

SUPREME COURT ORDINANCE

SUPREME COURT (APPOINTMENT OF KING'S COUNSEL) RULES 2023

(Legal Notice 5 of 2023)

ARRANGEMENT OF RULES

RULE

PART I

PRELIMINARY

1. Citation and commencement
2. Interpretation
3. Application of rules

PART II

ELIGIBILITY

4. Eligibility requirements

PART III

ESTABLISHMENT AND DUTIES OF KING'S COUNSEL SELECTION PANEL

5. King's Counsel Selection Panel
6. Duties of the Panel

PART IV

APPLICATION PROCESS FOR KING'S COUNSEL

7. Appointment by invitation
8. Appointment by application
9. Call for application
10. Application
11. Recusal
12. Duty to disclose
13. Interview

PART V

THE PANEL'S DECISION AND REPORT TO THE GOVERNOR

14. Communication of decision of Panel
15. Report to Governor to appoint

PART VI

OTHER RELEVANT MATTERS

16. Confidentiality of information obtained by Panel
 17. Revocation of appointment and resignation
 18. Revocation
- SCHEDULE: Persons or bodies that may be consulted

SUPREME COURT ORDINANCE

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(Legal Notice 5 of 2023)

MADE by the Chief Justice under section 16 of the Supreme Court Ordinance.

PART I

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Supreme Court (Appointment of King's Counsel) Rules 2023 and shall come into operation on the 15th day of January 2023.

Interpretation

2. In these Rules—

“attorney” means a person who has been admitted as an attorney under the provisions of the Legal Profession Ordinance, and whose name has been entered on the Roll of Attorneys;

“Panel” means the King's Counsel Selection Panel established under rule 5;

“higher courts” means the Supreme Court, the Court of Appeal or the Privy Council.

Application of rules

3. (1) These Rules shall apply to the appointment of King's Counsel in the Islands.

(2) An appointment of a King's Counsel may be made—

(a) in cases where an attorney has demonstrated his competencies to a standard of excellence in advocacy, advice and other competencies in the higher courts; and

(b) in cases where an attorney has demonstrated in his practice the highest integrity and conduct befitting recognition by the legal profession.

PART II
ELIGIBILITY

Eligibility requirements

4. (1) An attorney with a minimum of fifteen years of practice who has demonstrated a high level of advocacy in the higher courts may be eligible for consideration for an appointment as a King's Counsel on the recommendation of the Panel.

(2) In addition, the attorney shall possess the following qualities—

- (a) he shall be learned in the law so as to provide sound guidance and to assist in judicial interpretation and development of the law;
- (b) where necessary he shall be skilled in the presentation and testing of litigant's cases and shall display a sound appreciation for the jurisprudence of the Islands and shall be analytical in the application of the law;
- (c) he shall be worthy of confidence and implicit trust by the judiciary, his colleagues and the public at all times so as to advance the open, fair and efficient administration of justice;
- (d) he shall be committed to the discharge of his duty to the court and to the legal system;
- (e) where he is in private practice he shall honour the cab-rank rules, namely the duty to accept briefs to appear in matters in which he is competent and available, regardless of any personal opinions of the parties or the causes, and subject only to exceptions related to appropriate fees and conflicting obligations;
- (f) he shall have the capacity and willingness to devote himself to the vigorous advancement of the clients' interests where applicable and to the overall sound advancement of the administration of justice;
- (g) he shall demonstrate some or all of the following—
 - (i) experience in arguing cases on appeal;
 - (ii) a position of leadership in a specialist field of law;

- (iii) experience in conducting major cases in which the other party is represented by King's Counsel;
 - (iv) experience in conducting cases with a junior; and
 - (v) considerable practice in giving advice in specialist fields of law; and
- (h) he shall have contributed to some or all of the following—
- (i) the Islands and his community as an attorney through services rendered pro bono;
 - (ii) the Bar Association;
 - (iii) the legal profession in areas other than legal practice;
 - (iv) to the development of the law and jurisprudence through publication; and
 - (v) to judicial initiatives aimed at improving the quality of justice delivery and access to justice.

(3) An applicant shall be required to provide evidence of matters under subrule (1) and (2) when he submits his application under rule 10.

PART III

ESTABLISHMENT AND DUTIES OF KING'S COUNSEL SELECTION PANEL

King's Counsel Selection Panel

5. (1) The King's Counsel Selection Panel is established.
- (2) The Panel shall consist of the following persons—
- (a) the Chief Justice;
 - (b) the Attorney General;
 - (c) the Director of Public Prosecutions; and
 - (d) the Doyen of the Bar.
- (3) The Chief Justice shall chair the Panel and shall have the deciding vote.
- (4) The Panel may conduct its business either by the full Panel as constituted under subrule (2) or by any three members of the Panel one of whom shall be the Chief Justice.

Duties of the Panel

6. The Panel shall be responsible for the following—

- (a) to deliberate on appointments by invitation and by application;
- (b) to consult with persons or bodies set out in the Schedule in making a determination as to the suitability of an applicant;
- (c) to interview an applicant if necessary to clarify information in the application in the following cases—
 - (i) to seek further evidence as to the competencies of the applicant; or
 - (ii) to help assess the information already available to the Panel.
- (d) to determine whether an applicant should be recommended to be appointed a King's Counsel;
- (e) to communicate the Panel's recommendations to the Governor and the applicant; and
- (f) to perform other functions as are conferred on the Panel under these Rules or any other directions given by the Chief Justice.

PART IV

APPLICATION PROCESS FOR KING'S COUNSEL

Appointment by invitation

7. (1) An attorney who fulfills the eligibility requirements under rule 4, may be invited to be considered for an appointment as King's Counsel.

(2) An invitation under subrule (1) may be made on the recommendation of any of the following persons—

- (a) the Chief Justice;
- (b) the Attorney General;
- (c) the Director of Public Prosecutions; or
- (d) the Bar Council.

(3) A person who makes a recommendation to the panel pursuant to subrule (1) and (2) shall inform the Panel in writing of his recommendation.

(4) Upon receipt of the recommendation, the Panel shall inform the recommended attorney, and may in its discretion, require him to furnish the Panel with the information requested under rule 10 (c) to (i).

(5) The Panel shall consider the eligibility of the attorney by carrying out its own investigation, which may include an interview of the attorney.

(6) A recommendation for an appointment as King's Counsel under this rule shall be made by the Panel, once the Panel is satisfied that the attorney is a fit and proper person to be appointed a King's Counsel.

Appointment by application

8. (1) An attorney who fulfills the eligibility requirements set out in rule 4 may, following a call for application under rule 9 by the Chief Justice, apply in writing to the Chief Justice.

(2) An application received under subrule (1) may be referred to the Panel by the Chief Justice.

Call for application

9. (1) The Chief Justice shall issue a call for applications under rule 8 every two years by notice published in the Gazette, in at least one newspaper in general circulation and on the Court's website.

(2) An attorney interested in applying shall submit his application in accordance with the procedure set out in rule 10 within sixty days of the issue of the call.

Application

10. An application for an appointment as a King's Counsel shall be made in writing to the Chief Justice and shall be accompanied by a non-refundable fee of \$200, the following documents and any other information as may be requested by the Chief Justice—

(a) a letter under confidential cover setting out the following—

(i) the reasons for the applicant's belief that he meets the eligibility criteria under rule 4;

(ii) the reasons for the applicant's belief that he is worthy—

(A) for consideration by the Panel; and

- (B) to be recommended by the Panel to the Governor;
- (b) at least two letters of reference at least one of which shall be from a current King's Counsel in the Islands;
 - (c) a full curriculum vitae from the attorney;
 - (d) a narrative report of the practice areas undertaken by the attorney over the course of his career, to include a list of at least ten important cases in the areas of practice of the attorney, determined by the higher courts and which have—
 - (i) contributed to the jurisprudence of the Islands;
 - (ii) demonstrated the attorney's competencies, substance, complexity and sensitivity at either the trial level or the appellate level.
 - (e) any books, research papers, or conference papers written by the attorney;
 - (f) a list of all professional memberships;
 - (g) any evidence of training provided to junior counsel or a pupil in training;
 - (h) any evidence of pro bono work in the Islands undertaken in the last three years before the submission of his application under this rule; and
 - (i) any evidence of pro bono work in the Islands undertaken in the last three years prior to the submission of his application under this rule, which had the effect of improving the legal sector, jurisprudence, and the rule of law in the Islands.

Recusal

11. (1) A member of the Panel, other than the Chief Justice, may request leave of the Panel to recuse himself from participating in the selection process of an applicant.

(2) A request under subrule (1) shall state reasons for recusal, be in writing addressed to all members of the Panel and copied to the applicant.

(3) Where an applicant wishes to have a member of the Panel recuse himself from considering his application, he shall submit his request in writing to the Chief Justice no later than five days after the submission of his application.

(4) The applicant in his request for recusal shall provide sound reasons for the request.

(5) The decision on the request for recusal shall be in the sole discretion of the Chief Justice.

Duty to disclose

12. (1) An applicant shall disclose every circumstance in his practice, including disclosure of malpractice suits and complaints, which would cause him embarrassment should the information be made public.

(2) An applicant may, where it is warranted, provide an explanation of any of the circumstances he disclosed under subrule (1).

Interview

13. (1) The Panel may, in writing, invite an applicant under its consideration to an interview at a date and time to be determined by the Panel.

(2) The interview shall be conducted by the Panel in accordance with its own processes.

(3) The results of the interview shall be considered by the Panel alongside the documents submitted under rule 10 and the requirements under rule 4 (1) and (2).

(4) The Panel may or may not make a recommendation after the interview.

PART V

THE PANEL'S DECISION AND REPORT TO THE GOVERNOR

Communication of decision of Panel

14. The decision of the Panel on whether an applicant was successful or unsuccessful shall be communicated to the applicant in writing by the Chief Justice.

Report to the Governor to appoint

15. (1) The Chief Justice shall communicate the Panel's recommendation in writing to the Governor.

(2) The Governor, on receiving the Panel's recommendation to appoint an applicant, may appoint the applicant as King's Counsel.

PART VI

OTHER RELEVANT MATTERS

Confidentiality of information obtained by Panel

16. (1) A member of the Panel shall regard and deal with any information relating to any person under consideration by the Panel as confidential.

(2) A member of the Panel shall not disclose or allow to be disclosed any information referred to in subrule (1) to anyone not lawfully entitled to the information.

Revocation of appointment and resignation

17. (1) An appointment of King's Counsel may be revoked—

- (a) by the Governor acting on the advice of the Chief Justice; or
- (b) where disciplinary proceedings find the attorney guilty of conduct which in the opinion of the Chief Justice is incompatible with the office of King's Counsel.

(2) Prior to any revocation, the attorney shall be given an opportunity to be heard, to show cause why his appointment or recognition should not be revoked.

(3) A King's Counsel may decline or resign his appointment, in writing, addressed to the Chief Justice.

Revocation

18. The Supreme Court (Appointment of Queen's Counsel) Rules 2021 is revoked. (LN 52 of 2021)

SCHEDULE

PERSONS OR BODIES THAT MAY BE CONSULTED

Rule 6

The following persons or bodies may be consulted during the application process—

- (a) the Judiciary.
- (b) Disciplinary Committees and Tribunals;
- (c) the Registrars of the Supreme Court;
- (d) the Integrity Commission;

- (e) King's Counsel;
- (f) The President of the Bar Association
- (g) the Commissioner of Police;
- (h) prior employers of the applicant; and
- (i) any other person who in the opinion of the Panel is appropriate.

MADE this 10th day of January 2023.

MABEL M AGYEMANG
CHIEF JUSTICE

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules provide the procedure for the appointment of King's Counsel in the Islands and revoke the Supreme Court (Appointment of Queen's Counsel) Rules 2021(LN 52 of 2021).