



THE MATRIMONIAL PROPERTY RULES 1988

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 14th day of March 1988

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL
 PURSUANT to subsections (3) and (3A) of section 53 of the Matrimonial Property Act 1976 (as substituted by section 17 of the Family Courts Act 1980 and as amended by section 2 of the Matrimonial Property Amendment Act 1983), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

ANALYSIS

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RULES

1. Title and commencement—(1) These rules may be cited as the Matrimonial Property Rules 1988.

(2) These rules shall come into force on the 18th day of April 1988.

2. Interpretation—(1) In these rules, unless the context otherwise requires,—

“The Act” means the Matrimonial Property Act 1976:

“Registrar” means the Registrar of a Family Court; and includes any Deputy Registrar:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

(2) In these rules a reference to a numbered form is a reference to the form so numbered in the Schedule to these rules.

Disclosure

3. Application—(1) Rules 4 and 5 of these rules shall apply to—

(a) Every application made to a Family Court on or after the 18th day of April 1988 for an order under section 25 (1) (a) of the Act:

(b) Any other application, being an application for an order under the Act (other than one under section 25 (1) (a)) to which a Family Court, either on application or on its own motion, applies rules 4 and 5 of these rules.

(2) These rules shall apply in addition to any relevant rules in the District Courts Rules 1948, and if in any proceedings any question arises as to the application of these rules or if a situation arises for which no provision is made either under these rules or those rules, the Family Court shall dispose of the case in such manner as the Family Court thinks best calculated to promote the ends of justice.

4. Affidavit disclosing property—(1) Where this rule applies in respect of any application, the applicant shall, within 20 working days of filing the application or within such longer time as the Family Court or a Family Court Judge on application may allow,—

(a) File an affidavit in form MP1 in the office of the District Court in which the application was filed; and

(b) Effect personal service of a copy of the affidavit on the respondent to the application.

(2) The respondent to an application to which this rule applies shall, within 20 working days of service on the respondent of the copy of the affidavit referred to in subclause (1) (b) of this rule or within such shorter or longer time as the Family Court or a Family Court Judge on application may specify,—

(a) File an affidavit in form MP1 in the office of the District Court in which the applicant’s affidavit was filed under subclause (1) (a) of this rule; and

(b) Serve a copy of the affidavit on the applicant.

(3) If the respondent to an application to which this rule applies has not, at the time of the filing by the respondent of an affidavit in form MP1,

already filed an address for service, that affidavit shall state an address for service in accordance with the District Court Rules 1948.

5. Insufficient affidavit—If either party to an application to which this rule applies files an affidavit in form MP1, which purports to set out the property of that party that is or may be in issue in the proceedings, and the other party believes on reasonable grounds that the affidavit does not accurately set out the nature and value of the property of the first-mentioned party that is or may be in issue in the proceedings, the other party may apply to the Family Court, either *ex parte* or on notice, for—

- (a) An order requiring the party in default to file a sufficient affidavit; or
- (b) An order, under section 38 (1) of the Act, for an inquiry into the nature and value of the property of the party in default which is or may be in issue in the proceedings.

6. Failure to file affidavit or sufficient affidavit—(1) If a respondent who is required under these rules to file an affidavit in form MP1—

- (a) Fails to file an affidavit in form MP1; or
- (b) Fails to file a sufficient affidavit in form MP1,—

the applicant may apply, either *ex parte* or on notice, to the Family Court or a Family Court Judge for an order—

- (c) Requiring the respondent to attend at a time and place stated in the order for examination by the Family Court as to any or all of the matters required to be disclosed in an affidavit in form MP1; or
- (d) Under section 38 (1) of the Act for an inquiry into the nature and value of the property of the party in default which is or may be in issue in the proceedings.

(2) On an application under subclause (1) (a) of this rule, the Family Court or a Family Court Judge may make an order for the attendance and examination of the respondent and for the production of any books or documents relating to the respondent's property.

(3) An order made under subclause (2) of this rule shall be in form MP2 and shall be served personally upon the respondent.

(4) On the failure of the respondent to attend for examination at the time and place appointed, a Family Court Judge may issue a warrant in form MP3 to arrest the respondent and bring the respondent before the Family Court as soon as possible.

(5) If the applicant fails to file an affidavit in form MP1, or a sufficient affidavit in form MP1, as the case may be, the Court may order the application to be—

- (a) Dismissed; or
- (b) Stayed until the order is complied with.

(6) The failure by the applicant or the respondent to file an affidavit in form MP1, or a sufficient affidavit in form MP1, as the case may be, may be taken into account by the Family Court in exercising its power under section 40 of the Act to make an order as to costs.

7. Failure to attend for examination or to comply with directions in relation to examination—(1) If the respondent—

- (a) Fails to comply with an order made under rule 6 (2) of these rules; or
- (b) On attending or being brought before the Family Court for examination under rule 6 of these rules, wilfully and without lawful excuse disobeys any direction given to the respondent by

the Family Court in relation to that examination (including a direction to answer questions),—

the Family Court may order that the respondent be allowed to defend the application only on such terms as the Family Court thinks fit.

(2) Nothing in this rule limits section 112 of the District Courts Act 1947.

8. Power to summon witnesses—(1) Where the Family Court believes in relation to any examination to be held under rule 6 of these rules that any person (other than the respondent)—

(a) Has possession of any book, paper, or document relating to the affairs or property of the respondent; or

(b) Is capable of giving information concerning the respondent's property or concerning the respondent's liabilities,—

the Family Court may issue a summons in form MP4 requiring that person to appear before the Family Court as a witness at the time and place appointed in the summons.

(2) Any person so summoned may be required to produce any book, paper, or document relating to the affairs or property of the respondent.

(3) No person who is required by a summons issued under subclause (1) of this rule to travel more than 20 kilometres to attend the examination shall be bound to attend unless expenses in accordance with the scale prescribed by regulations made under the Summary Proceedings Act 1957 are tendered to that person.

(4) On the failure of any person to appear before the Family Court in answer to a summons under subclause (1) of this rule, a Family Court Judge may issue a warrant in form MP5 to arrest that person and bring that person before the Family Court as soon as possible.

9. Execution of warrants—(1) A person to whom a warrant under rule 6 (4) or rule 8 (4) of these rules is issued may execute it forthwith but shall not be obliged to do so if that person believes that the person to be arrested could not, within 72 hours after the arrest, be brought before the Family Court.

(2) A warrant under rule 6 (4) or rule 8 (4) of these rules shall cease to have effect if a sufficient affidavit is filed.

(3) Every respondent or other person apprehended under a warrant under rule 6 (4) or rule 8 (4) of these rules shall be bailable as of right.

10. Conduct of examination—(1) An examination under rule 6 of these rules shall be made orally on oath before the Family Court.

(2) Every respondent who is brought before a Family Court under rule 6 of these rules shall appear personally, and may be represented by a barrister or solicitor who may examine the respondent and be heard on the matter of the respondent's property.

(3) Any witness may be cross-examined by the respondent or the respondent's barrister or solicitor.

(4) Any examination under rule 6 of these rules may from time to time be adjourned by the Family Court to a time and place to be appointed.

(5) On any examination under rule 6 of these rules, sections 46 to 49A of the Summary Proceedings Act 1957 shall apply, so far as they are applicable and with the necessary modifications, as if the examination were the hearing of a charge.

Conference

11. Power of Judge to call conference—(1) For the purpose of ensuring that any application or intended application under the Act may be determined in a just, expeditious, and economical manner, a Family Court Judge may at any time, either on the application of either party or intended party or their counsel or without such application, on such terms as the Family Court Judge thinks fit, direct the holding of a conference of—

(a) Parties or intended parties; or

(b) The counsel representing the parties or intended parties.

(2) The Family Court Judge shall preside over the conference and may adjourn the conference from time to time and from place to place.

(3) Where the conference is held pursuant to subclause (1) (a) of this rule, the counsel representing any party or intended party may attend either in the place of the party or intended party or with the party or intended party.

(4) Where the conference is held pursuant to subclause (1) (b) of this rule, any party or intended party who is not represented by counsel may attend the conference of counsel.

12. Orders and directions—(1) At any conference held pursuant to rule 11 of these rules the Family Court Judge presiding may make such orders and give such directions as appear best adapted to secure the just, expeditious, and economical disposal of the application under the Act.

(2) Without limiting the generality of subclause (1) of this rule, the Family Court Judge may—

(a) Settle the issues to be determined:

(b) Direct what persons shall be joined as parties to the application or direct that the name of any party be joined or struck out:

(c) Direct which parties shall be served:

(d) Direct by whom and within what time any affidavit or other document shall be filed:

(e) Require any party to make admissions in respect of questions of fact, and, if that party refuses or fails to make an admission in respect of any such question, require that party (subject to the direction of the Family Court Judge hearing the application) to bear the costs of proving that question at the hearing:

(f) Make any order or issue any warrant or summons authorised by rules 3 to 10 of these rules:

(g) Abridge, extend, or fix a time for the filing of any document or the doing of any other thing:

(h) Require further or better particulars of any facts or other circumstances connected with the application:

(i) Require any party to make discovery or to produce documents or permit any party to administer interrogatories:

(j) Appoint any person pursuant to section 38 (1) of the Act to make an inquiry into the matters of fact in issue between the parties:

(k) Fix a time and place for the hearing of the proceedings:

(l) Give such consequential directions as may be necessary.

13. Non-compliance with order—If any party fails to comply with any order made under rule 12 of these rules, the following provisions shall apply:

- (a) If the party failing to comply with the order is the applicant in the proceedings, the Family Court Judge may order the proceedings to be—
 - (i) Dismissed; or
 - (ii) Stayed until the order is complied with:
- (b) If the party failing to comply with the order is the respondent, the Family Court Judge may order that the respondent be allowed to defend the application only on such terms as the Family Court Judge thinks fit:
- (c) The failure may be taken into account by the Family Court in exercising its power under section 40 of the Act to make an order as to costs.

Service Outside New Zealand

14. Service and execution of process outside New Zealand—(1) Rule 89 of the District Courts Rules 1948 shall not apply to proceedings taken in the Family Court under the Matrimonial Property Act 1976.

(2) Any person who makes an application to the Family Court under the Matrimonial Property Act 1976 and who wishes to have that application served outside New Zealand shall apply to the Family Court for directions.

(3) On any such application for directions the Family Court—

(a) Shall give directions relating to the following matters:

(i) The time within which the respondent may file a notice of defence; and

(ii) The method of service of the application to the Family Court under the Matrimonial Property Act 1976; and

(b) May give directions relating to any other matter relevant to the service outside New Zealand of the application to the Family Court under the Matrimonial Property Act 1976.

(4) The Registrar shall issue, for service on the respondent,—

(a) A copy of the application; and

(b) A notice in form MP6.

SCHEDULE

FORMS

Form MP1

Rule 4

AFFIDAVIT OF ASSETS AND LIABILITIES

Matrimonial Property Act 1976

In the District Court
at

*In the matter of the Matrimonial
Property Act 1976*

and

*In the matter of an application for
an order [Here describe the order
applied for]*

Between [Full name], of [Address], [Occupation]
Applicant,

And [Full name], of [Address], [Occupation].

I, [Full name] of [Address], [Occupation], make oath and say:

1. My assets and liabilities are described in paragraphs 3 to 6 of this affidavit.
2. The assets described in paragraph 3 of this affidavit include—
 - (a) All property owned by me either in my sole name or jointly or in common with any other person or persons:
 - (b) Any interest to which I am beneficially entitled in any property:
 - (c) All property owned by me whether it is in New Zealand or elsewhere:
 - (d) All property owned by me whether I consider it to be matrimonial property or separate property:
 - (e) All property owned by me irrespective of the time at which or the manner in which it was acquired.

Assets

3. My assets are as follows:
 - (a) Matrimonial home or homestead:
 - Location:
 - Share owned:
 - Value at separation:
 - Value at date of affidavit:
 - (b) Land and buildings:
 - Location:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:

SCHEDULE—*continued*FORMS—*continued*Form MP1—*continued*

- (c) Household chattels:
 - Location:
 - Share owned:
 - Identify those claimed as matrimonial property and those claimed as separate property:
 - Value at separation:
 - Value at date of affidavit:
- (d) Superannuation:
 - Name of scheme or schemes:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (e) Money in any bank:
 - Bank:
 - Account No:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (f) Money not in bank or invested:
 - Location:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (g) Money lent or in hands of any person:
 - Name and address:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (h) Government stock, debentures, or bonds:
 - Details:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (i) Public company shares, debentures, or bonds:
 - Details:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (j) Private company shares, debentures, or bonds:
 - Details:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:

SCHEDULE—*continued*FORMS—*continued*Form MP1—*continued*

- (k) Plant and machinery:
 - Description:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (l) Livestock:
 - Description:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (m) Interest in business, partnership, stock-in-trade, or venture of any kind:
 - Description:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (n) Motor vehicles:
 - Description:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (o) Life assurance:
 - Life assured:
 - Name and number:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (p) Property insurance:
 - Name and number:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (q) Compensation or damages:
 - Description:
 - Share owned:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:
- (r) Debt or mortgage owed to me:
 - Description:
 - Share owed to me:
 - Claimed as matrimonial property or separate property:
 - Value at separation:
 - Value at date of affidavit:

SCHEDULE—*continued*FORMS—*continued*Form MP1—*continued*

- (s) Interest in trust or estate:
 Description:
 Share:
 Claimed as matrimonial property or separate property:
 Value at separation:
 Value at date of affidavit:
- (t) Any other property or asset not specified above that is, or could be, the subject of an order in the proceedings:
 Description:
 Share owned:
 Claimed as matrimonial property or separate property:
 Value at separation:
 Value at date of affidavit:
4. Valuations of items described in paragraphs (a), (b), (c), and (d) of paragraph 3 of this affidavit are attached marked "A", "B", "C", and "D" respectively.

Liabilities

5. My liabilities are as follows:
- (a) Mortgages secured over matrimonial home:
 Mortgagee:
 Amount owing:
- (b) Mortgages secured over any other land or buildings:
 Property:
 Mortgagee:
 Amount owing:
- (c) Bank overdrafts or term loans:
 Bank:
 Amount owing:
- (d) Borrowing against life assurance policy:
 Name and number:
 Amount owing:
- (e) Borrowing against superannuation contributions:
 Name of scheme:
 Amount owing:
- (f) Loans secured over chattels, plant, machinery, or livestock:
 Property:
 Lender:
 Amount owing:
- (g) Hire purchase loans:
 Goods:
 Lender:
 Amount owing:
- (h) Other loans:
 Lender:
 Amount owing:
- (i) Unsecured debts:
 Lender:
 Amount owing:

SCHEDULE—continued

FORMS—continued

Form MP2

Rule 6 (3)

ORDER TO ATTEND FOR EXAMINATION

Matrimonial Property Act 1976

(Heading—As for form MP1)

To: The Respondent

- * You have failed to file an affidavit as required by rule 4 of the Matrimonial Property Rules 1988.
- * You have failed to file a sufficient affidavit as required by rule 5 of the Matrimonial Property Rules 1988.

You are ordered to attend for examination by the Family Court as to any or all of the matters required to be disclosed in an affidavit under the Matrimonial Property Rules 1988.

You are ordered to appear at a.m.(p.m.) on [Date] at the Family Court at

If you file a sufficient affidavit before the above date, you need not appear for examination.

- * You are ordered to bring to the examination any books or documents relating to your property.

.....
Registrar

.....
Date

The office of the District Court is open from to on Mondays to Fridays inclusive.

*Delete if not applicable.

NOTES

Representation by a lawyer

You may be represented at the examination by a lawyer if you wish.

Failure to appear

If you fail to appear in answer to this order, a warrant may be issued for your arrest.

Advice

If you need help, consult a lawyer or contact a District Court office immediately.



SCHEDULE—*continued*

FORMS—*continued*

Form MP3

Rule 6 (4)

WARRANT TO ARREST RESPONDENT FOR EXAMINATION

Matrimonial Property Act 1976
(Heading—As for form MP1)

To: Every Constable

An order was made on requiring the respondent to appear on [Date] at the Family Court at to be examined as to any or all of the matters required to be disclosed in an affidavit under the Matrimonial Property Rules 1988.

* The examination was adjourned to

The order could not be served (or The respondent did not appear).

I direct you to arrest the respondent and bring the respondent before a Family Court as soon as possible.

If you believe the respondent cannot be brought before a Family Court within 72 hours after the arrest of the respondent, you need not execute the warrant immediately.

.....
Judge

.....
Date

*Delete if not applicable

SCHEDULE—*continued*

FORMS—*continued*

Form MP4

Rule 8 (1)

SUMMONS TO WITNESS TO ATTEND EXAMINATION

Matrimonial Property Act 1976
(Heading—As for form MP1)

To:
.....
.....

[*Full name*] has been ordered to attend for examination as to any or all of the matters required to be disclosed in an affidavit under the Matrimonial Property Rules 1988.

I believe—

- * That you have possession of books, papers, or documents relating to the affairs or property of the respondent; or
- * That you are capable of giving information concerning the respondent's property or the respondent's liabilities.

YOU ARE SUMMONED to appear as a witness at the examination at
..... a.m.(p.m.) on at the Family Court at

- * You are required to bring with you and produce [*Set out details of the book, paper, or document*].

.....
Registrar

.....
Date

*Delete if not applicable.

NOTES

Travelling expenses

If you are required to travel more than 20 kilometres to attend the examination, you are entitled to a sum for expenses.

Failure to appear

If you fail to appear in answer to this summons, a warrant may be issued for your arrest.

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

SCHEDULE—continued

FORMS—continued

Form MP5

Rule 8 (4)

WARRANT TO ARREST WITNESS FOR ATTENDANCE AT EXAMINATION

Matrimonial Property Act 1976
(Heading—As for form MP1)

To: Every Constable

[Full name], of [Address], [Occupation], was summoned to appear on
.. at as a witness at an examination of the respondent as to any
or all of the matters required to be disclosed in an affidavit under the
Matrimonial Property Rules 1988.

The witness failed to appear.

I am satisfied—

- (a) That the summons was duly served on the witness; and
- (b) That the witness was not required to travel more than 20 kilometres to attend the examination (or That expenses in accordance with the prescribed scale were tendered to the witness).

I direct you to arrest the witness, [Full name], and bring him (or her) before a Family Court as soon as possible.

If you believe that the witness cannot be brought before the Family Court within 72 hours after the arrest of the witness, you need not execute the warrant immediately.

.....
Judge

.....
Date

SCHEDULE—continued

FORMS—continued

Form MP6

Rule 14 (4)

NOTICE TO RESPONDENT RESIDING OUTSIDE NEW ZEALAND OF APPLICATION UNDER MATRIMONIAL PROPERTY ACT 1976

In the District Court

at

To:

.....

.....

An application (see the attached copy) has been filed in this Court by [Full name]. The order or orders sought by the applicant are specified in the application.

Jurisdiction of Court

The Court may make an order for where [Set out bases for jurisdiction in respect of each order sought following closely the relevant provisions of the Matrimonial Property Act 1976].

Notice of defence

If you wish to defend the application or be heard on it, you should, either directly or through a lawyer in the place where you are, send authority to a lawyer in New Zealand, by air mail, instructing that lawyer to act for you. If you wish to defend the application, you must, within days of receiving this notice,—

- (a) File a notice of defence in this office of the Court; and
- (b) Serve a copy of the notice of defence on the other party to the proceedings. That copy may be delivered to the address for service given by the applicant.

If your notice of defence is not filed within that time, the case may proceed without further notice to you.

Address for service

If you do not wish to defend the application but you do wish to know what is happening, you should—

- (a) File in this office of the Court a notice giving the address of a place in New Zealand at which documents can be left for you; and
- (b) Serve a copy of the notice on the other party to the proceedings. That copy may be delivered to the address for service given by the applicant.

Advice

If you need help, consult a lawyer in the place where you are immediately.

SCHEDULE—*continued*FORMS—*continued*

If you intend to employ a lawyer in New Zealand, you should ask about your eligibility for legal aid in this country.

.....
Registrar.

.....
Date

C. J. HILL,
Acting for Clerk of the Executive Council.

EXPLANATORY NOTE

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

These rules, which come into force on 18 April 1988, prescribe procedures that apply in Family Courts in relation to proceedings under the Matrimonial Property Act 1976.

Rules 3 to 10 provide for the disclosure of assets in matrimonial property cases.

Rules 10 to 13 empower a Family Court Judge to hold a conference for the purpose of ensuring that any application or intended application under the Matrimonial Property Act 1976 is determined in a just, expeditious, and economical manner.

Rule 14 allows applications made to a Family Court under the Matrimonial Property Act 1976 to be served outside New Zealand.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 17 March 1988.

These rules are administered in the Department of Justice.