point will largely remove the current discovery complications and their attendant expense.

9. The main substantive procedural changes are to the front end process of beginning a civil claim.
10. The stylistic changes aim to reflect modern drafting practices and to make the Rules more accessible to the legal professional and lay litigant alike.

Beginning a claim: notice of claim procedure

11. A plaintiff must file a notice of claim to initiate any claim other than in defamation, admiralty, or to enforce an arbitral award (r 2.10), or originating applications (r 6.1), and leave in special circumstances (r 2.7). Proceedings for these types of action must be commenced by filing a statement of claim: r 2.9.
12. The requirements for the notice of claim are found in r 2.11. The new High Court Rules and other rules apply to the service of documents (other than originating applications): r 2.38. The general requirement is for personal service in the first instance and service at an address once an address for service has been given.
13. A plaintiff must serve the notice of claim on every defendant as soon as practicable after it has been filed (r 2.10(3)). The proceeding comes to an end if the notice of claim is not served within 12 months of the day of filing unless an extension has been permitted under r 2.10(6) (r 2.10(4)).
14. A defendant who wishes to respond to the notice of claim must complete and serve a response within 30 working days of the day it was served with the notice of claim: r 2.12(1). The contents of the response are contained in rule r 2.13.
15. If there is no response to the notice of claim and the claim is a liquidated demand, the plaintiff may approach the Court Registrar for sealing of the judgment by default: r 2.39. If evidence is required or necessary (because the claim is non-liquidated), this can be offered by affidavits which will usually be considered in chambers without the need for a formal hearing. Part 12 details the procedure for obtaining judgment by default or formal proof.
16. A plaintiff wishing to pursue a claim after receiving the defendant's response must complete and serve on the defendant an information capsule within 30 working days of the date of service of the defendant's response: r 2.14(1). The requirements of the plaintiff's information capsule are contained in r 2.14(3).
17. The defendant must serve an information capsule on the plaintiff within 30 working days of the date of service of the plaintiff's information capsule: r 2.15(1). The requirements of the defendant's information capsule are found in r 2.15(3).
18. Counterclaims against the plaintiff by a defendant must be outlined in its initial response and information capsule: see relevant rules and r 2.27(1). Counterclaims by the defendant against other persons are provided for in r 2.28. Claims between defendants are treated at r 2.30 and following.

19. If the defendant does not serve an information capsule in response, the plaintiff may proceed to judgment by default or formal proof under r 2.39: r 2.15(4). This is the second opportunity to seek judgment by default or formal proof.
20. Rule 2.2 provides a diagrammatic overview of the notice of claim procedure. This is replicated in Annex I.
21. It is hoped that following the exchange of information capsules litigants will review their position and be able to resolve matters. In such instance, the plaintiff must file a notice of discontinuance: r 2.17(1).
22. If a claim is not settled after the information capsule exchange and the plaintiff does nothing to pursue it within 90 days of the day on which the defendant's information capsule was served, the proceeding comes to an end: r 2.17(4). The plaintiff may, however, recommence it subject to any time limitations: r 2.17(5).
23. If the plaintiff wishes to pursue the claim after the exchange of information capsules, it must file the defendant's response to its notice of claim, both information capsules, and a notice of pursuit of claim: r 2.17(2).
24. Third and further party joinder is available after the plaintiff has given a notice of pursuit of claim. It is provided for at rr 2.18 and following.

Proceeding to trial

25. There are three types of trials (r 2.40(1)):
 - a. Short trial;
 - b. Simplified trial; and
 - c. Full trial.
26. The procedure from this point is diagrammatically depicted at r 2.16 which is replicated in Annex II.
27. The Court or a Registrar must decide whether to allocate a short trial: r 2.40(2). If a short trial is allocated, rules 2.46 to 2.48 apply.
28. If a short trial is not allocated, the parties must proceed to a settlement conference: r 2.40(5). This must occur as soon as possible after the date 30 working days after the decision not to allocate a short trial: r 2.40(7). The conference is in chambers (r 2.47(2)) and the Judge who assists the parties must not preside at any trial unless all parties taking part in the conference agree and the only matter for resolution at the hearing is a matter of law: r 2.47(3). A proceeding will be treated as being discontinued 30 working days from the date on which a Judge endorses the proceeding as having been settled unless there is a direction to the contrary: r 2.47(4).
29. If the settlement is unsuccessful, it converts to a judicial directions conference during which a simplified or full trial is allocated by the Judge: rr 2.40(5)(b) and 2.48.

30. Summary judgment is only available where a simplified or full trial is allocated and not where a short trial is allocated: r 2.42(1). A party who has settled under rr 2.1 (mediation or other alternative dispute resolution) or 2.47 (judicial settlement conference) may apply for a summary judgment to enforce that settlement: r 2.43.

Short Trial

31. A short trial is intended for claims that can come to a hearing quickly, where the issues are relatively uncomplicated, or a modest amount is at stake and trial time is unlikely to exceed one day: r 2.44(1).
32. Where a short trial is allocated, there will be no settlement conference. A date for trial will be set and the parties' preparation will be confined to the exchanging of further or revised 'will say' statements and any further documents on which either intends to rely.
33. Features of the short trial process are that the only evidential statements required to be produced are the 'will say' statements exchanged before the hearing and at the hearing itself. Evidence will be given orally (without written brief) and documents to be produced in evidence need not be in indexed bundles: r 2.45(1).
34. The total time for the presentation of a party's case must not exceed the total time calculated as follows under r 2.45(2):

Item	Time Limit (minutes)
1. Examination of witnesses	40 per witness
2. Cross-examination of witnesses	20 per witness
3. Re-examination of witnesses	10 per witness
4. Submissions for a party	30 per party

But the Court may, for good reason consistent with the objective of the rules, extend the total time: r 2.45(3).

35. Should a party dispute the suitability of a proceeding for a short trial, there is the opportunity to seek a review: r 2.46.

Simplified trial

36. If the Judge directs a simplified trial at a judicial directions conference, a party must disclose the documents intended to be relied on at trial at least 15 working days before that trial, giving a copy to each other party: r 2.51(2)(a).
37. Evidence at a simplified trial is by affidavits which must be served within the same time frame: r 2.51(2)(b). The affidavits will be read by the judge prior to the hearing.

38. There is provision for a party to apply for an order that another party disclose particular documents (r 2.51(3)) and the Judge may so order if satisfied the documents are relevant, or that disclosure is necessary to decide the matter fairly, or for any other reason (r 2.51(4)).
39. Apart from the fact that a party whose proceeding is allocated a simplified trial may apply for summary judgment after a failed settlement conference (r 2.51(5)), the only interlocutory applications that may be made in what has become a simplified trial are those specified in r 2.49(3) or such application as the Judge may allow in the interests of justice (r 2.51(6))
40. A witness need only appear at a simplified trial if an opposing party has served a notice to cross-examine that witness, or where the Judge so requests: r 2.52(1). Each party is limited to one expert per specialist discipline unless more are allowed with leave of the Court (r 2.52(2)).
41. Features of the simplified trial process under r 2.53 are:

Steps	Requirements
Pre-trial disclosure (documents and affidavits of evidence in chief)	In accordance with r 2.51
Witnesses	As allowed under r 2.52

42. The total time for the presentation of a party's case must not exceed the total time calculated as follows under r 2.53(2):

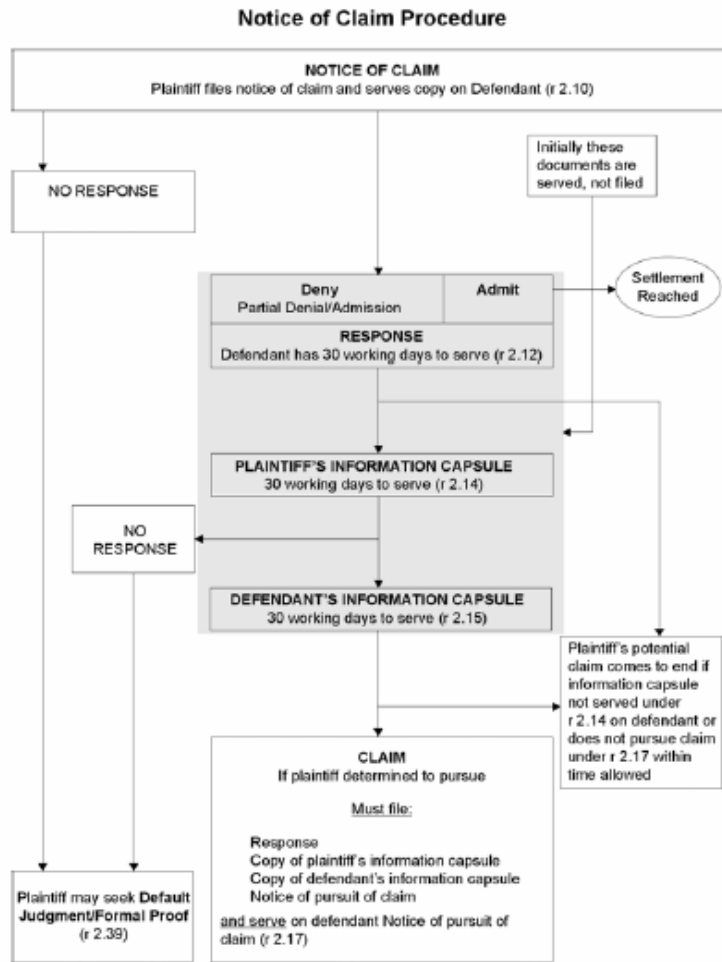
Description of Proceeding	Time Limits (minutes)
1. Cross-examination of witnesses	50 per witness
2. Re-examination of witnesses	10 per witness
3. Submissions for a party	30 per party

43. The Court may extend the total time available to a party for good reason consistent with the objective of the Rules: r 2.53(3).

Full Trial

44. The full trial procedure follows the High Court model (r 2.54) subject to any direction by a Judge to tailor the interlocutory process to be followed to suit the needs of the particular case.

ANNEX I



ANNEX II

Procedure On and After Filing Response and Information Capsules

