

CAYMAN ISLANDS



Supplement No. 1 published with Extraordinary
Gazette No. 38 dated 28 May 2009.

COURT OF APPEAL (AMENDMENT) RULES 2009

COURT OF APPEAL LAW (2006 REVISION)

COURT OF APPEAL (AMENDMENT) RULES 2009

The Rules Committee of the Court, in exercise of the power conferred by section 35(3) of the Court of Appeal Law (2006 Revision), makes the following Rules:

Citation

1. These Rules may be cited as the Court of Appeal (Amendment) Rules 2009.

Interpretation

2. (1) In these Rules -
“Court of Appeal Law” means the Court of Appeal Law (2006 Revision); and
“principal Rules” means the Court of Appeal Rules (2004 Revision).
(2) Expressions defined in the Court of Appeal Law and in the principal Rules shall bear the same meanings in these Rules.

Amends Rule 7

3. There is inserted after Rule 7(2) of the principal Rules -
“(3) The registers shall be open to public inspection upon payment of the prescribed fee.”

Amends Rule 11

4. (1) Rule 11(4) of the principal Rules is amended by substituting for the reference to section 20(1) of the Court of Appeal Law a reference to section 19(1) of that Law.
(2) There is inserted after Rule 11(4) of the principal Rules -
“(4A) In addition to those cases specified as requiring leave to appeal in paragraphs (e) and (f) of section 6 of the Court of Appeal Law, leave of the Court shall be required for an appeal under section 29(1) of that Law from any decision of the Grand Court in the exercise of its appellate jurisdiction in civil proceedings except where the liberty of the subject or the custody of an infant is in question.
(4B) In a case falling under sub-rule (4A) leave to appeal shall not be granted unless the appeal involves a point of law alone and:
(a) the appeal would raise an important point of principle or practice; or

- (b) there is some other compelling reason why a second appeal should be heard by the Court.”
- (3) Rule 11(5) of the principal Rules is amended by substituting for the words “leave to appeal is filed” the words “leave to appeal is made”.

Amends Rule 15

- 5. (1) Rule 15(1) of the principal Rules is amended by inserting the introductory words “Subject as provided in sub-rule (1A)”.
- (2) There is inserted after Rule 15(1) of the principal Rules –
 - “(1A) Notwithstanding sub-rule (1) a respondent intending to rely by way of objection to the hearing of the appeal on the failure of the appellant to seek leave to appeal (in a case where leave to appeal is required) shall serve on the appellant notice thereof in Civil Form 3 within fourteen days of receipt of the notice of appeal setting out the grounds of objection and shall file such notice with the Registrar within the same time.
 - (1B) Where notice of objection to which sub-rule (1A) applies has been filed the objection shall be determined in accordance with the provisions of Rule 15A”

Rule 15A

- 6. There is inserted after Rule 15 of the principal Rules –
 - “15A (1) Where notice of objection to which Rule 15(1A) applies has been served, the appellant (if he wishes to proceed with the appeal) shall serve on the respondent within fourteen days of receipt of the notice:
 - (a) a brief skeleton argument (no longer than 10 pages double spaced in a minimum of 12 point script) to explain (i) why it is contended that leave to appeal is not required and (ii) the arguments sought to be advanced in favour of the intended appeal; and
 - (b) a note or transcript of the judgment or ruling appealed from;and shall file such documents with the Registrar at the same time.
 - (2) An objection to the hearing of an appeal to which Rule 15(1A) applies shall, unless otherwise ordered by the Court or by the President of the Court, be determined in the first instance by a single Judge of the Court without an oral hearing.
 - (3) If the objection is upheld, the single Judge may if he thinks fit treat the matter before him as an application by the appellant for leave to appeal and may grant such leave.

- (4) In a case where the single Judge grants leave to appeal under sub-rule (3) that decision shall be final, and the appeal shall proceed under these Rules.
- (5) In a case where the single Judge (i) dismisses the objection or (ii) upholds the objection but does not grant leave to appeal, the party dissatisfied with that decision may renew the objection or the contention that leave to appeal is not required or may make or renew an application for leave to appeal (as the case may be) *inter partes* at the next available sitting of the Court.

Amends Rule 21

- 7. (1) Rule 21(2) of the principal Rules is revoked.
- (2) Rule 21(3) of the principal Rules is amended by substituting therefor –
“Where an application for leave to appeal has been refused by the court below, an application for such leave may be made to the Court *ex parte* within seven days from the date of such refusal”.
- (3) There is inserted after Rule 21(3) of the principal Rules –
“(3A) Where an *ex parte* application for leave to appeal is made to the Court, it shall be made and determined in accordance with the provisions of Rule 21A of these Rules”.

Rule 21A

- 8. There is inserted after Rule 21 of the principal Rules -
“21A (1) An *ex parte* application for leave to appeal shall, unless otherwise ordered by the Court, be made in the first instance in writing, by an application in Civil Form 3A accompanied by the documents described in sub-rule (5).
- (2) An *ex parte* application for leave to appeal shall, unless otherwise ordered by the Court or by the President of the Court, be determined in the first instance by a single Judge of the Court without an oral hearing.
- (3) If the single Judge grants leave to appeal, that decision shall be final, and the appeal shall proceed under these Rules.
- (4) If the single Judge refuses leave to appeal, the party seeking leave to appeal may renew the *ex parte* application for leave to appeal at the next available sitting of the Court.
- (5) The documents which shall accompany an *ex parte* application for leave to appeal shall be as follows –
(a) a draft of the intended notice and grounds of appeal;

- (b) the order against which the applicant seeks leave to appeal;
 - (c) a brief skeleton argument (no longer than 10 pages double spaced in a minimum of 12 point script) to explain any argument sought to be advanced in favour of the intended appeal; and
 - (d) the judge's written reasons or a note or transcript of the reasons or ruling.
- (6) If leave to appeal is granted on an application under this Rule the appellant's notice of appeal shall be served on the respondent and filed with the Registrar within fourteen days of the date upon which the order giving leave to appeal is made."

Amends Rule 24(1)

9. (1) Rule 24(1) of the principal Rules is amended by deleting the word "or" in paragraph (b), by substituting for paragraph (c) –
- “(c) an extension of time; or”
- and by inserting after paragraph (c) –
- “(d) the initial *ex parte* application for leave to appeal required by Rule 21(3A) of the Rules”.
- (2) Rule 24(2) is amended by inserting the introductory words “Except as otherwise provided by these Rules.”

Amends Rule 33

10. (1) Rule 33(6) of the principal Rules is amended by substituting therefor –
- “(6) A transcript of any stenographer's note taken of the proceedings at the trial of any appellant shall be supplied free of charge in accordance with Rule 33A of these Rules”.
- (2) Rule 33 of the principal Rules is further amended by substituting for the words “shorthand-writer” and “short-hand note” wherever those words respectively appear the words “stenographer” and “stenographer's note”.

Rule 33A

11. There is inserted after Rule 33 of the principal Rules -
- “33A (1) In the case of an appeal to the Court against any conviction by the Grand Court, the appellant shall be entitled to receive free of charge a transcript of any stenographer's note made at the trial of the arraignment, the plea entered to the indictment and the judge's summing up to the jury.
- (2) In the case of an appeal to the Court against any sentence by the Grand Court, the appellant shall be entitled to receive free of

charge a transcript of any stenographer's note made at the trial of the sentencing remarks made by the judge, any evidence adduced after the verdict in the case and any submissions made in mitigation of the sentence.

- (3) The Court, a single Judge of the Court, or a judge of the Grand Court may order, on the application of an appellant to the Court against conviction or sentence, that an appellant is to be provided free of charge with any part of the trial transcript other than those referred to in sub-rules (1) and (2) of this Rule.
- (4) An appellant who seeks to be provided free of charge with any part of the trial transcript, other than those referred to in sub-rules (1) and (2) of this Rule, shall apply in the first instance to the Grand Court.
- (5) The application referred to at sub-rule (4) of this Rule shall be made in writing stating precisely which parts of the trial transcript are sought, and giving the brief reasons why each part of the trial transcript sought is required.
- (6) The application referred to at sub-rule (4) of this Rule shall be accompanied by copies of (a) Criminal Form 1 and any other document stating the grounds of the intended appeal, and (b) the transcripts of any part of the trial already obtained.
- (7) The judge of the Grand Court to whom an application under sub-rule (4) of this Rule is made shall specify which further parts (if any) of the trial transcript shall be transcribed and provided to the appellant free of charge, and shall provide in writing short reasons for his decision.
- (8) An appellant who has been refused further parts of the transcript under this Rule may renew his application at a sitting of the Court”.

Rule 36A

12. There is inserted after Rule 36 of the principal Rules –

- “36A (1) In the case of any appeal or any application for leave to appeal to the Court against any conviction by the Grand Court the appellant or the Registrar shall provide the Court with the following documents:-
- (a) Criminal Form 1;
 - (b) the Indictment;
 - (c) the transcript of the judge's summing up to the jury; and
 - (d) any further transcript of the hearing before the Grand Court obtained in accordance with Rule 33A of these Rules; and

- (2) In the case of any appeal or any an application for leave to appeal to the Court against any sentence by the Grand Court the appellant or the Registrar shall provide the Court with the following documents:-
- (a) Criminal Form 1;
 - (b) the Indictment;
 - (c) a transcript of any shorthand note made at the trial of the sentencing remarks made by the Grand Court judge, any evidence adduced after the verdict in the case, and any submissions made in mitigation of the sentence;
 - (d) any further transcript of the hearing before the Grand Court obtained in accordance with Rule 33A of these Rules;
 - (e) any social inquiry report in respect of the appellant; and
 - (f) a list of the appellant's previous convictions (if any)."

Amends Rules 53, 58 and 59

13. Rules 53, 58 and 59 of the principal Rules are amended by substituting for the references in those Rules, respectively, to sections 28, 23 and 29(3) of the Court of Appeal Law references to sections 27(1), 22 and 29(2) of that Law.

Civil Form 3A

14. There is inserted after Civil Form 3 in the Schedule to the principal Rules the form (Civil Form 3A) in the schedule hereto.

Commencement

15. (1) These Rules shall come into operation on 1 June 2009.
- (2) The right to public inspection of the registers conferred by Rule 3 shall not extend to matters entered upon the registers before 1 June 2009.
- (3) Rules 4 to 9 (inclusive) of these Rules shall not apply to civil cases in which an appellant's notice of appeal in Civil Form 1 or application for leave to appeal has been lodged by whichever shall be the later of 1 June 2009 and fourteen days (or such extended period as may have been directed under section 24 of the Court of Appeal Law) after the date of the judgment appealed from.
- (4) Rules 10 to 12 (inclusive) of these Rules shall not apply to criminal cases in which an appellant's notice of appeal or application for leave to appeal in Criminal Form 1 has been submitted by whichever shall be the latest of 1 June 2009 and fourteen days (or such extended period as may have

been directed under section 13(3) of the Court of Appeal Law) after the date of conviction.

Made by the Rules Committee on 8 April 2009

The Right Honourable Sir John Chadwick, President
The Honourable Ian Forte QC, Justice of Appeal
The Honourable Dr Abdulai Conteh, Justice of Appeal

SCHEDULE
CIVIL FORM 3A

Rule 21A(1)

IN THE COURT OF APPEAL

APPLICATION FOR LEAVE TO APPEAL

Between Plaintiff/Defendant (Proposed Appellant)

And Defendant/Plaintiff (Proposed Respondent)

The Plaintiff/Defendant (Proposed Appellant) hereby applies in writing to a single Judge of the Court of Appeal for leave to appeal from the Order herein made by the Honourable Mr Justice on the day of 20 .

The applicant relies on the following documents in support of this application, copies of which are attached herewith -

1. Draft of the intended notice and grounds of appeal.
2. The Order against which the applicant seeks leave to appeal.
3. A skeleton argument.
4. The judge's written reasons or a note or transcript of the reasons or ruling.

Dated this day of 20 .

Applicant/Attorneys for Applicant

EXPLANATORY NOTE

This Note does not form part of the Court of Appeal (Amendment) Rules) 2009

1. The Court of Appeal Rules provide for the regulation of civil and criminal appeals to the Court of Appeal. The Rules were last revised on 6 July 2004; and were then consolidated. Power to amend the Rules is conferred on the Rules Committee of the Court by section 35(3) of the Court of Appeal Law (2006 Revision).
2. A need for revision has been identified in two particular respects: first, the provisions which govern leave to appeal in civil cases; and, second, those which govern the provision of trial transcripts free of charge in criminal appeals.

Leave to appeal in civil cases

3. Section 6(f) of the Court of Appeal Law provides that, save in five enumerated categories, no appeal shall lie without the leave of the Grand Court or the Court of Appeal from an interlocutory judgment made or given by a judge of the Grand Court. Section 6(h) of the Law provides that rules of court may prescribe other cases in which leave to appeal shall be required. The new Rule 11(4A) introduces a requirement for leave to appeal from decisions of the Grand Court in the exercise of its own appellate jurisdiction.
4. Save in a case within Rule 11(4A), leave to appeal from a judgment or order in a civil matter will be granted if (a) the proposed appeal has a real (that is to say, a realistic as opposed to fanciful) prospect of success or (b), exceptionally, the public interest requires the Court of Appeal to consider, or reconsider, the issue that would be raised in the proposed appeal. Rule 11(4B) introduces a more stringent test in a case falling within Rule 11(4A). Leave for a second appeal will not be granted unless the appeal would raise an important point of principle or practice or there is some other compelling reason why the appeal should be heard.
5. The new Rule 15A – read with Rule 15(1A) and (1B) – provides for the summary determination, in appropriate cases, of the question whether an appeal is one for which leave is required.
6. As the Rules stood before amendment, the effect of Rule 21(2) was that, even in a case where it appeared to the Court at the *ex parte* hearing plain that the leave sought should be granted, it was necessary to have a further hearing *inter partes* on the question of leave before the Court could proceed to hear and determine the appeal. The need for a further hearing in such cases was wasteful of time and resources and might lead to the expenditure of unnecessary costs. Rule 21(2) has been revoked. Applications for leave to appeal are now to be made and determined in accordance with Rules 21(3A) and 21A.

7. Without intending to derogate from section 33 of the Court of Appeal Law (which provides that the powers conferred by rules of court on a single Judge may be exercised by a judge of the Grand Court), as a matter of practice (i) objections to the hearing of appeals for which leave has not been sought (under Rule 15(1B)) and (ii) applications for leave to appeal (under Rule 21(3A)) will be placed (in the first instance) before a single Judge of the Court of Appeal, unless the Court or the President of the Court orders otherwise.
8. Rules 15A (5) and 21A(4) ensure that (consistently with section 31(2) of the Court of Appeal Law) an appeal will not be determined by the decision of the single Judge in upholding the objection and/or refusing leave to appeal. The party who is dissatisfied with the decision of the single Judge will have the unfettered right to renew the objection and/or the application for leave to appeal to the full Court at an oral hearing.

Provision of trial transcripts in criminal cases

9. A practice has grown up of seeking full transcripts of the proceedings in criminal trials when (on a proper appreciation of the issues to be raised on the appeal) a full transcript is neither necessary nor relevant. This practice is undesirable, costly and causes unnecessary delay both in the hearing of an appeal in the particular case and, more generally, in the work of the Court of Appeal. To avoid such unnecessary delay and expense, Rule 33(6) is amended and a new Rule 33A is introduced.
10. The effect of the new Rules is to give to an appellant a right to receive free of charge (a), in the case of an appeal against conviction, the transcript of the arraignment, the plea to the indictment and the summing up and (b), in the case of an appeal against sentence, the transcript of the sentencing remarks, the evidence after the verdict, and the pleas in mitigation. An appellant who seeks to be supplied, free of charge, with the transcript of other parts of the proceedings at trial must apply (in the first instance) to a judge of the Grand Court. That application is to be made and determined in writing without an oral hearing. The judge may be expected to order the supply free of charge of a transcript of those parts of the trial that need to be transcribed so as to enable the grounds of appeal (as formulated) to be fairly argued. Appellants should expect that it will be only in wholly exceptional cases that the supply free of charge of a transcript of the whole of the trial will be ordered.
11. If an application is refused by a judge of the Grand Court in whole or in part, it may be renewed before the full Court of Appeal at the hearing of the appeal; but the appellant (or his counsel) should be prepared to argue the appeal without the transcript of parts of the proceedings other than those already obtained. He should expect that it will be only in very rare cases that the hearing of an appeal will be adjourned in order that further trial transcripts can be obtained.

(Price \$2.40)