

JU301*

District Court of Western Australia Act 1969

District Court Amendment Rules (No. 2) 2011

Made by the Judges of the District Court.

1. Citation

These rules are the *District Court Amendment Rules (No. 2) 2011*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on 1 July 2011.

3. Rules amended

These rules amend the *District Court Rules 2005*.

4. Rule 6 amended

After rule 6(2)(a) insert:

- (ba) a reference in the RSC to “case manager” or to “Case Management Registrar” is to be taken as being a reference to a legally qualified Registrar, unless the context requires otherwise; and
- (bb) a reference in the RSC to a case management direction under Order 4A is to be taken as being a reference to a case management direction made under Part 4 of these rules.

5. Rule 29 replaced

Delete rule 29 and insert:

29. Various RSC provisions do not apply

These provisions of the RSC do not apply to a case —

- Order 4A
- Order 29
- Order 33 (other than rules 9 and 10)
- Order 59 rule 3(2)
- Order 59 rule 9
- Order 60A rule 2

6. Rule 38 amended

In rule 38(6) delete “rule 44(1) or applying to the Court under rule 45.” and insert:

rule 44(1).

7. Rule 43A inserted

In Part 4 Division 3 Subdivision 6 after the heading insert:

43A. Term used: Inactive Cases List

In this Subdivision —

Inactive Cases List means a list of inactive cases kept by the Court under rule 44D.

8. Rule 44 amended

In rule 44(2) delete “becomes” and insert:

is taken to be

9. Rules 44A to 44G inserted

After rule 44 insert:

44A. Cases inactive for 12 months deemed inactive

If no document is filed in a case for 12 months by any party to the case, the case is taken to be inactive unless the Court orders otherwise.

44B. Registrar may issue summons to show cause

- (1) A Registrar may at any time summons the parties to a case to attend a hearing before a Registrar to show cause why the case should not be put on the Inactive Cases List.
- (2) The hearing date for the summons must be at least 7 days after the date on which it is issued.
- (3) The issue of the summons does not prevent any party to the case from filing any document in the case.
- (4) At the hearing the Registrar may order that the case be put on the Inactive Cases List if not satisfied that the case is being conducted in a timely way, having regard to the requirements of these rules and the circumstances of the case.
- (5) An order may be made under subrule (4) in the absence of any party.

44C. Springing order that case be put on Inactive Cases List

- (1) A Judge or Registrar making an interlocutory order or case management direction in a case may include an order that unless the interlocutory order or direction is complied with by a date stated in the order or direction, the case is taken to be inactive.
- (2) Unless countermanded by a Judge or Registrar before it has effect, the order has effect according to its terms.

44D. Parties to be notified of case being on Inactive Cases List and to advise clients

- (1) When a case is taken to be inactive under rule 44(2) or 44A, or an order is made under rule 44B(4), or an

order made under rule 44C(1) takes effect, the Principal Registrar must —

- (a) put the case on the Inactive Cases List; and
 - (b) give all parties to the case written notice that the case is on the Inactive Cases List and of the effect of rules 44E and 44G.
- (2) If under subrule (1) a practitioner for a party is notified, the practitioner must, as soon as practicable, notify the party of —
- (a) the fact that the case is on the Inactive Cases List and why; and
 - (b) the effect of rules 44E and 44G.

44E. Consequences of case being on Inactive Cases List

If a case is on the Inactive Cases List, only these documents can be filed in the case —

- (a) a Form 1 (Entry for trial);
- (b) a consent order finalising the case;
- (c) a summons for an order under rule 44F(3);
- (d) a summons for an order dismissing the case for want of prosecution;
- (e) any document that relates to a document listed above.

44F. Removing cases from Inactive Cases List

- (1) If a Form 1 (Entry for trial), or a consent order finalising the case, is filed in a case on the Inactive Cases List, the case is taken to have been taken off the list.
- (2) Any party to a case on the Inactive Cases List may apply to the Court for an order that the case be taken off the Inactive Cases List.
- (3) The Court may order a case be taken off the Inactive Cases List if satisfied the case will be conducted in a timely way or for any other good reason.
- (4) An order that a case be taken off the Inactive Cases List may include any conditions necessary to ensure the case is conducted in a timely way.

44G. Certain inactive cases taken to have been dismissed

- (1) A case that is on the Inactive Cases List for 6 continuous months is taken to have been dismissed for want of prosecution.
- (2) If a case is dismissed under subrule (1), the Principal Registrar must give all parties to the case written notice of the fact.

- (3) If under subrule (2) a practitioner for a party is notified, the practitioner must, as soon as practicable, send a copy of the notice to the party.
- (4) If a case is dismissed under subrule (1), any party to it may apply to the Court for, and the Court may make, any order needed as a consequence of the dismissal.

10. Rule 45 deleted

Delete rule 45.

11. Rule 51A inserted

After rule 50 insert:

51A. Time for appealing

Unless another written law provides otherwise, an appeal to the Court against an appealable decision must be commenced within 21 days after the date of the decision.

12. Rule 51 amended

- (1) Delete rule 51(1) and (2) and insert:

- (1) To —

- (a) commence an appeal to the Court against an appealable decision; or
- (b) apply for an extension of time within which to commence such an appeal,

the appellant must file these documents —

- (c) a Form 6 (Appeal notice) that sets out the grounds for the appeal in accordance with subrule (3);
 - (d) any document required by subrule (2).
- (2) If Form 6 says an extension of time within which to commence the appeal is needed, the form must be filed with an affidavit by the applicant or the applicant's lawyer or both explaining why the appeal was not commenced within time.

- (2) Delete rule 51(4) and insert:

- (4) An appeal notice must be served on the respondent either personally or, if the respondent is in a prison, by

sending it to the superintendent of the prison by ordinary pre-paid post.

(3) After rule 51(5) insert:

(6) When an appeal notice is served on a respondent, it must have attached to it a Form 8 (Notice of respondent's intention).

(7) As soon as practicable after serving the respondent the appellant must file a Form 7 (Service certificate).

13. Rule 52 amended

(1) In rule 52(2) delete "a notice of appeal" and insert:

an appeal notice

(2) In rule 52(3) delete "notice of appeal," and insert:

appeal notice,

14. Rule 53 amended

(1) Delete rule 53(1), (2) and (3) and insert:

(1) On being served with an appeal notice, a respondent may file a Form 8 (Notice of respondent's intention).

(2) If the respondent files a Form 8, it must be filed within 21 days after the date on which the respondent is served with the appeal notice.

(3) If a respondent intends to seek to uphold the appealable decision on grounds other than those relied on by the primary court that made it, or to vary the decision, or to cross-appeal, the respondent must include in the Form 9 the grounds for doing so.

(2) After rule 53(5) insert:

(6) If a respondent does not file a Form 8 within the 21 days or any extension of that period ordered by the Court, the respondent is not entitled to take part or be heard in the appeal and is not a party to the appeal for the purposes of these rules.

15. Rule 54 deleted

Delete rule 54.

16. Rule 55 amended

(1) Delete rule 55(1) and (2) and insert:

(1) The appellant and each respondent that has filed a Form 8 (Notice of respondent's intention) in an appeal must attend a directions hearing on the date specified in the appeal notice.

(2) In rule 55(3) delete "the legally" and insert:

a legally

17. Rule 56A inserted

After rule 55 insert:

56A. Dismissing appeals for want of prosecution

If the fee payable under the *District Court (Fees) Regulations 2002* for the allocation of a hearing date for an appeal is not paid or waived within 14 days after the date on which the hearing date is set —

- (a) the Court will not hear the appeal on that hearing date; and
- (b) the parties to the appeal must attend a directions hearing before a Registrar on the date of that hearing date; and
- (c) the Registrar may dismiss the appeal for want of prosecution.

18. Rules 58A and 58B inserted

After rule 57 insert:

58A. Interim orders in appeals, applying for

- (1) At any time after an appeal is commenced and before it is concluded, a party may apply for an interim order or an order amending or cancelling an interim order.
- (2) To make such an application, the party must file, and serve on each other party, a Form 9 (Application in an appeal) with —
 - (a) an affidavit by the applicant or the applicant's lawyer or both explaining why the interim order is wanted; and

- (b) a document setting out the proposed order,
 unless —
- (c) these rules provide otherwise; or
 - (d) another written law provides otherwise; or
 - (e) a judge orders otherwise.

58B. Consenting to orders

The parties to an appeal may consent to an order being made by the court by filing a Form 10 (Consent notice).

19. Rule 58 amended

In rule 58(4) delete “notice of discontinuance” and insert:

Form 11 (Discontinuance notice)

20. Schedule 1 amended

In Schedule 1 after Form 5 insert:

6. Appeal notice (r. 51(1))

District Court of Western Australia		Appeal No:
		Appeal notice
Parties	Appellant Respondent	
Primary court's decision		
Primary court		
Case number		
Parties		
Date of decision		
Judicial officer		
Decision details ¹		
Appeal details		
Notice of appeal	The appellant appeals to the District Court against the above decision.	
Grounds of appeal ²	1.	
Acts that allows appeal ³	section:	
Notice to the respondent ⁴	If you want to take part in this appeal you must file a Form 8 (attached) under the <i>District Court Rules 2005</i> within 21 days after the date on which you are served with this notice and serve it on the appellant. If you file a Form 8 you must attend a directions hearing at the time and place stated below.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Directions hearing ⁵	Date:	Time:
	Place:	

Appellant's details for service ⁶		
Name	Fax No.	
Street address		
Telephone		
Email address		
Reference No.		
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form 6 —

- Examples:
 - Judgment against the defendant for \$40 000.
 - Dismissal of claim to recover possession of real property.
- Set out the grounds in numbered paragraphs.
- State the short title of the Act under which the appeal is being made.
- A copy of Form 8 (Notice of respondent's intention) must be attached to this form when it is served on the respondent.
- The court will complete this row when the appeal notice is filed.
- If the appellant is represented by a lawyer, the appellant's details below must be the lawyer's. If the appellant is self-represented, the details must be the appellant's personal details.

7. Service certificate (r. 51(7))

District Court of Western Australia		Appeal No:
		Service certificate
Parties	Appellant Respondent	
Certificate ¹	I certify that on [date] at [place] [name of server] served the respondent personally with these documents — <ul style="list-style-type: none"> a copy of an appeal notice dated [date]; a copy of every other document that was filed with the appeal notice; a copy of Form 8 (Notice of respondent's intention). I undertake to file an affidavit of service if the Court requires me to.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Note to Form 7 —

- If the documents were posted to the superintendent of the prison in which the respondent is imprisoned, modify this certificate to say when they were posted and to which prison.

8. Notice of respondent's intention (r. 53)

District Court of Western Australia		Appeal No:
		Notice of respondent's intention
Parties	Appellant Respondent	
Notice [Tick one box]	<input type="checkbox"/> ¹ The respondent intends to take part in this appeal. <input type="checkbox"/> ² The respondent does not intend to take part in this appeal and will accept any order made by the court in the appeal other than as to costs.	
Grounds for upholding	<input type="checkbox"/> The respondent will argue the primary court's decision should be upheld on the grounds relied on by the primary court in its decision.	

Other grounds for upholding ³	<input type="checkbox"/> The respondent will argue the primary court's decision should be upheld on the following grounds, not relied on by the primary court in its decision — 1.	
Variation ³	<input type="checkbox"/> The respondent applies for the primary court's decision to be varied as follows — 1. The respondent will argue the primary court's decision should be varied on the following grounds — 1.	
Cross-appeal ³	<input type="checkbox"/> The respondent also appeals against the primary court's decision and will rely on the following grounds — 1.	
Last date for appealing ⁴	Last date: Is an extension of time needed? Yes/No	
Respondent's details for service⁵		
Name Street address Telephone Email address Reference No.	Fax No.	
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

Notes to Form 8 —

1. If this box is ticked, complete one or more of the next 5 rows and the respondent's details for service.
2. If this box is ticked, ignore the next 5 rows and complete the respondent's details for service.
3. Set out the grounds in numbered paragraphs.
4. Complete this only if the respondent also appeals against the primary court's decision.
5. If the respondent is represented by a lawyer, the respondent's details below must be the lawyer's. If the respondent is self-represented, the details must be the respondent's personal details.

9. Application in an appeal (r. 58A)

District Court of Western Australia		Appeal No:
		Application in an appeal
Parties	Appellant Respondent	
Applicant	Appellant/Respondent	
Application ¹	The applicant applies for —	
Conference between parties [Tick one box]	<input type="checkbox"/> The parties to this application have conferred about the issues giving rise to this application and have not resolved them. <input type="checkbox"/> The parties to this application have not conferred about the issues giving rise to this application because — 2	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:

Notes to Form 9 —

1. State —
 - the order or orders sought; and
 - the written law and provision under which the application is made.
2. State the reasons why the parties have not conferred.

10. Consent notice (r. 58B)

District Court of Western Australia		Appeal No:
		Consent notice
Parties	Appellant Respondent	
Consent	We consent to the following order being made —	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

11. Discontinuance notice (r. 58)

District Court of Western Australia		Appeal No:
		Discontinuance notice
Parties	Appellant Respondent	
Notice	The appellant discontinues this appeal.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Dated: 10 May 2011.

Judges' signatures:

Chief Judge P D Martino

Judge M J Bowden

Senior Judge M A Yeats

Judge A M I Schoombee

Judge H J Wisbey

Judge C P Stevenson

Judge S M Deane (QC)

Judge S G Scott

Judge P R Eaton

Judge F C E Davis

Judge P P McCann

Judge P B O'Neal

Judge J A Wager

Judge S E Stone

Judge A S Stavrianou

Judge J G Staude

Judge T D Sweeney

Judge R E Birmingham (QC)

Judge B J H Goetze

Judge A S Derrick

Judge R E Keen