



**THE RULES COMMITTEE**  
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14 February 2012  
Minutes/01/12

**Circular No. 10 of 2012**

**Minutes of meeting held on 13 February 2012**

The meeting called by Agenda/04/12 was held in the Chief Justice's Boardroom, Supreme Court, Wellington, on Monday 13 February 2012 at 9:45 am.

**1. Preliminary**

*In Attendance*

Rt Hon Dame Sian Elias, GNZM, Chief Justice of New Zealand  
Hon Justice Fogarty (in the Chair)  
Hon Justice Winkelmann  
Hon Justice Asher  
Judge Doherty  
Hon Christopher Finlayson, Attorney-General  
Mr Andrew Beck, New Zealand Law Society representative  
Mr Brendan Brown QC  
Mr Rajesh Chhana, Ministry of Justice  
Mr Bruce Gray QC, New Zealand Law Society representative  
Mr Ian Jamieson, Parliamentary Counsel Office  
Dr Don Mathieson QC, Special Parliamentary Counsel, Parliamentary Counsel Office  
Mr Stephen Mills QC, New Zealand Bar Association representative  
Mr Kieron McCarron, Judicial Administrator to the Chief Justice  
Ms Paula Tesoriero, Ministry of Justice

Ms Rita Lowe, Secretary to the Rules Committee  
Dr Caroline Anderson, Clerk to the Rules Committee

*Apologies*

Judge Jan-Marie Doogue, Chief District Court Judge  
Judge Susan Thomas  
Cheryl Gwyn, Crown Law

*Matters arising*

The Chair opened by welcoming Mr Bruce Gray QC to the Committee before noting the re-appointment of Messrs Brendan Brown QC and Andrew Beck. Ms Paula Tesoriero then introduced Mr Rajesh Chhana, who will replace Ms Tesoriero during her leave.

*Confirmation of minutes*

The Committee confirmed the minutes of the meeting of the Monday 5 December 2011.

**2. District Court Rules (Agenda item 4)**

Judge Doherty and the Chair reported back to the Committee on the results of the December 2011/January 2012 consultation on the proposed amendments to the District Court Rules. These amendments revised the time periods in the Rules, reinserted a summary judgment procedure, relaxed the rules governing the amendment of pleadings and sought to make the procedures governing default judgment more plaintiff-friendly. As Judge Doherty remarked, this was a deliberately limited consultation as it was envisaged that a wider review of the DCR would be conducted this year.

Overall, thirteen submissions were received in response to the consultation paper. While a number of these dealt with issues outside the remit of this paper, all submissions endorsed the reintroduction of a summary judgment procedure and the overall shortening of time limitations. In fact, as Winkelmann J noted, some submitters supported further contracting the time periods and stripping away the case management procedure so that the District Court and the High Court have uniform procedures. After some discussion on whether summary judgment should be available as of right, the Committee agreed that the proposed amendments be accepted subject to change following a general review of the Rules in their totality. All were in agreement with the Attorney-General's view that this general review is urgent and that the wider policy considerations and aims of the DCR also need to be addressed. It was decided that a plan for this review will be formulated by the Civil Litigation Committee of the District Court. The Chief District Court Judge and Judges Thomas and Doherty can then report back to the Committee on how best to implement the consultation process two weeks before the 2 April meeting. The Chair expressed his strong belief that any reform needs to be the result of joint enterprise between the Bar and the Bench.

### **3. Case Management Reforms (Agenda item 2)**

The Chair reported back to the Committee about the consultation on the proposed case management reforms issued last December 2011. The Committee received five responses. Out of these several policy questions were raised; including whether the period for service of the proceeding should be extended to 15 working days in Form G2 and whether rules should be added relating to the creation of a bundle of authorities. The Committee agreed to extend the timeframe under G2 but believed it unnecessary to create rules governing the creation of agreed bundles of authorities. As the issue of timeframes, other policy questions and the reordering of the rules needs to be considered carefully and in conjunction with the Auckland Pilot, it was decided that Justice Winkelmann, Mr Gray QC and Dr Mathieson QC would go over the draft rules together and circulate their recommendations to the Committee.

Dr Mathieson was instructed to correct any typographical errors and simplify the forms accompanying the draft rules. In respect of the forms, the Chief Justice believed that there needs to be a general review of all of the HCR forms.

The Committee was keen to ensure that the rules are future-proofed in regards to e-filing by being drafted in a neutral manner. Justice Asher noted that Clifford J had asked that the Committee consider developing a protocol or guidelines for the creation of electronic files for use in civil trials and appeals. It was agreed that Clifford J should be invited to the next meeting to speak of his concerns as a standard protocol may be a useful resource for judges managing complex cases. This issue is to be put on the agenda for the April meeting.

Lastly, Justice Winkelmann also spoke to the Committee about the Auckland Case Management Pilot that commenced Wednesday the 1<sup>st</sup> of February. She explained that the Pilot provides a unique opportunity to trial run the proposed amendments as well as gather feedback from the Profession and the Bar. The Chair and Asher J thanked Her Honour for the large amount of time and work she has spent on this issue.

### **4. Revision of Default Judgment and Formal Proof Rules**

Justice Asher discussed the responses to the proposed rules and noted that only one substantive comment was received. In relation to draft r 15.8 (Formal proof for other claims), DuncanCotterill and Fortune Manning both believed there should be a presumptive rule providing that a deponent does not need to appear at a hearing for default judgment of an unliquidated demand unless otherwise ordered so by the Judge. The Committee considered the benefits of changing the default position as well as regional variation in practice. Overall, the Committee believed that it was preferable to keep to the rules as currently drafted as any change would require formidable administrative adjustments. If deponents were outside the jurisdiction or needed to travel a long distance to attend, the court could always organise attendance by means of a video-link.

The Committee agreed to amend draft r 15.7(3) by adding “Judge” alongside a Registrar to seal judgment. The Chief Justice raised the issue of Registrars’ powers and their appointment and asked Winkelmann J to look into the issue.

Mr Brown QC then raised the issue that Schedule 3 made no express provisions for formal proof (in respect to trial or the entering of judgment). He believed it would be timely to reconsider the formal proof rules as to their place within the structure of the HCR.

It was decided that the Committee would wait for the submissions from the NZLS to arrive before proceeding. They will be considered by a sub-committee consisting of Messrs Brown and Beck, Winkelmann J, the Chair and an appointee from the NZBA to be nominated by Mr Mills QC. Justice Asher is to Chair this sub-committee with a view to resolving default judgment rules by mid-March to gain their approval at the meeting on 2 April.

## **5. Criminal Procedure Rules**

A draft consultation paper to accompany v 8 of the Criminal Procedure Rules (“CPR”) was circulated by the Ministry of Justice on Friday. The Chair considered it was important to settle the consultation process. The Committee agreed that the consultation needed to be widely issued (including academics as well as practitioners and associated groups or bodies) and publicised in the media. The Committee all believed that the proposed timeframe was too short and the consultation deadline should be extended until 7 May. It was also proposed that Justice Ronald Young should come to the meeting on 11 June to present to the Committee. The Chair highlighted that the full Committee was to have a summary of the submissions that are received and that all members must agree with the draft rules before giving their approval to them.

The Clerk is to reformat and amend the consultation paper with a view to sending it out Friday 18 February.

## **6. Time Allocations**

Mr Brown QC spoke to the Committee about his further revision of Schedule 3 and believed that it should be approved, subject to the deletion of “undefended” from the headings above items 42 and 46. The Schedule could be revisited later as part of a larger review of proof processes. The Committee concurred.

## **7. General**

The Chair requested that the Clerk look at the extent of judicial prescription in the HCR, and in particular at the phrase “the Judge/ Court must”. The Clerk is also to look at whether bundles for the meeting can be circulated as a single paginated pdf document. The Chair

reiterated the decision of the last meeting that all circulars must be received by the Clerk at least two weeks before the meeting.

*Meeting finished at 1 pm.*