



New South Wales

District Court Amendment (Legal Practitioners) Rule 2001

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 23 August 2001.

J G Cowen

Secretary to the Rule Committee

Explanatory note

The object of this Rule is to amend the *District Court Rules 1973* to include a rule concerning the liability of barristers for improperly incurred or wasted costs. The provision is in similar terms to Part 52A, rule 43A of the *Supreme Court Rules 1970*. This Rule also amends Part 39A, rule 14 to insert provisions in respect of solicitors that are consistent with this new rule.

2001 No 750

Rule 1 District Court Amendment (Legal Practitioners) Rule 2001

District Court Amendment (Legal Practitioners) Rule 2001

1 Name of Rule

This Rule is the *District Court Amendment (Legal Practitioners) Rule 2001*.

2 Amendment of District Court Rules 1973

The *District Court Rules 1973* are amended as set out in Schedule 1.

3 Notes

The explanatory note does not form part of this Rule.

Schedule 1 Amendments

(Clause 2)

[1] Part 39A, rule 14

Omit rule 14 (2) (d). Insert instead:

- (d) to be prepared with any proper evidence or account,
- (d1) to comply with any provision of the rules or any judgment or order or direction of the Court, or

[2] Part 39A, rule 14 (4A)

Insert after rule 14 (4):

- (4A) The Court may give ancillary directions in order to give full effect to a costs order, including directing a solicitor to provide to the Court or a party to the proceedings a bill of costs in assessable form.

[3] Part 39A, rule 14A

Insert after rule 14:

14A Liability of barrister

- (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 an employee 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, including disallowing the costs for any step in the proceedings, and
 - (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.

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Schedule 1 Amendments

- (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 can proceed only with the incurring of extra costs or with the inconvenience of the Court or another party to the proceedings, because of the failure of the barrister:
 - (a) to attend in person or by a proper representative, or
 - (b) to file any document which ought to have been filed, or
 - (c) to deliver any document which ought to have been delivered for the use of the Court, or
 - (d) to be prepared with any proper evidence or account, or
 - (e) to comply with any provision of the rules or any judgment or order or direction of the Court, or
 - (f) otherwise to proceed.
- (3) The Court may, before making an order under subrule (1), refer the matter to the registrar for enquiry and report.
- (4) The Court may order that notice of any proceedings or order against a barrister under this rule must be given to the barrister's instructing solicitor or client in such manner as may be specified in the order.
- (5) The Court may give ancillary directions in order to give full effect to a costs order, including directing a barrister to provide to the Court or a party to the proceedings a bill of costs in assessable form.
- (6) This rule is in addition to, and is intended to operate independently of, the provisions of section 148E of the Act and does not apply in circumstances where section 148E of the Act applies.

BY AUTHORITY