

CAYMAN ISLANDS



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**GRAND COURT LAW (2008 REVISION)
THE GRAND COURT (AMENDMENT NO 2) RULES 2012**

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THE GRAND COURT (AMENDMENT NO 2) RULES 2012

These Rules are made by the Rules Committee pursuant to Section 19(3) of the Grand Court Law (2008 Revision).

1. Citation, Commencement and Interpretation.

- (1) These Rules shall be referred to as the Grand Court (Amendment No 2) Rules 2012.
- (2) These Rules shall come into operation on the 6th day of November 2012 referred to in these Rules as the "Commencement Date".
- (3) These Rules shall apply to every proceeding which is pending or commenced in the Court on or after the Commencement Date.
- (4) Words and expressions in these Rules which are also used in the Grand Court Rules 1995 (Revised Edition) shall have the same meaning in these Rules as they have in the Grand Court Rules 1995 (Revised Edition).

2. Revocation and Replacement of Order 5

- (1) GCR Order 5 is hereby revoked and replaced by the Order contained in the Schedule hereto.

3. Order 77A

- (1) GCR Order 77A is contained in the Schedule hereto.

Made by the Rules Committee on the 19th day of October 2012.

The Honourable Anthony Smellie QC, Chief Justice

The Honourable Sam Bulgin QC, Attorney General

Graham Ritchie QC, Legal Practitioner

Colin D. McKie, Legal Practitioner

THE GRAND COURT LAW (1995 REVISION)

THE GRAND COURT RULES, 1995

(REVISED EDITION)

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ORDER 5**MODE OF BEGINNING PROCEEDINGS****Mode of beginning civil proceedings (O. 5, r. 1)**

1. (1) Subject to the provision of any Law and of these Rules, civil proceedings in the Court may be begun by writ, originating summons, originating motion, petition or written application, which are referred to collectively in this rule as "originating process".
- (2) A "written application" means –
 - (a) a stop notice under Order 50, rule 11;
 - (b) an application under Order 85, rule 8;
 - (c) an application under Order 102, rule 18; and
 - (d) any other application which is required by the Rules to be made and determined in writing without any oral hearing.
- (3) Every originating process must be issued.
- (4) The issue of an originating process takes place upon it being –
 - (a) sealed by the Clerk of the Court with a seal indicating the date upon which it was sealed; and
 - (b) filed in accordance with paragraph (5).
- (5) Upon issuing an originating process the Clerk of the Court shall –
 - (a) assign it to the appropriate Division of the Court;
 - (b) assign to it a cause number, using chronological sequences for each Division, commencing on the 1st January each year;
 - (c) determine the amount of the fixed fee payable in accordance with the First Schedule of the Court Fees Rules;
 - (d) establish a court file in respect of the cause or matter in accordance with Order 63, rule 2;
 - (e) place an office copy of the originating process on the Court file;
 - (f) place a second office copy of the originating process (except in the case of divorce petitions and other proceedings commenced in the Family Division) on the Register of Writs maintained in accordance with Order 63, rule 8; and
 - (g) scan it into the computerised case record.
- (6) A person seeking to issue an originating process shall present to the Clerk of the Court

at least three copies thereof, each signed by or on behalf of the plaintiff, applicant or petitioner, as the case may be.

- (7) In the event that an originating process constitutes a financial services proceeding which is issued in the Financial Services Division, the Registrar of the Division, acting in consultation with the Chief Justice, shall assign the matter to a particular Commercial Judge whose initials shall be included in the title of the proceeding.
- (8) The Clerk of the Court shall not issue any originating process without first being satisfied that the prescribed fee has been paid.

Proceedings which must be begun by writ (O. 5, r. 2)

- 2. Subject to any provisions of a Law, or of these Rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ, that is to say, proceedings -
 - (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
 - (b) in which any claim by the plaintiff is based on an allegation of fraud;
 - (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any Law or independently of any contract or any such provision) where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
 - (d) in which a claim is made by the plaintiff in respect of the infringement of a patent; and
 - (e) which are a probate action.

Proceedings which must be begun by originating summons (O. 5, r. 3)

- 3. (1) Proceedings by which an application is to be made to the Court or a Judge thereof under any Law must be begun by originating summons except where by these Rules or by or under any Law the application in question is expressly required or authorised to be made by some other means.
- (2) This rule does not apply to an application made in pending proceedings.

Proceedings which may be begun by writ or originating summons (O. 5, r. 4)

- 4. (1) Except in the case of proceedings which by these Rules or by or under any Law are

required to be begun by originating motion or petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.

- (2) Proceedings -
- (a) in which the sole or principal question at issue is, or is likely to be, one of the construction of any Law or of any deed, will, contract or other document, or some other question of law; or
 - (b) in which there is unlikely to be any substantial dispute of fact,
- are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

Proceedings which may be begun by petition or writ (O. 5, r. 4A)

- 4A. (1) Proceedings under section 23 or 26(1) of The Cayman Islands Constitution Order 2009 shall be begun by petition or writ.
- (2) Such proceedings -
- (a) in which the sole or principal question at issue is, or is likely to be, one of the construction of any Law or of any deed, will, contract or other document, or some other question of law; or
 - (b) in which there is unlikely to be any substantial dispute of fact,
- are appropriate to be begun by petition unless the applicant for any reason considers it more appropriate to begin the proceedings by writ.

Proceedings to be begun by motion or petition (O. 5, r. 5)

5. Proceedings may be begun by originating motion or petition if, but only if, by these Rules or by or under any Law the proceedings in question are required or authorised to be so begun.

Right to sue in person (O. 5, r. 6)

6. (1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the Court by an attorney or in person.
- (2) Except as expressly provided by or under any Law, a body corporate may not begin or carry on or defend any such proceedings otherwise than by an attorney.

ORDER 77A

PROCEEDINGS UNDER SECTIONS 23 AND 26 OF THE CONSTITUTION

Definitions (O. 77A, r. 1)

1. (1) In this Order -

"act" includes a failure to act but excludes a failure to introduce before the Legislative Assembly, or for the Legislature to enact, primary legislation;

"Bill of Rights" means Part 1 of the Constitution;

"Constitution" means The Cayman Islands Constitution Order 2009;

"Lower Court" means the Summary Court, the Youth Court, the Drug Rehabilitation Court, and the Coroner's Court;

"primary legislation" means a Law enacted by the Legislature;

"public official" –

- (a) includes a public or governmental body, including any statutory body or company or association in which the Cayman Islands has an interest and performs a public function or duty;
- (b) includes any organization or person carrying out a public function or duty, including the Governor, except where the nature of their act is private;
- (c) excludes private schools (whether or not in receipt of government funding, subsidy or other assistance), churches, the Legislature and the Court, Court of Appeal, and any Lower Court;

"tribunal" means any tribunal, board or authority constituted by or under any enactment but excludes any Lower Court, the Court, the Court of Appeal or the Judicial Committee of the Privy Council.

General (O. 77A, r. 2)

2. (1) Pursuant to Rule 4A of Order 5, proceedings under section 23 or 26(1) of the Constitution shall be begun by petition or writ.

(2) References to the Court pursuant to section 26(2) of the Constitution shall be begun by petition.

- (3) No such writ shall be issued unless it is indorsed with a statement of claim. Every reference in this Order to a writ shall be deemed to include the statement of claim indorsed on the writ.
- (4) At the same time as every such petition is presented an affidavit shall be sworn by or on behalf of the petitioner confirming the facts and matters referred to in the petition.
- (5) Unless the Court otherwise orders, all proceedings (interlocutory and final) pursuant to this Order shall be heard in open Court.

Proceedings under Section 23 of the Constitution (O. 77A, r. 3)

3. (1) In any proceedings to which the Attorney General is not already a party, where a party seeks a declaration that primary legislation, or any part thereof, is incompatible with a section or sections of the Bill of Rights, the party seeking the declaration shall forthwith serve on the Attorney General copies of the originating process together with all pleadings and particulars already served on the parties to those proceedings.
- (2) In any proceedings where there is no claim for a declaration that primary legislation, or any part thereof, is incompatible with a section or sections of the Bill of Rights, but the Court considers that the proceedings may necessarily raise a real question as to whether primary legislation, or any part thereof, is compatible with a section or sections of the Bill of Rights, then the Court shall convene a hearing to determine whether or not the Attorney General should be given notice of the proceedings and generally for the future conduct of the proceedings.
- (3) Unless the Court otherwise orders, no further step may be taken in the proceedings until the earlier of –
 - (a) 7 days after the service on the Attorney General of the copies of the originating process and any pleadings and particulars, or
 - (b) the service on the parties of a notice of non-intervention by the Attorney General pursuant to rule 2(4) of this Order.
- (4) Within 7 days of service on the Attorney General of the originating process and any pleadings and particulars, he shall file and serve on the parties a notice stating whether or not he wishes to intervene in the proceedings, provided that if, after the expiry of the said 7 days, the Attorney General shall determine that it is in the public interest for him to intervene he may do so by filing and serving a notice on the parties. If the Attorney General's notice states that he wishes to intervene in the proceedings he shall automatically become an intervener in the proceedings without further order.

- (5) If the Attorney General gives notice of intervention then, unless the Court otherwise orders, no party may seek costs against the Attorney General nor may the Attorney General seek costs against any party.
- (6) Upon the Attorney General serving a notice of intervention, the party seeking the aforesaid declaration shall issue forthwith a summons and serve it on all the other parties and on the Attorney General seeking directions as to the future conduct of the action.
- (7) If the Court grants a declaration that primary legislation, or any part thereof, is incompatible with a section or sections of the Bill of Rights, the Attorney General shall cause a copy of the order embodying the declaration to be served forthwith on the Clerk of the Legislative Assembly.

Proceedings under Section 26(1) of the Constitution (O. 77A, r. 4)

- 4. (1) A petition, or a writ, or any pleading alleging that the government has breached or threatened the applicant's rights and freedoms under the Bill of Rights shall include full particulars of –
 - (a) the circumstances in which the government's liability is alleged to have arisen, and the circumstances of the conduct of any public official or officials in respect of which the applicant complains;
 - (b) the decision or decision or the act or acts that is or are alleged to breach the Bill of Rights, and the date or dates of each such decision or act;
 - (c) to the extent that any such decision or act as referred to in rule 4(1)(b) of this Order is alleged to have taken place more than one year prior to the issuing of the writ, the presentation of the petition, or filing of the pleading, the date or dates on which such decision or act was alleged to be known or alleged could reasonably have been known to the applicant.
- (2) The respondent to such a petition, or the defendant to such a writ, as the case may be, shall be the Attorney General and any relevant public official.
- (3) If a claim is brought by way of counterclaim then the defendant to such a counterclaim shall be the Attorney General and any relevant public official.

Reference to the Court under Section 26(2) of the Constitution; general provisions (O. 77A, r. 5)

- 5. (1) Every reference from a Lower Court or tribunal to the Court shall concisely set out –

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- (a) in the case of any criminal cause or matter, or in proceedings pursuant to the Extradition (Overseas Territories) Order 2002, the charge, summons, information or complaint in respect of which the proceedings arose;
 - (b) in any other proceedings, cause or matter, the identity of the parties and the allegations contained in the pleadings or, if there are no pleadings, a record of the proceedings;
 - (c) the facts, if any, found by the Lower Court or tribunal to have been proved or admitted, and/or the facts to be presumed; and
 - (d) the issue as to the interpretation of the Bill of Rights on which the opinion of the Court is sought.
- (2) The Lower Court or tribunal shall not in its reference provide a record of the evidence taken before it.
- (3) Where a Lower Court or tribunal makes a reference to the Court the applicant seeking the opinion of the Court must:
- (a) within 5 days after
 - (i) in the case of a reference made by a Lower Court, the applicant receiving the reference from the Clerk of the Court, or
 - (ii) in the case of a reference made by a tribunal, the applicant being served with the reference,the applicant shall present a petition to which is annexed the reference; and
 - (b) within 3 days after the applicant has received from the Court a sealed copy of the petition, serve on the parties a copy of that petition together with the reference annexed and the affidavit in support of the petition.
- (4) Unless the Attorney General is already a party to the proceedings before the Lower Court or tribunal, within 3 days after the petitioner has received from the Court a sealed copy of the petition, he must serve on the Attorney General a copy of that petition together with the reference annexed and the affidavit in support of the petition.
- (5) The petition must set out the petitioner's contentions on the issue as to the interpretation of the Bill of Rights as settled by the Lower Court pursuant to rule 5(1)(d) of this Order.

- (6) Within 5 days of service on the Attorney General of the petition under rule 5(4) of this Order, the Attorney General shall file and serve on the parties a notice stating whether or not he wishes to intervene in the proceedings, provided that if, after the expiry of the said 5 days, the Attorney General shall determine that it is in the public interest for him to intervene he may do so by filing and serving a notice on the parties. If the Attorney General's notice states that he wishes to intervene in the proceedings he shall automatically become an intervener in the proceedings without further order.
- (7) If the Attorney General gives notice of intervention then, unless the Court otherwise orders, no party may seek costs against the Attorney General nor may the Attorney General seek costs against any party.
- (8) Unless the Court otherwise orders, a reference in a pending criminal cause or matter, or in proceedings pursuant to the Extradition (Overseas Territories) Order 2002, shall be heard on an expedited basis; a reference in any other matter shall not be heard sooner than 10 days after the petitioner has served a copy of the petition on the persons specified in rules 5(3), 5(4) and 8 of this Order.

Procedure to be applied for a reference by a Lower Court to the Court under Section 26(2) of the Constitution (O. 77A, r. 6)

- 6. (1) If in proceedings before any Lower Court, any issue arises as to the interpretation of the Bill of Rights, and if the Lower Court is satisfied that it is necessary for the issue to be determined then it shall refer the question to the Court.
- (2) In any proceedings before a Lower Court where an application is made to the Lower Court to refer an issue to the Court the following rules shall apply.
 - (a) The applicant shall file with the Clerk of the Court and serve on all other parties a notice in writing.
 - (b) The notice shall be signed by the applicant or his attorney and it shall state the facts found by the Lower Court, or the presumed facts, and the issue as to the interpretation of the Bill of Rights on which the opinion of the Court is sought.
 - (c) Unless the Lower Court shall refuse to make a reference, within 4 days after filing of the notice the Magistrate or Justices shall cause the Clerk of the Court to send to the parties or their attorneys a draft reference in which are stated the matters required by rules 5(1) and 5(2) of this Order.
 - (d) Within 4 days of receipt of the draft reference under rule 6(2)(c) of this Order each party may make representations on the draft reference. Any such representations shall be in writing and signed by the party making them or his attorney and shall be filed.

- (e) Within 4 days after the latest day on which representations may be made under rule 6(2)(d) of this Order, the Magistrate or Justices shall make such adjustments, if any, to the draft reference prepared for the purpose of that rule as he or they shall think fit, after considering any such representations, and shall refer the issue to the Court.
 - (f) Forthwith after the reference has been made, the Clerk of the Court shall send a copy of the reference to the parties or their attorneys.
 - (g) If the Clerk of the Court is unable to send a draft reference under rule 6(2)(c) of this Order, or the Magistrate is, or Justices are, unable to make the reference under rule 6(2)(e) of this Order, he or they shall do so as soon as reasonably practicable thereafter and the time periods in those rules shall be extended accordingly. In any such event, the Clerk of the Court shall notify the parties or their attorneys in writing of the delay and the reasons therefor.
 - (h) Any party may apply in writing to the Lower Court for leave to extend the period under rule 6(2)(d) of this Order, as may have been extended, but not after any such period has expired.
 - (i) The making of a reference shall not in itself have the effect of –
 - (i) if and to the extent that the proceedings before the Lower Court are still pending, suspending those proceedings, or
 - (ii) suspending the execution or enforcement of any decision, sentence or order of the Lower Court.
- (3) Upon making any reference the Lower Court may give consideration to the future conduct of the proceedings before it including, without limitation, pending the determination of the reference whether or not it should suspend those proceedings, or suspend the execution or enforcement of any decision, sentence or order of it. In the case of any criminal cause or matter, or proceedings pursuant to the Extradition (Overseas Territories) Order 2002.
- (4) The Lower Court may refuse to make a reference if it considers the matter to be vexatious or unreasonable but if so it shall provide to the applicant written reasons for its refusal.

Signing and service of reference by a tribunal (O. 77A, r. 7)

7. (1) A reference by the Governor must be signed by the head of the Governor's office and a reference by the Governor-in-Cabinet must be signed by the Clerk of the Cabinet.

- (2) A reference by any other tribunal, not being an individual, must be signed by the chairman or president of the tribunal, and a reference by a tribunal being an individual must be signed by him or by a person authorised in that behalf to do so.
- (3) The reference must be served on the party at whose request the reference was made.

Service of petition under GCR O. 77A, rule 5(3) (O. 77A, r. 8)

8. The petitioner shall serve a petition under rule 5(3) of this Order together with the affidavit in support and a copy of the reference, on -
 - (a) the head of the Governor's office, the Clerk of the Cabinet, the secretary of the tribunal, or other person by whom the reference was made, unless the Governor, the Governor-in-Cabinet, that tribunal or other person is the petitioner; and
 - (b) every party (other than the petitioner) to the proceedings in which the reference relates arose; and
 - (c) the Attorney General, unless he is already a party to the proceedings before the tribunal.

Amendment of reference (O. 77A, r. 9)

9. The Court hearing a reference from a Lower Court or a tribunal may amend the reference.

Right of Governor, Governor-in-Cabinet, etc. to appear and be heard (O. 77A, r. 10)

10. In proceedings for the determination of a reference by a tribunal to the Court, the Governor, the Governor-in-Cabinet, chairman or president of the tribunal, or other person by whom the reference was made shall be entitled to appear and be heard.