

IN CONFIDENCE

High Court Amendment Rules 2010

Governor-General

Order in Council

At Wellington this day of 20

Present:
in Council

Pursuant to section [xx] of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Rules

1 Title

These rules are the High Court Amendment Rules 2010.

2 Commencement

These rules come into force on [to come].

3 Principal rules amended

These rules amend the High Court Rules set out in Schedule 2 to the Judicature Act 1908.

4 New rule 1.2 substituted

Rule 1.2 is revoked and the following rule substituted:

“1.2 Objective

- “(1) The objective of these rules is to secure the just, speedy and inexpensive determination of any proceeding or interlocutory application according to law.
- “(2) Without limiting the generality of subclause (1), the objective stated in that subclause includes the following goals:
- “(a) the efficient use of the judicial and administrative resources available for the purposes of the court:
 - “(b) the efficient disposal of the court’s overall caseload:
 - “(c) the disposal of all proceedings and interlocutory applications in a timely manner:
 - “(d) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.”

5 New rule 1.2A inserted

The following rule is inserted after rule 1.2:

“1.2A General obligation of parties and lawyers

- “(1) The parties to a proceeding or interlocutory application must conduct it in a way that is consistent with the objective of these rules.

- “(2) A party’s lawyer must, while conducting on the party’s behalf a proceeding or an interlocutory application:
- “(a) take account of the duty imposed by subclause (1); and
 - “(b) assist the party to comply with that duty.
- “(3) In this rule **lawyer** includes counsel, the solicitor on the record as acting for a party, and any partner or employee of that solicitor.
- “(4) This rule complements the Lawyers and Conveyancers Act 2006 and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, and does not limit or affect the duties on lawyers imposed by that Act or those Rules.
- “(5) The duty in subclause (1) includes the duties (which may be performed directly by each party or through that party’s lawyer):
- “(a) to define the issue or issues truly in dispute:
 - “(b) to confine the evidence adduced and submissions made to that issue or issues:
 - “(c) to cooperate on procedural arrangements with opposing lawyers and court staff:
 - “(d) to consider the possibility of resolving the proceeding or interlocutory application by negotiation or alternative dispute resolution process when practicable:
 - “(e) not to take any step with the sole or main purpose of causing delay in the determination of the proceeding or interlocutory application:
 - “(f) not to advance any submission or take any point which:
 - “(i) has no prospect of success; and
 - “(ii) causes delay.
- “(6) Nothing in this rule requires a party to take any step to protect or further the substantive interests of another party, or a lawyer to take any step to protect or further the substantive interests of a party other than the lawyer’s client.
- “(7) This rule does not limit or affect any privilege (for example, for settlement negotiations or mediation) under the Evidence Act 2006.”

6 Rule 14.6 (Increased costs and indemnity costs) amended
Rule 14.6 is amended by adding the following subclause (5):

“(5) When making an order under subclause (3) or subclause (4), the court may take account of any failure by or on behalf of a party to comply with rule 1.2A.”

7 New subpart 3 of Part 14 inserted

The following subpart is inserted after rule 14.23:

“Subpart 3—Costs against lawyers
personally

“14.24 Breach of lawyer’s general duty

“(1) If the court is satisfied that a party’s lawyer has breached the duty set out in rule 1.2A(2), it may order the lawyer personally to pay any costs which that breach has caused.

“(2) If a lawyer has been ordered to pay costs under subclause (1), the lawyer must not recover the costs from his or her client.

“(3) Costs ordered under subclause (1) may be fixed either as a contribution to a party’s actual costs or on an indemnity basis.”

Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

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

Date of notification in *Gazette*:

These rules are administered by the Ministry of Justice.
