

# SUPREME COURT, WORKERS' COMPENSATION RULES.<sup>(1)</sup>

These Rules may be cited as the *Supreme Court, Workers' Compensation Rules.*<sup>(1)</sup>

## RULES OF COURT.

### Division I.

Rules relating to appeals under section 18 of the  
*Workers' Compensation Ordinances 1941.*

1.—(a) Every appeal shall be instituted by a notice of appeal in the form of a notice of motion and in a summary way.

(b) The notice of appeal shall be entitled "In the Supreme Court of the Territory of New Guinea", "On appeal from" (naming the District Court from which the appeal is brought), and shall be entitled as between the party appellant and the party respondent. There shall be endorsed on the notice of appeal an address for service in such case as is provided for in Rule 9.

(c) The notice of appeal shall state whether the whole, or part only, of the decision, order, or award of the District Court is complained of and, in the latter case, shall specify the part complained of.

(d) The grounds of appeal shall be stated in the notice of appeal concisely and specifically.

(e) The notice of appeal may be amended at any time as the Court or a Judge thinks fit.

2. A notice of a cross-appeal is not required, but if a respondent intends upon the hearing of an appeal to contend that the decision, order, or award appealed against should be varied, he shall, within fourteen days after service on him of the notice of appeal, or such further time as the Court or a Judge allows, give notice of his intention to such of the parties as may be affected by such contention; and file copies of such notice.

The provisions of these Rules with respect to the filing and lodging of copies of the notice of appeal shall apply to copies of such notice.

3. When an ex-parte application under the Workers' Compensation Ordinances has been refused by a District Court the application may be renewed by way of appeal, subject to section 18 of the *Workers' Compensation Ordinances 1941*, in the Supreme Court, without any notice of appeal being filed. Application may be made to the Supreme

(1) Particulars of these Rules are as follows :—

Ordinances under which made.	Date on which made by Chief Judge of the Supreme Court of T.N.G.	Date on which published in <i>N.G. Gaz.</i>	Date on which took effect and came into operation.
<i>Workers' Compensation Ordinances 1941 and Judiciary Ordinance 1921-1938</i>	13.11.1941	17.11.1941	17.11.1941 ( <i>N.G. Gaz.</i> of 17.11.1941)

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Court on any day appointed for hearing appeals by Rule 14 or on a day to be appointed by a Judge, and must be made as soon as practicable having regard to the circumstances of the case.

4. An appeal shall not operate as a stay of execution or of proceedings under the decision, order, or award appealed against, except so far as, and on such terms and conditions as, the District Court appealed from or a Judge of the Supreme Court may order; and no intermediate act or proceedings shall be invalidated except so far as the District Court or a Judge of the Supreme Court may direct.

5. Security for the costs of an appeal shall not ordinarily be required, but a Judge may in a proper case order any appellant to give security for the costs of an appeal.

6. The notice of appeal shall be served on all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court or a Judge may direct the notice of appeal to be served on any party to the proceedings in the District Court and on any person who was not such a party, and may postpone or adjourn the hearing of the appeal on such terms as may appear proper, and may give such judgment and make any such order as might have been given or made if the persons served with such notice had been original parties.

7.—(a) The notice of appeal shall be served on the respondent within twenty-one days from the date of the decision, order, or award of the District Court.

(b) A Judge of the Supreme Court or the District Court from which the appeal is brought may extend the time for serving the notice of appeal, and notwithstanding that such period of twenty-one days has expired.

(c) Within the same period the appellant shall file a copy of the notice of appeal in the Registry of the Supreme Court and two copies in the District Court.

As respects the copy first-mentioned, the appellant may lodge the same in the District Court with the copies filed in the District Court. A copy so lodged shall be deemed to have been filed in the Registry of the Supreme Court and shall be dealt with as hereinafter directed.

(d) An order extending the time for service of the notice of appeal shall of itself operate to extend in the same measure the time for filing copies of the notice of appeal pursuant to this Rule.

8.—(a) In any case in which the notice of appeal is incompetent or does not conform to the requirements of any of these Rules or in which the requirements of these Rules as to service and filing are not complied with, the Court or a Judge may set aside the notice of appeal or amend or otherwise deal with the same as appears fit, or make such other order as the nature of the case requires.

(b) No application to set aside a notice of appeal for irregularity, or for any irregularity or default in respect of the service or filing of the same shall be allowed, unless made within a reasonable time, nor if the party applying has, with knowledge of the irregularity or default, taken a fresh step.

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9. Every party to an appeal, shall if his place of residence is not within one mile of the seat of the District Court from which the appeal is brought, within ten days after service of the notice of appeal, lodge with the Clerk of the District Court notice of an address for service within one mile of the Court and give notice of such address to the other party or parties to the appeal.

In default of such notice or of an indorsement of an address for service pursuant to Rule 1, a party's address for service shall be deemed to be at the office of the Clerk of the District Court.

This Rule, save as to the period specified, applies to the case of a party who after the institution of an appeal ceases to reside within one mile of the seat of the District Court. In such case the notice shall be lodged and given forthwith by the party so ceasing to reside.

10. It shall be the duty of a District Court exercising jurisdiction or authority under the Ordinances to make or cause to be taken a note—

- (a) of the evidence taken in any proceedings by way of arbitration or otherwise under the Ordinance;
- (b) of any ruling made by the District Court with respect to the admission or rejection of evidence;
- (c) of any application made to the District Court;
- (d) of the contentions of the respective parties on any point of law and of the decision of the District Court thereon;
- (e) of the findings of fact (including any inferences of fact) and of the reasons of the District Court for any decision, order, or award.

All such notes are comprehended in the expression "the magistrate's notes".

11.—(i) Upon the filing of the notice of appeal in the District Court, the Clerk of the Court shall, under the direction of the stipendiary magistrate or district officer whose decision, order, or award is complained of, assemble and schedule:—

- (a) A copy of the notice of appeal and of any notice given pursuant to Rule 2.;
- (b) The claim or application, by whatever name, by or on which the proceedings in the District Court were instituted or taken and the relevant plea or answer and other pleadings, by whatever name;
- (c) The magistrate's notes;
- (d) All relevant documentary evidence, affidavits and depositions received in such proceedings;

The magistrate or district officer shall authenticate the magistrate's notes by signing the same;

(ii) The schedule and the scheduled materials, lying in the District Court, shall be available for inspection and perusal by any party to the appeal. A copy of the schedule and the scheduled materials will be supplied to any party to the appeal, within a reasonable time after the same is bespoken, upon payment of the prescribed fees.

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The stipendiary magistrate or district officer may at the request of any party to the appeal and in the exercise of his discretion include any additional or further materials and amend and note the schedule accordingly.

12. The Court at the hearing of the appeal may make such special order as it thinks fit with respect to any costs incidental to or consequent upon the inclusion of materials at the request of any party to an appeal.

13. On the expiration of twenty-one days from the filing of the notice of appeal in the District Court, the Clerk of the District Court, by the direction of the District Court, shall forward the schedule and the scheduled materials to the Registrar of the Supreme Court together with—

(a) any copy of the notice of appeal or of a notice given pursuant to Rule 2, if lodged, pursuant to Rule 7, in the District Court in lieu of the Registry of the Supreme Court;

(b) the appellant's request to set the appeal down for hearing if the appellant shall have lodged the same for transmission.

14.—(a) Subject to any special order of a Judge as to the time and place for hearing an appeal, an appeal may be set down for hearing on the Monday of any month, other than December, falling on or between the twentieth and the twenty-sixth days of the month.

(b) The appellant shall give the respondent twenty-eight days' notice of the hearing of the appeal. Such notice may be given at any time and the period of twenty-eight days shall be inclusive of the day of hearing.

(c) Appeals shall be set down by the appellant for hearing, at least ten days before the day of hearing, unless a Judge of the Court permits the request for setting down an appeal to be received on a later day.

(d) If an appeal is not set down for hearing so that the hearing shall take place within three months after the month in which the notice of appeal was served on a respondent, the respondent may give like notice of hearing and set the appeal down for hearing, or apply to the Court by summons, to be served on the appellant, for the dismissal of the appeal.

(e) If an appeal is not brought on for hearing within six months after the month in which the decision, order, or award appealed against was given or made, the appeal shall be deemed to have been abandoned, but may be reinstated by the Court or a Judge on such terms and conditions as seem fit.

(f) The stipendiary magistrate or the district officer may, on production of a certificate of the Registrar of the Supreme Court that an appeal is deemed to be abandoned, tax a respondent's costs of the appeal and the amount allowed on taxation shall be payable forthwith by the appellant to the respondent and shall be recoverable as costs in the District Court.

15.—(a) If and in so far as it is an appeal on a question of fact, an appeal shall be in the nature of a rehearing, and further evidence may be received in accordance with paragraph (b) of this Rule.

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(b) After the hearing and determination of any matter upon the merits, further evidence (save as to matters subsequent which have occurred after the date of the decision, order, or award under appeal) shall be admitted on special grounds only and not without special leave of the Court or a Judge. Leave may be granted at the hearing if the appellant has given reasonable notice in that behalf.

(c) Further evidence upon questions of fact may be given by affidavit or by deposition taken before a District Court as defined in the said Ordinances or may be taken orally in Court at the hearing of the appeal.

(d) Notwithstanding anything contained in this Rule, in any case in which it appears to the Court that the proceedings in the District Court have miscarried by reason of failure to consider or determine any material issue, the Court may receive such further evidence as may be necessary to enable the Court to do justice between the parties.

(e) The Court on the hearing of an appeal on a question of fact shall have power to draw inferences of fact, and in any other case to draw such inferences of fact as might have been drawn by the District Court.

(f) The powers conferred on the Court by section 18 of the Ordinance may be exercised by the Court notwithstanding that the notice of appeal may be that part only of the decision, order, or award appealed from may be reversed or varied, and such powers may be exercised in favour of all or any of the respondents or parties although the respondents or parties may not have appealed from or complained of the decision, order, or award, but omission to give such notice as is provided for in Rule 2, may be a ground for an adjournment of the appeal or for a special order as to costs.

(g) No appeal shall succeed on the ground merely of mis-direction or the improper reception or rejection of evidence, unless some substantial wrong or miscarriage has been thereby occasioned in the District Court.

16. If an appellant does not appear at the hearing of an appeal, the appeal shall be dismissed, but a Judge, if he thinks fit, may order the appeal to be reinstated and the order dismissing the appeal to be vacated, on such terms as to costs or otherwise as in the circumstances may be just.

Where a party who has been served with a notice of appeal does not appear at the hearing of the appeal, then on proof by affidavit of the service of such notice and of the notice of the time and place appointed for the hearing of the appeal, such order shall be made on the appeal as in the circumstances may appear just.

The Court or a Judge may in any case at any time postpone or adjourn the hearing of an appeal for such time and on such terms as the Court or a Judge may think fit.

An order dismissing an appeal with costs for want of prosecution may be drawn up by the respondent and signed by the Judge without other warrant than this Rule.

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17. The Court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just, as also with respect to the costs of the proceedings in the District Court.

18. Whenever any original documents are for the purposes of an appeal delivered to the Registrar of the Supreme Court by the Clerk of a District Court, the same shall after the determination of the appeal be returned to the District Court.

19. In any case in which under these Rules an application may be made to a District Court as an alternative to the Supreme Court or a Judge, the application shall be made in the first instance to the District Court, but the District Court may at any stage direct the application to be made to the Supreme Court or to a Judge, as the case may be.

20. In any case not otherwise provided for Rule 6 of Order 90 of the Rules of the Supreme Court of Queensland<sup>(2)</sup> as of Wednesday the tenth day of October 1900 shall be applicable to proceedings under these Rules and shall extend to the exercise of the powers conferred by that Rule by the District Court in respect of any act matter or thing which by these Rules may be done in or by the District Court.

21. The fees and charges set out in the Schedule to these Rules shall be payable to the proper officer in respect of the several matters to which they respectively relate.

### *Division II.*

Rules relating to the submission of a question of law for the decision of the Supreme Court: the Second Schedule, Cl. 2., of the *Workers' Compensation Ordinances 1941*.

1. A question of law to be submitted to the Supreme Court pursuant to clauses 1. and 2. of Schedule II. of the Ordinances shall be submitted in the form of a special case.

2. The case shall be entitled "In the Supreme Court of the Territory of New Guinea" and as between the party applicant (by whatever name) in the District Court, as applicant, and the party respondent (by whatever name) in the District Court, as respondent and shall be described as "A special case submitted by the District Court at pursuant to clauses 1. and 2. of Schedule II. to the *Workers' Compensation Ordinances 1941*".

3. The body of the case shall be divided into paragraphs numbered consecutively, and each paragraph shall deal with a separate subject.

The case shall state the subject of the proceedings in the District Court in which the question or questions of law to be submitted arose and the course of such proceedings; the relevant facts and conclusions of fact as found by the District Court; the respective contentions of the parties (with citations of any authorities); the question or questions of law on which the decision of the Supreme Court is sought.

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(2) *The Rules of the Supreme Court* (Queensland, adopted) are printed on p. 617.

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4. When the draft of the case has been prepared, the Clerk of the District Court shall give notice to the parties concerned that the draft is open for inspection and may be perused at the office of the District Court within such period as the stipendiary magistrate or district officer shall direct.

The stipendiary magistrate or district officer may in his discretion hear the submissions of the parties with respect to the contents of the case as drafted and alter or modify the case so as the better to state the questions of law and the contentions of the parties.

The engrossment of the case as finally settled by the stipendiary magistrate or district officer shall be signed by him.

Any party shall be entitled to a copy of the case on payment of four pence per folio.

The Clerk of the District Court shall give notice to each of the parties that the case has been signed and will be set down for hearing and come on to be heard in the Supreme Court on the day appointed in that behalf by Rule 5. hereunder. No further notice of hearing shall be necessary.

5. The case shall be forwarded by the Clerk of the District Court to the Registry of the Supreme Court and the proper officer in the Registry shall enter the case in the list for hearing on the Monday falling on or between the twentieth and twenty-sixth days of the month next after the month (other than the month of December) in which the case was signed.

The case shall come on for hearing on the Monday for which it is set down unless upon application in that behalf the Court or a Judge appoints another day for hearing.

6. The Court may at any time postpone or adjourn the hearing of the case and may at any time remit the case to the District Court for amendment, whether by the statement of additional findings of fact or otherwise.

7. The opinion of the Court and/or the answer of the Court to any questions of law submitted in the case will be reduced to writing and transmitted to the District Court.

8. The costs of and incidental to a special case shall be costs in the proceedings in the District Court subject to any special order or direction of the Supreme Court.

*Directory notes.*—Since questions of law only can be submitted to the Court under clauses 1. and 2. of Schedule II., the Court is concerned only with the facts and inferences of fact found by the District Court. Therefore the evidence should not be set out in or exhibited to the case unless the evidence itself is the subject of a question to be submitted to the Court. This note will be taken as illustrating a general principle applicable to the preparation of special cases.

As a rule documents and copies of documents should not be annexed to the case; the substance of them should be incorporated in the text of the case. But pleadings and other writings, which it is desirable to set out in extenso, may be annexed.

COMPENSATION—

THE SCHEDULE OF FEES AND CHARGES MENTIONED IN RULE 21  
OF DIVISION I OF THESE RULES.

	£	s.	d.
On filing a notice under Rule 2 .. .. .		2	6
On renewing an ex parte application (R.3) .. .. .		5	0
On filing a notice of appeal .. .. .	1	10	0
each copy .. .. .		2	6
On a notice of motion or summons .. .. .		2	6
On filing an address for service .. .. .		1	0
On setting down an appeal for hearing .. .. .	1	0	0
On filing every affidavit .. .. .		2	6
On the final Order disposing of an appeal or hearing .. .. .		10	0
On any other Order .. .. .		2	6
For a copy of the Schedule and scheduled materials @ per folio .. .. .			4

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THE SCHEDULE OF FEES AND CHARGES IN RESPECT OF DIVISION II  
OF THESE RULES.

	£	s.	d.
Fee on case stated (to be paid by the applicant party) .. .. .		1	0 0