

**EASTERN CARIBBEAN SUPREME COURT**

**CIVIL PROCEDURE RULES 2000**

**PRACTICE DIRECTION**

**No. 1 of 2023**

**JUDICIAL SETTLEMENT CONFERENCES**

**(COMMONWEALTH OF DOMINICA)**

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and supplements rule 25.1(h) and shall be applicable only to the Commonwealth of Dominica.

**1. INTRODUCTORY NOTE**

- 1.1 One of the Court's main duties, in furtherance of the overriding objective of dealing with cases justly, is to actively encourage and assist parties to settle the whole or part of their dispute on terms that are fair to each party by using alternative forms of dispute resolution (ADR) such as mediation, and to facilitate the use of such procedures. Indeed, rule 25.1(h) of the Civil Procedure Rules 2000 provides that 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".
- 1.2 The objective of this Practice Direction is to establish a Judicial Settlement Conference pilot project to provide for the resolution of civil disputes. A Judicial Settlement Conference is a recognised ADR mechanism where a Judge or Master facilitates and engages in settlement discussions with the parties. The Practice Direction facilitates the making of an order or recommendation for a Judicial Settlement Conference before a Judge or Master designed to assist the parties in their negotiation of a settlement of the proceeding or of any of the issues in the proceeding. This Practice Direction is also designed to facilitate the use of a

Judicial Settlement Conference to provide litigants with a timely and cost-effective alternative to the conventional way of resolving civil disputes. It is intended to complement the provisions for mediation as an ADR mechanism for promoting the early disposition of cases.

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

- (a) insolvency proceedings (including winding up of companies);
- (b) non-contentious probate proceedings;
- (c) proceedings when the High Court is acting as a prize court; and
- (d) any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

## **2. DEFINITIONS**

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

‘Court’ – means the High Court

‘Court Office’ – refers to (a) the place where documents are to be filed, etc. and includes the Registry of the High Court; and (b) members of the court staff who carry out work of a formal or administrative nature;

‘Judge’ – means Judge of the High Court;

‘Referral Order’ – means an order (prepared by the Court Office) to attend a Judicial Settlement Conference as a result of a referral by a Judge or Master;

‘Relevant enactment’ – means the Evidence Act or similar enactment in force in the Commonwealth of Dominica;

‘Settlement Conference’ means a non-adversarial, co-operative decision-making process in which a Judge or Master assists the parties in resolving their dispute; and

'Settlement Officer' means the Judge or Master conducting the Settlement Conference.

### **3. REFERRAL TO A SETTLEMENT CONFERENCE**

3.1 This Practice Direction contemplates judicial involvement in the settlement process at two stages:

- (i) during the case management conference process and the stages leading up to trial or the hearing of an appeal; and
- (ii) during the hearing or trial provided it is undertaken with the parties' consent.

3.2 In conducting a Settlement Conference, a Judge or Master may assist the parties in evaluating the merits of the dispute and may provide an evaluation or an opinion of the likely outcome of the dispute.

3.3 A party may also request a Settlement Conference.

3.4 This Practice Direction does not restrict the right of the parties to engage in private mediation sessions before engaging in a Settlement Conference.

### **4. COURT REFERRAL TO A SETTLEMENT CONFERENCE BEFORE A HEARING**

4.1 A Judge or Master may, at any time before the hearing of any proceedings, convene a Settlement Conference of the parties in chambers for negotiating for a settlement of the proceedings or of any issue in those proceedings, and may assist in those negotiations.

4.2 A Judge or Master who presides at a Settlement Conference under paragraph 4.1 may not preside at or take any further part in any proceedings relating to the case unless –

- (a) the parties taking part in the conference consent; and
- (b) the Judge or Master is satisfied there are no circumstances that would make it inappropriate for the Judge or Master to do so.

## **5. COURT REFERRAL TO A SETTLEMENT CONFERENCE DURING A HEARING**

- 5.1 A Judge or Master may, with the consent of the parties, at any time during the hearing of any proceedings, convene a Settlement Conference of the parties for the purpose of negotiating for a settlement of the proceedings or of any issue in those proceedings.
- 5.2 A Judge or Master who convenes a Settlement Conference under paragraph 5.1 may not assist in the negotiations, but must arrange for another Judge or Master to do so unless –
- (a) the parties agree that the Judge or Master should assist in the negotiations and continue to preside at the hearing; and
  - (b) the Judge or Master is satisfied there are no circumstances that would make it inappropriate for the Judge or Master to do so.

## **6. DOCKETING FOR SETTLEMENT CONFERENCES**

- 6.1 Settlement Conferences may be held virtually or in person by any Judge or Master resident in any Member State or Territory via a random docket system.
- 6.2 The pool of Judges and Masters available to conduct Settlement Conferences shall be as fixed by the Chief Justice and the responsibility for docketing shall be assigned to either a Judge or Master as the Chief Justice may direct from time to time.

## **7. DIRECTIONS FOR MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION MECHANISM**

A Judge or Master may, at any time with the consent of the parties, make an order directing the parties to attempt to settle their dispute by mediation or another alternative dispute resolution mechanism (to be specified in the order) agreed to by the parties before they embark upon a Settlement Conference.

## **8. PREPARATION FOR A SETTLEMENT CONFERENCE**

For effectively promoting settlement at a Settlement Conference, counsel for the parties must be prepared at a case management conference or pre-trial review or at any other appropriate stage of the proceedings, as directed by a Judge or Master and in keeping with any Practice Direction, to deal with the following matters:

- (a) What information should be exchanged prior to a Settlement Conference;
- (b) Who should be at the Settlement Conference;
- (c) What is the best time in advance of the trial to hold a Settlement Conference;
- (d) What is the estimated time required for the Settlement Conference;
- (e) Whether there is a need for any special aids for the Settlement Conference, e.g. technological equipment such as video links for parties overseas etc.;
- (f) Who has the burden of proof on specific issues – is there a need to reverse the normal order for the exchange of memoranda for the Settlement Conference; and
- (g) If mediation is the preferred option for resolution of the dispute, then who is the suggested mediator, what time constraints are involved in setting up the mediation and what review date should follow the proposed mediation as far as the Court is concerned and otherwise the most appropriate course to be adopted in accordance with the Court-Connected Mediation Practice Direction.

## **9. SETTLEMENT CONFERENCE DIRECTIONS**

9.1 A Judge or Master may, either at the case management conference or pre-trial review or at any stage of the proceedings leading up to trial or the hearing of an appeal, give directions for a Settlement Conference in Form JSC A as set out in the Appendix to this Practice Direction and such other directions as may be considered necessary, including a stay of the proceedings or any interim relief, for promoting an effective Settlement Conference.

9.2 The Settlement Conference should as far as possible be concluded within 30 days from the date of the referral. However, this time may be extended by the consent of the parties or upon the recommendation of the Settlement Officer to the docketed Judge or Master.

## **10. ATTENDANCE AT A SETTLEMENT CONFERENCE**

10.1 All parties to the proceedings are required to attend the Settlement Conference together with their legal practitioner. However, if a party is unable to attend the Settlement Conference, the party should be represented at the Conference by a person who has authority to negotiate, enter into and execute a settlement agreement.

10.2 Parties and their legal practitioners may be required to attend a preliminary meeting with the Settlement Officer to discuss the case, including whether further documents should be included in the settlement brief.

10.3 Parties will use their best efforts to engage in a meaningful and productive Settlement Conference and the Settlement Officer will assist them to reach a satisfactory settlement to their dispute.

10.4 The Settlement Officer, together with the parties, is free to determine the manner in which the Settlement Conference proceeds.

10.5 Parties are expected to be active participants in the Settlement Conference and their legal practitioners are expected to assist wherever possible.

10.6 The Settlement Officer may conduct private meetings with the individual parties and their legal practitioner(s).

## **11. NON-ATTENDANCE AT A SETTLEMENT CONFERENCE AND COSTS CONSEQUENCES**

11.1 A party who fails to attend a Settlement Conference or refuses to participate at or during the conference may be ordered to pay the costs of the conference

or the aborted conference.

11.2 The Settlement Officer may refer the conduct of a party at or during a Judicial Settlement Conference to the docketed Judge or Master for a determination of any costs consequences, if the matter is not resolved and proceeds to trial, or any other order pursuant to Part 26 of the Civil Procedure Rules 2000.

11.3 Where the Settlement Officer is desirous of referring the conduct of a party to the docketed Judge or Master for consideration of costs consequences, such referral must form part of the report of the Settlement Officer to the docketed Judge or Master.

## **12. RULES RELATING TO CASE MANAGEMENT CONFERENCES TO APPLY**

12.1 Part 25 of the Civil Procedure Rules 2000, where appropriate, applies to Settlement Conferences.

12.2 The general powers of case management under Part 26 of the Civil Procedure Rules 2000 shall not be exercised by the Settlement Officer unless, with the consent of the parties, it is necessary to do so as an aid to the Settlement Conference process.

## **13. CONFIDENTIALITY**

13.1 All parties are required to execute a confidentiality agreement in Form JSC B as set out in the Appendix to this Practice Direction before the commencement of the Settlement Conference.

13.2 The Settlement Conference shall be conducted on a 'without prejudice' basis so that the views expressed or any statement or suggestion made by the parties, during the Settlement Conference of the substance thereof, shall not be referred to and may not be utilised by the parties in any proceedings between the parties.

- 13.3 The parties and the Settlement Officer must not disclose any statement made during a Settlement Conference.
- 13.4 Documents produced in a Settlement Conference, which are not otherwise disclosed, are not subject to disclosure through discovery or another process and are not admissible into evidence for any purposes, including the impeaching of credibility.
- 13.5 The comments expressed and statements made by the Settlement Officer as well as the notes, records and recollections are confidential and protected from disclosure for all purposes and at no time shall any party summon, subpoena or call the Settlement Officer as a witness to testify to any oral or written communication made at any stage of the Settlement Conference.
- 13.6 This paragraph must be read together with any applicable provisions of the Evidence Act or any other relevant enactment or law dealing with privileged information.

#### **14. CONCLUSION OF SETTLEMENT CONFERENCE**

- 14.1 Where the parties have arrived at a settlement agreement, the Settlement Officer shall within seven (7) days submit a report, in Form JSC C as set out in the Appendix to this Practice Direction, to the docketed Judge or Master who shall then consider and give directions on whether any trial dates fixed may be vacated and any trial directions be rescinded, or what further steps are required to be taken to facilitate the implementation of the settlement agreement including fixing a reporting date to be held in chambers or directing when a notice of discontinuance is to be filed as may be deemed appropriate in the circumstances.
- 14.2 Where the parties arrive at a settlement agreement, this agreement must be filed at the court office, in Form JSC D as set out in the Appendix to this Practice Direction, within seven (7) days or such extended period as the Court may allow in order for the agreement to be made a consent order of the Court.

14.3 In cases where the Court's approval of the settlement agreement is required, the agreement shall not take effect until the Court's approval is sought on application and the Court makes an order approving the terms of the agreement.

## **15. WHERE SETTLEMENT CONFERENCE IS UNSUCCESSFUL**

15.1 If no settlement agreement is reached by the parties at the Settlement Conference, the Settlement Officer shall within seven (7) days submit a report in Form JSC C as set out in the Appendix to this Practice Direction to the docketed Judge or Master stating that no settlement has been reached.

15.2 Upon receipt of the report in Form JSC C referred to in paragraph 15.1, the docketed Judge or Master will:

- (a) attempt a complete identification of all the issues with the parties or give a specific direction for the filing of memoranda by the parties so that this can occur;
- (b) ascertain what further steps are required before the trial of the proceeding; and
- (c) give further case management directions or schedule a trial date and make trial directions, as the case may be, if that has not already occurred.

## **16. COSTS**

Where there has been a settlement of the issues in a matter referred to a Settlement Conference but there is no agreement by the parties on the issue of costs, the docketed Judge or Master shall determine the issue of the costs of the proceedings.

## **17. EVALUATION**

17.1 The information gathered from the Evaluation Forms is very important to the Eastern Caribbean Supreme Court as it is analysed to identify areas where improvements can be made to the Settlement Conference process.

17.2 The Evaluation Form for Litigants in Form JSC E, as set out in the Appendix to this Practice Direction, must be completed by each litigant who attended the Settlement Conference.

17.3 The Evaluation Form for Legal Practitioners in Form JSC F, as set out in the Appendix to this Practice Direction, must be completed by each legal practitioner who attended the Settlement Conference.

## **18. EFFECTIVE DATE**

This Practice Direction shall come into effect in the Member State of the Commonwealth of Dominica on the 1<sup>st</sup> day of January, 2023.

**Dated the 12<sup>th</sup> day of December 2022.**

**Sgd.**

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

## APPENDIX TO PRACTICE DIRECTION

### FORM JSC A

[*Practice Direction 9.1*]

**The Eastern Caribbean Supreme Court**

**In the High Court of Justice**

[**State/Territory**]

**Claim No.**

**Between**

**A.B.**

**Claimant**

**AND**

**C.D.**

**Defendant**

## JUDICIAL SETTLEMENT DIRECTIONS

### Standard Directions – Judicial Settlement Conference

A Judicial Settlement Conference of [number of days] duration is required and shall be held at [time] on [date].

As a pre-condition to the conference proceeding:

- (a) The claimant shall file and serve a memorandum by [date] as set out below; and
- (b) The defendant shall file and serve a memorandum by [date] as set out below.

Each memorandum shall provide the information requested and fully answer each of the questions set out below. Where a party fails to comply with the above pre-condition, the conference will not be convened, and the cancellation of the conference shall be taken into account against the defaulting party when considering the making of any orders as to costs.

## **INFORMATION**

Each party is required to attach a one page “will-say” statement from each of their key witnesses other than expert witnesses ( for e.g.: “Witness A will say the following:.....”). Full statements and submissions need not be completed unless otherwise directed. The parties should also submit any experts’ reports that they intend to rely upon in their settlement negotiations or to substantiate their perspective. The parties are required to highlight and tab those portions of the reports which are considered the most probative.

## **QUESTIONS:**

1. What are the issues in this proceeding?
2. Which one (or more) of these issues is most significantly affecting your inability to settle? Please explain why.
3. Have you and the other party engaged in settlement negotiations? Please describe the nature of those negotiations.
4. What offers of settlement have been exchanged?
5. Upon what criteria was your settlement offer based (if one was made) or on what do you rely to support your present position (e.g. case law, industry standards, experts’ report or findings, etc.)?
6. What else do you believe that the Settlement Officer should know about the matter that would enable him or her to work more productively with all parties participating in the conference?

**NB: Judicial Settlement Conferences and documents filed in connection with them are treated as without prejudice and privileged, save as to the recording of whether a settlement was reached or not. Thus, memoranda of the kind required above are not part of the record and (unless it be requested by any party and agreed by all otherwise) will be destroyed, returned to counsel/parties, removed from the file or sealed (e.g. if the conference is adjourned) at the conclusion of the conference.**

This order has been made on the express understanding that the parties who will attend for the claimant/appellant and the defendant/respondent are parties who have full and unlimited authority to settle the case in the event that an agreement is reached.

**FORM JSC B**

*[Practice Direction 13.1]*

**The Eastern Caribbean Supreme Court**

**In the High Court of Justice**

**[State/Territory]**

**Claim No.**

**Between:**

**A.B.**

**Claimant**

**AND**

**C.D.**

**Defendant**

**CONFIDENTIALITY AGREEMENT**

The parties will participate in a Judicial Settlement Conference to be conducted in accordance with the Practice Direction on Judicial Settlement Conferences. The parties agree that:

1. statements made and documents produced in a Settlement Conference 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 Settlement Officer are confidential and protected from disclosure for all purposes;
3. where a Settlement Conference has been finalised all notes taken at any session in respect of the conference shall be destroyed in the presence of the parties;
4. no recordings or capture of information by electronic devices shall be allowed in any Settlement Conference;
5. at no time shall any party summon, subpoena or call the Settlement Officer as a witness to testify as to the fact of the Settlement Conference or as to any oral or written communication made at any stage of the conference;
6. this Agreement when signed in counterparts shall be as binding and effectual as one in respect of which all parties have signed as a single document;



**FORM JSC C**

[Practice Directions 14.1 and 15.1]

**The Eastern Caribbean Supreme Court**

**In the High Court of Justice**

[State/Territory]

**Claim No.**

**Between:**

**A.B.**

**Claimant**

**AND**

**C.D.**

**Defendant**

**REPORT ON OUTCOME OF JUDICIAL SETTLEMENT CONFERENCE**

**I HEREBY REPORT THAT** following the Judicial Settlement Conference scheduled/conducted in these proceedings on the ..... day of ....., 20..... (Date):

*(tick as applicable)*

[ ] The Parties entered into a Settlement Agreement.

OR

[ ] The Parties did not arrive at a Settlement Agreement.

OR

[ ] The Claimant/Defendant did not attend the Settlement Conference.

Dated:

Signed: -----

Settlement Officer

*(Print name)*

**FORM JSC D**

[Practice Direction 14.2]

**The Eastern Caribbean Supreme Court**

**In the High Court of Justice**

[State/Territory]

**Claim No.**

**Between:**

**A.B.**

**Claimant**

**and**

**C.D.**

**Defendant**

**AGREEMENT FOLLOWING JUDICIAL SETTLEMENT CONFERENCE**

Following on a Judicial Settlement Conference conducted by [Name of Settlement Officer] on the ..... day of ..... 20..., the parties hereby agree to settle the claim/appeal on the following terms:

(1)

(2)

(3)

...

Signed: -----

Dated:

Claimant

Signed: -----

Dated:

Defendant

**FORM JSC E**

[Practice Direction 17.2]

**EVALUATION FORM FOR LITIGANTS**

*Please fill out this Evaluation Form after the Judicial Settlement Conference and return it to the Docketed Judge or Master. All responses to this questionnaire are strictly confidential.*

Name of the Settlement Officer: \_\_\_\_\_

Date of the Settlement Conference: \_\_\_\_\_

Are you the:  Claimant  Defendant  Other? Please specify.

Did you have a legal practitioner represent you in this case? Yes  No

If No, did you have any difficulty representing yourself? Yes  No

Did you reach an agreement and settle your case? Yes  No

If Yes,

(a) Are you satisfied with the terms of the settlement agreement? Yes  No

(b) In your opinion will this settle the dispute? Yes  No

(c) Do you believe the other party will live up to the terms of the settlement agreement?

Yes  No

Do you think that the Settlement Officer did everything he/she could to bring about a settlement agreement? Yes  No

Were you satisfied with the Settlement Conference facilities and surroundings? Yes  No

If No, please identify any areas of dissatisfaction:

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*Please circle the number, which best reflects how you feel about each of the following statements.*

	1-disagree	2-not sure	3-agree
1. The Settlement Officer explained the Settlement Conference process clearly so that I knew what to expect during the Conference.	1	2	3
2. The Settlement Officer allowed me / my legal practitioner to fully present my case.	1	2	3
3. The Settlement Officer carefully listened to my side of the case.	1	2	3
4. The Settlement Officer asked appropriate questions to determine the facts in the case.	1	2	3
5. The Settlement Officer helped me/my legal practitioner to generate options for settling the dispute.	1	2	3
6. The Settlement Officer treated all parties equally.	1	2	3
7. Overall, I was satisfied with the Settlement Conference session itself.	1	2	3
8. Overall, I was satisfied with the way the Settlement Officer handled the session.	1	2	3
9. If I become a litigant in the future I would try the Settlement Conference process again.	1	2	3

*Please provide any comments you wish to make regarding the Settlement Officer or the Settlement Conference process on this form.*

*Thank you.*

**Form JSC F**

[Practice Direction 17.3]

**EVALUATION FORM FOR LEGAL PRACTITIONERS**

*Please fill out this form after the Settlement Conference and return it to the Docketed Judge or Master. All responses to this questionnaire are strictly confidential.*

Name of the Settlement Officer: \_\_\_\_\_

Are you the  Claimant’s legal practitioner  Defendant’s legal practitioner  Other Party’s legal practitioner? Please specify.

Date of Settlement Conference: \_\_\_\_\_

Outcome:  not settled  settled  some issues settled

Type of case (Tort, contract, etc.): \_\_\_\_\_

Settlement Officer’s level of participation:  None  Low  Medium  High

*Your comments are important, particularly in instances of a “poor” ranking. We would appreciate you elaborating as much as possible.*

	<b>1 - poor</b>	<b>2 – satisfactory</b>	<b>3 - very good</b>
1. During the introductory statement, how well did the Settlement Officer explain the Settlement Conference process to all parties?	1	2	3
2. Were you satisfied that your client was allowed to fully present his/her case?	1	2	3
3. How well did the Settlement Officer understand the FACTUAL issues involved in the case?	1	2	3
4. How well did the Settlement Officer understand the LEGAL issues involved in the case?	1	2	3
5. How well did the Settlement Officer ask appropriate questions to determine the facts of the case?	1	2	3

