

**PART C**

**ISLAND COURT (COURT CLERKS)**

**RULES**

**2005**

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**2005**

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## **Interpretation**

In these rules, unless the context indicates to the contrary, “**custom area**” means part or whole of an island where the customs are substantially similar;

“**party**” means claimant and defendant in civil cases and prosecutor, complainant and accused in criminal cases.

## **Rule 1 - Court registers and records**

The clerk of each Island Court shall keep such registers and records of civil and criminal cases as the Chief Justice shall direct, and shall record every step in such cases in such manner as the Chief Justice shall direct.

## **Rule 2 - Filing of court documents**

- (1) The clerk shall check all documents relating to both civil and criminal cases which are presented for filing to make sure that they relate to cases which that Island Court has jurisdiction to determine, and that they are in accordance with the rules of civil procedure and of criminal procedure made by the Chief Justice.
- (2) If the clerk is satisfied that a document presented for filing is in order, the clerk shall accept it and file it in an orderly and secure manner as prescribed by the Chief Justice.

## **Rule 3 - Dates for hearing**

- (1) When documents are filed to commence a civil case or a criminal case, the clerk shall allocate a date for the hearing of that case, and shall enter that date in the summons to be served on the defendant and witnesses.
- (2) If a court adjourns a hearing from the date originally allocated to it by the clerk, the clerk shall alter the date of hearing and inform the parties and witnesses accordingly.

## **Rule 4 - Preparation of documents**

- (1) The clerk shall prepare summonses for service on defendants and witnesses in civil cases, and sign summonses for defendants and witnesses in criminal cases, and such other documents as the Chief Justice shall prescribe.
- (2) The clerk may give advice to parties as to the preparation of appropriate documents, but should not prepare those documents.

### **Rule 5 - Service of documents**

- (1) The clerk shall be responsible for ensuring that documents that are to be served are served by appropriate persons within the time specified by the civil procedure and criminal procedure rules.
- (2) Documents in criminal cases are served by police, but documents in civil cases are served by the clerk.
- (3) The clerk shall ensure that a written record is made of the time and place of service of all documents relating to a case that are served on parties or witnesses, and that this is recorded in the file of that case.

### **Rule 6 - Nomination of justices**

- (1) Before each day for hearing, the clerk shall prepare a list of the cases for hearing on that day, and shall post a copy of that list at the office of the court.
- (2) The clerk shall, after discussion with the supervising magistrate, determine which of the available justices should be nominated to attend the hearing, to ensure that the justices contain a balance of gender and political and religious affiliations, and are independent of the parties and have no interest in the cases to be heard. If the case relates to ownership, or boundary of customary land, all the justices must be knowledgeable about the customs of the custom area in which the land is situated.
- (3) The clerk shall, after consultation with the supervising magistrate, select which of the justices to be nominated should be nominated as the chairperson to ensure that the hearing is conducted in an orderly, fair and respectful manner.
- (4) The clerk should then inform the justices who have been nominated of the time and place of the hearing.

### **Rule 7 - Preparation for sitting of Court**

- (1) Before each sitting of the Court, the clerk shall prepare a list of the cases to be heard at that sitting, and shall give a copy of that list to the justices of the Court and attach a copy of that list outside the courtroom for members of the public to see.
- (2) Before each sitting, the clerk shall ensure that the courtroom is in order for the hearing and that some paper and pens are available for the justices to make notes of evidence.

## **Rule 8 - Hearing**

- (1) When the justices are ready to enter the courtroom, the clerk shall call for all persons present in the courtroom to stand up and remain standing until the justices are seated.
- (2) When the justices are seated the chairperson of the court shall request the clerk to read aloud the names of the parties in each case in the list for that day, in the order in which the case appears in that list.
- (3) The language of the Court shall be Bislama, and the clerk must always ask the parties in each case whether they understand Bislama before the hearing of the case begins. If a party does not understand Bislama, the clerk shall inform the chairperson who shall adjourn the case until a suitably qualified person can be found to act as interpreter for that party.
- (4) The hearing of each case shall commence by the clerk reading out aloud:
  - (a) the statement of claim in civil cases; or
  - (b) the charge in criminal cases.
- (5) The clerk shall then ask the defendant whether the defendant understands the statement of claim or charge, as the case may be, and whether the defendant admits that the statement of claim or the charge is true or denies that the statement of claim or charge is true.

The clerk shall record in writing the answer of the defendant.
- (6) If the defendant admits the statement of claim or the charge, the chairperson shall request the claimant or prosecutor to give a short statement of facts to the court.
- (7) If the defendant does not answer the clerk, or denies that the statement of claim or the charge is true, or denies that the summary of facts given by the claimant or the prosecutor is true, the chairperson shall request the clerk to ensure that all witnesses in the case leave the court room, but remain available for calling when appropriate, and that the hearing then proceeds as provided by the rules of civil procedure or the rules of criminal procedure.
- (8) The clerk shall require each party and witness, before giving evidence, to swear an oath or make a solemn declaration to tell the truth before that witness gives evidence.

The oath or declaration shall be as follows:  
"I swear by Almighty God (or, I solemnly sincerely and truly declare) that I will tell to this Court the truth, the full truth and all the truth regarding this case."

- (9) The clerk shall require each person who agrees to act as interpreter for a party, to swear an oath or make a solemn declaration to make a truthful and accurate translation to the best of that person's ability.  
The oath or declaration shall be as follows:  
"I swear to accurately and truthfully translate the words of the parties and witnesses in this case from the Bislama language into the language of the party or witness who does not understand that language and to translate into the Bislama language the words of the party or witness who does not speak that language."
- (10) The clerk shall not-
- (a) question the parties or witnesses;
  - (b) participate in the discussions of the justices or in the making of the judgment of the court
  - (c) be present with the justices when they are discussing what should be the decision of the court.
- (11) At the conclusion of each case the clerk shall call out the names of the parties in the next case on the list for that day, and when all the cases are concluded, shall announce to the court that all the cases to be heard that day are completed.
- (12) The clerk shall be present throughout the hearing of each case, and shall assist the chairperson to maintain dignity and order in the courtroom throughout the hearing.

### **Rule 9 - Recording of Decision of Court**

The clerk must record in writing-

- (a) the answer of the defendant to the charge or the statement of claim;
- (b) a declaration of interest by a justice or an objection of a party to a justice on the grounds of interest, and the outcome of that declaration or objection;
- (c) a summary of the evidence; and
- (d) the terms of each decision of the court in both civil and criminal cases in such manner as the Chief Justice shall prescribe;
- (e) such other matters as the chairperson may require;

This record must be signed by the chairperson of the Court.

### **Rule 10 - Revision of decisions of Island Court**

The clerk shall make arrangements with the supervising magistrate to enable that magistrate to revise the decisions of the Island Court at regular intervals not exceeding 3 months.

### **Rule 11 - Forms**

The forms set out in appendix A to the rules of civil procedure and the rules of criminal procedure, or forms to like effect, shall be used in all cases to which they are applicable, with such variations as circumstances may require.

### **Rule 12 - Fees to be charged and receipts**

- (1) The fees set out in appendix B to the rules of civil procedure shall be paid by the party indicated in the appendix.
- (2) A receipt will be issued by the clerk in respect of all fees paid by a party.

### **Rule 13 - Documents to be displayed in court office**

The clerk shall ensure that the following documents are displayed in the court office for members of the public to see:

- (a) warrant of jurisdiction of that Court;
- (b) table of fees payable in respect of documents filed in that court;
- (c) list of cases for hearing at next hearing day;
- (d) notice as to right of appeal from decisions of that Court within 30 days to a Magistrate's Court or, in a case relating to ownership or boundary of land, to the Supreme Court.