

**IN THE EASTERN CARIBBEAN SUPREME COURT**  
(A.D. 2003)

**PRACTICE DIRECTION**

**No. 1 of 2003**

**COURT CONNECTED MEDIATION**

This Practice Direction is made pursuant to Part 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and supplements Part 25.1[h] of the Rules.

**1. GENERAL**

In this Practice Direction, unless otherwise provided for or the context otherwise requires -

**"ADR"** - means a collective description of methods of resolving disputes otherwise than through the trial process including, in particular, mediation;

**"Court"** - means the High Court and, where the context so admits and in Part 62, the Court of Appeal

**"court-connected mediation services"** - means mediation services provided as the result of a referral by the court;

**"court office"** - refers to -

- (a) the place where documents are to be filed, etc. and includes a Registry of the High Court and of the Court of Appeal; and
- (b) members of the court staff who carry out work of a formal or administrative nature under rule 2.6 (1) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

**“ECSC regional mediation coordinator”** means the person appointed by the Chief Justice to coordinate the development of court-connected mediation in the Member States and Territories;

**“Judicial Education Institute”** - means the Judicial Education Institute of the Eastern Caribbean Supreme Court;

**“mediation”** - means a flexible dispute resolution procedure in which a neutral third party, the mediator, facilitates negotiations between the parties to help them settle their dispute;

**“mediation coordinator”** - means the person appointed to be responsible for the management of court connected mediation in each of the Member States;

**“mediation session”** - refers to a mediation including continuations and adjournments of the same matter held with a mediator and attended by parties and or their lawyers to a dispute to which this Practice Direction applies;

**“mediator”** - means an individual engaged as a neutral third party to provide mediation services and whose name appears on the Roster of Mediators for the Eastern Caribbean Supreme Court;

**“Member States”** means -

- [1] Antigua and Barbuda;
- [2] Commonwealth of Dominica;
- [3] Grenada;
- [4] Saint Christopher and Nevis;
- [5] Saint Lucia; and
- [6] St. Vincent and the Grenadines;

**“party”** - includes both the party to the claim and any legal practitioner on record for that party unless any rule specifies or it is clear from the context that it relates to the client or to the legal practitioner only;

**“referral order”** - means an order to attend mediation as a result of a referral by a master or judge;

**“Rules”** - means Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

**“statement of case”** - means -

- (a) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and a reply; and
- (b) any further information given in relation to any statement of case under Part 34 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 either voluntarily or by order of the court;

**“Territories”** means -

- [1] Anguilla;
- [2] Montserrat; and
- [3] the British Virgin Islands

**“To refer”** - means to provide a party to a case with the name of one or more mediators for the purpose of selecting a mediator.

## **2. INTRODUCTORY NOTE**

Court-connected Mediation was introduced in St. Lucia by Practice Direction No. 2 of 2002. Practice Direction No. 1 of 2003 extends court-connected mediation to all Member States and makes provision for the referral to mediation of civil actions filed in the Court.

Under Part 25.1(h) of the Rules, the Court must actively manage cases, by **“encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures”**. In order to facilitate the use of such procedures and to provide litigants with a timely and cost-effective method to the conventional way of resolving civil disputes, the Court is instituting Court-connected mediation in the Member States.

Practice Direction No. 1 of 2003 does not provide for court-connected mediation in family proceedings, insolvency (including winding up of companies), non-contentious probate proceedings, proceedings when the High Court is acting as a prize court and any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

### **3. ADMINISTRATION**

Court-connected mediation will be managed on a regional and national basis. In each Member State and Territory there will be a national court-connected Mediation committee which may include:

- Members of the Judiciary
- Registrar of the High Court
- Representatives from:
  - The Ministry responsible for Legal Affairs
  - The Bar Association
  - The private sector
  - Trade Unions
  - Religious Organisations
- Such other persons as may be selected by the Chief Justice

These Committees shall be responsible for selecting mediators, who have been certified by the Judicial Education Institute, to be placed on the Roster of Mediators. The committees will also deal with complaints, assess the effectiveness of the process and make recommendations.

The Roster of Mediators from which litigants can choose a mediator will be available at the High Court Office and at the office of the Mediation Co-

ordinator. Mediators on the roster will be paid on a fee basis established by the Court.

The Regional Court-connected Mediation committee shall be comprised of:

- Representatives of the national court-connected Mediation committees
- Such other persons as may be selected by the Chief Justice

This committee will serve as an advisory body to the Chief Justice.

#### **4. REFERRAL TO MEDIATION**

At any stage of the proceedings:

- A Master or Judge may make an order referring any civil action filed in the Court to mediation.
- The parties may by consent notify the court that they wish to have their case referred to mediation and in such case, the Master or Judge shall make a referral order.

Parties will not be allowed to opt out of the Referral Order to mediation except by order of a Master or Judge and upon adducing good and substantial reasons.

#### **5. SELECTION OF MEDIATOR AND DATE FOR MEDIATION**

It is the joint responsibility of the parties to select a Mediator mutually agreed to by them. If the parties cannot agree upon a mutually acceptable mediator, a Master or Judge shall make an order appointing a mediator from the Roster of Mediators.

The Mediation Co-ordinator shall be responsible for the scheduling of mediation sessions, which will be conducted on facilities under the management and control of the Court. Parties will be required to attend a mediation session of up to three hours but they may choose to go beyond that period if they so desire.

After the holding of a mediation session, the following cases will be returned to case management:

- Cases in which a Certificate of Non-compliance has been filed;
- Cases in which a Notice of Outcome of Mediation indicates that the parties have not settled.

## **6. PRE-MEDIATION REQUIREMENTS**

After an order has been made referring a matter to mediation, the parties are required to:

- Submit a copy of the Statement of Case to the Mediator at least 7 days prior to the mediation session;
- Sign a Confidentiality Agreement prior to the mediation session.

If the parties have agreed to settle or have settled the claim prior to the scheduled mediation session, they must cancel the session and provide the Mediation Coordinator with the details of the terms of the agreement or settlement.

## **7. ATTENDANCE AT MEDIATION SESSION**

All parties to the litigation are required to attend the mediation session. The Mediator shall lodge with the Mediation Co-ordinator a Certificate of Non-compliance if a party to the claim fails to attend the mediation session whether or not their legal practitioners attend.

## **8. PROCEDURES**

The Procedures to be followed in relation to court-connected mediation are prescribed in the First Schedule.

## **9. PRACTICE FORMS**

The Practice Forms are contained in the Second Schedule.

## **10. EFFECTIVE DATE**

This Practice Direction will come into effect on the 1<sup>st</sup> day of December 2003 and will be applicable to all civil actions filed in the Court.

Dated this 22<sup>nd</sup> day of December 2003.

**Sir Dennis Byron  
Chief Justice**

## FIRST SCHEDULE

### PROCEDURES

#### 1. REFERRAL OF CASES TO MEDIATION

1.1 At any stage of the proceedings:

- a. A Master or Judge may make an order in Form M1 referring any civil action filed in the Court to mediation; or
- b. The parties may by consent notify the Court in Form M8 that they wish to have their case referred to mediation, and in such case, the Master or Judge may make a Referral Order.

1.2 This Practice Direction does not apply to the following matters as excluded by Part 2.2 (3) of the Civil Procedure Rules 2000:

- Family proceedings
- Insolvency (including winding up of companies)
- Non-contentious probate proceedings
- Proceedings when the High Court is acting as a prize court; and
- Any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

1.3 After the Referral Order has been made, the court office shall send a copy to the Mediation Co-ordinator.

#### 2. CRITERIA FOR REFERRAL OF CASES

2.1 In considering whether to refer a case to mediation, the master or judge shall take into account all relevant circumstances including the following:



- a) the relationship between the parties;
- b) the willingness of the parties to resolve their dispute by a collaborative process;
- c) opportunities for joint gains not available through litigation in the court; or
- d) any other criteria considered appropriate by the master or judge.

**3. APPLICATION TO DISPENSE WITH MEDIATION**

Within 15 days after the Referral Order, a party may apply to the court to vacate the Referral Order if good and substantial reason is shown to the master or judge.

**4. TIME FOR CONDUCTING THE MEDIATION SESSION**

The mediation session hearing shall be held within 45 days of the Referral Order unless otherwise ordered by the master or judge, on application by any party.

**5. EXTENSION OF TIME FOR MEDIATION**

5.1 In considering whether to extend the time within which the mediation is to be conducted the master or judge shall take into account all circumstances, including:

- a) the number of parties and the complexity of the issues in the action; and
- b) whether the mediation will be more likely to succeed if it is postponed to allow the parties to acquire more information.

## **6. ROSTER OF MEDIATORS**

6.1 The Mediation Co-ordinator shall maintain a Roster of Mediators for that Member State, as selected by the Court-connected Mediation Committee.

6.2 The Roster of Mediators shall be exhibited at the High Court Office and at the office of the Mediation Co-ordinator.

## **7. SELECTION OF MEDIATOR BY THE PARTIES**

7.1 All court-connected mediations shall be conducted by a mediator from the Roster of Mediators, who is:

- a) mutually agreed to by the parties; or
- b) assigned by the master or judge, where the parties fail to agree.

7.2 The parties may select the mediator:

- a) at the time of filing the Notice for Referral to Mediation;
- b) at the time the Referral Order is made; or
- c) within 10 days of the Referral Order, by filing a Notice of Selection of Mediator in Form M2.

7.3 If the parties fail to select a mediator, the Mediation Coordinator shall request:

- a) That the master or judge assign a mediator from the Roster of Mediators; and
- b) Issue a Notice of Selection of Mediator in Form M3, to the parties.

## **8. SCHEDULED DATE FOR MEDIATION**

When the Notice of Selection of Mediator is filed in Form M2 and M3, the Mediation Co-ordinator shall:

- a) in consultation with the parties and the mediator, fix a date for the mediation session; and
- b) serve on every party a Notice of Scheduled Mediation (**Form M4**) stating the place, date and time of the mediation.

## **9. PROCEDURE BEFORE THE MEDIATION SESSION**

### **9.1 Parties are required to:**

- a) Submit a copy of the Statement of Case to the Mediator at least 7 days prior to the mediation session;
- b) Sign a Confidentiality Agreement prior to the mediation session.

9.2 If the parties have agreed to settle or have settled the matter prior to the scheduled mediation session, they must cancel the session and provide the Mediation Coordinator with the details of the terms of the agreement or settlement.

## **10. ATTENDANCE AT THE MEDIATION SESSION**

- 10.1 The parties are required to attend a three-hour mediation session. After the first three hours, the mediation may be continued if the parties and the mediator agree to do so and the parties agree to pay the scheduled additional hourly rate.
- 10.2 A party who requires another person's approval before agreeing to a settlement shall, before the mediation session, arrange to have ready access to the other person throughout the session.
- 10.3 Where a party is not a natural person, the person attending on behalf of that party must be authorized to settle the dispute or be in a position to be able to obtain such authority during the mediation.
- 10.4 With the consent of all parties and the mediator, a mediation session may be adjourned at any time. In the event of an

adjournment, the parties must reschedule the mediation session within the time limits set out in the Practice Direction.

**11. FAILURE TO ATTEND**

11.1 If a party fails to attend the mediation session within half an hour of the appointed time or attends the mediation session without having authority to settle the mediator shall:

- a) cancel the session; and
- b) immediately lodge with the Mediation Co-ordinator a Certificate of Non-compliance (**Form M 5**) for filing at the Court Office.

**12. NON-COMPLIANCE WITH THE REFERRAL ORDER**

When a Certificate of Non-compliance is filed with the Court Office, the Registrar shall refer the matter to the master or judge who may make an order under Part 26 (case management- the court's powers) or under Part 64 (costs- general) of the Rules against a party who fails to comply with the Practice Direction.

**13. CONFIDENTIALITY**

Prior to commencement of the mediation session the parties shall sign a Confidentiality Agreement (**Form M6**).

**14. MEDIATOR'S REPORT**

At the end of the mediation session, the mediator shall complete and lodge the Notice of Outcome of Mediation (**Form M 7**) with the Mediation Co-ordinator, for filing at the Court Office.

**15. AGREEMENT**

15.1 If there is an agreement resolving some or all of the issues in the dispute:

- a) it shall be signed by the parties and the mediator and lodged with the Mediation Co-ordinator for filing at the Court Office; and
- b) within 7 days after the agreement is signed the parties shall apply to the court for an order in terms of the agreement and the master or judge shall make an order in Form M9;

15.2 If the parties fail to make an application to the court for an order in terms of the signed agreement within 7 days after the agreement is signed, the master or judge shall make an order under Part 26.2 of the Rules.

**16. NO AGREEMENT**

If no agreement is reached that resolves all the issues in dispute, the matter shall be returned to case management.

**SECOND SCHEDULE**

**PRACTICE FORMS**

**Form M 1: Mediation Referral Order**

[Rule 1.1(a)]

The Eastern Caribbean Supreme Court

In the High Court of Justice

[State/Territory]

Claim No.

Between

A.B.	Claimant
and	
C.D.	Defendant

**Mediation Referral Order**

Made the    day of            20 ...

Upon this matter coming on before:

The Honourable Justice/Master

[And Upon Hearing                            Counsel for the Claimant and                            Counsel  
for the Defendant]

[And Upon the Claimant and/or Defendant being present]

IT IS ORDERED THAT:

The parties to these proceedings are required to attend a mediation session with a mediator within 45 days from today's date. Parties shall select a mediator from the Roster of Mediators and advise the Mediation Co-ordinator of the name of the mediator within 10 days of the receipt of this notice. If parties fail to select a mediator, one will be appointed by the Court.

By the Court  
[SEAL]  
Registrar

**Form M 2: Notice of Selection of Mediator**

*[Rule 7.2]*

Heading: same as in Form M 1

**Notice of Selection of Mediator**

TAKE NOTICE that the parties have selected ..... (*Name of Mediator*)  
from the Roster of Mediators.

Dated:

Signed:

Claimant/ Claimant's Legal Practitioner  
(*Name, address, telephone number, email*)

To: Mediation Co-ordinator  
(*Name, address, telephone number, email*)

**Form M3: Notice of Selection of Mediator by Judge or Master**

*[Rule 7.3]*

Heading: *same as in Form M1*

**Notice of Selection of Mediator by Judge or Master**

TAKE NOTICE that a Notice of Selection of Mediator by the parties has not been filed in this action. Accordingly, I have assigned ..... (*Name of Mediator*) to conduct the mediation session in these proceedings.

Unless the court orders otherwise, you are required to attend this mediation session. If you have a lawyer representing you in this action, he is also required to attend.

YOU MAY BE PENALIZED IF YOU FAIL TO ATTEND THE MEDIATION SESSION.

(Dated)

By the Court

[SEAL]

Registrar

To: Claimant’s Legal Practitioner/ Claimant  
*(Name, address, telephone number, email)*

And To: Defendant’s Legal Practitioner/ Defendant  
*(Name, address, telephone number, email)*

And To: Mediation Co-ordinator  
*(Name, address, telephone number, email)*



**Form M4: Notice of Scheduled Mediation**

*[Rule 8(b)]*

Heading: same as in Form M1

**Notice of Scheduled Mediation**

TAKE NOTICE that the parties/ the Master or Judge have/has selected. *(Name of Mediator)* from the Roster of Mediators. The mediation is scheduled to take place on the.....day, of.....*(date)* from ..... to ..... *(time)* at the Office of the Mediation Co-ordinator at ..... *(address)*.

You are required to attend a three-hour mediation session. If you have a lawyer representing you in this proceeding, he is also required to attend. Any party attending the mediation must be authorized to settle the dispute or be in a position to be able to obtain such authority during the mediation.

When you attend the mediation session, you should bring with you any documents that you consider of central importance to your case. You should plan to remain throughout the scheduled time.

Dated:

Signed: Mediation Co-ordinator

*(Name, address, telephone number, email)*

To: The Mediator

*(Name, address, telephone number, email)*

To: Claimant's Legal Practitioner/ Claimant

*(Name, address, telephone number, email)*

And To: Defendant's Legal Practitioner/ Defendant

*(Name, address, telephone number, email)*

**Form M5: Certificate of Non-Compliance**

[Rule 11.1(b)]

Heading: *same as in Form M1*

**Certificate of Non-Compliance**

TAKE NOTICE that

- The claimant failed to attend the mediation session.
- The defendant failed to attend the mediation session
- The claimant or his representative attended the mediation but had no authority to settle.
- The defendant or his representative attended the mediation but had no authority to settle.

Dated:

Signed:

Mediator

*(Name, address, telephone number, email)*

To: Mediation Co-ordinator

*(Name, address, telephone number, email)*

And to: The Registrar

*(Name, address, telephone number, email)*

**Form M6: Confidentiality Agreement**

[Rule 13]

Heading: *same as in Form M 1*

**Confidentiality Agreement**

The parties will participate in a Mediation Session to be conducted in accordance with the Practice Direction regarding the Court-connected Mediation Pilot Project. The parties agree that:

- 1) statements made and documents produced in a mediation session and not otherwise discoverable are not subject to disclosure through discovery or any other process and are not admissible into evidence for any purpose, including impeaching credibility;
- 2) the notes, records and recollections of the mediator conducting the session are confidential and protected from disclosure for all purposes; and
- 3) at no time shall any party summon, subpoena or call the mediator as a witness to testify as to the fact of the mediation or as to any oral or written communication made at any stage of the mediation.

Each of the parties and their lawyers has read this agreement and agree to proceed with the mediation on the terms contained herein.

Dated:

.....

.....

Defendant

Claimant

.....

.....

Legal Practitioner for the Defendant

Legal Practitioner for the Claimant

To: The Mediation Co-ordinator

*(Name, address, telephone number, email)*

**Form M7: Notice of Outcome of Mediation**

*[Rule 14]*

Heading: *same as in Form M1*

**Notice of Outcome of Mediation**

TAKE NOTICE that a mediation session was conducted in this proceeding on the ..... day of ..... *(Date)*

- The parties settled prior to the mediation session.
- The parties settled as a result of the mediation session.
- The parties did not settle.
- The parties settled some issues as a result of the mediation session.
- The terms of the settlement on all issues are hereto annexed.

Dated:

Signed:

The Mediator  
*(name, address, telephone number, email)*

To: The Mediation Co-ordinator  
*(Name, address, telephone number, email)*

And to: The Registrar  
*(Name, address, telephone number, email)*

**Form M 8: Notice for Referral to Mediation**

*[Rule 1.1(b)]*

Heading: *same as in Form M1*

**Notice for Referral to Mediation**

TAKE NOTICE that:

- 1. I .....(name) of .....(address) the Claimant herein consent to have the Court refer this matter to mediation.
- 2. I .....(name) of .....(address) the Defendant herein consent to have the Court refer this matter to mediation.
- 3. We have selected.....(name of mediator) from the Roster of Mediators.

Dated

Signed

**Claimant/ Claimant's Legal Practitioner**

*(name, address, telephone number, email)*

**Defendant/ Defendant's Legal Practitioner**

*(name, address, telephone number, email)*

To: The Registrar

**Form M9 : Order subsequent to Mediation Agreement**  
*[Rule 15.1(b)]*

Heading: *same as in Form M1*

**Order subsequent to Mediation Agreement**

Made the      day of                      20 ...

Upon this matter coming on before:

The Honourable Justice/Master

[And Upon Hearing                              Counsel for the Claimant and                              Counsel  
for the Defendant]

[And Upon the Claimant and/or Defendant being present]

Upon this matter having been referred to mediation

And upon the parties having agreed to the terms set out in the signed agreement annexed hereto;

IT IS ORDERED THAT

All further proceedings in this matter are stayed except for the purpose of carrying into effect the terms of the said agreement;

For that purpose the parties have permission to apply to the court.

BY THE COURT

REGISTRAR