

[DRAFT] **SUPREME COURT** [DRAFT]
(MISCELLANEOUS AMENDMENTS) RULES 2022

I, Chief Sir Gibuma Gibbs Salika GCL KBE CSM, Chief Justice of Papua New Guinea, certify that, pursuant to section 184 (*rules of court*) of the *Constitution* and section 41 (*rules of court*) of the *Supreme Court Act*, and all other powers enabling, the following Rules, described as “*Supreme Court (Miscellaneous Amendments) Rules 2022*”, amending the *Supreme Court Rules 2012*, have been made by the Judges and shall come into force on a date to be determined by the Chief Justice by notice published in the *National Gazette*.

Dated this day of 2022

Chief Sir Gibuma Gibbs Salika GCL KBE CSM, Chief Justice of Papua New Guinea

* Editorial note: The date on which the *Supreme Court (Miscellaneous Amendments) Rules 2022* shall come into force is 2022 (as determined by the Chief Justice and published in *National Gazette* No G... of 2022).

[DRAFT] **SUPREME COURT** [DRAFT]
(MISCELLANEOUS AMENDMENTS) RULES 2022

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(MISCELLANEOUS AMENDMENTS) RULES 2022

1 Amendment of Division 5.2 (*election petition reviews*)

Division 5.2 (*election petition reviews*) is amended in the following ways:

- (a) The definition of “decision” in Order 5 rule 7 is repealed and replaced by the following:

““decision” means any decision of the National Court regarding an election petition that is susceptible to review under s 155(2)(b) of the *Constitution* and for the avoidance of doubt includes a decision to refuse an objection to competency of the petition and a decision to refuse a no-case submission made after the close of the petitioner’s case at the trial of the petition.”

- (b) Order 5 rule 14 is repealed and replaced by the following:

“The application for leave shall be filed and served within 14 days after the decision sought to be reviewed or within such time as extended by a Judge, upon application filed within that 14-day period.”

- (c) Order 5 rule 15 is repealed and replaced by the following:

“The application for leave and supporting affidavit shall be served on the respondents personally or in any manner permitted by a Judge, including by service on their lawyers in the National Court proceedings, not less than three days before the application is heard, and an affidavit of service shall be filed within that three-day period.”

2 Repeal and replacement of Division 7.1 (*application to extend time and application for leave to appeal*)

Division 7.1 (*application to extend time and application for leave to appeal*) is repealed and replaced with the following:

“Sub-Division 1.—Application to Extend Time

1. Where a person desires to make an application for a further period within which to lodge a notice of appeal or an application for leave to appeal, the applicant shall, within 40 days after the date of the judgment in question, file and serve on all parties in the proceedings the subject of the proposed appeal or the lawyers for such parties in those proceedings:

- (a) an application in form 4 setting out:
 - (i) the date of the judgment in question;
 - (ii) the grounds upon which the applicant relies for an extension of time;
 - (iii) the further period which the applicant seeks; and
- (b) a supporting affidavit:

- (i) annexing a copy of the judgment in question, or a transcript or if no judgment or transcript is available a summary of the decision of the Court;
 - (ii) deposing as to why the additional amount of time being sought is required.
2. The Registrar shall take all steps necessary to have an application under rule 1 heard by a Judge as soon as is practicable after its filing.

Sub-Division 2.—Application for leave to appeal

3. Where an appeal from a judgment lies to the Court only with leave, an application for leave to appeal may be heard and determined by a Judge.
4. An application for leave to appeal shall be made by filing a notice in writing and shall—
- (a) be entitled "In the Supreme Court of Justice" and shall also be entitled as between the party as appellant and the party as respondent; and
 - (b) show that an appeal lies with leave; and
 - (c) state the nature of the case, the questions involved and the reason why leave should be given; and
 - (d) show an address for service of the party giving the notice; and
 - (e) be in accordance with form 7; and
 - (f) be served forthwith on all parties in the proceedings the subject of the proposed appeal or the lawyers for such parties in those proceedings."

3 Repeal and replacement of Division 7.5 (*objection to competency of appeal*)

Division 7.5 (*objection to competency of appeal*) is repealed and replaced with the following:

- "15. A respondent who objects to the competency of an appeal or of an application for leave to appeal shall, within 14 days after service of the notice of appeal or application for leave to appeal—
- (a) file an objection in accordance with form 9; and
 - (b) serve a copy of the objection on the appellant in any manner including by service on the appellant's lawyers in the National Court proceedings.
16. Any party may file affidavits.
17. (1) An objection of which notice has been given shall be determined by:
- (a) in the case of an objection to a matter that is within the jurisdiction of a Judge, any Judge; and

(b) in any other case, the Court.

(2) An objection to competency shall be heard and determined before the substantive matter to which the objection relates is set down for hearing unless a Judge decides in a special case that it is in the interests of justice to set down the matters together.

18. Upon the hearing of an objection to competency the burden of establishing the incompetency of the matter the subject of objection is on the party making the objection.

19. If notice of objection is not given and the appeal or the application for leave to appeal is dismissed as incompetent, the respondent shall not receive any costs of the appeal or the application for leave to appeal unless the Court or Judge on special grounds orders otherwise.”

4 Amendment of Division 7.19 (*time, and want of prosecution*)

Division 7.19 (*time, and want of prosecution*) is amended in the following ways:

- (a) Order 7 rule 48 is amended by inserting the words “or a Judge” between the words “the Court” and “may”;
- (b) Order 7 rule 49 is amended by inserting the words “or a Judge” between the words “the Court” and “may”.

5 Repeal and replacement of Division 13.3 (*file reference*)

Division 13.3 (*file reference*) is repealed and replaced with the following:

The Registrar shall ensure, unless directed otherwise in a particular case by a Judge, that the file references shown in column 1 of the table below, bearing the descriptions shown in column 2 of the table, are allocated to the categories of matters shown in column 3 of the table.

File reference	Description	Categories of matters
SC APP	Supreme Court Application	Applications for leave to appeal, for further time to appeal, for leave to seek review under <i>Constitution</i> , s 155(2)(b), for bail and any other applications that may be heard and determined by a Judge
SC REF	Supreme Court Reference	References to the Supreme Court under <i>Constitution</i> , ss 18(2) or 19 or <i>Supreme Court Act</i> , s 21
SC RES	Supreme Court Reservation	Reservation of a question of law to the Supreme Court under <i>Supreme Court Act</i> , s 21
SC REV	Supreme Court Review	Review of a decision of the National Court under <i>Constitution</i> , s 155(2)(b)
SC REV (EP)	Supreme Court Election Petition Review	Review, pursuant to Division 5.2 of the <i>Supreme Court Rules</i> , of a decision of the National Court under <i>Constitution</i> , s 155(2)(b)
SCA	Supreme Court Appeal	Supreme Court civil appeal

SCCA	Supreme Court Constitutional Application	Application to the Supreme Court under <i>Constitution</i> , s 18(1)
SCM	Supreme Court Motion	Appeals under <i>Supreme Court Rules</i> , Order 10
SCMP	Supreme Court Miscellaneous Proceeding	Any matter apparently within the jurisdiction of the Supreme Court that is not otherwise described in this table
SCRA	Supreme Court Criminal Appeal	Supreme Court criminal appeals

6 Amendment of Division 13.8 (*directions list and directions hearing*)

Division 13.8 (*directions list and directions hearing*) is amended by inserting after rule 8 the following new rule:

“8A. All interlocutory applications and processes, including applications to adduce fresh evidence, to dismiss an appeal for abuse of process or for want of prosecution or for failure to comply with directions of a Judge, and objections to competency, shall be heard at a separate and distinct hearing and determined before the substantive matter to which they relate is set down for hearing, unless a Judge determines in a particular case, in consultation with the parties, that is in the interests of justice for another procedure to apply.”

7. Amendment of Division 13.16 (*summary disposal*)

Division 13.16 (*summary disposal*) is amended in the following ways:

- (a) Order 13 rule 16(1) is amended by inserting the words “or a Judge” between the words “the Court” and “may”;
- (b) Order 13 rule 16(1)(a) is amended by inserting the words “or Judge’s” between the words “the Court’s” and “own”;
- (c) Order 13 rule 16(2) is amended by inserting the words “or a Judge” between the words “the Court” and “for”;
- (d) Order 13 rule 16(2)(a) is repealed and replaced by: “The Registrar may give notice, 14 days before the hearing, in form 10D to each of the parties of the intention to refer the matter to the Court or a Judge for summary determination, or may publish, 14 days before the hearing, an appropriate notice in the media.”; and
- (e) Order 13 rule 16(2)(c) is amended by inserting the words “or a Judge” between the words “the Court,” and “together”.

8 New Order 14 (*on the papers matters*)

After Order 13 (*listings rules*) a new Order 14 is inserted in the following terms:

“Order 14 – On the Papers Matters

Division 1 – On the Papers List

1. A list of appeals or reviews or other matters pending in the Supreme Court suitable for hearing and determination on the papers, to be known as the “On the Papers List” is hereby established.
2. A case may only be placed on the On the Papers List by order of the Court or a Judge assigned by the Chief Justice to be a Duty Judge under Order 13, rule 2 of the *Supreme Court Rules*. Such an order may be made:
 - (a) on the Court’s or Duty Judge’s own motion, but only after affording each of the parties an opportunity to be heard as to whether the case should be placed on the On the Papers List and whether there should be any variation from the standard length of written submission and being satisfied that it is in the interests of justice that the case be placed on the On the Papers List; or
 - (b) on the application of a party, but only after affording each of the other parties an opportunity to be heard as to whether the case should be placed on the On the Papers List and whether there should be any variation from the standard length of written submissions and being satisfied that it is in the interests of justice that the case be placed on the On the Papers List; or
 - (c) on the joint request of the parties, if the Court or a Judge, after considering that request, is satisfied that it is in the interests of justice that the case be placed on the On the Papers List.
3. If a variation from the standard form directions is sought by a party or the parties, that variation and a succinct, related explanation must be specified in the listing request.
4. No case will be placed on the On the Papers List unless the appeal or application book (or other similar book or collection of materials prepared on direction of the Court or a Judge) has been filed.

Division 2 – Appeal/Application Books

5. Appeal or application books are to be prepared in accordance with the usual practice of the Court but must, if within the systems data filing limits or unless the Court or a Judge or the Registrar otherwise directs, be filed electronically using the Court’s Integrated Electronic Case Management System (IECMS). Large, multi-volume appeal books prepared in accordance with Order 7, rule 43 of the *Supreme Court Rules* and not feasible for scanning may, with the permission of the Court or a Judge or the Registrar, be filed in hard copy form. Hard copy volumes so filed will then, as occasion requires, be distributed by the Registrar to the Judges by the most efficient available means.

Division 3 – Procedure after being placed on the On the Papers List

6. Upon being placed on the On the Papers List, the case will be heard and determined on the papers, following an exchange of written submissions by the parties.
7. The On the Papers Listing Directions will specify the dates by which, in terms of the standard form directions, or such variation as the Court or a Judge may approve, written submissions must be filed and served.
8. The standard On the Papers Listing Directions will be:
 - (a) the submissions in chief of the appellant/applicant must be electronically filed and served by [insert date];
 - (b) the submissions in chief of the respondent(s) must be filed and served by [insert date];
 - (c) the submissions in reply of the appellant/applicant or a statement that an appellant/applicant will file no reply submissions shall be electronically filed and served by [insert date];
 - (d) the submissions in chief of a party shall be not more than 50 pages (including annexures) and shall specify any grounds of appeal or review or any other contentions that are abandoned or otherwise not being pursued;
 - (e) a party must annex to a submission in chief the orders sought by that party in respect of the appeal or application;
 - (f) the submissions in reply of a party must not exceed five pages;
 - (g) the submissions of a party represented by the same firm as another party shall be a joint submission;
 - (h) the submissions of a party represented by a different firm or who is not represented must be made by a separate submission;
 - (i) if a party seeks an order for costs other than on a party-party basis to be taxed if not agreed, the reasons for such different costs order being made, must be specified in that party's submissions;
 - (j) the Court expects that the submissions of a party shall, within the page limits specified, be as brief and succinct as possible and avoid unnecessary or unnecessarily extensive copying of extracts from decided cases or legislation;
 - (k) case references in submissions must be to the authorised report of the case or, if not reported, specify its SC or N number.

Division 4 – When judgment shall stand reserved

9. Upon the date of filing of the last submissions in reply or, as the case may be, upon the date of filing of a statement that there will be no submissions in reply, or on any other date ordered to be appropriate by the Court or a Judge, which shall be deemed the “Expiry Date”, judgment shall, subject to paragraph 10, without further order, stand reserved.
10. There may be circumstances in which the Court or a Judge will wish to pose questions to counsel arising from submissions, in which case such questions shall be posed through the Registrar, to be conveyed electronically to counsel and counsel shall respond within the time set, through the Registrar; and in all such cases, all parties shall be copied in to the communication that takes place, and the Expiry Date will be amended accordingly.
11. The Registrar must forthwith after the Expiry Date:
 - (a) certify that judgment stands reserved; and
 - (b) forward to the Chief Justice and the members of the bench hearing the matter a copy of his certificate; and
 - (c) place on the file and email to the parties a copy of his certificate.

Division 5 – Default of compliance with standard form or specific directions

12. If a party is in default of compliance with the On the Papers Listing Directions or any variation thereof made by the Court or a Judge, the Court may make on the papers such order to which the party not in default appears justly entitled.
13. Default in compliance with the usual practice in relation to the preparation of appeal or application books will be the subject of a requirement to show cause to the Court or a Judge by filed written response why the case should not be dismissed for want of prosecution.

Division 6 – Variation of directions

14. The Court or a Judge may, on application and either before or after the Expiry Date and prior to the delivery of judgment on the appeal or application, make such variation to the times specified in accordance with the On the Papers Listing Directions and when judgment shall stand reserved as seems just on the evidence and after hearing from the parties.
15. Unless the Court or a Judge otherwise directs, such applications are to be heard and determined on the papers.
16. Save as aforesaid, once an appeal or application is placed on the On the Papers List, no other interlocutory application may be made in the case without the leave of the Court or a Judge.

Division 7 – Pronouncement of orders and publication of reasons for judgment

17. The Registrar will notify the parties of the date and mode of pronouncement of orders and publication of reasons for judgment.

Division 8 – Access by non-parties to documents

18. So as to achieve the closest assimilation of a case heard on the papers with one heard in open court, a non-party may, at such place at the Court as the Registrar may specify, view any notice of appeal or other originating document (or amendment of either) and any submission, order and reasons for judgment, in the same way as in any case not on the On the Papers List.

Division 9 – Filing and service of documents

19. Unless the Court or a Judge or the Registrar otherwise directs, all documents to be filed in the Court must be filed electronically.
20. The following information must be provided on any filed document:
 - (a) if a lawyer prepares the document—the name, postal address, telephone number and email address of the firm, and the name of an individual in the firm and that person’s mobile phone number, who can be contacted in respect of the matter;
 - (b) if the party or person on whose behalf the document is to be filed is not represented by a lawyer—the name, postal address, telephone number and email address of the party or person, and that person’s mobile phone number, who can be contacted in respect of the matter.
21. The person who files a document electronically must:
 - (a) keep a paper or electronic copy of the document; and
 - (b) if directed to do so by the Court, a Judge or the Registrar, produce a hard copy of the document.
22. The normal requirements of service are dispensed with, and all parties may, subject to an order of the Court or a Judge to the contrary, serve any Court documents on other parties by email or other electronic means, and shall ensure that if and when required to do so, sufficient records are available to verify and prove service.

Division 10 – Format of documents

23. A document to be filed in a case on the On the Papers List must:
 - (a) be in clear, sharp, legible and permanent type of at least 12 point size; and
 - (b) have not less than 1.5 line spacing between lines and paragraphs; and

- (c) be in A4 size; and
 - (d) have margins of at least 2.5 cm at the top, bottom, left and right sides; and
 - (e) have each page numbered; and
 - (f) be without erasure or alteration that causes material disfigurement.”
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