

EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES

PRACTICE DIRECTION 69C

No. 1 of 2015

COMMERCIAL DIVISION

This Practice Direction is made pursuant to Part 4.2(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

1. Introduction

- 1.1 This practice direction is applicable to claims filed in the Commercial Division in Saint Lucia.
- 1.2 This practice direction supplements Part 69C of the Rules and provides for the promotion of efficiency of procedures in the Commercial Division.

2. Context

- 2.1 In this practice direction:-

“Heavy Applications” means hearings which involve extensive issues and are estimated to be more than half a day;

“Judge” means a high court judge assigned to the Commercial Division of the Supreme Court;

“Ordinary applications” means hearings estimated to be of more than two hours duration but less than half a day;

“Rules” mean the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

“Short applications” means hearings estimated to be of less than two hours duration;

“Unit” means the Case Management Unit of the Commercial Division

3. Preparation of Bundles

- 3.1 The practice of the High Court Registry submitting original court files to the Judge for applications and trials does not apply to the Commercial Division and will be replaced by court bundles prepared in accordance with the specifications for compilation outlined in this practice direction. It is the duty of all legal practitioners to co-operate in the preparation of the court bundles.
- 3.2 Documents to be used in bundles should be:-
- (a) on letter size paper;
 - (b) contained in suitably secured bundles;
 - (c) paginated;
 - (d) indexed;
 - (e) wholly legible;
 - (f) arranged chronologically; and
 - (g) contained in three ring binders or lever arch files.
- Categories of documents should be separated by dividers and paginated sequentially through the bundle.
- 3.3 In particular bundles should be prepared as follows:-
- (a) no more than one copy of any one document should be included, unless there is good reason for doing otherwise;
 - (b) all documents, and correspondence, should be included in chronological order;
 - (c) where a contract or similar document is central to the case it may be included in a separate place provided that a page is inserted in the chronological run of documents to indicate:-
 - (i) the place the contract or similar document would have appeared had it appeared chronologically; and
 - (ii) where it may be found instead;
 - (d) if a document has to be read across rather than down the page, it should be so placed in the bundle as to ensure that the top of the text is nearest to the spine;
 - (e) no bundle should contain more than 300 sheets;
 - (f) bundles should not be overfilled, and should allow sufficient room for later insertions. However the size of the file used should not be a

size that is larger than necessary for the present and anticipated contents;

- (g) bundles should be paginated, in the bottom right hand corner and in a form which can clearly be distinguished from any existing pagination on the document;
- (h) bundles should be indexed, except that a chronological bundle of documents need not be indexed if an index is unlikely to be useful;
- (i) bundles should be numbered and named on the outside and on the inside front cover, the label should include the short title of the case, and a description of the bundle (including its number, where relevant);
- (j) large documents, such as plans, should be placed in an easily accessible file.

3.4 Where applicable, a copy of the bundle(s) should be provided as a matter of course to all other parties. Where documents are copied unnecessarily or bundled incompetently, the cost for such bundles will be disallowed.

3.5 All bundles required for the use of the court will be retained by the court.

4. Applications

4.1 The timetable for short and ordinary applications is as follows:

- (a) evidence in support must be filed and served with the application;
- (b) evidence in answer must be filed and served within 14 days thereafter;
- (c) evidence in reply (if any) must be filed and served within 7 days thereafter.

4.2 The timetable for heavy applications is as follows:

- (a) evidence in support must be filed and served with the application;
- (b) evidence in answer must be filed and served within 21 days thereafter;

- (c) evidence in reply (if any) must be filed and served as soon as possible and in any event within 14 days of service of the evidence in answer.
- 4.3 These timetables may be abridged in accordance with rules 69C.9 (9) and (11).
- 4.4 An application bundle must be lodged with the Unit not later than 2 pm two clear days before the hearing of a short application and not later than 2 pm four clear days before the hearing of an ordinary or heavy application.
- 4.5 The application bundle should contain a copy of documents which the applicant and where applicable the respondent, wishes to rely upon at the hearing of the application, in the following order:-
- (a) the application;
 - (b) any witness statement or affidavit relied upon in support of the application, together with their exhibits;
 - (c) a draft of the order sought on the application;
 - (d) the originating process;
 - (e) statements of case, if any;
 - (f) all orders made to date in the proceedings, unless irrelevant to the application;
 - (g) witness statements or affidavits relied upon by the respondents, together with their exhibits;
 - (h) case summary or skeleton arguments;
 - (i) copies of authorities; and
 - (j) any other documents.
- 4.6 The application bundle must be compiled in accordance with paragraph 3 of this practice direction and it is the responsibility of the applicant to ensure that application bundles are lodged pursuant to this practice direction. The court may refuse to entertain an application where the applicant has not complied with this paragraph and in such circumstances the court may consider an order for wasted costs.
- 4.7 Respondents are not required to provide case summaries but where appropriate should provide skeleton arguments together with copies of any authorities intended to be relied upon, to the Unit and the applicant,

within the same timeframe stipulated in paragraph 4.4 of this practice direction.

- 4.8 In relation to short applications, a case summary is intended to enable the court to assimilate the facts of the case and the issues raised on the application. It may be as short as half a page but should not ordinarily exceed one and a half pages. Where an application is more complex and issues of law are likely to be contested, instead of a case summary, skeleton arguments should be lodged, summarizing the facts and issues and setting out the party's position on the legal points raised. Skeleton arguments are not required for short applications.

5. Case Management Conference ('CMC')

- 5.1 Where a CMC has been fixed in a commercial matter, unless the court orders otherwise, the claimant (or applicant), in consultation with the other parties, must prepare and lodge with the Unit no later than three clear days before the date of the CMC, a case management bundle containing the following documents with such modifications as the circumstances of the case may require:-

- (a) a case summary, containing a short and uncontroversial summary of what the case is about and of its material case history. No part of the case summary whether amounting to an admission or otherwise, will be relied upon by any party at trial;
- (b) a list of the principal issues to be decided at trial, with a section listing important matters which are not in dispute;
- (c) a chronology of the main incidents giving rise to the litigation and the steps taken in the case to date;
- (d) the cast of characters and/or detailed corporate or organizational flow chart showing the relationship of the individuals or legal entities involved in the case;

- (d) the claim form, statements of case to date and any applications and orders made to date in the proceedings. The case management bundle should not include any order for an interim payment;
- (e) copies of all applications intended by any party to be made at the case management conference together with supporting evidence for example; permission to change a statement of case, requests for disclosure and requests for information;
- (f) a list prepared by each party of the identity of the witnesses of fact that the party intends to call at trial and a short statement of the nature of the evidence which is intended to be given by that witness. A party is not obligated to call all witnesses identified and may choose to call witnesses not identified but only subject to compliance with any direction given or timetable set by the Court. Notwithstanding this it is the duty of all parties so far as possible to identify the witnesses intended to be called at trial and the nature of their evidence, at the CMC;
- (g) a list prepared by each party of issues requiring expert evidence, with a short statement of the nature of the expert evidence required, the identity of the expert to be called and the nature of his or her expertise;
- (h) if a legal practitioner considers that a particular issue is suitable to be tried as a preliminary issue, a statement signed by him or her to that effect, identifying the issue with precision;
- (i) the provisional estimate of the legal practitioner for each party of the minimum and maximum length of trial. As much as possible this estimate should be agreed;
- (j) the provisional estimates of the legal practitioner for each party of the earliest date by which the party can be ready for trial; and
- (k) a statement by each legal practitioner indicating whether a pre-trial review (PTR) is likely to be useful. Where a PTR is considered unnecessary at this stage, a legal practitioner is not precluded from

applying for a direction under Rule 38.2(2), at a later stage, if the circumstances so require.

- 5.2 As much as possible parties should agree the case summary, list of issues for decision, chronology and estimated length of trial and it is for the claimant to initiate the process of achieving agreement. If agreement cannot be reached, a party who disagrees should summarize his or her disagreement in a short note ('a note of disagreement') which must be included in the CMC bundle.
- 5.3 Parties other than the claimant (or applicant) must provide the claimant (or applicant) with notes of disagreement and with their versions of the lists, estimates and statements required under sub-paragraphs 5.1 (g) to (k) of this practice direction, no later than seven clear days before the date set for the CMC. Failure to meet this time limit may incur cost sanctions.
- 5.4 Parties must be ready to assist the court by directing the court's attention to any specific fact or issue upon which it contends that standard disclosure should be given and should be in a position to say whether such disclosure should include any specific document.

6. Pre Trial Review ('PTR')

- 6.1 If a PTR is held, the trial timetable submitted at the PTR must allow for pre-trial reading, opening oral submissions, the examination, cross examination and re-examination of each witness of fact and of each expert witness (taking into account any time needed for interpretation), for the preparation of any final written submissions and for closing oral submissions.
- 6.2 Before the PTR, the parties must discuss and if possible, agree on a draft written trial timetable. The claimant must file a copy of the draft trial timetable at least two days before the hearing of the PTR. Any parts of the timetable which are not agreed must be identified and short explanations of the disagreement must be given.

- 6.3 It shall be the duty of all other parties to supply to the claimant not less than seven clear days before the hearing date for the PTR such material as that party considers should be included in the updated case management bundle for use at the PTR.
- 6.4 At any PTR or CMC hearing, the court will ensure that case management directions have been complied with and give any further directions for the trial that are necessary.
- 6.5 The legal practitioner(s) who will represent the parties at the trial should attend the PTR and any CMC hearing at which arrangements for the trial are to be discussed.

7. Trial

- 7.1 Trial bundles must be arranged as follows: -
 - (a) a separate bundle separately indexed containing the statements of case, answers to requests for information, orders (other than any order for an interim payment) and directions made or given in the case, lists of documents supplied in the course of disclosure and notices served under Rule 28.18(2). The categories of documents should be separated by dividers and the bundle should be internally paginated;
 - (b) a separate bundle separately indexed containing the witness statements or witness summaries or, if appropriate, affidavits, such documents to be separated by dividers and the bundle to be internally paginated. If witness statements, witness summaries or affidavits have attached to them, exhibit(s), or contain reference to other documents, those other documents should not be incorporated in the same bundle. Instead, the margin of the statement, summary or affidavit should cross-refer to the document by reference to its position in the other trial bundles. It is the responsibility of the party putting in the statement, summary or affidavit to do this;

- (c) a separate bundle separately indexed and internally paginated containing the experts reports (or the report of the single expert);
- (d) one or (as necessary) more chronological bundles containing all other documents which any party wishes to have included for the purposes of trial. Such chronological bundles should be numbered consecutively from the earliest in time to the most recent and if there is more than one such bundle the pagination should continue sequentially through them all;
- (e) one or more separate bundles containing documents of a particular category which may conveniently be grouped together (e.g. contractual documents, drawings, plans, photographs). Such bundles should be internally paginated and the documents they contain separated by dividers. Where a document included in such a bundle is part of the documents in the case, it should not be included a second time in the chronological bundles. Instead, a blank page must be inserted at the correct place in the chronological bundles indicating the nature of the document, its date, and at what page in which other bundle it is to be found;
- (f) documents obtained on disclosure should be marked at the top right hand corner identifying the party who disclosed it and the sequential number of the document in that party's list of documents;
- (g) documents which are faint or otherwise difficult to decipher should be followed immediately in the bundle by an agreed transcription. If no transcription can be agreed, then the parties should include their own transcriptions, clearly indicating which party puts it forward; and
- (h) documents in any language other than English should be followed immediately in the bundle by an agreed translation or if the translation cannot be agreed, then each party should include its own translation, clearly indicating which party puts the translation forward.

7.2 A copy of the trial bundle(s) should be provided by the claimant as a matter of course to the other parties.

7.3 Where the bundles exceed 100 pages of documents in total, the claimant must lodge a core bundle with the Unit (that is, a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial) at least 10 days before the date fixed for the trial.

8. Reading lists, skeleton arguments and agreed authorities for trial

8.1 Not later than 2 pm two clear days before the date fixed for trial the parties must lodge with the Unit an agreed pre -reading list, together with an agreed estimate of the time needed for pre- reading.

8.2 Not later than 1 pm seven clear days before the date fixed for trial each party must serve on the other parties and lodge with the Unit its skeleton argument and a non-contentious - chronology of events summarizing only the key dates in the case. Where there is disagreement about a particular event or description, it is useful if that fact is indicated in neutral terms and the competing versions concisely stated.

8.3 A skeleton argument is intended to identify both for the parties and the court, those points which are and are not in issue and the nature of the argument in relation to those points that are in issue. It is not a substitute for oral argument and should therefore:-

(a) identify concisely:-

(i) the nature of the case generally and the background facts insofar as they are relevant to the matter before the court;

(ii) the propositions of law to be relied on with proper citation of and references to the relevant authorities;

(iii) the submissions of fact to be made with references to the evidence;

(b) be in numbered paragraphs and state the name of the legal practitioner who prepared them;

(c) avoid arguing the case at length;

(d) be prepared in a format which is easily legible;

(e) not be in a font smaller than 12 point;

(f) must be in Arial font only, with line spacing of 1.5 or greater; and

(g) not be longer than 20 pages.

- 8.4 After skeleton arguments have been filed, parties are required to lodge within twenty-four hours of filing, an electronic copy of the filed document to the Unit in accordance with paragraph 12 of this practice direction. The document must be in portable document format (PDF). The court will not accept electronic copies of skeleton arguments that have not been filed.
- 8.5 An agreed bundle of authorities must be lodged with the Unit not later than 2 pm two clear days before the day fixed for trial.
- 8.6 The bundle of authorities must be properly indexed. Each authority must be tabbed (either numerically or alphabetically) and the index of the authorities must indicate the tab where the authority is reproduced.

9. Evidence at trial

- 9.1 Legal practitioners should bear in mind that the mere inclusion of an admissible document in the court bundles does not mean that the document forms part of the evidence in the trial. It is the legal practitioner's responsibility to indicate clearly to the court before closing his or her case the written evidence which forms part of that case.
- 9.2 To adduce a document in evidence, a legal practitioner needs to draw the attention of the court to it as part of the case. This should be done in the written opening statement or in the oral opening statement. Documents which have not previously been put in evidence before the closure of the parties' cases should not normally be referred to as evidence in the course of final submissions.

10. Proceedings at trial

- 10.1 At trial, the legal practitioner for the claimant will ordinarily be invited to make an opening statement. Such statements should be kept as short as possible and unless the practitioner is of the view that the trial will proceed more efficiently if he or she makes submissions on law in opening, all legal arguments should be reserved for closing submissions. Following the opening statement of the claimant, the legal practitioner(s)

for the other party (ies) will be invited to make a short opening statement. Legal practitioners are encouraged to decline this invitation unless they consider that a statement is required in order to put forward the opposing case on any legal submissions made by counsel for the claimant in opening or to correct a misunderstanding or ambiguity or to draw attention to some matter which will assist the Judge in assimilation of the evidence.

- 10.2 The court will usually require closing submissions in writing and will ordinarily give legal practitioners a short opportunity to prepare such submissions. The court may permit oral closing submissions, whether or not written closing submissions have been submitted. The normal order of submissions will be for the claimant to address first, followed by each of the defendants in the order in which they appear on the claim form, with the claimant having a right of reply.

11. Orders

- 11.1 After a contested hearing draft orders as agreed by the parties reflecting the decision of the Court shall be submitted to the Unit for approval by the judge.
- 11.2 Where an application is made without notice or an application or trial proceeds in the absence of any other party, the party appearing shall sign a draft order in accordance with the order made or judgment given in the application or at trial and submit to the Unit for approval by the Judge, following which it should be delivered by that party to the Unit, for perfection.

12. Electronic communication

- 12.1 A document may be filed by electronic means in accordance with the practice direction made for this purpose.

12.2 Filed copies of skeleton arguments, case summaries, chronologies and lists of issues may be lodged by sending them via e-mail to the Unit. The address for this purpose may be obtained from the Unit.

13. Proceedings via Video or Audio Conference

13.1 The Judge may conduct a CMC or PTR and in appropriate cases hear interlocutory applications by means of a video or audio conference, particularly if foreign legal practitioners and leading counsel have been retained by any of the parties or the judge is likely to be off island.

13.2 When a CMC takes the form of a video or audio conference call, the Registrar will direct one of the parties to set up the video or audio link and circulate the dial-in instructions and codes to the judge and all the parties.

13.3 The protocol for video or audio proceedings require that all participating legal practitioners must be on line before the appointed time, so that the judge will be the last person to join the conference.

13.4 Video or audio proceedings may not be recorded by any party without the consent of the Judge.

14. Evidence by Video Link

14.1 In an appropriate case the court may allow a witness to give evidence through video link. If permission is given the court will give directions for the conduct of this part of the trial.

14.2 The party seeking permission to call evidence by video link should prepare and serve on all parties and lodge with the Court a memorandum stating the particulars of the request citing reasons and setting out precisely what arrangements are proposed.

14.3 An application for permission to call evidence by video link should be made, if possible, at the CMC hearing or, at the latest, at the PTR. The Judge may however permit an application to be made at a later stage.

15. Effective Date

15.1 This Practice Direction will come into effect on the 4th day of January 2016.

Made this 30th day of November 2015

A handwritten signature in black ink, appearing to read 'J. M. Pereira', with a large, sweeping flourish above the name.

**Dame Janice M Pereira, DBE
Chief Justice**