

**CRIMINAL PROCEDURE CODE
(CHAPTER 7)**

CRIMINAL APPEAL RULES

**S 19/1992
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SUBSIDIARY LEGISLATION

CRIMINAL APPEAL RULES

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SUBSIDIARY LEGISLATION

Rules made under section 441

CRIMINAL APPEAL RULES

Commencement: 1st July 1992
[S 19/1992]

PART I

PRELIMINARY

Citation

1. These Rules may be cited as the Criminal Appeal Rules.

Application

2. These Rules apply to all appeals of a criminal nature in relation to which a notice of appeal or application to the Court of Appeal has not been issued before the date of commencement.

Forms

3. The forms set out in the Schedule, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable.

Interpretation

4. In these Rules, unless the context otherwise requires —

“Court” means the Court of Appeal;

“Court below” means the Court from which the appeal is brought;

“Judge” includes the presiding officer of any Court from which an appeal lies to the Court;

“Registrar” means the Registrar of the Court of Appeal;

“respondent” means the person who appears on behalf of the Public Prosecutor or who undertakes the defence of the appeal.

[Subsidiary]

PART 2

NOTICES OF APPEAL

Notices of appeal

5. (1) A notice of appeal, or a notice of application for extension of time within which such notice shall be given, shall be signed by the appellant himself, or, subject to the provisions of this rule, by any person authorised to act on his behalf.

(2) Any notice or other document which is required or authorised to be given or sent is deemed to be duly given or sent if forwarded by registered post addressed to the person to whom such notice or other document is so required or authorised to be given or sent.

(3) When an appellant or any other person authorised or required to give or send any notice of appeal or notice of any application is unable to write, he may affix his mark thereto in the presence of a witness who shall attest the same, and thereupon such notice is deemed to be duly signed by such appellant.

(4) If, at the trial of a person, it has been contended that he was not responsible according to law for his actions on the ground that he was insane at the time the act was done or the omission made by him, any notice required to be given and signed by the appellant himself may be given and signed by any person authorised to act on his behalf.

(5) In the case of a body corporate, it shall be sufficient compliance therewith if such notice or other document is signed by the secretary, clerk, manager, or advocate of such body corporate.

Issue of certificate of conviction

6. The Registrar of the Court below shall not issue a certificate of conviction of any person convicted in the Court below if notice of appeal is given, until the determination thereof.

Obtaining of Judge's notes

7. The Registrar, when he has received a notice of appeal or a notice of application for extension of the time within which such notice shall be given, shall obtain the trial Judge's notes of the trial and judgment or copies thereof.

Copies of record for appellant

8. (1) At any time after notice of appeal has been given, the appellant may obtain from the Registrar copies of the record and of any documents or exhibits in the possession of the latter for the purposes of the appeal.

(2) Such copies shall be supplied by the Registrar, or the Registrar of the Court below, free of charge to the appellant and respondent.

Forms of appeal

9. A person wishing to appeal to the Court against his conviction or sentence shall commence his appeal by sending to the Registrar a notice of appeal, or notice of application for extension of time within which such notice shall be given, in Forms 1 and 2 of the Schedule.

Abandonment of appeal

10. An appellant, at any time after he has duly served notice of appeal, or an application for extension of time within which such notice shall be given, may abandon his appeal by giving notice of abandonment thereof in Form 3 to the Registrar, and upon such notice being given the appeal is deemed to have been dismissed by the Court.

Procedure where question of law reserved

11. If a Judge of the Court below reserves a question of law for the consideration of the Court, the person convicted shall for the purposes of these Rules be deemed to be an appellant.

PART 3

FINES, RECOGNISANCES, BAIL

Person in custody in default of payment

12. (1) If a person has, on his conviction, been sentenced to payment of a fine and, in default of payment, to imprisonment and such person remains in custody in default of payment of the fine, he is deemed, for purposes of appeal, to be a person sentenced to imprisonment.

(2) If a person has, on his conviction, been sentenced to the payment of a fine and, in a default of payment, to imprisonment, and he intimates to the Judge of the Court below that he wishes to appeal against his conviction, such Judge may, if he thinks right so to do, order such person forthwith to enter into recognisances in such amount and with or without sureties in such amount, as such Judge may require, to prosecute his appeal.

(3) Subject thereto, such Judge may order that payment of the fine, shall be made at the final determination of the appeal, if the same be dismissed, to the Registrar of the Court below, or as the Court may order.

(4) The recognisances under this rule shall be in Form 4 or 5.

[Subsidiary]

(5) The Registrar of the Court below shall forward the recognisances of the appellant and his sureties to the Registrar.

(6) An appellant who has been sentenced to the payment of a fine, and has paid the same or part thereof, shall, if his appeal is successful, be entitled, subject to any order of the Court, to the return of the sum of any part thereof which he has paid.

(7) If an appellant, to whom subrule (2) applies, does not serve in accordance with these Rules a notice of appeal within 10 days from the date of his sentence, the Registrar of the Court, which may, after notice in Form 6 or 7 has been given to the appellant and his sureties, order a forfeiture of the recognisances of the appellant and his sureties, and may issue a warrant for the arrest of the appellant in Form 8 and may commit him to prison in default of payment of his fine, or may make such other order as it thinks right.

Varying order of restitution

13. If, at the trial of a person, an order of restitution of any property to any person has been made by the Judge of the Court below, the person in whose favour, or against whom, the order of restitution has been made, and with the leave of the Court, any other person, shall, on the final hearing by the Court of an appeal against the conviction on which such order of restitution was made, be entitled to be heard by the Court before any order annulling or varying such order of restitution is made.

Temporary suspension of orders made on conviction

14. (1) If, on the conviction of a person, the Judge of the Court below makes an order that such person shall pay the whole or any part of the costs and expenses of the prosecution out of any moneys taken from such person on his arrest, or where such Judge lawfully makes on the conviction of any person before him any order for the payment of money by the convicted person or by any other person or any order affecting the rights or property of such convicted person, the operation of such orders shall in any of such cases be suspended when notice of appeal is given until determination of the appeal.

(2) The Court may annul any order to which this rule refers on the determination of the appeal, or may vary such order.

(3) If, on the conviction of a person any disqualification, forfeiture or disability attaches to such person by reason of such conviction, such disqualification, forfeiture or disability shall be suspended, when notice of appeal is given, until the determination thereof.

(4) If, on the conviction of a person any property matters or things, the subject of the prosecution or connected therewith, are to be or may be ordered to be destroyed or forfeited under the provisions of any written law, the destruction or forfeiture or order

for destruction or forfeiture thereof shall be suspended when notice of appeal is given until the determination thereof by the Court.

(5) If, on the conviction of a person, any claim may be made or any proceedings may be taken against such person or any other person in consequence of such conviction, such proceedings shall not be taken when notice of appeal is given until the determination thereof.

(6) A person affected by any orders which are suspended under this rule may, with the leave of the Court, be heard on the appeal, before any such orders are varied or annulled by the Court.

Appellant's sureties and recognisances

15. (1) When the Court or the Court below admits an appellant to bail pending the determination of his appeal, the Court shall specify the amounts in which the appellant and his sureties shall be bound by recognisance, and shall direct before whom the recognisances of the appellant and his sureties may be taken.

(2) If such Court does not make any special order or give any directions under this rule, the recognisances of the appellant and of his sureties may be taken before a magistrate.

(3) The recognisances provided for in this rule shall be in Form 4 or 5.

(4) The Registrar of the Court below shall forward the recognisances of the appellant and of his sureties to the Registrar.

Appellant absent

16. (1) The Court may, if an appellant is not present at any hearing of his appeal, issue a warrant for the arrest of the appellant in Form 8.

(2) The Court may consider the appeal in the absence of the appellant or make such order as it thinks fit.

(3) If an appellant is present before the Court, the Court may make any order admitting the appellant to bail, or revoke or vary any such order previously made, or enlarge from time to time the recognisances of the appellant or of his sureties or substitute any other surety for a surety previously bound.

Bail

17. At any time after an appellant has been released on bail, the Court, or, where the appellant was released on bail by the Court below, the Court below may revoke the order admitting to bail, and issue a warrant in Form 8 for his arrest and order him to be committed to prison.

PART 4

HEARINGS

Registrar to keep documents etc.

18. (1) The Registrar shall keep available for use by the Court any documents, exhibits or other things relating to the proceedings before the lower Court.

(2) Pending the determination of the appeal, such documents, exhibits or other things shall be open, as the Registrar may arrange, for inspection by any interested party to the appeal.

(3) The Court, may at any stage of any appeal, on application by any party to an appeal, order any document, exhibit or other thing connected with the proceedings to be produced to the Registrar or before the Court by any person having the custody or control thereof.

(4) Service of any order made under this rule shall be personal service, unless the Court or a Judge of the Court otherwise orders. For the purpose of affecting due service thereof, the Registrar may require assistance of the police and may forward the order to the Commissioner of Police, who shall comply therewith.

Reserved decisions or reasons

19. (1) The Court may, if at the close of the argument on any appeal, it does not on that day deliver its decision and its reasons therefor —

(a) announce its decision and state that the reasons therefor will be given at a later date; or

(b) announce that it is reserving its decision and reasons therefor to a later date.

(2) Where the reasons for a decision are given at a later date and those reasons have been recorded in writing, the Court may, instead of reading the reasons, supply copies of such reasons in accordance with subrule (3) hereof.

(3) Where the reasons for a decision are given at a later date and, being recorded in writing, are not read, the Court shall —

(a) deliver a copy thereof to each of the parties or their advocates;

(b) lodge a copy thereof in the Supreme Court Library; and

(c) make a copy thereof available for public inspection in the Registry.

(4) If the Court of Appeal reads its decision, or its decision and reasons, at a later date it shall be sufficient if at least one of the Judges who heard the appeal is present.

Notices to appellant in custody

20. If an appellant is in custody, the Registrar shall notify the appellant and the Director of Prisons of the probable day on which the appeal or application will be heard.

Applications not provided for

21. (1) Except where otherwise provided in these Rules, an application to the Court may be made by or on behalf of the Public Prosecutor, or by the appellant, or by his advocate on his behalf, orally or in writing.

(2) If the appellant is unrepresented and is in custody, he shall make any such application by forwarding the same in writing to the Registrar.

Warrant to secure attendance of appellant

22. An appellant who is in custody may, at any time before the determination of his appeal, be brought before the Court, or a Judge or examiner, by warrant under the hand of the Registrar.

PART 5

NOTIFICATION OF APPEALS

Notification of determination of appeal

23. (1) On the final determination of an application, the Registrar shall give to the appellant, if he is in appeal custody and has not been present at such determination, and to the respondent and the Director of Prisons notice of such determination in Form 9.

(2) In an appeal against a conviction involving sentence of death, the Registrar shall, on receiving the notice of appeal, send copies thereof for the information of the Director of Prisons.

(3) On the final determination of any appeal involving sentence of death, the Registrar shall forthwith notify the Minister of Law*, the appellant, the respondent and the Director of Prisons in Form 10.

* Transferred to the Permanent Secretary, Office of the Prime Minister, with effect from 26th July 1999 —
[S 37/1999]

[Subsidiary]

Notification of result to lower Court

24. (1) The Registrar, at the determination of an appeal, shall notify the Registrar of the Court below of the decision of the Court and of any orders or directions made or given by the Court.

(2) The Registrar of the Court below shall on receiving the notification referred to in this rule enter the particulars thereof on the records of such Court.

Return of exhibits etc.

25. Upon the determination of an appeal, the Registrar shall, where practicable, return to the Court below any exhibits, or documents usually kept by the Court below, or forming part of the record of the Court below.

Enforcement of orders etc.

26. Any order given or made by the Court may be enforced by the Court or by the Court below as may be most expedient.

PART 6

WITNESS

Attendance of witness before Court

27. (1) Where the Court has ordered any witness to attend and be examined before the Court, an order in Form 11 shall be served upon such witness specifying the time and place at which to attend for such purpose.

(2) Such order may be made on the application at any time of the appellant or respondent, but if the appellant is in custody and not legally represented the application shall be made by him in Form 12.

Order appointing examiner

28. (1) Where the Court orders the examination of any witness to be conducted otherwise than before the Court itself, such order shall specify the person appointed as examiner to take and the place of taking such examination and the witnesses to be examined thereat.

(2) The Registrar shall furnish to the examiner any documents or exhibits and any other material relating to the said appeal as and when requested to do so. Such documents and exhibits and other material shall, after the examination has been concluded, be returned by the examiner, together with any depositions taken by him under this rule, to the Registrar.

(3) When the examiner has appointed the day and time for the examination, he shall request the Registrar to notify the appellant or respondent and their professional representatives, if any, and when the appellant is in prison, the Director of Prisons. The Registrar shall cause to be served on every witness to be examined a notice in Form 13.

Taking of evidence

29. (1) A witness examined before an examiner under this rule shall give his evidence upon oath to be administered by such examiner, except where any such witness if giving evidence as a witness at a trial need not be sworn.

(2) The examination of a witness shall be taken in the form of a deposition and unless otherwise ordered shall be taken in private. The caption in Form 14 shall be attached to any such deposition.

(3) Where any witness shall receive an order or notice to attend before the Court or an examiner, the Registrar may, if it appears to him necessary to do so, pay to such witness a reasonable sum for his expenses.

(4) The appellant and his advocate (if any) and the respondent shall be entitled to be present at and take part in any examination of any witness to which this rule relates.

PART 7

GENERAL

Registers of appeal

30. The Registrar shall keep a register, in such form as he may think right, of all cases in which he shall receive a notice of appeal.

Prison officers to attend sittings on appeal

31. The Director of Prisons shall, on notice from the Registrar, cause such number of prison officers to attend a sitting of the Court as, having regard to the list of appeals thereat, the Registrar shall consider necessary.

Appellant to surrender on appeal

32. (1) An appellant who is not in custody shall, whenever his case is called on before the Court, surrender himself to such persons as the Court shall from time to time direct.

(2) Such an appellant shall be searched by them and is deemed to be in their lawful custody until further released on bail, or otherwise dealt with as the Court shall direct.

[Subsidiary]

Waiver of non-compliance with rules

33. (1) Non-compliance on the part of an appellant with these Rules or with any rule of practice for the time being in force shall not prevent the further prosecution of his appeal if the Court considers that such non-compliance may be waived or remedied by amendment or otherwise.

(2) The Court may, in such manner as it thinks fit, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed.

(3) The Registrar shall forthwith notify the appellant or any directions given by the Court under this rule, if the appellant was not present at the time when such directions were given.

Fees

34. (1) There shall be charged by the Registrar, a sum of \$100 for each notice of appeal and notice of application.

(2) Notwithstanding this rule, the Chief Registrar may reduce or dispense with the whole or part of such fees, if satisfied that the poverty of the appellant or applicant so requires.

(3) The Public Prosecutor shall not be charged any fee.

Revocation

35. Sarawak, North Borneo and Brunei (Court of Appeal) (Fees in Criminal Matters) Rules are revoked.

SCHEDULE

(rule 9)

FORM 1

IN THE COURT OF APPEAL

NOTICE OF APPEAL
AGAINST CONVICTION/SENTENCE

PUBLIC PROSECUTOR

V

.....

To the Registrar of the Court of Appeal

I, having
been convicted of the offence(s) of in
the High Court on the day of

HEREBY give notice to the Court of Appeal that I wish to appeal against —

- (a) my conviction of the said offence(s);
- (b) the sentence of imposed upon
me;
- (c) both my conviction and sentence on the following grounds —

.....
.....
.....
.....

.....
(Signature or mark of appellant)

Dated this day of

FORM 2

(rule 9)

IN THE COURT OF APPEAL

APPLICATION FOR EXTENSION OF TIME

PUBLIC PROSECUTOR

V

.....

To the Registrar of the Court of Appeal

I , having been convicted of the offence(s) of in the High Court on the day of give you notice that I hereby apply to the Court of Appeal for an extension of the time within which I may give Notice of Appeal on the following grounds —

.....
.....

.....
(Signature or mark of appellant)

Dated this day of

Please also send to the Registrar of the Court of Appeal, Form 1 duly completed, with this Notice.

.....
(Signature or mark of appellant)

Dated this day of

FORM 3

(rule 10)

IN THE COURT OF APPEAL

ABANDONMENT OF APPEAL

PUBLIC PROSECUTOR

V

.....

To the Registrar of the Court of Appeal

I , having been convicted of the offence(s) of in the High Court on the day of and having given notice of my wish to appeal to the Court of Appeal against —

- (a) my conviction for the said offences;
- (b) the sentence of passed on me on conviction;
- (c) both my conviction and sentence.

HEREBY give notice that I do not intend to prosecute my appeal and hereby abandon all further proceedings in this appeal as from today.

.....
(Signature or mark of former appellant)

Dated this day of

FORM 4

(rules 12(4) and 15(3))

IN THE COURT OF APPEAL

RECOGNISANCE OF BAIL OF APPLICANT

PUBLIC PROSECUTOR

V

.....

Registrar of the Court of Appeal

1. was convicted by the High Court of the offence(s) of

 on the day of as is in lawful custody in the prison.
2. has duly appealed against his conviction (and sentence) to the Court of Appeal.
3. has been granted bail pending the determination of his appeal on —
 (a) entering his own recognisance in the sum of
 (b) with sureties each in the sum of
4. The said has come before me and has acknowledged that he owes the sum of \$ to His Majesty the Sultan and Yang Di-Pertuan which may be levied on his goods and lands for the benefit of His Majesty the Sultan and Yang Di-Pertuan if he, the said fails in the condition set out below.

FORM 4 — (continued)

Taken and acknowledged before me theday of

.....

(Signature of Magistrate taking the acknowledgement)

Condition

The said shall personally appear before the Court Appeal at every hearing of his appeal and at the final determination of it.

The appellant shall fill up and sign the following —

When released on bail, my residence, to which any Notices may be addressed, will be as follow —

.....
.....

.....

(Signature or mark of appellant)

Dated this day of

FORM 5

(rules 12(4) and 15(3))

IN THE COURT OF APPEAL

APPELLANT'S SURETIES

PUBLIC PROSECUTOR

V

.....

To the Registrar of the Court of Appeal

On the day of , has come before me and acknowledge that he owes to His Majesty the Sultan and Yang Di-Pertuan the sum of \$ which may be levied on his goods and lands for the benefit of His Majesty the Sultan and Yang Di-Pertuan if fails in the condition which he has entered to appear before the Court of Appeal at every hearing of his appeal and at the final determination of it.

Taken and acknowledged before me theday of

.....

(Signature of Magistrate
taking the acknowledgement)

This form should be completed in relation to each surety.

FORM 6
(rule 12(7))

IN THE COURT OF APPEAL

NOTICE OF BREACH OF CONDITION TO APPELLANT

PUBLIC PROSECUTOR

V

.....

To the abovenamed Appellant

1. You were convicted on the day of and sentenced to the payment of \$..... and in default of payment to imprisonment.
2. You entered recognisances for \$ and sureties for \$ each, to prosecute your appeal.
3. No notice of appeal has been served by you.
4. Unless you attend the Court of Appeal on the day of and show good cause to contrary, the Court will order the forfeiture of your recognisance and those of your sureties.

.....

Registrar of the Court of Appeal

[Subsidiary]

FORM 7
(rule 12(7))

IN THE COURT OF APPEAL

NOTICE OF SURETY

PUBLIC PROSECUTOR

V

.....

To

of

1. You became bound as surety for the abovenamed appellant to ensure that he should prosecute his appeal.
2. The appellant has failed to prosecute his appeal.
3. Unless you attend the Court of Appeal on the day of and show good cause to the contrary, your recognisances may be ordered to be forfeited.

.....

Registrar of the Court of Appeal

FORM 8

(rules 12(7), 16(1) and 17)

IN THE COURT OF APPEAL

ARREST OF APPELLANT

PUBLIC PROSECUTOR

V

.....

To all Police Officers.

1. and appellant in the Court has been released on bail.
2. The Court of Appeal has ordered that a warrant be issued for his arrest.
3. This warrant authorises you to arrest the said and to deliver him to the prison.
4. This warrant also authorises the officer in charge of the prison to receive the appellant into his custody until further order of the Court of Appeal.

.....

Judge of the Court of Appeal

Dated this day of

FORM 9
(rule 23(1))

IN THE COURT OF APPEAL

RESULT OF APPEAL OR APPLICATION

PUBLIC PROSECUTOR

V

.....

To the abovenamed appellant.

- 1. This is to give you notice that the Court of Appeal has given judgment on your appeal/application.
- 2. The said Court has ordered that your appeal against conviction
.....
.....
- 3. The said Court has ordered that your appeal against sentence
- 4. The said Court has ordered that your application for leave to extend time within which you may give notice of appeal

.....
Registrar of the Court of Appeal

Dated this day of

FORM 10

(rule 23(3))

IN THE COURT OF APPEAL

NOTICE TO AUTHORITIES

PUBLIC PROSECUTOR

V

.....

To The Minister of Law*
Director of Prisons
The Appellant
The Respondent

1. The abovenamed appellant has —
 - (a) applied for leave to extend the time for his appeal;
 - (b) appealed against his conviction for the offence of

2. The Court of Appeal has given judgment in the said appeal to the following effect

.....

.....

.....
Registrar of the Court of Appeal

Dated this day of

* Transferred to the Permanent Secretary, Office of the Prime Minister, with effect from 26th July 1999 —
[S 37/1999]

[Subsidiary]

FORM 11

(rule 27(1))

IN THE COURT OF APPEAL

ORDER TO WITNESS TO ATTEND

PUBLIC PROSECUTOR

V

.....

To

of

1. You have been ordered to attend the Court of Appeal to be examined as a witness before that Court on the appeal of the above appellant.
2. This is to give you notice to attend before the Court of Appeal on the day of at 9.00 a.m.
3. You must bring with you any books, papers or other things which may relate to the appeal and which you have had Notice to produce.

.....
Registrar of the Court of Appeal

Dated this day of

FORM 12

(rule 27(2))

IN THE COURT OF APPEAL

APPELLANT'S APPLICATION FOR WITNESSES

PUBLIC PROSECUTOR

V

.....

I, the appellant, having appealed to the Court of Appeal, hereby request that the said Court shall order the following witness(es) to attend the said Court and be examined on my behalf.

.....
(Signature or mark of appellant)

- 1. Name and address of witness

- 2. Whether witness examined at trial

- 3. If no, state why

- 4. On what matters do you want him to be examined

- 5. State shortly the evidence which you think he can give

Dated this day of

[Subsidiary]

FORM 13

(rule 28(3))

IN THE COURT OF APPEAL

NOTICE TO WITNESS TO ATTEND EXAMINER

PUBLIC PROSECUTOR

V

.....

To

of

1. You have been ordered to attend the Court of Appeal to be examined as a witness on the appeal of the above appellant.
2. This is to give you notice to attend before the duly appointed examiner at 9.00 a.m. on the day of at
3. You must bring with you any books, papers or other things which may relate to the appeal and which you have had Notice to produce.

.....
Registrar of the Court of Appeal

Dated this day of

FORM 14

(rule 29(2))

IN THE COURT OF APPEAL

DEPOSITION OF WITNESS TAKEN BY EXAMINER

PUBLIC PROSECUTOR

V

.....

1. The deposition(s) attached was/were taken by me, an examiner duly appointed by the Court of Appeal, of of and of of on the day of
2. The witness(es) were examined before me under an Order of the Court of Appeal dated the day ofin the presence of the appellant and the respondent (or their advocates).
3. Both appellant and respondent (or their advocates) were given an opportunity to ask questions of the witness(es).
4. The depositions were read over by me to the appellant and respondent (or their advocates) before being signed by the witness(es).

Taken before me the day of

.....

Examiner

