



**INTERNAL OPERATING PROCEDURES
OF THE SUPREME COURT**

Effective March 18, 2014

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INTRODUCTION

The Commonwealth Supreme Court (“Court”) is the Commonwealth’s court of last resort. The Court is comprised of a chief justice and two associate justices. The Court holds quarterly sessions where it sits, hears, and decides cases in panels of three. Hearings are held at the Supreme Court on Saipan, unless the Court sets the hearings at the courthouses on Rota or Tinian.

These Internal Operating Procedures (IOPs) cover the essential processes of the Court. They are designed to ensure the Court carefully, consistently, and expeditiously processes appeals.

These IOPs implement the: (1) statutory mandates; (2) NMI Supreme Court Rules; and (3) customs and traditions of the Court.

Section 1. Definitions

- (a) **Chief Justice.** The Chief Justice of the Supreme Court is appointed pursuant to Article IV, Section 5 of the Commonwealth Constitution. In the absence of the Chief Justice, the associate justice most senior in commission shall serve as acting chief justice. Where several justices are sworn in on the same date, the first to take the oath in the order of their swearing will determine the order of precedence.
- (b) **Clerk.** The Clerk of the Supreme Court assists the Court in discharging its constitutional responsibilities.
- (c) **Docket Control Report.** This is a report that details the status of: (1) all pending motions, writ petitions, and certified questions; (2) cases presented orally or submitted on the briefs and awaiting decisions; (3) pending cases decided but awaiting final opinion or order; (4) cases ready for oral arguments; (5) cases at issue but not yet scheduled for oral argument or assigned to a panel for decision on the briefs; (6) stayed cases; (7) remanded cases with jurisdiction retained; (8) published cases; and (9) all other cases.
- (d) **Justice.** An associate justice of the Supreme Court is appointed pursuant to Article IV, Section 5 of the Commonwealth Constitution.
- (e) **Justice Pro Tempore.** An active or former judge or justice appointed by the Chief Justice, pursuant to Article IV, Section 9D of the Commonwealth Constitution, to serve on the Supreme Court for specific cases or motions. The judge or justice shall come from the Commonwealth, any United States jurisdiction, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands.
- (f) **Law Clerk.** A Supreme Court law clerk works under the supervision of the Chief Justice and justices.

- (g) **Lead Justice.** The justice responsible for procedural matters, drafting the opinion if he or she is in the majority, and ensuring compliance with the timely disposition of a case according to the Court's case management time standards.
- (h) **Panel.** The three individuals assigned to decide an appeal or a matter before the Court.
- (i) **Panel Members.** The Chief Justice, justices, or justices pro tempore assigned to a panel.
- (j) **Seniority.** Seniority shall be determined as follows:
 - (1) **Active.**
 - (A) Chief justice of the Court;
 - (B) Senior associate justice of the Court;
 - (C) Junior associate justice of the Court;
 - (D) Presiding judge of the Superior Court;
 - (E) Active Superior Court judges according to tenure;
 - (F) Chief justices from non-CNMI jurisdiction according to tenure;
 - (G) Justices from non-CNMI jurisdictions according to tenure;
 - (H) Judges from non-CNMI jurisdictions according to tenure.
 - (2) **Former.** Seniority of former, which includes retired, justices or judges shall be determined according to their age from oldest to youngest.
 - (A) Justices from the Court;
 - (B) Judges from the Superior Court;
 - (C) Justices from non-CNMI courts;
 - (D) Judges from non-CNMI courts.

Section 2. Initial Stages of Appeal

- (a) **Notice of Appeal.** The Clerk reviews the appeal for jurisdictional defects and then distributes a copy of the notice of appeal to the Chief Justice and justices for an initial conflict screening.
- (b) **Conflict Screening.** The Chief Justice and justices conduct an initial conflict screening (see Section 4(b) for further information).
- (c) **Appointment of Justice Pro Tempore.** When a justice pro tempore is necessary to fill in a panel, see Section 4(c).
- (d) **Designation of Lead Justice.** The Clerk requests the appointment of a lead justice from the Chief Justice. The Chief Justice shall: (1) assign the lead justice on a rotating basis; and then (2) issue an order designating the lead justice.

- (e) **Monitoring of Transcripts.** The Clerk periodically meets with the Superior Court Clerk of Court to monitor the progress of transcribing the record.
- (f) **Briefing Schedule.** The Clerk issues a notice of briefing schedule after the Superior Court Clerk of Court files the certification of record.

Section 3. Case Management

- (a) **Law Clerks and Clerk Monthly Meeting.** The law clerks and Clerk shall meet on the last Thursday of every month to finalize the Docket Control Report. The Clerk shall send the finalized Docket Control Report to the Chief Justice and justices at least three (3) days before the Justices, Law Clerks, and Clerk monthly meeting.
 - (1) **Docket Control Report.** The Clerk shall prepare a draft of this report every month and distribute it to the law clerks at least three (3) days prior to the law clerk and Clerk meeting.
- (b) **Justices, Law Clerks, and Clerk Monthly Meeting.** The Chief Justice, justices, law clerks, and the Clerk meet on the first Thursday of every month to discuss the Docket Control Report and other agenda matters. Attendance at this meeting is mandatory.
 - (1) **Agenda.** The Clerk distributes a proposed agenda to the Chief Justice and justices at least seven (7) days before the meeting. The Chief Justice and justices may place an item on the agenda by: (a) notifying the Clerk at least two (2) days prior to the meeting and (b) sending a copy of the item to each justice. Notwithstanding the foregoing, a new item may be placed on the agenda with the concurrence of the Chief Justice and both justices.

Section 4. Panel Structure and Composition

- (a) **Initial Panel.** The initial panel shall consist of the Chief Justice and the two justices unless there is a recusal or disqualification.
- (b) **Recusal and Disqualification of Panel Members.**
 - (1) **Recusal.**
 - (A) **Circumstances.** A panel member shall recuse himself or herself in any proceeding in which his or her impartiality might be reasonably questioned. A list of circumstances where recusal is either appropriate or mandatory can be found in the Commonwealth Code.
 - (B) **Procedure.** A panel member who finds it necessary to recuse must promptly file an order of recusal.
 - (2) **Disqualification.** A party may move to disqualify a panel member.

- (A) Process. The motion shall be decided by the most senior panel member not challenged by the motion. If all panel members are challenged in the motion then the Chief Justice will appoint a justice pro tempore to decide the motion.
- (c) Replacing Recused or Disqualified Justices. If any panel member is recused or disqualified from a case, then the Chief Justice appoints a justice pro tempore to fill the panel.
- (d) Panel for Post-Remanded Cases. A case remanded from the United States Supreme Court is referred to the panel of this Court that decided the matter. If a panel member is unavailable then the Chief Justice shall appoint a new panel member. A panel member is unavailable if he or she is disqualified or recused.

Section 5. Motions

- (a) Emergency Motions. A motion that is made where a movant certifies that relief is needed in less than twenty-one (21) days to avoid irreparable harm.
 - (1) Timing. These motions should be disposed of by the close of the next business day except under extenuating circumstances.
 - (2) Process.
 - (A) Clerk shall send the motion and supporting documents to the Chief Justice, justices, and law clerks;
 - (B) Clerk will call the Chief Justice and justices to confirm receipt of the motion;
 - (C) Clerk will assign a law clerk to promptly: (a) review the motion and (b) issue a recommendation to the Court;
 - (D) Clerk will schedule a meeting between the Chief Justice, justices, law clerks, and Clerk to discuss the motion;
 - (E) Chief Justice appoints a lead justice;
 - (F) Law clerk drafts an order once a decision has been made;
 - (G) Clerk electronically files the order and serves it to the parties after the order has been approved according to NMI Supreme Court Rules.
- (b) Regular Motions. A regular motion is a non-emergency motion.
 - (1) Assignment. These motions are assigned to the lead justice handling the case.
 - (2) Oral Argument. A motion will be decided with oral argument unless the Court unanimously orders otherwise.
 - (3) Disposition. Motions are decided by a single panel member, the panel as a whole, or the Clerk, as provided by the NMI Supreme Court Rules.

Section 6. Bench Memoranda

- (a) **Case Assignment.** The lead justice's law clerk shall write a bench memorandum, however, the Clerk can redistribute this task as needed to ensure an equitable distribution of work.
- (b) **Bench Memoranda.** The law clerk assigned to a case shall prepare a memorandum and distribute it to the panel consistent with the timeframes and structure detailed in the law clerk handbook.
- (c) **Motion Practice.** See Section 5.

Section 7. Hearings and Oral Arguments

- (a) **Pre-Oral Argument Panel Conference.** The lead justice shall schedule a pre-oral argument conference that takes place at least five (5) days prior to the oral arguments. At this conference, the panel should discuss the facts and issues presented on appeal. The law clerk assigned to the case shall notify the panel of the scheduled meeting.
- (b) **Waiver of Oral Argument.** Oral argument is allowed in every case unless the panel, after examining the briefs and record, unanimously agrees that argument is unnecessary. Parties may also waive oral argument with the unanimous written approval of the panel.
- (c) **Notice of Argument and Allotted Time for Argument.** The Clerk communicates to counsel in each case whether the case is to be orally argued or submitted on the briefs. If the appeal is scheduled for an oral argument, each side shall have thirty minutes to argue and answer questions from the panel.
- (d) **Preparation for Oral Argument and Setting of Courtroom.** A day before the scheduled hearing, the Clerk shall ensure that (1) the monitor, digital recorder, and all microphones are functioning properly and (2) the courtroom is prepared according to the customs of the Court. The law clerk shall prepare a short synopsis of the case and provide it to the Clerk who shall ensure it is displayed on the television screen in front of the Court.
- (e) **Courtroom Security.** The Marshal Service Division shall ensure the courtroom is secure prior to and during proceedings.
- (f) **Presiding Justice.** The Chief Justice presides over all cases where he is a panel member. If the Chief Justice is not a panelist then the most senior panel member presides.
- (g) **Court Procession.** The panel members enter the courtroom according to their seat assignment. Facing the courtroom from the bench, the presiding justice sits in the middle, the next most senior panel member is stationed to the right of the presiding justice, and the most junior panel member to the left. All remain standing until the presiding justice sits.

Section 8. Panel Conference

- (a) After Oral Argument. The panel assembles in the deliberation room to deliberate and vote on the merits of the case immediately after the conclusion of oral arguments.
- (b) Waived Argument. If the case is submitted on the briefs then the panel shall hold a meeting in the deliberation room within fourteen (14) days of the order waiving oral argument to deliberate and vote on the merits of the case.

Section 9. Opinions

- (a) Drafting of Opinion. The lead justice shall author the opinion unless he or she decides to concur with or dissent from the opinion of the Court.
- (b) Confidentiality. All communications regarding the proposed decision of the panel are confidential and shall be treated as such.
- (c) Publication of Opinions. An opinion shall be published when a majority of the panel determines the opinion has precedential or institutional value.
- (d) Types of Opinions.
 - (1) Per Curiam. A decision that is published in the name of the Court. These opinions do not have an identified author.
 - (2) Authored. An opinion written by an identified panel member.
- (e) Disposition. Each panel should issue an opinion within six (6) months of oral argument or the date of the order submitting the case on the briefs.
- (f) Preparation and Circulation of Opinions.
 - (1) Role of the Lead Justice. The lead justice prepares a draft opinion in accordance with the decision of the panel at conference. If the lead justice dissents or concurs then another panel member shall draft the opinion. The draft opinion shall set forth the reasons supporting the Court's decision.
 - (2) Circulation within Panel. After the draft opinion has been prepared, the authoring panel member circulates it to the other panel members within 120 days of oral arguments or the date of the order submitting the case on the briefs. The other two panel members shall communicate in writing their approval, disapproval, or suggestions to the other panel members within twenty-one (21) days of receiving the draft opinion. Where a textual revision or addition is suggested, the suggesting panel member submits his or her modification in specific language capable of being inserted into the opinion and provides copies to the other two panel members.

- (3) Concurrences and Dissents. Any panel member intending to concur or dissent from the majority opinion shall promptly: (1) notify the lead justice and (2) provide the concurrence or dissent to the other panel members within thirty (30) days of receiving the draft opinion.
- (4) Filing of Opinions, Orders, and Judgments. Following written or electronic mail approval from all three panel members, the assigned law clerk transmits to the Clerk for filing the (1) judgment; (2) opinion; and (3) any concurring or dissenting opinions.
- (5) Formatting of Opinions.
 - (A) Styles and Citations. The form and style of citations shall be as set forth in the most recent edition of The Bluebook: A Uniform System of Citation as modified by the Commonwealth Supreme Court Style Manual.
 - (B) Listing of Counsel. Counsel of record is listed on the first page of all published opinions.

Section 10. Motion to Reconsider

- (a) Assignment. A motion to reconsider shall be assigned to the panel that decided the appeal. If a panel member is unavailable then the Chief Justice shall appoint a new panel member. A panel member is unavailable if he or she is disqualified or recused.
- (b) Procedure.
 - (1) The Clerk notifies the assigned law clerk and the panel who issued the opinion;
 - (2) The law clerk reviews the motion and recommends to the panel whether a reply should be required;
 - (3) The panel determines whether a reply is required;
 - (4) The panel meets to deliberate on the motion within the later of (a) ten (10) days from notification or (b) seven (7) days from reply;
 - (5) The order will be issued within two (2) months of the panel meeting.

Section 11. Court Communications

- (a) External. The Clerk's office handles all communication between the Court and the public (including attorneys) regarding matters pending before the Court. The Clerk is not authorized to waive the requirements of any statute or rule when speaking for the Court on procedural or scheduling matters.

Section 12. Calendar

- (a) Annual Argument Calendar. Before December 1 of each year, the Clerk will: (1) distribute a calendar setting out when oral arguments are scheduled and (2) post the calendar on the Judiciary's website.
- (b) Quarterly Case Calendar. The Clerk will promptly: (1) distribute a quarterly calendar identifying the case, time, and venue of each appeal scheduled for oral argument; and (2) post the calendar on the Judiciary's website.