

REGISTRAR'S CIRCULAR NO. 8 OF 1954.

Court of Appeal (Amendment) Rules 1954 (.L.N.532/54).

The above Rules render necessary amendment of Registrar's Circular No. 18 of 1948, (hereinafter called 'the Circular') and they themselves also require explanation. But it must be realized that, except as hereby altered, the Circular is still in force and must be followed. The Circular, on your file, should be endorsed "amended by Registrar's Circular No. 8 of 1954."

2. There is a difference in phraseology in the Rules, from that used in the Circular which may be confusing unless realized. The Rules use the phrase "Registrar", when speaking of the Senior Assistant or Assistant Registrar of a High Court Registry, and the phrase "Registrar of the Court of Appeal" when speaking of myself. The Circular uses the phrases "Assistant Registrar" and "Registrar" respectively for these officers. In this Circular the phraseology used in the Rules is followed.
3. It must be appreciated that it is not the intention of the new Rules to alter the existing practice whereby the main file of an appeal kept in the Federal Registry, contains the main documents filed in the appeal. An alteration to this effect would have been highly inconvenient. It will be noted that although new Rules 3A(3), 13(1), and 15(6) prescribe filing in the High Court Registries (and not in the Federal Registry) they do not provide that the documents filed shall be kept there.

4. Rule 3A(1) should be carefully noted. It provides that applications in pending appeals shall not be given a separate number but shall bear the number of the appeal. The Circular is therefore amended to the extent that in such applications the Registrar of the Court of Appeal will not inform the Registrar concerned of a number. But in the case of applications other than in pending Appeal, sub-rule (2) applies the old practice.

5. New Rule 15(6) is rather difficult to follow and has already caused some difficulty. It should be realized that the intention is to alter the previous position, whereby the time for filing the 'record of appeal' was ascertained by reference to the date of entry of appeal, and instead to ascertain it by reference to the "next sitting of the Court of Appeal". To enable this to be done conveniently it was necessary to define "next sitting of the Court of Appeal" and also to provide that, in some cases it would not be the actual next sitting in date. Therefore for the purpose of ascertaining the time within which to file the record, and for this purpose only, the phrase "next sitting of the Court of Appeal" bears a special meaning as defined in the sub-rule.

6. In actual practice there is no difficulty in ascertaining the last date on which the record of appeal must be filed in any particular case. It is done as follows :-

- (a) Take a date exactly two months after the date of entry of appeal.
- (b) Then look at the Court of Appeal calendar, as gazetted, and ascertain the next sitting of the Court of Appeal after that date, at the place where appeals from the Registry of filing are usually heard.

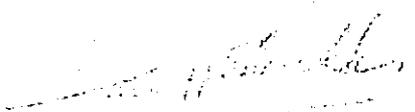
by the sub-rule. It will be appreciated that there may be an actual next sitting earlier than this (as will be seen in the example given below) but by reason of the jump forward by two months mentioned in (a) above, such sitting must be ignored.

(c) Then calculate back 28 days from the date of the "next sitting of the Court of Appeal" as ascertained under (b), (excluding the date of next sitting). These are the "28 days before the next sitting of the Court of Appeal" as mentioned in lines 4 and 5 of the sub-rule, and, as the filing has to take place "not less than 28 days before the next sitting" it follows that the date of such "next sitting" must be excluded from such 28 days.

7. The above looks rather complicated and an example will make it easier. An appeal is entered at, say, Alor Star Registry on the 10th January, 1954. Under para.6(a) supra we go forward to 10th March, 1954. Using the gazetted Court of Appeal calendar for 1954, we find that the "next sitting of the Court of Appeal", is therefore the gazetted sitting of 16th August at Penang. (It will be noted that the Penang sitting on 15th February is excluded). Having ascertained this date and applying para.6(c) above, we go back 28 days, excluding 16th August. This period of 28 days is 19th July - 15th August inclusive. Therefore the record must be filed on or before 18th July, 1954.

8. It should also be appreciated that the "next sitting of the Court of Appeal", ascertained as above, will not necessarily in all cases be the date when the appeal will be set down for hearing, though probably it will usually be so. If the parties are anxious for an early hearing they may file the record earlier than is necessary in order to get the appeal before the Court earlier. For instance in the above example, if the record is a short one and filing is accelerated, it might be quite possible to have the appeal heard at the 15th February Penang Sitting. If parties indicate that they desire an earlier hearing in this way, the Registrar should give immediate information of this to the Registrar of the Court of Appeal. It will however be realized that the actual decision as to date of hearing rests with the Chief Justice.

9. I have gone into New Rule 15(6) at considerable length as it has been indicated to me that some officers have found it difficult to follow. If any Registrar wants to raise any further points on this, or on the other rules, he should do so immediately.

  
(D.H. SHACKLES)  
REGISTRAR.

The Federal Registry,  
Supreme Court, Federation of Malaya,  
Kuala Lumpur. 15th November, 1954.  
(RSC.39/54: RSC.95/54-A: DHS/tkc)

To:

All Senior Assistant Registrars, Supreme Court.  
All Assistant Registrars, Supreme Court.  
All Presidents, Sessions Courts.