

1994—No. 523

SUPREME COURT RULES (AMENDMENT No. 287) 1994

NEW SOUTH WALES



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1. These rules are made by the Rule Committee on 19 September 1994.
2. The Supreme Court Rules 1970 are amended as follows:

Part 52A

After rule 43 insert:

Liability of barrister

43A. (1) Where costs are incurred improperly or without reasonable cause, or are wasted by undue delay or by any other misconduct or default, and it appears to the Court that a barrister is responsible (whether personally or through a servant or agent), the Court may, after giving the barrister a reasonable opportunity to be heard:

- (a) disallow the costs as between the barrister and his or her instructing solicitor or as between the barrister and the client;
- (b) direct the barrister to repay to the client costs which the client has been ordered to pay to any other party; and
- (c) direct the barrister to indemnify any party other than the client against costs payable by the party indemnified.

(2) Without limiting the generality of subrule (1), a barrister is responsible for default for the purposes of that subrule where any proceedings cannot conveniently proceed, or fail or are adjourned without useful progress being made, because of the failure of the barrister:

- (a) to attend in person or by a proper representative;
- (b) to file any document which ought to have been filed;
- (c) to deliver any document which ought to have been delivered for the use of the Court;
- (d) to be prepared with any proper evidence or account; or
- (e) otherwise to proceed.

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(3) The Court may, before making an order under subrule (1), refer the matter to a registrar for enquiry and report.

(4) The Court may order that notice of any proceedings or order against a barrister under this rule shall be given to the barrister's instructing solicitor or client in such manner as may be specified in the order under this subrule.

3. The Supreme Court Rules 1970 are further amended as follows:

(a) SCHEDULE F Form 98

(i) Omit "25A1." and insert instead "25A".

(ii) From paragraph 9 omit "will" where firstly occurring and insert instead "estate".

(b) SCHEDULE F Form 99

Omit "25 (I) (e)" wherever appearing and insert instead "25(2) (f)".

(c) SCHEDULE F Form 104

From paragraph 11, omit "will" where firstly occurring and insert instead "estate".

4. An affidavit file prior to 1 December 1994 that complies with Form 98 or Form 99 or Form 104 as in force immediately before the amendment contained in paragraph 3 takes effect shall be taken to comply with that form as amended by paragraph 3.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendment contained in paragraph 2 is to provide for the costs consequences of delay, misconduct or default by a barrister. Similar provisions already exist in respect of a solicitor.

2. The object of the amendment contained in paragraph 3 is to:

- (a) correct inaccurate rule references in forms;
- (b) substitute references to an estate for references to a will, in certain forms relating to administration of estates.

M.A. Blay,
The Secretary of the Rule Committee