

17 December 2013

Thomas Cleary
Clerk to the Rules Committee
Auckland High Court
PO Box 60
Auckland 1010

By email: Thomas.Cleary@justice.govt.nz

Dear Thomas

Reform of the District Court Rules 2009 – consultation

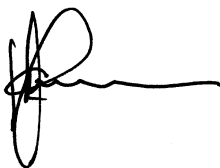
The New Zealand Law Society (Law Society) appreciates the opportunity to comment on the Rules Committee's consultation paper *Reform of the District Court Rules 2009: Draft District Court Rules*, released in early November. The consultation paper is the final stage in the review of the District Court Rules 2009, and follows extensive consultation with the profession.

The paper was circulated to the Law Society's Civil Litigation and Tribunals Committee for consideration, and no concerns were raised. This is consistent with the relatively low turnout at the consultation meetings held around the country in November, which can be taken to indicate there is general approval of the draft Rules. The Civil Litigation and Tribunals Committee endorses the statement in the recent article (*LawTalk* 830, 25 October 2013 at p27) that "... the best features of the 2009 Rules have been retained while other aspects have been amended to address the concerns of the profession and other stakeholders." Accordingly, the Law Society supports the proposed draft Rules.

We also note that following the consultation meetings, draft Rules 12.4(2) and (3) regarding summary judgment may be amended (as suggested by Judge Thomas in her memo of 22 November 2013 to the Rules Committee). The Law Society is supportive of that amendment, for the reasons set out in Judge Thomas' memo.

If you wish to discuss these matters further, please contact the Civil Litigation and Tribunals Committee convenor, Andrew Beck, through the committee secretary, Rhyn Visser (phone (04) 463 2962 or email rhyn.visser@lawsociety.org.nz).

Yours sincerely



Chris Moore
President

31 January 2014

District Courts Rules sub-committee of the Rules Committee
Secretary to the Rules Committee
Ministry of Justice
PO Box 180
WELLINGTON

Proposed draft District Court Rules 2013

Our Ref:

This letter sets out Crown Law's comments on the proposed draft District Court Rules 2013 emailed to us on 4 November 2014 by Janine Ford (Ministry of Justice).

1. The definition of "chattels" in proposed draft r 1.4 is broad and includes "all things that are not land". With the introduction of the Personal Property Securities Act 1999 it is perhaps surprising that there are so many references to "chattels" within the proposed draft rules however, any such analysis of the appropriateness or otherwise of this definition is beyond the scope of our review.
2. The definition of "HCF" in proposed draft r 1.4 should include a reference to Schedule 1 of the High Court Rules where the forms are set out.
3. Proposed draft r 5.1 determines the proper registry for filing documents. However, there is no priority afforded to the various alternatives in r 5.1(1). The equivalent rule in the High Court Rules (HCR 5.1) appears to provide a better solution albeit with appropriate changes made.
4. Proposed draft r 14.17 could usefully include a confirmation that in-house solicitor costs may be claimed. There have been some inconsistent legal precedents on this issue and so a clarification would be helpful.
5. The drafting of r 20.15(2) should read: "The memorandum may be in **the form of** one of the **statements in HCF G 10**".

Yours sincerely
Crown Law



Jessica Gorman
Team Manager
Revenue Team

Direct phone: 04 494 5527
Direct fax: 04 473 3482
Email: jessica.gorman@crownlaw.govt.nz

Bell Gully Submission to the Rules Committee – *Reform of the District Court Rules 2009*

1. We are grateful for this opportunity to submit on the Rule Committee's proposed reforms to the District Court Rules 2009. In this submission, we address the following matters:
 - (a) Alignment with the High Court Rules;
 - (b) Replacing forms with pleadings;
 - (c) List of documents;
 - (d) Case management conferences;
 - (e) Judicial settlement conferences;
 - (f) Retaining the existing forms of trial; and
 - (g) Summary judgment.

2. We would be happy to discuss our views further, if that would be helpful. Please contact:

David Friar
Partner
09 916 8977

Jesse Wilson
Senior Associate
09 916 8843

Proposed Changes

Alignment with the High Court Rules

3. We support the proposed alignment of the District Court Rules with the High Court Rules. We agree that the District Court Rules should be consistent with the High Court Rules in the absence of a well-justified basis for non-alignment. Consistency promotes the objectives of the Rules by:
 - (a) improving counsel's familiarity with the Rules;
 - (b) enabling judicial guidance under one set of rules to assist counsel and Judges under the other set of rules; and
 - (c) reducing the risk of parties being unjustifiably advantaged or disadvantaged by the forum in which they conduct their disputes.

4. The proposal to increase the jurisdictional limit of the District Court from \$200,000 to \$350,000 under clause 256 of the Judicature Modernisation Bill further confirms our view that it is desirable for civil disputes in the District Court to be subject to generally similar procedures as the High Court.

Replacing forms with pleadings

5. We strongly support the replacement of the current District Court forms with pleadings. In our experience, the replacement of formal pleadings with less formal notices has not resulted in any cost savings or other efficiencies. The currently prescribed forms have tended to reduce the clarity with which claims and defences are articulated. This undermines a party's right to be fairly informed of the case that it is required to meet. We have encountered cases in which parties have opted to file formal pleadings ahead of trial in recognition of the difficulties associated with running a trial in the absence of formal pleadings to set the parameters of the parties' cases.

List of documents

6. We submit that the District Court Rules should introduce the initial disclosure rules contained in rule 8.4 of the High Court Rules. In our experience, the initial disclosure procedure under the High Court Rules works effectively.
7. Introducing a similar regime in the District Court Rules would be consistent with the Rules Committee's high-level objective aim of aligning the two sets of rules.
8. We also submit that the High Court initial disclosure regime would be more desirable than the proposal under draft rules 5.28(4) and 8.4 for a statement of claim to be accompanied by a list of documents rather than a bundle of documents, as required by High Court Rule 8.4.
 - (a) In almost all cases parties are likely to request copies of the documents listed in the list of documents. We submit that it would be more efficient to have the documents provided along with the list, rather than introduce the additional step of requiring a party to make a request under the proposed new rule 8.4(2); and
 - (b) The majority of the work and associated cost involved in initial disclosure is incurred when identifying the relevant documents and generating the list of those documents. Once that work is performed, the additional cost of producing copies of the documents for the other parties is modest (and would likely be incurred in all cases for the reason described above).

Case management conferences

9. We support the proposals in relation to case management conferences.

Judicial settlement conferences

10. In relation to judicial settlement conferences, we submit that:
 - (a) Such conferences should not be allocated as a matter of course. We submit that the District Court Rules should be amended to align with the approach adopted in the High Court since 1 February 2013, following the review undertaken by the High Court in 2012. We agree with the conclusions of that review. We consider that the reasoning of that review applies even more strongly in the District Court, which does not have Associate Judges available to preside over settlement conferences. We therefore submit that it would be desirable to end the practice of mandatory judicial settlement conferences in order to free up judicial resources for hearings and judgment writing; and
 - (b) The requirements under proposed new rule 8.4(7) to provide will say statements for each of a party's witnesses is unduly prescriptive. We submit that it would be

preferable for parties to retain autonomy regarding the materials which they exchange in advance of a settlement conference.

Retaining the existing forms of trial (short, simplified and full trials)

11. We generally support the retention of the existing forms of trial (short, simplified and full trials). However, in our experience, the new forms of trial introduced under the District Court Rules have not resulted in material time or cost savings and it appears common to dispense with the time allocations stipulated in the District Court Rules for simplified trials.

Summary judgment

12. We strongly support allowing a party to apply for summary judgment in all proceedings under the District Court Rules (except where an enactment expressly provides that summary judgment is unavailable). Many civil proceedings in the District Court concern debt enforcement in circumstances where this is no fairly arguable defence to the claim. The summary judgment procedure is a just and efficient method to determine such claims.

Concluding comments

13. We welcome the proposed changes and support the philosophy underpinning the reforms. The proposals as a whole are likely to promote the just, speedy and inexpensive determination of proceedings.
14. For the reasons set out above, we submit that there are further opportunities to align the District Court Rules with the High Court Rules. We would strongly support further harmonisation of the two regimes.
15. We appreciate the opportunity to provide comments on the proposed changes.

Bell Gully
January 2014

31 January 2014

Rules Committee
By email: thomas.cleary@justice.govt.nz

Attention: Clerk to the Rules Committee

Dear Mr Thomas Cleary

Reform of the District Court Rules

- 1 We have read and considered the consultation paper on the proposal for the reform of the District Court Rules, and would like to comment on the proposals.
- 2 We are strongly in favour of the proposed changes. In particular, we welcome the alignment of the District Court procedure with that of the High Court, and the re-introduction of statements of claim and statements of defence.
- 3 We have some specific comments in relation to the amendment rules provided with the consultation paper, and refer to each rule in turn where relevant. At this stage we have only reviewed up to part 13 in detail. If it is possible for comments to be provided at a slightly later stage, please advise.
- 4 Rules 4.10 and 4.11 regarding the third party notice both include a requirement that the third party notice and the statement of claim against the third party respectively must be accompanied by a list of documents relied on under Rule 8.4. This should be changed so that only one rule has that requirement. In our opinion it should be retained by Rule 4.11, so that the requirement is to file the list of documents with the statement of claim. This will ensure that if the claim is amended that a new list will also be provided if necessary.
- 5 Rule 5.1 does not make it clear whether a plaintiff can simply elect to file the proceedings in the registry closest to where the cause of action arose rather than closest to the defendant, or whether an affidavit as to where cause of action arose is required, as it is in the High Court. We believe that this should be clarified.
- 6 Rule 5.48 requires the statement of defence to be filed within 30 working days after the defendant is served with the notice of proceeding and statement of claim. We believe that a timeframe that is different to the High Court Rules will create confusion, and in our opinion this should be changed to 25 working days. We note that this would accord with the timeframe for a statement of defence to a counterclaim to be filed, which is 25 working days (Rule 5.57).
- 7 Rule 8.4 includes at paragraph 7 a requirement about when will-say statements must be filed for a judicial settlement conference. This requirement is already included in rule 7.3, which sets out all of the rules for a judicial settlement conference. We believe that this paragraph should be removed from rule 8.4.
- 8 Rule 12.5, which provides for service of an application for summary judgment out of New Zealand, specifies a time requirement for the proceedings to be served not less than 15 working days before the hearing where the service takes place in Australia. As the standard time for service (in Rule 12.7) has, in accordance with recent changes in the High Court, been made 25 working days before the hearing, we believe that this should be standardised to 25 working days regardless of where a party is located.

9 We trust that the above observations are of assistance. If you have any additional questions, please do not hesitate to contact us.

Yours sincerely



Jonathan Forsey / Hayley Dale
Special Counsel / Professional Support Lawyer

d +64 3 372 6436
hayley.dale@duncancotterill.com

Thomas Cleary - Draft District Courts Rules 2013

From: "Brett Cunningham" <brettcunningham@xtra.co.nz>
To: <thomas.cleary@justice.govt.nz>
Date: 11/8/2013 12:58 p.m.
Subject: Draft District Courts Rules 2013
CC: "Rhyn Visser" <Rhyn.Visser@lawsociety.org.nz>

Hello Thomas

Could rule **5.1 How to determine proper registry** be expanded to provide that, where centralised case management and filing apply, a party may file documents not only by post to the centralised registry but in person at either the central registry or the proper registry.

At present there is the anomolous situation wherein a courier but not a party may deliver a document for filing to the Auckland office of the District Court in respect of a proceeding in a proper court other than Auckland despite a party being required, if filing by post, to send documents to the postal address of the central registry and not of the proper court.

Regards

Brett Cunningham
Barrister