

**LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE**

NEW SOUTH WALES



*[Published in Gazette No. 37 of 18 February 1994]*

1. This rule is made by the Rule Committee on 7 February 1994, and has effect on and from 18 February 1994.

2. The Local Courts (Civil Claims) Rules 1988 are amended as follows:

(a) Part 24 rule 5 (5)

Omit the subrule.

(b) Part 24 rule 6 (3), (4)

After Part 24 rule 6 (2) insert the following subrules:

(3) Subject to subrule (4), service of a subpoena for production which requires production on a specified date, being a date not later than 21 days before the hearing of the action in which the subpoena is issued, may be effected by sending a copy of the subpoena by pre-paid post addressed to the person named at that person's usual or last known residence or place of business.

(4) Service pursuant to subrule (3) shall not be effective unless and until the subpoena is actually received by the person named.

(c) Part 30 rule 3 (2)

Omit "levying against goods of a judgment debtor under", insert instead "executing or attempting to execute".

(d) Part 31 rule 10 (4)

After Part 31 rule 10 (3) insert the following subrule:

(4) A judgment creditor is not entitled to recover against a judgment debtor any costs of issue and service of an examination summons except to the extent that such costs are included in an amount recoverable for attending to examine, or examining, the judgment debtor.

## (e) Part 31 rule 12

- (i) After subrule (4A) insert the following subrule:

(4B) If a party discontinues an action in a court's Small Claims Division, the court may award costs against the party to another party.

- (ii) In subrule (5) omit "or (4)", insert instead " , (4) or (4B)".
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**EXPLANATORY NOTE**

The purpose of the amendments is:

- (a) and (b) to provide for 'service by post of subpoenas for production;
- (c) to enable a Sheriff's Officer to give a judgment debtor notice of a writ of execution when attempting to execute the writ instead of, as at present, only when actually making a levy;
- (d) to clarify the provision, put in doubt by a Determination of the Legal Fees and Costs Board, that the only costs recoverable in respect of an examination summons are the costs of attending and examining the debtor;
- (e) to provide that costs on discontinuance be recoverable in the Small Claims Division.

E. J. O'GRADY,  
Secretary to the Rule Committee.

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