

NORTHERN TERRITORY OF AUSTRALIA

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Regulations 1981, No. 12 \*

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Rules of Court under the Supreme Court Act

We, the undersigned Judges, hereby make the following Rules of Court under the Supreme Court Act.

Dated this 29th day of May, 1981.

W.E.S. Forster C.J.  
J.H. Muirhead J.  
J. Toohey J.  
J.F. Gallop J.

Judges of the  
Supreme Court

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LOCAL COURT APPEAL RULES

PART I - PRELIMINARY

1. CITATION

These Rules may be cited as the Local Court Appeal Rules.

2. COMMENCEMENT

These Rules shall come into operation on the date of commencement of the Local Courts Act (No. 2) 1979.

3. REPEAL

The Rules of Court (Local Court Matters) 1941 are repealed.

4. TRANSITIONAL AND SAVINGS

These Rules shall not apply to or in relation to an appeal against a final judgment, determination, order or interlocutory order where the judgment, determination, order or interlocutory order was made prior to the commencement of these Rules.

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\* Notified in the Northern Territory Government Gazette  
on \_\_\_\_\_, 1981.

23 JUL 1981

Local Court Appeal Rules

5. SUPREME COURT RULES

(1) These Rules shall be read as supplementary to and, unless the contrary intention appears, not as amending or revoking a provision of the Rules of the Supreme Court.

(2) Where these Rules do not make provision in relation to a matter of practice or procedure in an appeal, the matter shall be governed by the Rules of the Supreme Court.

PART II - APPEAL FROM INTERLOCUTORY ORDER

6. DEFINITION

In this Part, unless the contrary intention appears, "appeal" means an appeal to the Supreme Court under section 54(2) of the Local Courts Act.

7. POWER OF COURT ON HEARING APPEAL

On an appeal, the Supreme Court may make an order and award such costs as it thinks fit.

8. APPLICATION FOR SPECIAL LEAVE TO APPEAL

(1) An application for special leave to appeal from an interlocutory order shall be made to a Judge in Chambers before the expiration of 14 days from the date of the making of that order.

(2) An application under sub-rule (1) may be made ex parte and shall be on affidavit proving -

- (a) the necessary facts and documents;
- (b) the question in issue; and
- (c) the grounds upon which leave is sought.

9. CONSIDERATIONS FOR GRANTING SPECIAL LEAVE

An application under rule 8(1) shall not be granted unless by reason of -

- (a) the general importance of the question in issue;
- (b) the consequence of the appeal in the particular action;
- (c) manifest error; or
- (d) some other consideration,

it appears desirable that special leave should be granted.

## Local Court Appeal Rules

### 10. PROCEDURE ON APPEAL

(1) Where special leave to appeal has been granted, the order giving leave shall be forwarded by the Master to the Clerk of the Local Court who shall file the order.

(2) Where leave to appeal has been given by a Local Court, the order giving leave shall be filed in that Court by the appellant as soon as practicable.

(3) An appeal shall be deemed to be duly instituted upon the filing of an order under sub-rule (1) or (2).

(4) Upon the filing of an order under sub-rule (1) or (2) the Clerk of the Local Court shall forward to the Master the file containing the documents relating to the action in which the order appealed against was made.

(5) An appellant shall, within 7 days of the filing of an order under sub-rule (1) or (2), file a notice of motion by way of appeal in the Supreme Court and serve a copy of the notice on the respondent.

(6) A notice of motion filed under sub-rule (5) shall state that the appeal is pursuant to leave or special leave.

### 11. RESCINDING LEAVE TO APPEAL

(1) At any time after leave to appeal has been granted, the respondent may apply to a Judge in Chambers for an order rescinding that leave.

(2) A Judge hearing an application under sub-rule (1) may make such order, including an order rescinding the leave to appeal, as he thinks fit.

(3) If a Judge, upon the hearing of an appeal, determines that leave or special leave to appeal should not have been given, he may rescind the leave or special leave.

### 12. STAY OF PROCEEDINGS

An order giving leave or special leave to appeal shall not operate as a stay of proceedings unless an order to that effect is included in the order giving leave or special leave to appeal or an order to that effect is made upon separate application to a Judge.

### 13. COSTS ON APPEAL

(1) Costs of, and incidental to, obtaining special leave or rescinding special leave and of an appeal may be -

(a) fixed by a Judge; or

(b) ordered to be taxed by the Master.

## Local Court Appeal Rules

(2) Where an amount of costs has been fixed or taxed under sub-rule (1), the Clerk of the Local Court shall enter judgment for the amount of the costs so fixed or taxed against the party ordered to pay costs.

### 14. RETURN OF FILE TO CLERK

The Master shall forward to the Clerk of the Local Court -

(a) an order made on appeal or pursuant to rule 11(2) or (3) or rule 15 which shall be signed or initialled by the Master and impressed with the Seal; and

(b) the file.

### 15. FAILURE TO COMPLY

(1) If an appellant fails to comply with the requirements of this Part, the respondent may apply to a Judge for an order that the leave or special leave be rescinded and the appeal dismissed.

(2) An application under sub-rule (1) may be made in the same manner as an application under rule 8.

(3) A Judge, upon hearing an application under sub-rule (1), may make such order as he thinks fit.

## PART III - APPEAL FROM FINAL JUDGMENT, DETERMINATION OR ORDER

### 16. DEFINITION

In this Part, unless the contrary intention appears, "appeal" means an appeal to the Supreme Court under section 54(1) of the Local Courts Act.

### 17. COPY OF NOTICE TO BE FILED

A party who serves on or posts to the Clerk of the Local Court and the opposite party or that party's solicitor a notice of intention to appeal pursuant to section 54A(1) of the Local Courts Act shall file a copy of the notice in a Registry of the Supreme Court as soon as practicable.

### 18. NOTICE TO CONTAIN PARTICULARS

A notice of intention to appeal shall contain brief particulars of the judgment, determination or order complained of and shall specify the grounds of appeal.

### 19. INSTITUTING APPEALS

An appeal shall be deemed to be duly instituted upon the filing of the notice of intention to appeal in a Registry of the Supreme Court.

## Local Court Appeal Rules

### 20. CLERK TO FORWARD DOCUMENTS

(1) After receiving a notice of intention to appeal the Clerk of the Local Court shall forward to the Master where, at the trial of the action, evidence -

(a) was not recorded - a typed copy of the evidence and a typed copy of the notes made by the Judge, Magistrate or Justice which shall be signed by that Judge, Magistrate or Justice; or

(b) was recorded - a copy of the typed manuscript,

together with -

(c) the file containing the documents relating to the action and the exhibits put in evidence at the trial; and

(d) a list of the documents relating to the action and the exhibits put in evidence at the trial certified as correct by the Clerk of the Local Court.

(2) On the completion of an appeal and the expiration of the time for appeal from an order made on appeal, the Master shall return to the Clerk of the Local Court the file and exhibits forwarded to him in pursuance of sub-rule (1).

### 21. SETTING DOWN OF APPEAL

An appellant shall, within 28 days of filing a copy of a notice of intention to appeal in a Registry of the Supreme Court, set down the appeal for hearing.

### 22. NOTICE NOT TO OPERATE AS STAY OF PROCEEDINGS

(1) An application for an order that a notice of intention to appeal operates as a stay of proceedings may be made by summons to a Judge in Chambers at any time after notice of intention to appeal has been given.

(2) Except in case of urgency, at least 24 hours notice shall be given to the other party of an application for a stay of proceedings.

## PART IV - MISCELLANEOUS

### 23. TIME

(1) Without prejudice to another power to enlarge time, the Supreme Court or a Judge may -

(a) enlarge the time for giving notice of intention to appeal limited by section 54A of the Local Courts Act; and

Local Court Appeal Rules

(b) enlarge any time set by these Rules for doing an act or taking proceedings.

(2) An enlargement of time may be ordered under sub-rule (1) although the application for enlargement is not made until after the expiration of the time allowed.

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