Guidance on Using the Notice of Proceeding when Summary Judgment Sought by Plaintiff

(Form 35A of the District Court Rules 2014)

About the notice of proceeding when summary judgment sought by plaintiff

Form 35A is used, instead of form 1, when a notice of proceeding is being filed, and served, by a plaintiff also making an application for summary judgment.

When being filed and served this form will need to be accompanied by:

* A statement of claim
* A list of documents relied on (form 6)
* An application for summary judgment (using form 17)
* An affidavit in support of the application for summary judgment.

How to use the template

All the required fields are set out in the template on the following two pages.

The sections that you have to fill out are marked with red text. The red text explains what you need to put in. These are fillable form fields, so click on the red text and start typing. The red text will be replaced by the content that you type. If you want to leave the field blank, just enter a space.

The blue text is explanatory notes. Delete these notes before printing the form.

Formatting your form

Before printing the form, check the following:

That the pages are numbered. Numbering should at page 1 on the page after the cover page (i.e. the cover page should not be numbered). The template is set up to automatically number the pages in this matter.

You may print the form either single or double-sided. However, the cover sheet must not be double sided. If you print double sided you must adjust the margins as follows:

* In the “Margins” section in Word, select “Custom Margins”. In the box that pops up, find the field called “Multiple pages”. Select “Mirror Margins” from the dropdown menu, and click OK.
* The wide margin should now be on the left of every front page, and on the right of every reverse page.

Once you have completed the form, print and sign it.

In the District Court

Choose an item. Registry

No: Enter the CIV number (court reference number) if known.

Under the: Enter the Act under which the proceeding is being brought (for example, “Fair Trading Act 1986”). Delete this line if not applicable.

In the matter of Enter in a few words what the dispute is about. For example, “a breach of contract”.

Between: Plaintiff’s full name, address and occupation.

(plaintiff)

And: Defendant’s full name, address and occupation.

(defendant)

Note: if there are more than two parties involved, list their names, addresses and occupations in the format above.

If there is a counterclaim, repeat the fields above for any counterclaim plaintiffs/defendants.

Notice of Proceeding

Next event date: Next court event date (if known). Delete this line if unknown.

Judicial officer: Judge hearing the next event (if known). Delete this line if unknown.

Fill out the option that applies and delete the other option. **NOTE: enter enough lines above so this section is at the bottom of the cover page.**

For an individual: Filed by Person’s name, the Your role in proceedings, e.g. “plaintiff” in person.

OR; for an organisation: Filed by Person’s name, an authorised officer for the Your organisation’s role in proceedings, e.g. “plaintiff”, Enter the name of the organisation.

To the defendant/s:

**This document notifies you that:**

1. a claim, a copy of which is served with this document, has been filed by the plaintiff; and
2. the plaintiff has also applied to this court for immediate judgment against you (on that claim or, if judgment is not sought on the full claim, to the extent stated in the notice of application for summary judgment also served with this document) on the ground that you have no defence (to the plaintiff’s claim or to the plaintiff’s claim to the extent stated in the application).

**Notice of opposition and affidavit setting out defence**

1. If you have a defence to the plaintiff’s claim, you should, not less than 3 working days before the date of hearing shown in the notice of application for summary judgment (also served with this document):
   1. file in the court registry at Court location (e.g. “Manukau”):
      1. a notice of opposition; and
      2. an affidavit sworn by you or on your behalf setting out your defence; and
   2. serve a copy of that notice of opposition and a copy of that affidavit on the plaintiff.
2. The court may give whatever judgment on the plaintiff’s claim against you is thought just if you fail—
   1. to file both a notice of opposition and an affidavit, and to serve copies of them on the plaintiff; and
   2. to appear on the date of hearing in opposition to the plaintiff’s application.

**Statement of defence**

1. You may, in addition to filing a notice of opposition and an affidavit, file a statement of defence.
2. If you want to file a statement of defence,—
   1. you must file it in the registry of the court in which your notice of opposition and your affidavit were filed; and
   2. you must serve a copy of it on the plaintiff; and
   3. you must both file and serve it not less than 3 working days before the date of hearing.

Date: Enter date here (may be handwritten)

Signature: (sign here)

Name: Enter your name

Select your role

Information for defendant(s)

**Advice**

1. Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately.

**Legal Aid**

1. If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3. Choose the statement that applies in regards to legal aid

**Appearance objecting to jurisdiction of court**

1. If you object to the jurisdiction of the court to hear and determine this proceeding, you may, within the time allowed for filing your notice of opposition and your affidavit,—
   1. file in the registry of the court, instead of a notice of opposition and an affidavit, an appearance stating your objection and the grounds for it; and
   2. serve a copy of the appearance on the plaintiff.
2. Such an appearance will not be treated as a submission to the jurisdiction of the court.

**Registry hours**

1. The registry hours of the court are from 9 am to 5 pm, except on court holidays.

**Working days**

1. Working day means any day of the week other than—
   1. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
   2. a day in the period commencing with 25 December in any year and ending with 15 January in the following year; and
   3. if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

**Note: the next two sections are only to be included if the defendant is being served overseas.**

* If the defendant is being served in New Zealand, **delete** both of the following sections.
* If the defendant is to be served in Australia, **delete** the first section (*information for defendant served overseas*) and **complete** the second section (*notice giving prescribed information for defendant served in Australia*).
* If the defendant is being served in a country other than New Zealand or Australia, **complete** the first section (*information for defendant served overseas*) and **delete** the second section (*notice giving prescribed information for defendant served in Australia*).

Information for defendant served overseas

Since you are resident outside New Zealand you are further notified that –

1. The plaintiff has commenced a proceeding against you in the District Court of New Zealand, claiming the relief specified in the attached statement of claim.
2. Although you are resident outside New Zealand, the plaintiff claims that the plaintiff can bring this proceeding against you in the District Court of New Zealand.
3. By New Zealand law, the District Court may exercise jurisdiction in certain classes of case even though the defendant is resident outside New Zealand.
4. See rule 6.23 of the District Court Rules 2014. Specify the particular provision under this rule that allows you to serve the proceeding overseas
5. In this case, the plaintiff claims: specify the acts you allege occurred that mean New Zealand has jurisdiction.
6. Even though the court has jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied that,—
   1. in all the circumstances, a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and
   2. the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.
7. If you want to dispute the jurisdiction of the District Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send authority to a solicitor in New Zealand by airmail instructing that solicitor to act for you.

Notice giving prescribed information for defendant served in Australia

*Sections 8(1)(a) and* *15, Trans-Tasman Proceedings Act 2010 (NZ)*

Please read this notice and the attached document very carefully.

If you have any trouble understanding them, you should get legal advice as soon as possible.

The plaintiff has commenced a proceeding against you in the Full name of court, e.g. “Manukau District Court”. Attached to this notice are list names of documents here; e.g. “a statement of claim and a list of documents relied on (the **attached document(s)**) filed in the Full name of court, e.g. “Manukau District Court”.

Service of the attached document(s) in Australia is authorised by the Trans-Tasman Proceedings Act 2010 (NZ).

**Consequences of the attached document(s) being served on you**

The Full name of court, e.g. “Manukau District Court” can consider and make a decision on any claim set out in the attached document(s).

The decision of the Full name of court, e.g. “Manukau District Court” on this claim (its judgment) may be enforced in Australia or New Zealand.

**Your rights to apply for the proceeding to be stayed**

If a court in Australia is the more appropriate court to decide the claim set out in the attached document(s), you may be able to have the proceeding stayed by applying to the Full name of court, e.g. “Manukau District Court”. If the proceeding is stayed, the claim cannot proceed in the Full name of court, e.g. “Manukau District Court”.

You have 30 working days from the day on which you are served with the attached document(s) to apply for the proceeding to be stayed.

If you think the proceeding should be stayed, it is recommended that you get legal advice as soon as possible.

**Contesting this claim**

If you want to contest this claim, you must take any action set out in the attached document(s) as being necessary to contest the claim. You have 30 working days after the day on which you are served with the attached document(s) to respond.

The statement of defence must contain an address in New Zealand or Australia where documents can be left for you or sent to you.

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Note: keep the following signature block even if you have deleted the preceding section/s.

Date:

Signature:

(Registrar/Deputy Registrar)