



THE RULES COMMITTEE

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Wellington

6 September 2000

Minutes/3/2000.

CIRCULAR NO 38 OF 2000

Minutes of the Meeting held on Friday 25 August 2000

The meeting called by Agenda/3/2000 was held in the Judges Common Room, High Court, Wellington on Friday 25 August 2000 commencing at 9.30am.

1. Preliminary

In attendance

The Chief Justice (The Rt Hon Dame Sian Elias GNZM)
The Hon Justice Fisher (in the Chair)
The Hon Justice Chambers
The Hon Justice Wild
Master G J Venning
Judge C J Doherty (for Chief District Court Judge Young)
Judge J P Doogue
Ms E D France (Acting Solicitor-General)
Mr K McCarron (for the Chief Executive, Department for Courts)
Mr C F Finlayson
Mr G E Tanner (Chief Parliamentary Counsel)
Ms E Tobeck (Clerk to the Rules Committee)
Miss M A Soper (Secretary)

Mr A Bridgeman and Mr R McDuff (from the New Zealand Insolvency and Trustee Service, by invitation)

(a) *Apologies*

The Attorney-General (The Hon Margaret Wilson)
Chief District Court Judge Young
Mr T C Weston QC

(b) *Confirmation of minutes*

On the motion of Justice Chambers, seconded by Ms Tobeck, the minutes of the meeting held on Friday 2 June 2000 were taken as an accurate record and were confirmed.

2. Matters referred to Parliamentary Counsel for drafting

(a) *Rule 183 and proposed new Property Law Act*

The Committee noted that this item is for action when necessary and agreed to delete it from the agenda until the new Property Law Act is enacted.

(b) *District Courts Rules*

Discussion

The Committee noted that the District Court Rules Subcommittee has some final points to address in relation to the District Courts Rules.

The Committee noted that there are differences in jurisdiction because of specific provisions in the District Courts Act 1947 (the District Courts do not have a charging order nisi or the entitlement to appoint counsel to assist the court for example).

The Committee noted that there are differences in authority for making rules (District Courts Act, s 122 and Judicature Act 1908, s 51C). The Committee noted that there may be a need to amend the High Court Rules where the District Courts Rule is better (search of court records for example).

In respect of costs the Committee noted that the policy issues of party and party costs are more acute in the District Courts. The Subcommittee had agreed to adopt the High Court regime and needed only to decide the appropriate rates.

Decisions

The Committee agreed that the costs regime in the District Court will remain the same until the rates are decided.

The Committee agreed to circulate Parliamentary Counsel Office's draft with a view to it being approved at the meeting on Monday 9 October 2000.

3. Matters referred for statutory amendment

(a) *Masters jurisdiction*

The Committee agreed to take this matter off the agenda on the basis that the Committee has done all it can. The amendment has been supported in principle by the Minister of Justice. The Secretary agreed to check on its progress from time to time.

4. Unification of High and District Courts Rules

Discussion

The Committee noted that there is a degree of commonality in the High Court Rules and the District Courts Rules, but also that the District Courts should not necessarily be burdened with procedures available in the High Court which are out of proportion to the issue at stake. Particular areas will need a separate regime such as, for example, small claims.

Decision

The Committee supported the proposal that summary instalment orders be made by the Official Assignee on the basis that there is a right of appeal to the District Court.

(b) *Master Gambrill's proposals*

The Committee agreed that Rule 839(2) should be amended so that the affidavit be filed not earlier than three days before the hearing, because an affidavit filed at least three days before the hearing tends to be stale. The matter was referred to the Parliamentary Counsel office.

The second point raised by Master Gambrill was that if a debtor files in the Christmas period there is no provision for the 14 day time limit to be extended. This needs an amendment to s 19(1)(d) of the Insolvency Act 1967 and the matter was referred to the Ministry of Economic Development accordingly. The Committee alerted Messrs Bridgeman and McDuff to the difficulties that have arisen in the context of the Companies Acts with a view to avoiding similar problems. The definitions of "working day" are different in the High Court Rules than under both the Companies Acts 1955 and 1993. This means that some working days in the Companies Acts are court holidays. As a result Rule 700ZJ and forms 64O to R have become very complex.

The meeting closed at 3.15pm.

The next meeting will be held on 9 October 2000.

Margaret Soper
Secretary

ADDENDUM TO THE MINUTES:*Action required by:*Justice Fisher:

- Write to Justice Williams re criminal procedure
- Write to Minister of Justice on jurisdiction of Rules Committee over District Courts Procedure
- Circulate agendas and minutes to the Judges

Justice Chambers

- Member of District Courts subcommittee

Justice Wild

- Convene Costs subcommittee
- Expert Witnesses

Master Venning

- Forward criminal procedure practice notes to Mr McCarron
- Member of Costs subcommittee
- Practice Notes

Judge Doogue

- Convene District Courts subcommittee
- Unification of High and District Court Rules

Judge Doherty

- Member of District Courts subcommittee
- Member of Costs subcommittee
- Expert Witnesses

Mr McCarron

- Convene Criminal Practice Subcommittee
- Arrange for annual report of committee
- Website (with Mr Finlayson and Secretary)
- Insolvency

Mr Weston

- Member of Costs subcommittee
- Expert Witnesses
- Practice Notes

Mr Finlayson

- Member of District Courts subcommittee
- Convene Admiralty Rules subcommittee (write to Justice Williams and Judge Perkins)
- Website (with Mr McCarron)
- Electronic Transactions Rules
- Expert Witnesses