CAYMAN ISLANDS

Grand Court Act

(2015 Revision)

GRAND COURT PRACTICE DIRECTIONS

(2024 Consolidation)

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PD 1 of 2016-8th February, 2016
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PD 6A of 2020-5th May, 2020
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PD 9 of 2020-5th May, 2020
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CAYMAN ISLANDS

Grand Court Act

(2015 Revision)

GRAND COURT PRACTICE DIRECTIONS

(2024 Consolidation)

Arrangement of Practice Directions

CAYMAN ISLANDS

Grand Court Act

(2015 Revision)

GRAND COURT PRACTICE DIRECTIONS

(2024 Consolidation)

Citation

1. These Practice Directions may be cited as the *Grand Court Practice Directions (2024 Consolidation)*.

GRAND COURT PRACTICE DIRECTION NO. 2 OF 1995

(GCR O.1, r.12)

Attachment of Earnings Orders – Calculation of Post-Judgment Interest

(GCR O.50A, r.7)

1. Wherever a judgment debt is ordered to be paid by instalments pursuant to an attachment of earnings order made under GCR Order 50A, rule 7, post-judgment interest will be calculated at the time of making the order.

2. The amount of interest will be calculated on the assumption that the instalments are paid on due date, using the following formula where D is the amount of the judgment debt (including principal and pre-judgment interest); N is the number of monthly instalments; R is the prescribed rate; I is the interest payable; and X is the amount of each instalment, i.e. the normal monthly deduction rate.

$$\left(\frac{DxN}{24}\right)R = 1$$

Amount of each instalment will be

$$\left(\frac{D}{N}\right) + \left(\frac{I}{N}\right) = X$$

Example:
Judgment debt CI$12,500 which is to be payable by equal instalments over 36 months. The prescribed rate of post-judgment interest payable on CI dollar debts is currently 8% per annum. The monthly instalment is therefore CI$388.89 calculated as follows:

Interest payable

$$\left(\frac{12{,}500x36}{24}\right)8\% = 1{,}500$$

The amount of each instalment

$$\left(\frac{12{,}500}{36}\right) + \left(\frac{1{,}500}{36}\right) = 388.89/month$$

Each instalment therefore comprises principal of CI$347.22 and interest of CI$41.67.

DATED this 1st day of May, 1995.

_____

Hon. George Harre, Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 3 OF 1995

(GCR O.1, r.12)

Attachment of Earnings Orders – Method of Payment

(GCR O.50A, r.8)

1. Payment of sums due under attachment of earnings orders must be made by cheque made payable to "The Accountant General of the Grand Court".

2. Cheques must be sent by post or hand delivered to the Court Funds Office, Government Administration Building, George Town.

3. Upon being served with an attachment of earnings order, employers will also be provided with a book of pre-printed carbonised lodgment/receipt forms.

4. The employer must complete a carbonised lodgment/receipt form and send both the white original and the blue copy to the Court Funds Office with each payment.

5. The blue copy receipt form will then be signed by an authorised officer of the Court Funds Office and returned to the employer as that employer's receipt.

6. Deductions made from an employee's remuneration must be recorded in the employer's work account maintained in accordance with Section 30(1) of the *Labour Act (as amended and revised)*, and the receipts issued by the Court Funds Office should be treated as part of the work account to be preserved for at least two years.

MADE this 1st day of May, 1995 with the prior approval of the Chief Justice of the Grand Court

_____

Alan Mason, Accountant General

GRAND COURT PRACTICE DIRECTION NO. 5 OF 1995

(GCR O.1, r.12)

Trial Bundles

(GCR O.34, r.10)

1. Order 34, rule 10 is intended to ensure that:

(a) The trial judge is able to read the core documents prior to the commencement of the trial; and

(b) The Court has available all necessary documents, properly organised into bundles, at the commencement of every trial.

The rule requires the plaintiff to deliver bundles of documents to the Clerk of the Court for these purposes.

2. Order 34, rule 10 does not specify how, when or by whom the bundles of documents shall be prepared. This is a matter left to the parties to determine by agreement having regard to the circumstances of each individual case.

3. In cases involving a small number of documents (such as personal injury claims) it will normally be appropriate for all the documents to be included in the core bundles; for those bundles to be created by the plaintiff; and for them to be delivered to the defendant at the same time as they are delivered to the Clerk of the Court in accordance with rule 10(1).

4. In cases involving large numbers of documents, it would normally be appropriate for the parties' attorneys to make arrangements for those documents to be indexed, paginated and put into bundles long before the plaintiff is required to deliver them to the Clerk of the Court.

5. It is the duty of the parties and their attorneys to make all such arrangements for the preparation and exchange of bundles of documents as may be appropriate, having regard to the circumstances of the case. The objective is to ensure that both parties have available to them bundles of all

the documents (indexed, paginated and organised in the way in which they will be used at the trial) at such time as may be necessary to enable them to properly prepare their respective cases in time for the commencement of the trial.

DATED this 7th day of March, 1996

HON. GEORGE HARRE
Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 1 OF 1996

(GCR O.1, r.12)

***Land Acquisition Act (as amended and revised)* – Payment of Compensation into Court**

1. Where a lodgment of funds in Court is made by the Cabinet pursuant to Section 27(2) of the *Land Acquisition Act (as amended and revised)*, such payment shall be accompanied by a request for lodgment in practice form no. 1.

2. The request for lodgment shall specify particulars of the title of the land to which the compensation relates and the names and addresses of all the persons who are believed to be entitled or claim to be entitled to all or part of such compensation.

3. The officer who signs the request for lodgment on behalf of the Cabinet should send notice of lodgment to all the persons who are believed to be entitled or claim to be entitled to all or part of such compensation.

MADE this 5th day of January, 1996 with the prior approval of the Chief Justice of the Grand Court.

_____

Alan Mason, Accountant General

REQUEST FOR LODGMENT

Pursuant to Section 27 of the *Land Acquisition Act (as amended and revised)*

GCR Form 1

Description of Land

I, _____, request that the Accountant General of the Grand Court do receive into Court for lodgment to a Nominated Account the sum of CI$_____, being the compensation awarded by the Cabinet in respect of the compulsory acquisition of the above-mentioned land.

DATED this ____ day of _____, 20____

Signed _____
[ ]

The following persons are believed to be entitled or claim to be entitled to all or part of this compensation:

COURT FUNDS OFFICE USE

Date received	
Nominated Account number	
Date funds transferred to a Nominated Account	
Lodgment approved by:	

GRAND COURT PRACTICE DIRECTION NO. 2 OF 1996

(GCR O.1, r.12)

Trial Bundles

(GCR O.34, r.10)

1. Order 34, rule 10 is intended to ensure that:

(a) The trial judge is able to read the core documents prior to the commencement of the trial; and

(b) The Court has available all necessary documents, properly organised into bundles, at the commencement of every trial.

The rule requires the plaintiff to deliver bundles of documents to the Clerk of the Court for these purposes.

2. Order 34, rule 10 does not specify how, when or by whom the bundles of documents shall be prepared. This is a matter left to the parties to determine by agreement having regard to the circumstances of each individual case.

3. In cases involving a small number of documents (such as personal injury claims) it will normally be appropriate for all the documents to be included in the core bundles; for those bundles to be created by the plaintiff; and for them to be delivered to the defendant at the same time as they are delivered to the Clerk of the Court in accordance with rule 10(1).

4. In cases involving large numbers of documents, it would normally be appropriate for the parties' attorneys to make arrangements for those

documents to be indexed, paginated and put into bundles long before the plaintiff is required to deliver them to the Clerk of the Court.

5. It is the duty of the parties and their attorneys to make all such arrangements for the preparation and exchange of bundles of documents as may be appropriate, having regard to the circumstances of the case. The objective is to ensure that both parties have available to them bundles of all the documents (indexed, paginated and organised in the way in which they will be used at the trail) at such time as may be necessary to enable them to properly prepare their respective cases in time for the commencement of the trail.

DATED this 7th day of March, 1996

HON. GEORGE HARRE
Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 1 OF 1997

Legal Aid Rules 1997

In accordance with Rule 5 of the Legal Aid Rules 1997, I have established the following Forms to be used for the purpose of the rules –

1. Application for Criminal Legal Aid.
2. Statement of Means.
3. Application for Civil Legal Aid.
4. Criminal Legal Aid Certificate.
5. Civil Legal Aid Certificate.
6. Bill of costs.

Copies of the Forms may be obtained from the Courts Office.

MADE this 1st day of April, 1997.

G.E. Harre
Chief Justice

Form No. 1

LEGAL AID RULES 1997

Application for Criminal Legal Aid

1. Name

2. Address

3. Have you already instructed an attorney? If so,

   (a) Attorney's name

   (b) Attorney's address

   (c) Date upon which you instructed the attorney

   (d) Have you agreed to pay the attorney any fee?

4. The following documents are attached

   (a) Copy charges/indictment

   (b) Statement means form

5. Do you intend to plead guilty or not guilty to all or any of the charges?

I hereby apply for the grant of criminal legal aid in respect of the charges mentioned above on the grounds that I do not have the financial means to pay the cost of obtaining legal advice and representation.

I hereby certify that the information contained in the attached statement of means is true, accurate and complete.

_____ _____

Applicant's signature Date

Form No. 2

LEGAL AID RULES 1997

Statement of Means

1. Personal details

Name: _____. Age: _____

Address: _____

Marital status: Married ☐ Single ☐ Divorced ☐

2. Details of children:

Name	Age

3. Details of other dependents:

Name	Relationship

4. Details of employment:

Employer's name: _____

Employer's Address: _____

Your Job Specification: _____

Amount of Wages:		Work Permit No.	

5. If unemployed:

Reason for unemployment:	
Amount of pension (if any):	

6. Details of land owned:

Registration details:	Registration Section	Block	Parcel

Estimated value:		Amount of Mortgage	

7. Details of savings:

Name of bank:

Account Nos:		Balance:	

8. Details of monthly expenses:

Mortgage instalments:	
Rent:	
Utilities:	
Maintenance Orders: Loan instalments:	

9. Other relevant information:

A separate sheet may be used if necessary.

I declare that the details contained in this statement of means are true and accurate to the best of my knowledge and belief.

_____ _____

Applicant's signature Date

Form No. 3

LEGAL AID RULES 1997

Application for Civil Legal Aid

1. Name

2. Address

3. Have you already instructed an attorney? If so, state -

   (a) Attorney's name
   (b) Attorney's address
   (c) Date upon which you instructed the attorney
   (d) Have you agreed to pay the attorney any fee?

4. State full particulars of the proceedings which you intend to bring or which have been brought against you.

   (a) Cause No.
   (b) Opposing Parties
   (c) Nature of Proceedings

5. The following documents are attached

   (a) Documents served on me by the Plaintiff/Applicant (if any)
   (b) A statement setting out the basis of my claim/defence
   (c) An attorney's opinion (if any)
   (d) Statement means

I hereby apply for civil legal aid to enable me to pursue the claim/defend the proceedings (**delete as applicable**) described above on the grounds that my case has merit and I do not have the financial means to obtain legal advice and representation. I hereby certify that the information contained in the attached statement of means is true, accurate and complete.

Applicant's signature Date

Form No. 4

Criminal Legal Aid Certificate

1. Name

2. Address

3. Offences (Specify below the Scheduled Offences to which the certificate relates by reference to the charge numbers and/or the indictment number and the relevant counts in the indictment)

_____
_____
_____
_____
_____
_____
_____
_____

4. Attorneys

I hereby certify that the above mentioned person is entitled to obtain legal advice and representation in respect of the scheduled offences specified above with effect from (specify the effective date which may not be earlier than the date upon which the applicant first instructed the attorney).

_____ _____
Judge/Magistrate Date

CRIMINAL LEGAL AID CERTIFICATE

NOTES FOR THE GUIDANCE OF ASSISTED PERSONS

1. Attorney

The Certificate specifies the attorney whom the assisted person is authorised to instruct. The assisted person may not instruct any other attorney without the Court's consent.

2. Proceedings

The Certificate specifies the charges in respect of which the assisted person is authorised to obtain legal advice and representation. The assisted person may not seek advice about other charges without first obtaining the Court's consent.

3. Contributions

If convicted of any of the charges specified in the certificate, the assisted person may be ordered to pay a contribution towards the cost of that assisted person's legal representation.

4. Bail Applications

This certificate enables the assisted person to be represented on one bail application only unless with prior leave of the Court.

5. "Mentions"

This certificate does not authorise the assisted person to instruct an attorney to appear when that assisted person's case is merely "mentioned" in Court.

6. Effective Date

This is the date from which the certificate is effective and may be backdated to the date upon which the assisted person first instructed that assisted person's attorney.

Form No. 5

Civil Legal Aid Certificate

1.	Name	
2.	Address	
3.	Attorney (See Note 1)	
4.	Proceedings (See Note 2)	
5.	Conditions (See Note 3)	
6.	Effective Date (See Note 4)	

I hereby certify that the above mentioned person is authorised to seek and obtain legal advice and representation in respect of the proceedings or intended proceedings described above, subject to the limitations and conditions specified above.

Judge of the Grand Court _____ Date _____

CIVIL LEGAL AID CERTIFICATE

NOTES FOR THE GUIDANCE OF ASSISTED PERSONS

1. Attorney

The Certificate specifies the attorney whom the assisted person is authorised to instruct. The assisted person may not instruct any other attorney without the Court's consent.

2. Proceedings

The Certificate specifies the proceedings or intended proceedings in respect of which the assisted person is authorised to obtain legal advice and representation. The assisted person may not seek advice about the commencement or the defence of any other causes of action or proceedings, without first obtaining the Court's consent.

3. Conditions

The Certificate specifies the limitations upon the assisted person's authority to seek legal advice and representation and the conditions, as to contributions and other matters, with which that assisted person must comply. Contributions may be expressed as a fixed sum or a percentage of the total cost or a combination of both and may be payable by means of a lump sum or by instalments.

4. Effective Date

This is the date from which the certificate is effective and may be backdated to the date upon which the assisted person first instructed that assisted person’s attorney.

Form No. 6

Bill of Costs

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ____ OF 20

[TITLE OF PROCEEDING]

Bill of Costs
to be Taxed Pursuant to The Legal Aid Rules 1997

Date	Item	Amount Claimed		Amount Allowed	
	Instructions on behalf of [state name] pursuant to a legal aid certificate dated [state date] [Set out a general description of the proceedings, the cause of action and the outcome.] [Then set out each item of work, the date on which it was done and the time engaged.] TOTAL CLAIMED: Signature of Attorney: TOTAL ALLOWED Signature of Taxing Officer:				

DATED this _____ day of _____, 19____

LEGAL AID TAXATION

NOTES FOR THE GUIDANCE OF ATTORNEYS

1. Every bill of costs must be in Form No. 6. It must specify the legal aid certificate to which it relates; it must be stated in CI dollars; and it must be signed by the attorney named in the certificate or a partner of the firm named in the certificate. Any disbursement incurred in a foreign currency must be translated into CI dollars.

2. The introduction to the bill of costs should describe the nature of the proceedings and include a short summary of the plaintiff's cause of action, the defendant's case and the final outcome. The purpose of the introduction is to provide the taxing officer with a proper understanding of the proceeding without having to read the court file.

3. The main part of the bill of costs should comprise a detailed description of each item of work done; the date upon which it was done and the amount of attorney time expended in doing the work. Time spent by paralegals, secretaries and messengers is not chargeable. Such time is considered to be part of the attorney's overheads and is reflected in the hourly rate for work done by attorneys.

4. The applicable time unit is either 15 minutes for those attorneys using a manual time recording and accounting systems or 6 minutes for those attorneys using computerised time recording and accounting systems.

5. Whenever the item of work comprises the preparation or review of any pleading, affidavit or other document on the court file, it must be clearly described so that the taxing officer can easily identify it.

6. Time waiting at court in excess of an hour will normally be disallowed.

7. It is the duty of attorneys to maintain client files, timesheets and accounting records in a way which will enable them to produce a bill of costs expeditiously and economically. Time spent by attorneys in preparing a bill of costs will normally be allowed at half the hourly rate specified in rule 17.

8. Attorneys must be prepared to verify the content of bills of costs by reference to client files, timesheets and accounting records. All claims for disbursements, except telephone calls and photocopying charges, must be supported by receipts. Attorneys must be prepared to produce telephone bills if required to do so by the taxing officer.

GRAND COURT PRACTICE DIRECTION NO. 2 OF 1997

Register of Judgments and Register of Writs, etc.

(GCR O.63, rr.7 and 8)

1. GCR Order 63, rr.7 and 8 provide for the establishment of a register of judgments containing an office copy of every final judgment made or treated as having been made in open court and a register of writs and other originating process containing office copies of every writ, originating summons, originating motion or petition issued by the court. These registers are open to public inspection upon payment of the prescribed fees.

2. The registers were created on 1st June, 1995 and contain office copies of judgments given and originating process issued only after that date.

3. Any person wishing to obtain a copy of any judgment given in open court or any originating process issued prior to 1st June, 1995 should make application by letter addressed to the Clerk of the Court. Such application should specify the full title and cause number of the action in question. The Clerk of the Court will then arrange for copies to be obtained from the relevant court files as soon thereafter as is reasonably possible.

MADE this 9th day of April, 1997.

_____

Hon. George Harre, Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 3 OF 1997

Confidentiality and Publication of Chamber's Proceedings

In the absence of local rules, the Cayman Islands practice for the reporting of proceedings heard in chambers is to be found in the English Administration of Justice Act 1960, s.12, with the addition of the provisions of this direction. Section 12 reads:

"(1) The publication of information relating to proceedings before any court sitting in private shall not itself be contempt of court except in the following cases, that is to say –

(a) where the proceedings relate to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;

(b) where the proceedings are brought under Part VIII of the Mental Health Act, 1959, or under any provision of that Act authorising an application or reference to be made to a Mental Health Review Tribunal or to a county court;

(c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.

(3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section."

In view of the sensitivity of many proceedings now routinely being brought in the commercial or civil jurisdiction of the Grand Court, the parties involved in any matters taken in chambers about which information might be published but for an express prohibition, are to be at liberty to apply for an order against or delimiting publication.

Once the publication is made, it will then be in the discretion of the judge in the particular case to determine the ambit of publication. The publication of information relating to proceedings taken in chambers will not then of itself be a contempt of court unless it is contrary to the guidelines set out herein or contrary to a direction made by the judge in the case.

The form below should be submitted by counsel prior to and certainly no later than the occasion of the delivery of the written ruling or judgment in any case in which the issue arises. It is preferable that the application be submitted in advance, particularly when a matter is pending decision, so that it may be reflected in the order, ruling or judgment.

The use of the form will avoid the need for any separate application by way of summons in the cause. Notice of the submission of the form is to be given

to all sides. Unless it is necessary that counsel be heard in person (e.g. if any other party objects) the application may be submitted with written reasons, to be considered by the judge administratively and the decision notified in writing.

11th August 1997

The Hon. Anthony Smellie, QC
Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 1 OF 1999

(GCR O.1, r.12)

Filing Documents in Court

1 Application and Commencement

1.1 This practice direction applies to all proceedings to which the Grand Court Rules have general application by virtue of O.1, r.2 and to all winding up proceedings.

1.2 It does not apply to-

1.2.1 proceedings governed by the *Matrimonial Causes Rules (as amended and revised)*;

1.2.2 proceedings governed by the *Grand Court (Bankruptcy) Rules (as amended and revised)*; and

1.2.3 appeals from civil proceedings in the Summary Court.

1.3 This practice direction shall come into force on 1st March, 1999 ("the Commencement Date").

2 Introduction

2.1 The *Grand Court (Civil Procedure) Rules (as amended and revised)* specifically required that all pleadings be filed. Although there was no similar requirement for affidavits and other documents to be filed, it became the established practice for all pleadings, affidavits, notices, lists and other documents to be filed whether or not they were actually used by the Court.

2.2 The rules relating to filing were materially changed with effect from 1st June, 1995, but the pre-existing practice has continued with the result that the Court office is accumulating a large volume of documents unnecessarily. The *Grand Court Rules (as amended and revised)* required that the following documents shall be issued by or filed with the Court —

2.2.1writs, originating summonses, originating motions and petitions (O.5, r.1);

2.2.2 third party notices (O.5, r.1 and O.16, r.3);

2.2.3 acknowledgements of service (O.12, r.4);

2.2.4 interlocutory summonses and notices of motion (O.32, r.2);

2.2.5 affidavits (including the exhibits) which are actually used in court (O.41, r.9);

2.2.6 judgements and orders (O.42, r.5);

2.2.7 applications for default judgements (O.42, r.6);

2.2.8 writs of execution (O.46, r.6);

2.2.9 notices of change, appointment, etc. of attorney (O.67, r.8).

2.3 No other documents are required to be filed, although it is the established practice to file all pleadings. GCR O.18 has been amended to require pleadings to be filed within 14 days after service.

2.4 The procedure for issuing writs (including writs of execution) and other forms of originating and interlocutory process involves filing an original document signed by or on behalf of the plaintiff or applicant. The procedure for drawing up and perfecting judgements and orders also involves filing an original document signed by the judge or stamped with a facsimile of the judge's signature. Acknowledgements of service and notices of change, etc. are required to be filed because they constitute notice both to the Court and to the parties. Affidavits only require to be filed if and when they are *used* in a cause or matter.

2.5 With effect from the Commencement Date, the practice relating to filing will be brought into line with the Rules as follows.

3 **New Practice**

3.1 **Pleadings**. The new GCR O.18 now requires that all pleadings be filed within 14 days after service. Pleadings are defined to mean statements of claim, defences, replies, counterclaims, defences to counterclaims, pleadings subsequent to reply (which may only be served with leave) and particulars of pleadings (but not the requests for particulars). It should be noted that the term "pleadings" does not include generally endorsed writs, summonses, motions or petitions, all of which do require to be filed as part of the procedure whereby they are issued. A writ which is specially endorsed with a statement of claim does constitute a pleading and requires to be filed as part of the procedure for issuing the writ.

3.2 **Discovery**. GCR O.24 requires that lists of documents, notices to produce documents, affidavits verifying lists, etc. shall be served. It does not require that any such documents shall be filed.

3.3 **Interrogatories.** Interrogatories and affidavits containing answers to interrogatories served in accordance with GCR O.26 shall not be filed.

3.4 **Evidence for trial.** The parties to actions commenced by writ are required or permitted by various rules to prepare and exchange written evidence in advance of the trial. GCR O.38 provides for the exchange of witness statements, expert reports and affidavits. GCR O.38 Part II comprises a code relating to the admission of hearsay evidence which involves the service of notices and counter-notices. GCR O.39 makes provision for evidence to be taken by deposition. No witness statements, affidavits, reports, depositions or notices served pursuant to these rules are required to be filed.

3.5 **Affidavits.**

3.5.1 Whether or not affidavits are required to be filed depends upon the purpose for which they are served. GCR O.41, r.9 provides that every affidavit *used* in a cause or matter must be filed. An affidavit

is only *used* within the meaning of this rule when it is read by the judge and constitutes part of the evidential basis upon which a judgement is given or an order is made. Affidavits which are sworn in compliance with orders (e.g., affidavits verifying lists of documents and affidavits made in compliance with asset disclosure orders) are required to be served but should not be filed because they are not intended to be used by the Court.

3.5.2 Whilst copies of affidavits sworn in connection with interlocutory applications are required to be served, the original affidavits are only required to be filed in accordance with GCR O.41, r.9 if the application is in fact contested with the result that such affidavits are read by the judge and constitute part of the evidential basis upon which the order is made. It follows that original affidavits need not be filed in advance of the hearing.

3.5.3 Written statements of evidence, whether in the form of affidavits, witness statements or depositions, intended to be used in evidence at trial are only required to be filed in the event that a trial takes place and such documents are in fact admitted in evidence. Since the vast majority of actions are settled, such documents should not be filed in anticipation of a trial taking place.

3.5.4 GCR O.41, r.9(2) requires that the exhibits to affidavits should *not* be filed. Copy exhibits need to be served and made available to the Judge in advance of the hearing but the original exhibits should be kept by the party's attorney and are not required to be filed.

3.6 **Originating Summons Procedure.** Affidavits sworn in compliance with GCR O.28 are required to be filed.

3.7 **Petition and Originating Notice of Motion Procedure.** Affidavits sworn in connection with petitions and originating (but not interlocutory) notices of motion require to be filed.

3.8 **Payment into Court.** Notices relating to payment into court and acceptance of funds in court served pursuant to GCR O.22, rr.3 and 4 shall not be filed. Lodgement and payment schedules require to be delivered to the Court Funds Office but are not required to be filed on the Court file.

3.9 **Voluntary Filing is not Permitted.** With effect from the Commencement Date, the Clerk of the Court will not accept for filing any document which is not required to be filed under the Rules.

4 **Preparing Interlocutory Applications and Trials**

4.1 When preparing an interlocutory application, it shall be the duty of the applicant's attorney, after consultation with the attorneys for the other parties, to prepare and deliver to the relevant judge's secretary a bundle containing copies of all those pleadings, affidavits, etc. which are relevant to the application. Unless the application is both short and straightforward, such bundles should normally be delivered in advance of the hearing, preferably by the Thursday of the previous week. In the event that the hearing is vacated for whatever reason, the judge's bundle will be returned to the applicant's attorney and there will be no requirement for any part of it to be filed. In the event that the hearing takes place, the judge's bundle will be returned to the applicant's attorney after the judge has made that judge's order, but it shall be the duty of the parties' attorneys to file the originals of those affidavits read by the judge.

5 **Correspondence Between Attorneys**

5.1 Correspondence between the parties' attorneys should never be copied to the Court and will not be placed on court files.

5.2 Any such correspondence received by the Clerk of the Court will be destroyed.

6 **Authorities**

6.1 Lists of authorities and/or bundles of copy authorities should be agreed between the parties' attorneys and sent to the Judge's secretary in advance of the hearing.

6.2 Neither lists of authorities, nor bundles of copy authorities, should be filed.

DATED this 28th day of January, 1999.

_____

Honourable Anthony Smellie, QC
Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 2 OF 1999

(GCR O.1, r.12)

Drawing Up and Filing of Judgments and Orders

(GCR O.42, r.5(4) and (5))

1. Every judgment or order should be *dated* with the date upon which it was made. A judgment or order is made when the judge pronounces it.

2. The attorney responsible for drawing up a judgment or order should include the date upon which it was made in the draft which is presented for signature. Unsigned draft orders must be not be sealed.

3. The date upon which a judgment or order is *filed* is the date upon which it is signed. After having been signed the judgment or order will be sealed with the Court seal and the date of filing will be inserted either by the judge themselves or a court official.

MADE this 28th day of January, 1999.

_____

Hon. Anthony Smellie, QC, Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 4 OF 1999

INDICTMENTS

1. Application and Commencement

1.1 This practice direction applies to all committals for trial to the Grand Court in accordance with Part V of the *Criminal Procedure Code (as amended and revised)* (the "Code").

1.2 This practice direction shall come into force on 1st June 1999 (the "commencement date")

2. Introduction

2.1 Section 106 of the Code requires that a signed indictment be filed in the office of the Grand Court.

2.2 The Code specifies that a copy of the indictment shall be served on the accused at least three days before the day of the trial. There are no directions in the Code to specify when the indictment shall be filed.

3. New Practice

3.1 This Practice Direction requires that all indictments with the exception of those specified in paragraph 3.2 shall be filed in the office of the Clerk of the Court within seven days of the date of committal for trial.

3.2 Where the prosecution are unable to file an indictment within the seven days specified in paragraph 3.1 it shall be the duty of the prosecution to bring this to the attention of the Listing Officer of the Grand Court within seven days of the date of committal for trial. The Listing Officer will then fix a mention date for a judge to give directions.

4. Plea & Direction Forms

4.1 As a consequence of the above, plea and direction forms are to be filed by the defence within seven days of the filing of the indictment.

Dated this 26th day of June 1999
Anthony Smellie, QC
Chief Justice

IN THE GRAND COURT OF THE CAYMAN ISLANDS

GRAND COURT PRACTICE DIRECTION NO. 5 OF 1999

LEGAL AID FORMS - AFFIDAVIT OF MEANS

In accordance with Rule 5 of the Legal Aid Rules 1997 an Affidavit of Means in the Form attached will be required of applicants for Legal Aid. Effective immediately, this Form of Affidavit of Means will be required in substitution for the Statement of Means prescribed by Practice Direction 1/97 issued on 1 April 1997.

Copies of the Form of Affidavit of Means may be obtained from the Courts Office.

Anthony Smellie
Chief Justice

27th October 1999

Form No. 2

LEGAL AID RULES 1997

Affidavit of Means

I_____ of _____
Make oath and say as follows:

The following details are a true statement of my financial means and I understand that it is an offence under the *Poor Persons (Legal Aid) Act (as amended and revised)* punishable by imprisonment or a fine to make a false statement.

1. Personal Details:
Name:_____ Age:_____

Address:_____

Marital status: Married / Single / Divorce / Separated

2. Details of Children:

Name	Age

3. Details of dependents:

Name	Relationship

4. Details of employment:

Employer's name: _____

Employer's address: _____

Nature of employment: _____

4. (continued)

Amount of wages CI$ _____ Per week/month/year

Overtime/bonus/gratuities CI$ _____ Per week/month/year

Work Permit Number _____

5. Details of other employment:

Employer's name: _____

Employer's address: _____

Nature of employment: _____

Amount of wages CI$ _____ Per week/month/year

Overtime/bonus/gratuities CI$ _____ Per week/month/year

Work Permit Number _____

6. I enclose proof of my earnings and saving accounts.

7. I am unemployed for the following reasons

_____
_____
_____

My prospect of obtaining employment is as follows:

_____
_____
_____

8. Details of other income (examples are affiliation/maintenance/property rental/self employment/pension)

_____
_____
_____

9. Details of savings/checking accounts:

Name of bank or other account	Account number	Balance

10. Details of land owned:

Registration Section	Block	Parcel	Estimated Balance	Mortgage Balance

11. I have no other form of income or property.

12. Details of monthly expenses:

Mortgage/rent	CI$
Utilities	CI$
Maintenance Payments	CI$
Loan Payments	CI$
	CI$
	CI$
	CI$

13. Any other relevant information (A separate sheet may be used if necessary):

Sworn to at George Town, Grand Cayman)
this day of)
20 before me)
) _____

_____
Justice of the Peace

GCR 1995 (revised)

GRAND COURT PRACTICE DIRECTION NO. 1 OF 2000

(GCR O.1, r.12)

LISTING FORMS

1 Application and Commencement

1.1 This practice direction applies to-

a. all interlocutory applications made in any action begun by a writ or originating summons;

b. all applications governed by the Matrimonial Causes Rules, 1986 As Amended, except for undefended divorce petitions;

c. all applications made in connection with bankruptcy and winding up proceedings, except for the hearing of a creditor's winding up petition;

d. the trial of all actions begun by originating summons;

e. the trial of all applications for judicial review, applications for writs of habeus corpus and appeals to the Grand Court governed by GCR O.55 and 56; and

f. any other application (not being one specified in paragraph 1.2) in respect of which the Listing Officer requires a Listing Form to be completed.

1.2 This practice direction shall not apply to —

a. the trial of actions begun by writ in respect of which GCR O.34 continues to apply;

b. undefended divorce petitions;

c. creditors' winding up petitions;

d. applications for leave to appeal to the Court of Appeal;

e. appeals from the Summary Court; and

f. applications under Section 4 of the *Confidential Information Disclosure Act (as amended and revised)*.

1.3 This practice direction shall come into force on 3rd January, 2000.

2 Introduction

2.1 The position of "Listing Officer" was created to ensure efficient use of court time. The Listing Officer's ability to carry out this function is directly related to the information provided by attorneys regarding their cases. When case information is incomplete, listing difficulties arise.

3 New Practice

3.1 As a consequence of the above, all requests for court dates must be accompanied by a completed Listing Form.

4 Listing Form

4.1 The Listing Form shall be in Practice Form 1/00.

4.2 In the case of any *ex parte* application or any proceeding begun by petition, the Listing Form shall be completed by the attorneys acting for the applicant or petitioner as the case may be.

4.3 In the case of any *inter partes* application or the trial of any originating summons in respect of which the respondent has filed a notice of intention to defend, the listing form shall be completed and signed by the attorneys acting for both the applicant and all the respondents.

Dated this _____ day of December, 1999.

_____

The Hon. Chief Justice Anthony Smellie

GRAND COURT PRACTICE DIRECTION No. 1 OF 2001

(GCR O.1, r.l2)

GUIDELINES RELATING TO THE TAXATION OF COSTS

(GCR O.62, r. 17)

1. Introduction

1.1 These Guidelines are made pursuant to GCR Order 62, rule 17 and are intended to be a comprehensive code relating to the procedure in respect of taxation; the form and content of bills of costs; and the nature and amount of fees, charges, disbursements, expenses, or remuneration which may be allowed on taxation.

1.2 These Guidelines have no application to bills of costs relating to work done before 1st January 2002, ("the Commencement Date") which will be taxed in accordance with the schedule to the Grand Court (Taxation of Costs) Rules 1995.

1.3 Where an order for costs relates to work done both before and after the Commencement Date, it will normally be appropriate to prepare two separate bills of costs.

1.4 Words and expressions used in these Guidelines shall have the meaning ascribed to them by GCR O.1, r.7 and GCR O.62, r.3 as the case may be.

1.5 These Guidelines apply both to taxations on the standard basis and taxations on the indemnity basis. The only distinction between a taxation on this basis is (a) the difference in the burden of proof and (b) the application of maximum hourly rates for attorneys' fees in the case of taxations on the standard basis.

2. Structure of a bill of costs

2.1 A bill of costs should distinguish between legal fees and disbursements.

2.2. A bill of costs may be drawn up in CI$ or US$ (referred to as "the currency of the bill"). Costs incurred in any other currency must be translated into the currency of the bill at the exchange rate ruling on the date of the bill. The CI$/US$ exchange rate is fixed at 0.82.

2.3 The bill should contain an introduction which describes the nature of the litigation sufficient to enable the taxing officer to gain a proper understanding

2.4 The work done and disbursements incurred should be itemised and set out chronologically.

2.5 The lawyers engaged should be identified sufficiently to enable the taxing officer to determine the appropriate hourly rate(s) for work done by each of them.

2.6 Each item of work done should be described. The number of hours worked on each item by each lawyer or paralegal should be stated, together with the applicable hourly rates.

2.7 The bill should be divided into five columns as follows:

(a) Column 1 should contain the item number.

(b) Column 2 should contain a description of each item of work arranged chronologically; the date(s) on which or period(s) during which it was done; the identity of the person(s) doing the work; the time spent; and the applicable hourly rates.

(c) Column 3 should contain the total amount claimed in respect of the item.

(d) Column 4 is for use by the paying party and should be left blank.

(e) Column 5 is for use by the taxing officer and should be left blank.

2.8 When the item comprises a disbursement it should be described in Column 2 and the amount claimed should be stated in Column 3.

2.9 Whenever possible, the paying party's response should be summarised in Column 4. The word "Agreed" should be inserted to indicate that the item and the amount claimed in respect of it are agreed in all respects. "Not agreed" shall be taken to mean that the item should be disallowed in toto. The paying party may insert a lower dollar amount to indicate that the amount claimed should be reduced because the time spent is excessive and/or the hourly rate(s) is excessive.

2.10 A brief explanation of the paying party's objection should be included in Column 4.

2.11 Where appropriate, the paying party should explain or elaborate upon that party's objection by a separate statement in writing.

2.12 The taxing officer will insert in Column 5 the amount allowed in respect of each item.

2.13 The successful party's bill of costs must contain a declaration signed by that party's attorney to the effect that

(a) the bill is accurate and complete; and

(b) the amount sought in the bill does not exceed the successful party's incurred costs.

2.14 Having completed Column 4, the paying party's attorney must also sign the bill of costs.

2.15 Wherever possible, copies of bills of costs should be served in the form of a computer disk or by e-mail.

3. Procedure for serving and lodging bills of costs

3.1 The successful party must serve that party's bill of costs on the paying party personally or upon the paying party's attorney.

3.2 Where more than one party is liable jointly or severally to pay the whole or part of the costs, a copy of the bill of costs shall be served on every paying party.

3.3 Unless the bill of costs is exceptionally long or complex, the paying party should complete Column 4 and return it to the successful party within 21 days.

3.4 Unless the total amount payable is agreed, the successful party must lodge the bill of costs for taxation within 14 days of receiving it back from the paying party.

3.5 If the paying party fails to respond within 21 days or such longer period as may be agreed between the parties or allowed by the taxing officer, the successful party may apply for a default costs certificate.

3.6 The paying party may not participate in a taxation unless and until the paying party has completed Column 4 of the bill of costs.

4. Procedure on taxation

4.1 A taxation shall be inquisitorial in nature.

4.2 The taxing officer shall control the procedure applicable to each taxation which will not necessarily involve any oral hearing.

4.3 The taxing officer will investigate each item in the bill of costs unless it is agreed and determine what amount, if any, shall be allowed in respect of it.

4.4 If the paying party has failed to complete Column 4 of the bill of costs or failed to respond to any particular item within the prescribed time limit, the taxing officer will proceed to taxation on the assumption that the bill or particular item, as the case may be, is "Agreed".

4.5 The taxing officer will require the successful party to justify each item in whatever way appears to the taxing officer to be appropriate. The successful party may be required to give an oral explanation and/or make written submissions and/or produce supporting documents of the kind referred to in rule 30(3).

4.6 For the purposes of justifying a bill of costs no distinction is to be drawn between work done by foreign lawyers and that done by local attorneys. Original files belonging to foreign lawyers must be produced if required by the taxing officer, failing which the amount claimed will be disallowed.

4.7 The taxing officer may require the production of files or individual documents which are privileged, but the taxing officer should not disclose them to the paying party.

4.8 The taxing officer will require the paying party to justify the paying party's objections to the bill of costs in whatever way appears to the taxing officer to be appropriate. The paying party may be required to explain the paying party's objections in writing and/or make oral submissions to the taxing officer.

4.9 The successful party will be required to produce to the taxing officer and disclose to the paying party all necessary invoices and receipts in respect of the disbursements claimed in the bill of costs. The successful party may also be required to produce the actual invoices rendered by the successful party's attorney and foreign lawyers and to reconcile the amount claimed in the bill of costs with the amount specified in the invoices.

5. Procedure for Taxation of Costs Payable out of a Fund

5.1 When the costs of a trustee, personal representative or official liquidator are ordered to be paid out of a fund and taxed on the indemnity basis, the Bill of Costs should be prepared in accordance with Section 2 of these Guidelines.

5.2 The Bill of Costs should be served on the person (if any) designated for this purpose, such as a representative beneficiary in the case of costs payable out of a trust fund or the creditors' committee in the case of costs payable out of the assets of an insolvent company.

5.3 In cases where the trustee, personal representative or official liquidator is required to serve their Bill of Costs, that person may apply for a default costs certificate or a certificate for costs in an agreed amount as may be appropriate.

5.4 In any other case, the trustee personal representative or official liquidator must make an application for taxation, in which case the procedure contained in Section 4 of these Practice Directions will apply.

6. Disbursements

6.1 An expense may be claimed as a disbursement on taxation if:

(a) it was reasonably and properly incurred by the successful party's attorney in the course of conducting the proceedings; and

(b) it is not an expense of a kind which is customarily included in the overheads reflected in attorneys' hourly rates and is therefore deemed to be reflected in the hourly rates charged by the successful party's attorney.

6.2 The amount claimed in respect of any disbursement shall not exceed the actual amount paid by the successful party who may be required to produce a receipt or other documents evidencing the amount paid.

6.3 Notwithstanding paragraphs 6.1 and 6.2 above, the following sums may be claimed as disbursements:

(a) photocopying charges - up to 50¢ per page;

(b) printing charges - up to 50¢ per page;

(c) telephone and fax charges - the amount of the call charge plus a mark up not exceeding 20%;

(d) transcripts produced by court reporters - up to CI$3.50 per page.

6.4 Legal fees paid to foreign lawyers cannot be claimed as disbursements unless the foreign lawyer is engaged to give an opinion on a point of foreign law which is in issue in the proceedings.

6.5 Admission fees and work permit fees paid in respect of foreign lawyers are not recoverable on taxation on the basis that such expenses are part of the overheads reflected in the foreign lawyer's hourly rates.

6.6 Work permit fees paid in respect of expert witnesses are recoverable.

7. Attorney's fees

7.1 The amount of attorney's fees allowable on taxation on the standard basis shall be determined on the basis of time spent. The unit of time used in a bill of costs may be $^{1}/_{10}$ hour or ¼ hour.

7.2 Amounts claimed on the basis of brief fees, refreshers, lump sums, percentages, conditional fee agreements, contingency agreements or any basis other than hourly rates will be disallowed.

7.3 In the case of taxations on the standard basis, the hourly rates to be applied will be determined on the basis of the post qualification experience of the persons engaged as follows:

More than 15 years	**Up to CI$300 or US$365**
Between 10 and 15 years	Up to CI$275 or US$335
Between 5 and 10 years	Up to CI$250 or US$305
Less than 5 years	Up to CI$150 or US$185
Articled Clerks and Paralegals	UP to CI$ 90 or US$110

These are maximum rates. The taxing officer may, in the exercise of the taxing officer’s discretion, determine that lower rates are appropriate in any particular case. The number of years post-qualification experience shall be reckoned from the date upon which the attorney was first admitted to practice as a professional lawyer either in the Cayman Islands or elsewhere. King’s Counsel shall be treated as attorneys having more than 15 years post qualification experience.

7.4 In the case of taxations on the indemnity basis, the hourly rate or scale of rates will be that agreed between the attorney and that attorney's client provided that such rate or scale is not unreasonable. The mere fact that the agreed rate is higher than the maximum rate(s) allowable on a taxation on the standard basis shall not be regarded as evidence that it is unreasonable.

7.5 In determining the amount allowable in respect of each item in a bill of costs the taxing officer shall have regard to both the experience of the person undertaking the work and the nature of the work undertaken. For example, work done by an attorney of more than 15 years experience which could equally well have been done by a paralegal or junior attorney will be allowed at the appropriate lower hourly rate. However, the taxing officer will take into account that routine tasks done by paralegals and junior attorneys need to be directed and supervised by experienced attorneys.

7.6 Work done by articled clerks or trainees is not recoverable on taxation unless it is work of a kind which would normally be done by paralegals.

7.7 The cost of routine typing and file maintenance done by secretaries comprises part of the overheads reflected in the hourly rates for attorneys and is therefore not recoverable on taxation.

7.8 The cost of organising, cataloguing and filing documents for the purposes of discovery, inspection and/or trial is recoverable on taxation.

8. Work done by persons other than attorneys

8.1 Legal work done by "in-house counsel" who are in the employment of the successful party is not normally recoverable on taxation. It will only be recoverable if the successful party can satisfy the taxing officer that it is work of a kind which would otherwise be done by outside lawyers.

For example, the work involved in instructing outside lawyers is not recoverable; time spent receiving and considering advice from outside lawyers is not recoverable; but time spent preparing a draft list of documents under the supervision of outside lawyers may be recoverable.

8.2 Investigative and other work done by non-lawyers will be recoverable on taxation only to the extent that the Court has given a direction pursuant to rule 18 that it should be allowed.

9. Travelling and hotel expenses

9.1 Reasonable travelling expenses incurred in bringing witnesses to the Islands or between the Islands shall be recoverable on taxation.

9.2 Reasonable expenses incurred by witnesses travelling within Grand Cayman or within Cayman Brac shall not be recoverable on taxation.

9.3 Reasonable hotel expenses incurred in accommodating witnesses during a hearing shall be recoverable on taxation, not exceeding US$250 per day. Only the accommodation element of the hotel charges may be recovered.

9.4 Travelling and hotel expenses paid to foreign lawyers shall not be recoverable on taxation.

10. Service of process

10.1 The cost of serving process out of the jurisdiction is recoverable as a disbursement.

10.2 The cost of effecting personal service on an individual within the jurisdiction is recoverable at the rate specified in Schedule 3 of the *Court Fees Rules (as amended and revised)* whether the successful party employs the bailiff or a private process server.

10.3 The cost of serving process on the registered office of a company or upon a party's attorney and the cost of filing documents at court is not recoverable on the basis that the cost of employing messengers is part of the overheads reflected in the attorney's hourly rates.

Issued by The Rules Committee on the 22nd day of October, 2001.

The Hon. Anthony Smellie, Q.C., Chief Justice
The Hon. David Ballantyne, Attorney General
Andrew J. Jones, Esq., Legal Practitioner
Alden M. McLaughlin, Esq., Legal Practitioner

GRAND COURT PRACTICE DIRECTION No. 1 OF 2004

(GCR O.1, r. 12)

CORRECTIONS TO JUDGMENTS

1. Unless the judge otherwise sees fit, copies of written judgments will now be made available before being released as finally approved to facilitate the following:

   1.1 To enable the attorneys of the parties to consider the judgment and decide what consequential orders they should seek. In appropriate cases the judge may impose conditions of confidentiality until the judgment is finally released or until the formal order is finally issued.

   1.2 To enable the attorneys of the parties to submit any written suggestions to the judge about typing errors, wrong references of fact or citation of authority or other minor corrections of that kind in good time, so that, if the judge thinks fit, the judgment can be corrected before it is finally handed down in open Court or Chambers.

2. The same will apply to reasons for judgments.

3. Written suggestions for changes must be submitted within 72 hours of the release of the judgment or reasons for judgment; unless the judge otherwise directs in writing.

4. Judgments or reasons for judgments released on the foregoing basis will on every page be stamped: “Unapproved version: No permission is granted to publicise, copy, or use in Court”.

5. None of the foregoing is intended to affect the discretion of the judge to issue errata in respect of written judgments or reasons for judgments for errors which later come to the judge's attention but within a reasonable time after the formal delivery (for example, errors which may be identified by the editors of the Law Reports). The intention is that any such errata will be given within 4 weeks of the formal release of the judgment or reasons for judgment and will immediately be notified to the attorneys and publishers of the Law Reports upon being given.

Dated this 17th day of March 2004

The Hon. Anthony Smellie, QC, Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 2 OF 2004[1]

PROCEEDINGS BY WAY OF VIDEO CONFERENCING CIVIL OR CRIMINAL

1. Introduction

1.1 This practice direction **applies to all** applications seeking the sanction of the Court for the use of video conferencing (VCF).

1.2 The purpose of this practice direction is to explain and clarify certain procedures and arrangements necessary in this relatively new method of taking evidence in trials or in other parts of any legal proceedings, for example, interim application case management conferences and pre-trial reviews. Further guidance is given in the Video Conferencing Guide appended to this practice direction. 1.3 VCF equipment may be used both (a) in a courtroom, whether via equipment which is permanently placed there or via a mobile unit, and (b) in a separate studio or conference room. In either case, the location at which the judge sits is referred to as the "local site". The other site or sites to and from which transmission is made are referred to as "the remote site" and in any particular case any such site may be another courtroom.

2. Preliminary Arrangements

2.1. The Court's permission is required for any part of any proceedings to be dealt with by means of VCF. Before seeking a direction, the applicant should notify the listing officer or other appropriate court officer of the intention to seek it, and should enquire as to the availability of court VCF equipment for the day or days of the proposed VCF.

2.2 The application should be made to any of the Judges of the Grand Court. If all parties consent to a direction, permission can be sought

[1] See later amendments to the Evidence Law in 2004.

by letter, fax or e-mail, although the Court may still require an oral hearing. All parties are entitled to be heard on whether or not such a direction should be given and as to its terms. If a witness at a remote site is to give evidence by an interpreter, consideration should be given at this stage as to whether the interpreter should be at the local site or the remote site.

2.3 If a VCF direction is given, arrangements for the transmission will then need to be made. The Court will ordinarily direct that the party seeking permission to use VCF is to be responsible for this. That party is hereafter – in civil cases – referred to as "the VCF arranging party".

2.4 The VCF arranging party must contact the listing officer or other appropriate officer of the court and make arrangements for the VCF transmission. Details of the remote site, and of the equipment to be used both at the local site (if not being supplied by the Court) and the remote site (including the number of ISDN lines and connection speed), together with all the necessary contact names and telephone numbers, will have to be provided to the listing officer or other court officer. The Court will need to be satisfied that any equipment provided by the parties for use at the local site and also that at the remote site is of sufficient quality for a satisfactory transmission.

3. Costs

3.1 Subject to any order to the contrary, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by, the VCF arranging party. All reasonable efforts should be made to keep the transmission to a minimum and so keep the costs down. All such costs will be considered to be part of the costs of the proceedings and the Court will determine at such subsequent time as is convenient or appropriate who, as between the parties, should be responsible for them and (if appropriate) in what proportions.

4. **Recording**

4.1 The VCF arranging party must arrange for recording equipment to be provided by the Court so that the evidence may be recorded at the local site.

4.2 Application for a direction from the Court must be made for the provision of recording equipment at the remote site by the arranging party.

4.3 No other recording may be made of any proceedings via VCF, save as directed by the Court.

Dated this 26th day of May 2004

The Hon. Anthony Smellie, Q.C., Chief Justice.

VIDEO CONFERENCING GUIDE

This guidance is for the use of video conferencing (VCF) in civil proceedings. It is in part based upon the protocol of the Federal Court of Australia and CPR 32 Practice Direction of the Courts of England and Wales. It is intended to provide a guide to all persons involved in the use of VCF, although it does not attempt to cover all the practical questions that may arise.

VIDEO CONFERENCING GENERALLY

1. VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in particular, be likely to achieve a material saving of costs, and such savings may also be achieved by its use for taking domestic evidence. It is, however, inevitably not as ideal as having the witness physically present in court. Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving, but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognised that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.
2. When used for the taking of evidence, the objective should be to make the VCF session as close as possible to the usual practice in a trial court where evidence is taken in open court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by VCF: for example, the administration of the oath, ensuring that the witness understands who is at the local site and what their various roles are, the raising of any objections to the evidence and the use of the documents.

3. It should be presumed that all foreign governments are willing to allow their nationals or others within their jurisdiction to be examined before a court on the Cayman Islands by means of VCF. If there is any doubt about this, enquiries should be directed to the Foreign and Commonwealth Office (International Legal Matters Unit, Consular Division) with a view to ensuring that the country from which the evidence is to be taken raises no objection to it at diplomatic level. The VCF arranging party will be required to make all necessary inquiries about this well in advance of the VCF and must be able to inform the court what those inquiries were and of their outcome.

4. Time zone differences need to be considered when a witness abroad is to be examined in Cayman via VCF. The convenience of the witness, the parties, their representatives and the court must all be taken into account. The cost of the use of a commercial studio is usually greater outside normal working hours.

5. Those involved with VCF need to be aware that, even with the most advanced systems currently available, there are the briefest of delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there will be a tendency to "speak over" the witness, whose voice will continue to be heard for a millisecond or so after that witness appears on the screen to have finished speaking.

6. With current technology, picture quality is good, but not as good as television picture. The quality of the picture is enhanced if those appearing on VCF monitors keep their movements to a minimum.

PRELIMINARY ARRANGEMENTS

7. The VCF arranging party must ensure that an appropriate person will be present at the local site to supervise the operation of the VCF throughout the transmission in order to deal with any technical problems.

8. It is recommended that the judge, practitioners and witness should arrive at their respective VCF sites about 20 minutes prior to the scheduled commencement of the transmission.

9. If the local site is not a courtroom, but a conference room or studio, the judge will need to determine who is to sit where. The VCF arranging party must take care to ensure that the number of microphones is adequate for the speakers and that the panning of the camera for the practitioners' table encompass all legal representatives so that the viewer can see everyone seated there.

10. The proceedings, wherever they may take place, form part of a trial to which the public is entitled to have access (unless the court has determined that they should be heard in private). If the local site is to be a studio or conference room, the VCF arranging party must ensure that it provides sufficient accommodation to enable a reasonable number of members of the public to attend.

11. In cases where the local site is a studio or conference room, the VCF arranging party should make arrangements, if practicable, for the Royal Coat of Arms to be placed above the judge's seat.

12. In cases where the VCF is to be used for the taking of evidence, the VCF arranging party must arrange for recording equipment to be provided by the court so that the evidence can be recorded. An associate will normally be present to operate the recording equipment when the local site is a courtroom. The VCF arranging party should take steps to ensure that an associate is present to do likewise when it is a studio or conference room. The equipment should be set up and tested before the VCF transmission. It will often be a valuable safeguard for the VCF arranging party also to arrange for the provision of recording equipment at the remote site. This will provide a useful back-up if there is any reduction in sound quality during the transmission. A direction from the court for the making of such a back-up recording must, however, be obtained first. This is because the proceedings are court proceedings and, save as directed by the court no other recording of them must be made. The court will direct what is to happen to the back-up recording.

13. Some countries may require that any oath or affirmation to be taken by a witness accord with local custom rather than the usual form of oath or affirmation used in the Cayman Islands. The VCF arranging party must make all appropriate prior enquiries and put in place all arrangements necessary to enable the oath or affirmation to be taken in accordance with local custom. That party must be in a position to inform the court what those inquiries were, what their outcome was and what arrangements have been made. If the oath or affirmation can be administered in the manner normal in the Cayman Islands, the VCF arranging party must arrange in advance to have the appropriate holy book at the remote site. The associate will normally administer the oath.

14. Consideration will need to be given in advance to the documents to which the witness is likely to be referred. The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the VCF arranging party should then send to the remote site.

15. Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the VCF arranging party should ensure that equipment is available to enable the documents to be transmitted between sites during the course of the VCF transmission. Consideration should be given to whether to use a document camera. If it is decided to use one, arrangements for its use will need to be established in advance. The panel operator will need to know the number and size of documents or objects if their images are to be sent by document camera. In many cases, a simpler and sufficient alternative will be to ensure that there are fax transmission and reception facilities at the participating sites.

THE HEARING

16. The procedure for conducting the transmission will be determined by the Judge. The Judge will determine who is to control the cameras. In cases where the VCF is being used for an application in the course of

the proceedings, the Judge will ordinarily not enter the local site until both sites are online. Similarly, at the conclusion of the hearing, the Judge will ordinarily leave the local site while both sites are still on line. The following paragraphs apply primarily to cases where the VCF is being used for the taking of the evidence of a witness at a remote site. In all cases, the judge will need to decide whether court dress is appropriate when using VCF facilities.

It might be appropriate when transmitting from courtroom to courtroom. It might not be when a commercial facility is being used.

17. At the beginning of the transmission, the Judge will probably wish to introduce themselves and the advocates to the witness. The Judge will probably want to know who is at the remote site and will invite the witness to introduce themselves and anyone else who is with them. The Judge may wish to give directions as to the seating arrangements at the remote site so that those present are visible at the local site during the taking of the evidence. The Judge will probably wish to explain to the witness the method of taking the oath or of affirming, the manner in which the evidence is taken, and who will be conducting the examination and cross-examination. The Judge will probably also wish to inform the witness of the matters referred to in paragraph 5 and 6 above (co-ordination of picture with sound, and picture quality).

18. The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the courtroom. During examination, cross-examination and re-examination, the witness must be able to see the legal representative asking the question and also any other person (whether another legal representative or the judge) making any statements in regard to the witness' evidence. It will in practice be most convenient if everyone remains seated throughout the transmission.

GRAND COURT PRACTICE DIRECTION No. 2 OF 2006

(GCR O. 42)

ORDERS

Orders that are not encompassed by GCR O. 42, r. 5(5) or 5A should be in the following format:

Under the style of cause:

"IN CHAMBERS/IN GRAND COURT
DATE OF ORDER
BEFORE HON. JUSTICE

ORDER

UPON hearing counsel for the applicant etc.

IT IS HEREBY ORDERED THAT:

DATED the
FILED the

_____
JUDGE OF THE GRAND COURT"

And on a separate page, not forming part of the order:

Approved as to form and content: etc."

Orders that are encompassed by GCR O. 42, r. 5(5) or 5A should include the indorsement "Approved as to form and content" after the signature line of the Clerk of the Court as the indorsement forms part of the order.

Dated this 24th day of October 2006

Hon. Anthony Smellie, Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 1 OF 2008

(GCR O.1,r.12)

REGISTER OF JUDGEMENTS - REGISTER OF WRITS

(GCR O.63, rr. 7 & 8)

1. The Register of Judgements and the Register of Writs and other originating process are open to public inspection. The purpose of this rule is that the existence of all legal proceedings, including the identity of the parties and the general nature of the causes of action, and the manner in which the Court finally adjudicated upon those proceedings should be a matter of public record.
2. It is therefore important that the information filed on these registers is both complete and accurate.
3. The Clerk of the Court has been instructed to ensure that *all* final judgements and orders are placed on the Register, including default judgements and consent orders in respect of which there are no written reasons.
4. Whenever a writ, petition, originating summons and originating motion is amended, the amended pleading must also be placed on the Register, otherwise readers are likely to be misled about the identity of the parties and/or the true nature of the causes of action. For the same reason, counterclaims and third party notices are required to be placed on the Register. The Clerk of the Court has been instructed to ensure that *all* pleadings by which new causes of action and/or new parties are or may be added, are placed on the Register, including amended pleadings, counterclaims and third party notices.

Dated this 31st day of October 2008

The Hon. Anthony Smellie, QC,
Chief Justice

GRAND COURT PRACTICE DIRECTION No. 2 OF 2010

(GCR O.1, r.12)

SCHEMES OF ARRANGEMENT AND COMPROMISE UNDER SECTION 86 OF THE COMPANIES ACT

(GCR O.102, r.20)

1 Introduction

1.1 This practice direction supersedes Practice Direction No.1 of 2002 (issued on 4th July 2002) which is hereby revoked.

1.2 The sole purpose of replacing Practice Direction No.1 of 2002 is to provide more detailed directions and guidance about matters which will be considered by the Court at the first hearing of a petition for an order sanctioning a scheme of arrangement. Practitioners are referred in particular to paragraphs 3.1 to 3.5 below.

1.3 This practice direction will apply to proceedings commenced and/or hearings taking place on or after 1st October 2010.

2 Commencing proceedings

2.1 The previous practice of the Court, whereby the applications for an order convening the Court meeting and the sanction of the scheme of arrangement were treated as two entirely separate proceedings, was abolished by Practice Direction No.1/2002. These applications will continue be made in the same proceeding, thus resulting in the creation of a single Court file.

2.2 The proceeding will be commenced by petition seeking the Court's sanction of a proposed scheme of arrangement or compromise. At the same time as filing a petition, the applicant must file an interlocutory summons for an order convening the Court meeting(s). As part of the directions given on this application, the Court will fix a date for the substantive hearing of the petition, notice of which will be given to the shareholders/creditors as part of the scheme documentation.

2.3 Within seven days after the Court meeting(s) has or have been held, the applicant must file an affidavit sworn by the Chairperson of the meeting(s) verifying that notice was duly sent in accordance with the order for directions; that the meeting(s) was or were duly held; and giving particulars of the result. In the event that the scheme was not approved, the applicant will also formally ask for the petition to be dismissed. In the event that the scheme was approved, the substantive hearing of the petition will take place on the pre-determined date. In most cases it should be unnecessary to file any further evidence.

3 Matters to be determined at the first Hearing

3.1 The first hearing (on the interlocutory summons for an order to convene the Court meeting) will normally be heard *ex parte*, but practitioners should consider giving notice to persons affected by the scheme in cases where class or other issues as referred to in paragraph 3.3 below arise, and where it is practical to do so. Such notice should include a statement of the intention to promote the scheme and of its purpose, and also of the proposed composition of classes and of the intention to raise any issue as referred to in paragraph 3.3 below.

3.2 In every case the Court will consider whether it is appropriate to convene class meetings and, if so, the composition of the classes so as to ensure that each meeting consists of shareholders or creditors whose rights against the company which are to be released or varied under the scheme, or the new rights which the scheme gives in their place, are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. It follows that the supporting affidavit must contain all such information as may be necessary to enable the Court to make this determination. The applicant should also raise at the first hearing any other matter which may affect the conduct of the meeting(s).

3.3 At the first hearing, the Court will also consider any other issue which is relevant to the jurisdiction of the Court to sanction the scheme, and any other issue which, although not strictly going to jurisdiction, is such that it would unquestionably lead the Court to refuse to sanction the scheme.

3.4 It is the responsibility of the applicant by evidence in support of the application or otherwise to draw the attention of the Court to any issue in relation to the meeting(s) or any issue in paragraph 3.3 above. Unless the applicant's case in relation to the meeting(s) or any issue in paragraph 3.3 above is a plain and obvious one, the applicant's counsel should provide the Court with a skeleton argument addressing the relevant issues.

3.5 The Court will, if necessary, give directions for the resolution of any such issues including, if necessary, directions for the postponement of meeting(s) until that resolution has been achieved, and will hear interested parties. The Court will expect any person who raises any such issue at the hearing to sanction the scheme to show good cause why they did not raise it at an earlier stage.

3.6 The Court will consider whether the proposed time and place of the Court meeting(s) and the method of giving notice is appropriate in all the circumstances. The test is whether the parties having the economic interest, which is typically not the registered holder of the shares or debt instruments, will have sufficient time in which to consider the scheme documentation and make an informed decision. Where necessary, the Court should be provided with evidence of the "shareholder/creditor profile". In cases where the relevant shares or debt instruments are listed on a stock exchange, the Court must be provided with all necessary evidence upon which to satisfy itself that the proposed notice period and method of giving notice will comply with applicable rules.

3.7 The applicant must satisfy the Court that the scheme documentation will provide the shareholder/creditor (which for this purpose means the person having the ultimate economic interest) with all the information reasonably necessary to enable them to make an informed decision about the merits of the proposed scheme. Since this application will typically be made *ex parte*, the applicant's counsel must draw the Court's attention to any aspects of the explanatory memorandum or proxy statement which might arguably depart from best practice.

3.8 If the proposed scheme relates to shares or debt instruments which are listed on a stock exchange, the applicant must file evidence which sets out the relevant listing rules and practice and explains the steps which have been or will be taken to comply with such listing rules or practice. The Court will always require to know whether the proposed explanatory memorandum or proxy statement requires the approval of the relevant stock exchange and, if so, whether such approval has been obtained.

3.9 If one of the proposed class meetings consists of a small number of persons who are all willing to be bound by the terms of the scheme, the Court may, in its discretion, waive the requirement for a formal class meeting to be held of that particular class if the evidence before it at the first hearing shows that all of the particular members in question consent to be bound by the terms of the scheme.

4 "Looking through the Register"

4.1 GCR O.102, r.20 (6) confirms the existing practice of the Court which is to "look through the Register" in appropriate cases for the purpose of determining whether or not the statutory majorities have been achieved.

4.2 In the past there has been some uncertainty about the way in which the Court will interpret and apply the statutory provisions in cases where the whole or substantially the whole of the relevant shares are registered with custodians or clearing houses such as Euroclear and Clearstream Luxembourg (previously known as Cedel). In the case of schemes involving creditors, similar uncertainty has arisen in cases where the scheme relates to a global note and where the whole of the debt instruments are registered with a single trustee. In such cases the Court will "look through the register" for the purpose of determining whether or not the statutory majorities have been achieved and any necessary directions for this purpose will be given at the hearing of the interlocutory summons.

4.3 For example, the Court may direct that the custodian be permitted to vote both for and against the scheme in accordance with the instructions received from its clients and proxy forms should be prepared accordingly. In such cases the scheme documentation should include a form of voting instructions for use by custodians.

4.4 Custodians and clearing houses may be required to specify both the number of clients or members from whom they have received instructions in addition to the number of shares voted. The majority in number will be calculated on the basis of the number of clients or members giving instructions to the custodian or clearing house. The Court understands that both Euroclear and Clearstream Luxembourg are content to proceed in this way. In cases involving other custodians or clearing houses, the Court will require evidence that the custodian or clearing house is willing and able to give effect to the Court's directions.

5 Hearing the Petition

5.1 The substantive hearing of the petition will take place in open court.

5.2 The date for the substantive hearing of the petition will be fixed at or before the hearing of the interlocutory summons for a direction convening the Court meeting(s).

5.3 Notice of the hearing date should be included in the scheme documentation, thus avoiding any subsequent need to publish advertisements. The explanatory memorandum or proxy statement should draw attention to the fact that shareholders or creditors will have the right to attend and be heard on the hearing of the petition.

5.4 GCR O.102, r.20 (10) provides that any person who voted at the Court meeting and any person who gave voting instructions to a custodian or clearing house who voted at the Court meeting, shall be entitled to be heard on the petition. In addition, the Court may be prepared to hear any other person whom it is satisfied has a substantial economic interest in the shares or debt instruments to which the scheme relates.

6 Miscellaneous

6.1 The Court is prepared in appropriate cases to direct that Court meetings be held outside the Cayman Islands.

6.2 Relevant extracts from the company's memorandum and articles of association should be exhibited to the supporting affidavit. It is not necessary to exhibit the whole of the memorandum and articles of association in every case.

Dated this 17th day of September 2010

The Hon. Anthony Smellie QC,
Chief Justice

GRAND COURT PRACTICE DIRECTION No 1 OF 2011

(GCR O. 1, r. 12)

GUIDELINES RELATING TO THE TAXATION OF COSTS

(GCR O.62, r.16)

1. This Practice Direction concerns taxation of costs on the standard basis in respect of work carried out by attorneys on or after 1 June 2011, and in respect of such work paragraph 7.3 of Practice Direction No 1 of 2001 shall no longer apply. In respect of taxation of costs on the standard basis in respect of work carried out by attorneys before 1 June 2011 paragraph 7.3 of Practice Direction No 1 of 2001 shall continue to apply.
2. Save for the amendments effected by paragraph 1 of this Practice Direction, Practice Direction No 1 of 2001 shall continue to apply.
3. The hourly rates to be applied will continue to be determined on the basis of the post-qualification experience of the person engaged as follows:

<u>Civil Division and Family Division</u>

More than 20 years	Up to CI$443 or US$540
Between 15 and 20 years	Up to CI$426 or US$520
Between 10 and 15 years	Up to CI$361 or US$440
Between 5 and 10 years	Up to CI$308 or US$375
Fewer than 5 years	Up to CI$230 or US$280
Articled Clerks and Paralegals	Up to CI$156 or US$190

<u>Financial Services Division and Admiralty Division</u>

More than 20 years	Up to CI$738 or US$900
Between 15 and 20 years	Up to CI$705 or US$860

Between 10 and 15 years	Up to CI$599 or US$730
Between 5 and 10 years	Up to CI$513 or US$625
Fewer than 5 years	Up to CI$377 or US$460
Articled Clerks and Paralegals	Up to CI$262 or US$320

In each case these are maximum rates.

If in any proceedings, or part of proceedings, in the Civil Division or in the Family Division the Judge is satisfied that the proceedings, or that part of the proceedings, were unusually important or unusually complex, the Judge may certify that with respect to any one or more of the persons engaged the maximum allowable rates shall be those applicable in the Financial Services Division.

In any proceedings in any Division the taxing officer may, in the exercise of the taxing officer's discretion, determine that rates lower than the maximum rates are appropriate in any particular case.

The number of years post-qualification experience for attorneys shall be reckoned from the date upon which the attorney was first admitted to practice as an attorney in the Cayman Islands or as a professional legal adviser elsewhere, whichever is the earlier. King's Counsel shall be treated as attorneys having more than 20 years post-qualification experience.

Issued by the Rules Committee on the 14 of April 2011

The Hon. Anthony Smellie, Q.C., Chief Justice
The Hon. Samuel Bulgin, Q.C., Attorney General
Graham Ritchie, Q.C., Legal Practitioner
Colin D. McKie, Legal Practitioner

GRAND COURT PRACTICE DIRECTION NO. 1 OF 2012

DELIVERY OF RESERVED JUDGMENTS

It is now the established practice that reserved judgments arising from cases in the Financial Services, Civil and Family Divisions of the Grand Court will be delivered within two to three (2-3) months. In the Criminal Division of the Grand Court, the established practice is that reserved judgments are delivered as soon as practicably possible and in any event within one (1) month.

Reserved judgments arising from criminal cases in the Summary Court are expected to be delivered within three (3) weeks and those arising from civil cases, within two to three (2-3) months.

In the Court of Appeal, the established practice is that judgments not delivered by the end of the session in which they are reserved, will usually be delivered by the end of the next session.

While it is the policy of the judiciary that these established practices shall be maintained, it must also be recognised that countervailing circumstances will sometimes arise.

With the foregoing considerations in mind, the following practice directions are issued:

(i) A judge or magistrate should strive to deliver reserved judgments as soon as possible and in any event within such periods as are respectively mentioned above or as may from time to time be prescribed by the Chief Justice or the President of the Court of Appeal, as the case may be. If the judge or magistrate becomes aware that judicial commitments (or other circumstances) may prevent delivery of judgments within that time, the Chief Justice (or the President) should be alerted to that possibility. Arrangements will then be put in place to secure that the objectives of this Practice Direction are met.

(ii) In keeping with these objectives, the Listing policy of the Grand and Summary Courts must also be adapted. To that end, it is also now directed that time for the preparation of judgments, commensurate with the complexity and length of time taken for a hearing or trial, shall be reserved immediately following the conclusion of the hearing or trial.

Hon. Anthony Smellie

Chief Justice

The Cayman Islands

7th March 2012

GRAND COURT PRACTICE DIRECTION NO. 2 OF 2012

PROCEEDINGS IN THE GRAND COURT IN WHICH THE JUDGE PRESIDES FROM OVERSEAS

In keeping with the Grand Court (Amendment No. 2) Rules 2011 which confirm the jurisdiction of a judge who is physically outside the Islands to hold interlocutory hearings, the following shall apply:

(i) Following the directions of the Judge for the convening of the hearing, the applicant's attorney shall make arrangements with the Registrar of the Financial Services Division (or with the Clerk of Courts in respect of other Divisions) for the telecommunication link to be made (whether by telephone or televideo conference) (`the link').

(ii) The link may be made by use of "Skype" or similar service or by Cable and Wireless "Call Centre" or televideo conference service, as the Judge may direct. The costs of the link, if any, will be assumed in the first instance by the applicant and payment made upon presentation with the monthly invoice by the Court Administration.

(iii) All hearings will require attendance at Chambers by the applicant's attorney and (where appropriate or required, by the attorneys of other parties) and will be commenced by the engagement of the link to other participants as allowed by the Judge and to the Judge, at the time assigned. The Judge will then direct the conduct of the hearing.

(iv) Unless otherwise directed by the Judge, an accurate note of the hearing shall be kept by the applicant's attorney and presented to the Registrar for acceptance by the Judge as the record of the hearing. For these purposes, a printed record provided by the Cable and Wireless Call Centre Services may, if accepted by the Judge, suffice.

Whenever the Court's digital recorders are used for recording the hearing, the applicant's attorney may rely on that recording but will nonetheless be responsible for having the recording transcribed and submitted to the Registrar.

(v) A marshal of the Court (or other court officer) assigned by the Registrar with the agreement of the Judge, shall be present during the hearing to assist, if needs be, with the engagement of the link, with the recording of the proceedings and, as may be required, to assist the Judge.

(vi) That officer will keep the log of the time of beginning and end of the link for the purposes of record keeping and invoicing.

(vii) All orders declared by the Judge shall be formally extracted by the applicant's attorney and presented to the Registry (where appropriate, with the agreement of any other party) for acceptance and execution by the Judge.

(viii) Together with the note of the hearing (as approved by the Judge), the formal orders will be entered and kept on the respective Court file as part of the record of the action.

Hon. Anthony Smellie

Chief Justice

March 9 2012

GRAND COURT PRACTICE DIRECTION NO. 3 OF 2012

ATTIRE FOR PROCEEDINGS IN THE GRAND COURT

In keeping with and in confirmation of the practice that has developed with the agreement of the judges, the attire for proceedings in Chambers will be ordinary business attire.

The attire for proceedings in Open Court will continue to be wig and gown, unless for some particular reason acceptable to the Judge, ordinary business attire is allowed.

Hon. Anthony Smellie

Chief Justice

March 9 2012

GRAND COURT PRACTICE DIRECTION NO. 4 OF 2012

LIMITED ADMISSION AS AN ATTORNEY-AT-LAW

Section 4(1) of the *Legal Practitioners Act (as amended and revised)* ("the Law") gives power to a Judge to admit a person as an Attorney-at-Law on a limited basis for the purpose of a specified suit or matter in regard to which that person has been instructed by a local Attorney-at-Law or when, in a Legal Aid case, the Clerk of Court has certified that there is no local representation available. The person proposed to be admitted must possess a qualification prescribed by Section 3(1) of the Law and to have come or intends to come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter. The application is to be made in such manner as the Judge may think fit.

There are concerns that such limited admission has become simply a formality and that the Judge concerned is not usually being provided with the information necessary to enable a proper exercise of discretion as the Law requires. In future, such applications must be made in the following manner:

1. The application and supporting affidavits must be filed and delivered to the Judge who is to hear the application not less than three (3) business days before the hearing of the application. If necessary, the affidavit of the person proposed to be admitted ("the Applicant") may, for the purposes of the hearing of the application, be in unsworn final draft form if the Applicant is not present in the Islands at the time, provided that an undertaking is given to the Court at the hearing of the application that the affidavit will be sworn as soon as possible after the Applicant's arrival in the Islands.
2. The application will not be listed to be heard less than one business day prior to the hearing of the specified suit or matter in which it is proposed that the Applicant should appear if that is the purpose for which the Applicant's admission is sought.

3. The application shall be supported by an affidavit sworn by the Applicant ("the Applicant's Affidavit") and also by an affidavit by the local Attorney-at-Law who, or a member of whose firm, has instructed the Applicant to come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter ("the Attorney's Affidavit").

4. The Applicant's Affidavit shall contain and exhibit the following:

   (a) details of the qualification(s) prescribed by Section 3(1) of the Law which the Applicant possesses and a certified copy or copies thereof shall be exhibited;

   (b) confirmation that the Applicant is not or has not been the subject of any criminal conviction or proceedings other than in respect of a minor traffic offence;

   (c) confirmation that the Applicant is not or has not been the subject of any disciplinary or other similar proceedings relating to professional misconduct of any kind and an appropriately certified Certificate of Good Standing or the equivalent issued by the professional body to which the Applicant belongs shall be exhibited;

   (d) confirmation that the Applicant has been instructed by a Cayman Islands Attorney-at-Law, who shall be identified, to come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter, and that the Applicant has come or intends to come to the Islands for one or more of those purposes.

5. The original(s) of the certified copy or copies of the Applicant's qualifications(s) referred to in paragraph 4(a) above and of the certified Certificate of Good Standing or equivalent referred to in paragraph 4(c) above shall be made available to the Judge at the hearing of the application.

6. The Attorney's Affidavit shall contain and exhibit the following:

   (a) confirmation that it is the wish of the relevant client of the deponent or that client’s firm that the Applicant should be instructed on the

client's behalf to come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter;

(b) confirmation that the Applicant has been instructed by the deponent, or by some other named Attorney-at-Law in the Applicant's firm, to come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter;

(c) confirmation that the Applicant has been granted the necessary work permit or other immigration authorisation for the necessary duration to enable the Applicant to be in or come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter and a copy of the relevant work permit or other such authorisation shall be exhibited;

(d) unless the Judge hearing the Application is already very familiar with the specified suit or matter concerned, a sufficiently detailed summary thereof to enable the Judge to exercise that Judge's discretion in all the circumstances as to whether or not to admit the Applicant for the purpose of appearing, acting or advising in that specified suit or matter;

(e) if the Applicant is not Leading Counsel or the equivalent but is junior counsel or a solicitor or the equivalent, sufficient explanation as to why it is necessary and appropriate for the Applicant to come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter concerned.

7. Subject to paragraph 8 below, the limited admission of junior counsel, solicitors or the equivalent will not normally be granted except in unusual and special circumstances which must be fully set out in the Attorney's Affidavit.

8. The Judge may, in that Judge's discretion in the particular circumstances, themselves direct that a person qualified pursuant to Section 3(1) of the Law shall apply for limited admission for the purpose of appearing, acting or advising in a specified suit or matter. In that case, with the exception of paragraphs 3, 4(a) — (c), 5, 6(c), 9 and 10, which shall remain applicable, the Judge may dispense with compliance with such other of the provisions, if any, of this Practice Direction as the Judge may think fit.
9. If granted limited admission the Applicant is required to sign the Register of Admitted Attorneys either at the time of the application or, if the application has been heard prior to the Applicant having come to the Islands, as soon as practicable after the Applicant's arrival in the Islands and in any event before any appearance in the specified suit or matter in which it is proposed the Applicant should appear.
10. By signing the Register of Admitted Attorneys the Applicant is deemed to have accepted and agreed to act in accordance and to comply with all of the professional duties and obligations and to be subject to the professional discipline of a generally admitted Attorney-at-Law and an Officer of the Court.

Hon. Anthony Smellie
Chief Justice

9th February 2012

GRAND COURT PRACTICE DIRECTION NO. 5 OF 2012

PRACTICE DIRECTION ON APPLICATIONS UNDER SECTIONS 72, 75 AND 77 OF THE REGISTERED LAND ACT ("THE RLL").

In the recent past a number of decisions of this Court have dealt, in different ways, with the subject of applications under the RLL, for leave of the Court to enforce charges under the RLL by way of sale by private treaty.

These Practice Directions seek to explain the practice of the Court which has emerged as the result of those decisions.

Typically, Originating Summonses seek the following kinds of relief or variants thereof:

1. Declaratory relief to the effect that the defendant chargor ("the chargor") is in default of payment under the charge;
2. That the charge be enforced by sale of the charged property by way of public auction or private treaty, by the chargee acting in good faith and having regard to the interests of the chargor.
3. That a reserved price be fixed for the sale by way of private treaty.
4. That the property be listed for sale on the CIREBA Multi-listing System ("the MLS").
5. That other terms and conditions of the sale be determined, if any.
6. That leave be granted to issue a Writ of Possession with respect to the property.
7. Alternatively, that the chargee be given reasonable access to the property for the purpose of viewing or for any other purpose in connection with the chargee's efforts to sell the charged property
8. Costs.

Whether or not any aspect of relief is granted will of course be a matter for the exercise of discretion by the Court having regard to the particular circumstances of each case, including the conduct of the parties (see section 77 of the RLL and ***National Building Society v Cranston*** ***2011 (1) CILR 67 and Bank of Butterfield (Cayman) Ltd v. Thornton and Thornton Cause No. 307 of 2010*** written decision given on 29th March 2011)

Where the chargee has a power of sale under the charge and has complied with the requirements of the RLL for the giving of notice, the jurisdiction of the Court to exercise its discretion to vary or add to the provisions of section 75 of the RLL to allow the chargee to sell by way of private treaty (in addition to or instead of by way of public auction) will not be in dispute. Section 77 provides that the parties to a charge may vary or add to the provisions of section 75:

> *"provided that such variation or addition shall not be acted upon unless the court, having regard to the proceedings and conduct of the parties and the circumstances of the case, so orders".*

Factors of importance to the exercise of the Court's discretion will include:

a. That the property must not be sold at an undervalue ***(Paradise Manor Ltd v. Bank of Nova Scotia 1984-85 CILR 437***; ***Bank of Butterfield (Cayman) Ltd. v Jervis and Jackson 2011 (1) CILR 54***;

b. That the sale has to be in good faith ***(Paradise Manor Ltd v. Bank of Nova Scotia*** (above) and ***Bank of Butterfield v. Jervis and Jackson*** (above);

c. The best evidence of market value is the reaction of the market (***Scotiabank (Cayman Islands) Ltd. v. Rankine 2004-05 CILR Note 26 and Bank of Butterfield v. Thornton & Thornton*** (above));

d. The standard of care required of the chargee: that of a reasonable person in respect of the conduct of that person's own private affairs ***(Paradise Manor Ltd v. Bank of Nova Scotia*** (above));

e. Leave to sell by private treaty at a reserve price set by the Court will not usually be granted without previous attempts to market the property and to sell by public auction on the open market ***(Bank of Butterfield v. Jervis and Jackson*** (above);

f. Before leave to sell by private treaty *at a reserve price set by the Court* will be given, there will usually be to the satisfaction of the Court, evidence at least of attempts to sell by way of public auction (now defined to include sale by listing on the MLS at a reserve price set by the chargee aimed at realising the true market value: see ***Scotiabank Trust v Ebanks and Gordon*** below.

g. However, leave to sell by private treaty may be granted where there has been no prior attempt to sell on the open market where the Court is satisfied that it is in the interest of justice so to order, especially bearing in mind that attempts to sell by way of a formal public auction could add unnecessarily to the costs to be ultimately passed on to the chargor (***National Building Society of Cayman v. Cranston*** (above)). Where such leave is granted to sell by private treaty (that is: without a reserved price being set), the order will usually be conditioned as being subject to the chargee "acting in good faith and having regard to the interests of the chargor".

h. "*Sale by public auction*" does not necessarily require a formal auction with a bidding process conducted by an appointed auctioneer but "in substance, the sale of a property through the MLS is a public auction" (***Scotiabank & Trust (Cayman) Ltd. v. Cecilia Ebanks (as administratrix of estate of Allan Ebanks) and Rudolph Gordon (as administrator of estate of Allan Ebanks) GC Cause No. 298 of 2010, Judgment delivered January 12th 2012***

i. The sanction of the Court of a price obtained whether by public auction (by listing on the MLS or otherwise) or by private treaty, is more likely to be granted where the original asking price had been set by the chargee by reference to an independent valuation. In this way the Court will be able more likely to conclude that the chargee has acted in good faith in exercise of its rights under the charge.

j. There is no need for an application to the Court for placement of the property for sale by public auction (whether by way of a listing on the MLS or by formal auction) in the first instance by the chargee who, by virtue of the powers given under the charge and section 75 of the RLL, can sell by way of public auction without the leave of the Court ***(Bank of Butterfield v. Jervis and Jackson*** (above)).

k. An application to the Court is necessitated only where leave to sell by private treaty (whether by fixing of a reserve price or otherwise) is required by way of a variation of section 75 of the RLL as agreed in the charge loan agreement.

l. Where the Court considers that a chargee has brought an unnecessary application for leave to sell by public auction, the Court will refuse to grant an order for the costs of so doing ***Bank of Butterfield v. Jervis and Jackson*** (above)).

Other factors which the Court will consider will include:

(i) the defendant(s)' position and whether they have notice of the application;

(ii) whether the defendants are represented and have a proper understanding of the application;

(ii) whether there is any element of unfairness or unreasonableness in the chargee's application;

(iv) whether an order for costs should be imposed upon the chargor, over and above any right that the chargee might have to recover costs under the charge loan agreement.

Hon. Anthony Smellie
Chief Justice

22nd May 2012

GRAND COURT PRACTICE DIRECTION No. 6 OF 2012

(GCR O.1, r.12)

LISTING OF FAMILY LAW PROCEEDINGS

1. Application and Commencement

1.1 This practice direction applies to "family law proceedings" defined as including any of the following –

a. applications under Section 20, Section 21 *Matrimonial Causes Act (as amended and revised)*;

b. application is governed by rule 16 *Matrimonial Causes Rules(as amended and revised)*;

c. applications under Section 6 of the *Children Act (as amended and revised)*;

d. applications concerning affiliation orders;

e. applications under the *Protection from Domestic Violence Act (as amended and revised)*

f. applications under the *Children Act (as amended and revised)*

1.2 This Practice Direction shall come into force on, 8th October, 2012.

2. Introduction

2.1 Applications brought for orders within family law proceedings should come before the Court in a timely manner. The purpose of this practice direction is to ensure that all applications made within family law proceedings will be allocated a first mention date within 28 days of filing. Emergency applications may nonetheless be brought before a judge on a more urgent basis.

2.2 The Listing Office will allocate at least two days each month as family law proceedings mention days. The maximum hearing time that may be given for any case listed on a mention day will be 30 minutes. New applications will be allocated a first appointment hearing for a specific time. The applicant must ensure that the application and affidavit are in the appropriate form and that there is prompt service of the same. The parties must be punctual in their attendance for all appointments and a party shall attend all appointments of which that party has been given notice, unless the Court otherwise directs.

3. New Practice

3.1 The applicant shall file the application in the appropriate form along with supporting affidavit(s). There should be sufficient copies for them to be served on each respondent.

3.2 The applicant shall serve a copy of the application (endorsed with the date, time and place of the hearing) and supporting affidavit(s) on each respondent, such minimum number of days prior to the date fixed as may be specified in Rules of Court.

3.3 On receipt of the documents filed the Listing Office in conjunction with the Court Registry shall:

(i) fix the date, time and place for a first appointment, allowing sufficient time for the applicant to comply with paragraph 3.2. The allocated first appointment should be within 28 days of the date of the issuing of the application;

(ii) endorse the date, time and place so fixed upon the copies of the application filed by the applicant; and

(iii) return the copies to the applicant forthwith

3.4 An application for an urgent or *ex parte* hearing may, with leave of the Court, be made in which case the applicant shall, upon making the application, file with the Court Registry the application in the appropriate form along with supporting affidavit (which should set out the reasons why an urgent or *ex parte* hearing is necessary).

3.5 Where the Court refuses to make an order on an *ex parte* application, it may direct that the application be made *inter partes*.

DATED this 8th day of July 2012

The Hon Anthony Smellie QC
Chief Justice

The following reference number should be quoted in any reply

No......

Tel: (345) 949-4296/244-3835
Fax: (345) 949-3817

CAYMAN ISLANDS

Chief Justice's Chambers
P.O. Box 495
Grand Cayman KY1-1106
CAYMAN ISLANDS

CIRCULAR MEMORANDUM

TO: **All Attorneys practicing in the Family Division of the Grand Court; Court Staff**

FROM: **Chief Justice**

DATE: **October 3 2012**

SUBJECT: **Circular Practice Memorandum**
In the Grand Court
The Family Division

Practical difficulties in complying with the requirement of Practice Direction No. 6 of 2012 for the filing of affidavits have been brought to my attention.

That concern, as well as the recent implementation of the Children Law, require the extensive revision of the practice in relation to Family and Children matters before the Family Division and before the Summary Court.

It is therefore intended that Practice Direction No. 6 of 2012 will in short order, be revoked and replaced.

In the meantime, in order to address the immediate concern about the filing of affidavits mentioned above, the following practice will be adopted until further notice; with Practice Direction No. 6 of 2012 otherwise continuing to apply:

> Instead of the requirement for the filing of an affidavit in support of a summons for a hearing, the parties shall file (within four (4) days prior to the family mention day hearing) a brief chronology, a statement of issues and, where a party is in a position to make a proposal for settlement (either on the interim or final basis) of a contentious issue; a position paper.

Hon. Anthony Smellie
Chief Justice

GRAND COURT PRACTICE DIRECTIONS NO. 7 OF 2012

(GCR O.1, r. 12)

PAYMENT SCHEDULES - AUTHORISED SIGNATORIES

(GCR O.92, r. 9)

1. This practice direction shall come into force on 1 December 2012. With effect from 1 December 2012 practice Direction No. 4 of 1995 is hereby revoked.
2. The following officers are authorised to sign Payment Schedules:

'A' Signatories -

The Chief Justice

Puisne Judges (including acting Judges)

Magistrates (including acting Magistrates)

Court Administrator

'B' Signatories

The Clerk of the Court

The Registrar of the Court of Appeal

Deputy Clerks of the Court

3. Payment Schedule requiring payment of-

(a) less than CI$ 10,000, US$12,000 or the equivalent in any other currency shall be signed by any 'A' or 'B' signatory;

(b) more than CI$ 10,000, US$ 12,000 or the equivalent in any other currency but less than CI$ 100,000, US$120,000 or the equivalent

in any other currency, shall be signed by an 'A' signatory or any two 'B' signatories; and

(c) more than CI$ 100,000, US$ 120,000 or the equivalent in any other currency, shall be signed by an 'A' signatory

Dated this 19th day of October 2012

Hon. Anthony Smellie

Chief Justice

GRAND COURT PRACTICE DIRECTION No. 1 OF 2013

(GCR O.1, r.12)

CONSENT ORDERS IN ANCILLARY RELIEF PROCEEDINGS

Practitioners are reminded that when the Court is asked to make an order by consent, embodying the terms of an agreed settlement of ancillary relief proceedings, the Court is still obliged to comply with the statutory duty imposed by Section 19 of the *Matrimonial Causes Act (as amended and revised)*.

1. In this regard, the Court will now require the following before exercising its powers under section 19:

   (i) Confirmation signed by both parties that they have made and received sufficient disclosure to enable them to make an informed decision to ask the Court to approve the terms contained within the proposed consent order.

   (ii) In the case of unrepresented parties, signed confirmation that they have been advised to seek legal advice in regard to the proposed settlement, and have either done so or have declined to do so.

   (iii) The lodging of a fully completed Statement of information for a consent order. (Where all of the parties attend the hearing of an application for financial relief or where the court is satisfied by the content of evidence already filed, the court may dispense with the lodging of a Statement of information and give directions for the information which would otherwise be required to be given in such a statement to be given in such manner as it sees fit).

This Practice Direction shall come into force on the 1st day of May 2013.

DATED this 9th day of April 2013

The Hon. Anthony Smellie

Chief Justice

Grand Court Form

STATEMENT OF INFORMATION FOR A CONSENT ORDER

The full names of the parties

Petitioner:

Respondent:

To be completed by the court

Date filed:

Case number:

The age of the parties and duration of the marriage

Petitioner:

Respondent:

Duration of the Marriage:

Important Note. This form is to be lodged when the Court is asked to make an order by consent embodying the terms of an agreed settlement of ancillary relief proceedings.

1 Summary of Means

Give as the date of the statement the approximate amount or value of capital resources and net income of the petitioner and respondent and, where relevant, any minor children of the family. State also the net equity in any property concerned and the effect of its proposed distribution State:

1. Capital Resources less any unpaid mortgage or charges
   - (i) Petitioner CI/US$
   - (ii) Respondent CI/US$
   - (iii) Children CI/US

2. Net Income
   - (i) Petitioner CI$
   - (ii) Respondent CI$
   - (iii) Children CI$

2 **Where the parties are to live**

Give details of what arrangements are intended for the accommodation of each of the parties and any children of the family

3 **Marital Plans**

Petitioner	Respondent	
Yes / No	Yes / No	has no present intention to marry or cohabit
Yes / No	Yes / No	has remarried
Yes / No	Yes / No	intends to remarry
Yes / No	Yes /No	intends to cohabit with another person

4 Notice to Chargee

To be answered by the applicant where the terms of the order provide for a transfer of property

Has any and every chargee of the property been served with a notice of the application

Yes / No

Has any objection to such a transfer been made by any charge within14 days from the date of service?

Yes / No

5. Give details of any especially significant matters including but not limited to how the attached proposed consent order was reached e.g. discussions between parties, negotiations through attorneys, mediation, or other out of court dispute resolution

Petitioner's Statement of Truth

I believe that the facts stated in this Statement of information for a consent order are true.

I confirm that I have read the consent order and the completed Statement of information for a consent order from the Respondent and that I have made and received sufficient disclosure to enable me to make an informed decision to ask the Court to approve the terms contained within the consent order attached.

[I confirm that I am unrepresented and I have had the opportunity to seek legal advice in regard to the proposed settlement, and have done so / have declined to do so]. *(delete if represented)*

I confirm that I have not been pressured in any way to endorse the terms of the consent order attached.

Print full name:

Name of Petitioner's attorney *(complete if represented)* :

Signed by Petitioner:

Dated:

Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified by a statement of truth.

Respondent's Statement of Truth

I believe that the facts stated in this Statement of information for a consent order are true.

I confirm that I have read the consent order and the completed Statement of information for a consent order from the Petitioner and that I have made and received sufficient disclosure to enable me to make an informed decision to ask the Court to approve the terms contained within the consent order attached.

[I confirm that I am unrepresented and I have had the opportunity to seek legal advice in regard to the proposed settlement, and have done so / have declined to do so]. *(delete if represented)*

I confirm that I have not been pressured in any way to endorse the terms of the consent order attached.

Print full name:

Name of Respondent's attorney *(complete if represented)* :

Signed by Respondent:

Dated:

Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified by a statement of truth.

GRAND COURT PRACTICE DIRECTION No. 2 OF 2013

(GCRO.1, R.12)

FINANCIAL SERVICES DIVISION PROCEDURE RELATING TO THE COMMENCEMENT AND MANAGEMENT OF FINANCIAL SERVICES PROCEEDINGS

1. Appointment of Registrar of the FSD

1.1 Ms. Tomica Daley has been appointed Registrar of the FSD, pursuant to Rule 2(1) of the Grand Court (Amendment) Rules 2009 with effect from 6th May 2013.

1.2 All communications with the Registrar should be —

(a) by hand delivery at the FSD Registry, 3rd Floor (Room#l0l), Kirk House; or

(b) by e-mail addressed to Tomica.Daley@judicial.ky; or

(c) by telephone 244 3808

2. Assignment of proceedings to a Judge of the FSD

2.1 It is the responsibility of the Registrar, acting in conjunction with the Chief Justice, to assign every financial services proceeding, as defined in OCR 0.72, r.1(2) to a named judge of the FSD at the time the proceeding is commenced.

2.2 It is the responsibility of the petitioner/plaintiff's attorney to provide the Registrar with any and all information which appears to that attorney to be relevant in determining which judge should be assigned to the matter. For example —

(a) If the plaintiff's attorney considers that it would be appropriate for two or more related matters to be assigned to the same judge, this

fact should be drawn to the attention of the Registrar in a letter delivered with the originating process; or

(b) If the plaintiffs attorney considers that it would be inappropriate for a matter to be assigned to a particular judge, for whatever reason, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process.

2.3 As soon as a judge has been assigned, the Registrar will —

(a) notify the parties' attorneys; and

(b) deliver the Court file to the assigned judge.

2.4 Attorneys can expect to be notified about the name of the assigned judge on the next business following the day on which the originating process is filed at the FSD Registry.

2.5 The docket of the financial services proceedings assigned to each Judge of the FSD will be updated by the judge's secretary and circulated weekly to the Chief Justice, the Registrar and the Listing Officer.

2.6 Attorneys are reminded that GCR O.5, r. 1(7) requires that the initials of the assigned judge be included in the title of the proceeding as part of the cause number. It follows that the assigned judge's initials must be included as part of the cause number as it appears in all pleadings, affidavits and orders.

3. Procedure for listing hearings

3.1 Ms. Yasmin Ebanks will continue to serve as Listing Officer of the FSD but effective immediately she will make Listings in consultation with the Registrar of theFSD.

3.2 All communications with the FSD Registry should be —

(a) by hand delivery at the FSD Registry, 3rd Floor (Room#l05), Kirk House; or

(b) by e-mail addressed to Tomica.Daley@judicial.ky

(c) listing for FSD cases will be primarily managed by the FSD Registrar in liaison with the Listing Officer. All requests for FSD listings must be made by email addressed to Tomica.Daley@judicial.ky

3.3 For the purpose of this Practice Direction the expression "hearing" shall include summonses for directions, case management conferences ("CMCs") (which may take the form of video or telephone conference calls), interlocutory applications and trials.

3.4 No matter can be listed for hearing unless and until the proceeding has been assigned to a judge of the FSD who has had an opportunity to review the Court file.

3.5 Practice Direction #1/2000 (Listing Forms) does not apply to FSD.

3.6 Notwithstanding that a primary objective of the FSD is to ensure the availability of judges, the Registrar of the FSD and Listing Officer are not authorised to fix any hearing date without the prior approval of the assigned judge. If the assigned judge is not already familiar with the issues or cannot readily ascertain the issues relevant to the proposed hearing by reviewing the Court file, the parties may be required to produce an agreed case memorandum in accordance with GCR O.72, r.4(3).

3.7 In the case of trials or other potentially lengthy hearings, the assigned judge in consultation with the Registrar and Listing Officer, will normally fix the hearing date at the hearing of a summons for directions or at a CMC in which all parties' attorneys (and their leading counsel) will be required to participate.

3.8 The Registrar will publish a monthly list (on the 1st of each month) of hearings scheduled in the FSD for the ensuing month.

4. Listing procedure in respect of Capital Reductions

4.1 When presenting a petition for an order confirming a resolution for reducing the share capital of a company (under s.15 of the Companies Act) the petitioner's attorney is required (pursuant to GCR O.102, r.6) to issue a summons for directions at the same time as presenting the petition.

4.2 The petitioner's attorney must provide the Registrar with a draft of the proposed order for directions including the timetable for the company meeting(s) and court hearing(s), together with a covering letter which explains whether and, if so, why the matter is particularly time sensitive.

4.3 If upon reading the petition, affidavit and written submissions, the assigned Judge is satisfied that settling a list of creditors should be dispensed with under s.15(3) or that the reduction is not an exceptional case where settlement of a list of creditors is required under s.15(2), and the materials filed do not disclose any other reason for the assigned judge to require additional evidence or submissions, then the Judge may make an order for directions without the need for a hearing. In all other cases the Judge will direct the Registrar to fix a hearing in chambers.

5. Listing procedure in respect of petitions for supervision orders under s.124

5.1 Attorneys should anticipate that supervision orders pursuant to s.124 of the *Companies Act (as amended and revised)* will normally be made without the need for any hearing (pursuant to CWR O.15, r.5(1).)

5.2 In the event that the petition gives rise to any issue in respect of which further evidence or submissions are required, the assigned judge may convene a CMC or direct the Listing Officer to fix a date for hearing the petition in open court.

6. Applications for an order that a company be restored to the Register

6.1 With effect from Monday 27th September 2010 applications made by a company or one of its members, which are governed by GCR O.102, r.17, will be determined by the Registrar of the FSD rather than the Clerk of the Court and Form Nos. 66 and 67 should be amended accordingly.

6.2 If the Registrar decides, pursuant to GCR O.102, r.17 (6) (c), that an application ought to be referred to a judge for an oral hearing, the Registrar will —

(a) assign the application to a judge of the FSD;

(b) fix a hearing date; and

(c) give notice of the hearing to the applicant by e-mail.

6.3 Applications made by creditors, which are governed by GCR O.102, r.18, will continue to be heard in open court by a judge of the FSD.

6.4 At the same time as assigning a creditor's application to a judge of the FSD, the Registrar will fix a hearing date. To enable the petitioner to advertise the petition and give other creditors an opportunity to be heard, the hearing will be fixed on a date not less than 21 days or more than 28 days after the date on which the petition is presented.

7. Applications for a direction that payment of court fees be deferred

7.1 An application by an official liquidator or officeholder for a direction, pursuant to Rule 6(4) of the *Court Fees Rules (as amended and revised)*, that payment of court fees be deferred must be made to the assigned judge.

7.2 Such applications should be made by letter addressed to the assigned judge (with a copy to the Registrar) and signed by the officeholder personally.

7.3 The application will be determined by the assigned Judge and that Judge's decision will be communicated to the applicant and the Registrar by the judge's secretary.

7.4 In the event that the application is refused, the officeholder shall have the right to ask the Judge to reconsider that Judge's decision, for which purpose the applicant may ask the judge's secretary to fix an appointment for the applicant to appear before the Judge in person.

7.5 The purpose of Rule 6(4) is to ensure that an officeholder who is required or entitled to make an application to the Court in the performance of a legal duty in circumstances where the court fees will be payable out of a fund under that officeholder's control, should not be deterred from performing that officeholder's duty by being put in the position of having to pay the court fees out of that officeholder's own pocket.

7.6 For the purposes of determining whether an official liquidator has under that official liquidator's control "sufficient money with which to pay the fees immediately" within the meaning of Rule 6(4), the judge will have regard to the general rules as to priority contained in CWR Order 20, the effect of which is that court fees rank ahead of an official liquidator's remuneration.

7.7 If the officeholder does have some cash or cash equivalent assets under that officeholder's control, that officeholder's application letter must state (a) the amount which is immediately available; (b) the amount which is likely to become available to that officeholder within the next 90 days; (c) the purposes for which the officeholder intends to spend such cash over the next 90 days; and (d) whether the officeholder has received any remuneration or holds funds in trust for that purpose.

8. Applications for a direction that multiple proceedings be treated as "consolidated" for the purposes of assessing court fees

8.1 An application by a petitioner/plaintiff for a direction that two or more separate proceedings governed by the Companies Winding Up Rules or GCR O.102 be treated as consolidated into one for the purposes of calculating the amount of fixed fees and/or court hearing fees payable pursuant to Rules 3 and/or 5 of the *Court Fees Rules (as amended and revised)* must be made to the Registrar.

8.2 Such applications should be made by letter addressed to the Registrar at the time of filing the originating process.

8.3 The application will be determined by the assigned judge and the provisions of paragraphs 7.3 and 7.4 above shall apply.

9. Case Management Conferences

9.1 Without prejudice to the requirements of 0.72, r.4 (2), the assigned Judge may convene a CMC whenever that Judge thinks fit.

9.2 A CMC may take the form of a telephone conference call, especially if foreign lawyers and leading counsel have been retained by any of the parties or the assigned judge is likely to be off the Island.

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

9.4 The etiquette for telephonic CMCs requires that all participating attorneys must be on line before the appointed time, so that the Judge will be the last person to join the conference, whereupon the Judge will ask all the participants to identify themselves.

9.5 Telephonic CMC's may not be tape recorded without the consent of the Judge. If the Judge permits or directs that the CMC be tape recorded, the Judge will direct that a written transcript be prepared, sent to the judge and circulated amongst the parties. Whenever a CMC is not tape recorded, the note taken or approved by the judge will constitute the official record.

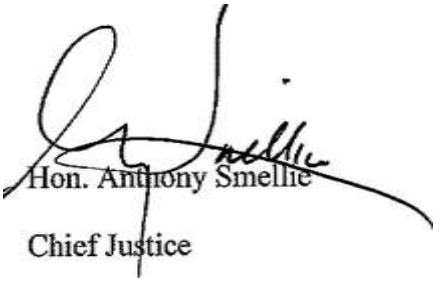
9.6 Hearing dates may be fixed by the assigned judge during the course of a CMC and, in appropriate cases, CMCs may be convened for the principal purpose of fixing the date for the trial or further hearings.

10. Availability of the Judges of the FSD

10.1 Judges of the FSD may conduct CMCs and, in appropriate cases, hear summonses for directions and interlocutory applications by means of telephone or video conferences when they are off the Island.

10.2 Paragraphs 9.4 and 9.5 above shall apply to any hearing which takes place by telephone or video conference.

11. This Practice Direction shall come into force on the 27th day of September 2013. With effect from 27th September 2013 Practice Direction No. 1 of 2010 is hereby revoked.



September 26, 2013

GRAND COURT PRACTICE DIRECTION No. 3 OF 2013

(Orders 3, 8, 9, 11, 15, 19 and 25 Companies Winding Up Rules (as amended and revised)

PROCEDURE FOR HEARING OF WINDING UP PETITIONS

With effect from Friday 1st March 2013, the *Companies Winding Up (Amendment) Rules 2013* amended Orders 3, 8, 9, 11, 15, 19 and 25 of the *Companies Winding Up Rules 2008* and varied the procedure for filing of Creditors' Petitions, Contributory Petitions and Authority's Petitions.

In order to ensure that winding up petitions and summonses for directions relating to winding up petitions are served with hearing dates on the same day that they are filed, the following procedure now governs the administrative process —

1. Winding up petitions must not be filed until after the case has been assigned to a Judge and a hearing date has been fixed.

2. Attorneys are required to deliver the winding up petition (and supporting affidavits) to the Registrar of the Financial Services Division together with a covering letter asking for the case to be assigned to a Judge and for a hearing date to be fixed. Any winding up petitions presented to the Civil Registry must be delivered to the Registrar of the Financial Services Division without being stamped and filed.

3. The Chief Justice will assign the matter to a Judge and return the file to the Registrar of the Financial Services Division.

4. A hearing date would normally be assigned within 24 hours after the Chief Justice assigns the matter to a Judge.

5. As soon as the hearing date has been fixed:-

(a) the assigned Judge's secretary should notify the Petitioner's attorneys of the hearing date, and request payment of fees;

(b) The assigned Judge's secretary should stamp and file the petition and return it to the Petitioner's attorney;

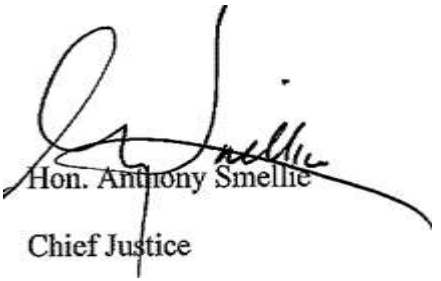
(c) the assigned Judge's secretary should notify the Petitioner's attorneys that the filed documents are ready for collection and payment of fees;

(d) the fees should then be paid; and

(e) the petition and supporting affidavits must be served forthwith.

Because the FSD cause number is generated by the Cash Office upon payment of the filing fee, it follows that cheques should not be accepted in respect of winding up petitions until after all the steps outlined above have been completed.

6. This Practice Direction shall come into force on the 27th September 2013.



Hon. Anthony Smellie

Chief Justice

September 26, 2013

GRAND COURT PRACTICE DIRECTION No 4 OF 2013

(GCR O. 1, r. 12)

JUDICIAL REVIEW — PRE-ACTION PROTOCOL FOR JUDICIAL REVIEW

(GCR O. 53)

Introduction

This protocol applies to all proceedings for judicial review in the Cayman Islands. It does not affect the time limit specified by GCR O. 53, r. 4 which requires that any application for judicial review must be filed promptly and in any event not later than 3 months after the grounds to make the claim first arose.[2]

1 Judicial review allows people with a sufficient interest in a decision or action by a public body to ask a judge to review the lawfulness of:

1.1 rules, and regulations, or other subordinate legislation; or

1.2 a decision, action or failure to act in relation to the exercise of a public function.

2 Judicial review may be used where there is no right of appeal or where all avenues of appeal have been exhausted.

3 Alternative Dispute Resolution ("ADR")

[2] Save where any statutory provision has the effect of limiting the time within which an application for judicial review may be made; see GC R 0. 53, r. 4(3). Although the Court does have the discretion under GCR O. 53, r. 4 to allow a late application, the Court will only permit this in exceptional circumstances. Compliance with this Protocol alone is unlikely to be sufficient to persuade the Court to allow a late application.

3.1 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the applicant and defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Court takes the view that litigation should be a last resort, and that proceedings should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court may have regard to such conduct when determining costs. However, parties should also note that an application for judicial review "*shall be made promptly and in any event within 3 months from the date when grounds for the application first arose*".

3.2 It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without recourse to litigation:

(a) discussion and negotiation;

(b) early neutral evaluation by an independent third party (for example, an attorney experienced in the field of administrative law or an individual experienced in the subject matter of the claim);

(c) mediation - a form of facilitated negotiation assisted by an independent neutral party.

3.3 It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

4 **Judicial review may not be appropriate in every instance. Applicants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before adopting this Protocol or issuing an application.**

5 This Protocol sets out a code of good practice and contains the steps which parties should generally follow before making an application for judicial review.

6 This Protocol does not impose a greater obligation on a public body to disclose documents or give reasons for its decision than that already provided for in statute or common law. However, where the Court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose sanctions. This Protocol will not be appropriate where the defendant does not have the legal power to change the decision being challenged. This Protocol will not be appropriate in urgent cases; for example, when directions have been set, or are in force, for the applicant's rem oval from the Cayman Islands, or where there is an urgent need for an interim order to compel a public body to act where it has unlawfully refused to do so; in such cases an application for judicial review should be made immediately. An applicant's letter before action will not stop the implementation of a disputed decision in all instances.

7 All applicants will need to satisfy themselves whether they should follow this Protocol, depending upon the circumstances of that applicant's case. Where the use of this Protocol is appropriate, the Court will normally expect all parties to have complied with it and will take into account compliance or non-compliance with the Protocol when giving direct ions for case management of proceedings or when making orders for costs. However, even in emergency cases, it is good practice to send a fax to the defendant a draft of the application for judicial review which the applicant intends to issue. An applicant is also normally required to notify a defendant when an interim mandatory order is being sought.

The applicant's letter before action

8 Before making a claim, the applicant should send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and to establish whether litigation can be avoided.

9 Applicants should normally use the suggested standard format for the letter outlined at Annex A.

10 The letter should contain the date and details of the decision, act or omission being challenged and a clear summary of the facts on which the application is based. It should also contain the details of any relevant information that the applicant is seeking and an explanation of why this is considered relevant.

11 The letter should normally contain the details of any interested parties known to the applicant. Those interested parties should be sent a copy of the letter before action for their information. Applicants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before sending the letter before action to other interested parties or issuing an application.

12 An application should not normally be issued until the proposed date for reply given in the letter before action has expired, unless the circumstances of the case require more immediate action to be taken.

The defendant's letter of response

13 Defendants should normally respond within 14 days of the letter before action using the standard format at Annex B. Failure to do so will be taken into account by the Court and sanctions may be imposed on the defendant unless there are good reasons not to do so.

14 Where it is not possible within the proposed time limit to reply substantively to the letter before action the defendant should send an interim reply and propose a reasonable extension within which to reply substantively to the letter before action. Where a defendant seeks an extension, it should give reasons and, where required, the additional information requested by the applicant in the letter before action. Proposing such an extension will not affect the time limit for the applicant to issue an application for judicial review nor will it bind the applicant where (s)he considers the proposal to be unreasonable. However, where the Court considers that a subsequent application for judicial review has been made prematurely it may impose sanctions.

15 If the defendant concedes the claim in full, its reply should say so in clear and unambiguous terms.

16 If the defendant concedes the claim in part or does not concede the claim at all, its reply should say so in clear and unambiguous terms, and:

16.1 where appropriate, contain a new decision, clearly identifying what aspects of the claim are being conceded and what are not, or,

give a clear timescale within which the new decision will be issued;

16.2 provide a fuller explanation for the decision, if it considers it appropriate to do so;

16.3 address any points of dispute, or explain why they cannot be addressed;

16.4 enclose any relevant documentation requested by the applicant, or explain why the documents are not being enclosed; and

16.5 where appropriate, confirm whether or not it will oppose any application for an interim remedy.

17 The response should be sent to all interested parties identified by the applicant and contain details of any other parties whom the defendant considers also have an interest.

ANNEX A

LETTER BEFORE ACTION

SECTION 1 - INFORMATION REQUIRED IN A LETTER BEFORE ACTION

Proposed claim for judicial review

1. To

   (*Insert the name and address (including post-office box number) of the proposed defendant - see details in section 2*.)

2. The applicant

   (*Insert the title, first and last name and the address (including post-office box number) of you, the applicant.*)

3. Reference details

   (*When dealing with large organisations it is important to understand that the information relating to any particular individual's previous dealings with it may not be immediately available. Therefore it is important to set out any relevant reference numbers for the matter in dispute and/or the identity of those within the public body who have been handling the particular matter in dispute.*)

4. The details of the matter being challenged

   (*Set out clearly the matter being challenged, particularly if there has been more than one decision.)*

5. The issue

(*Set out the date and details of the decision, or act or omission being challenged, a brief summary of the facts and why it is contended to be wrong. Consider attaching a draft of the Originating Summons*.)

6. The details of the action that the defendant is expected to take

(*Set out the details of the remedy you seek, including whether you are requesting a review or any interim remedy*.)

7. The details of your attorneys, if any, dealing with this application

(*Set out the name, address (including post-office box number), fax number and, if known, email address, and reference details of any attorneys dealing with the application on your behalf*.)

8. The details of any interested parties

(*Set out the details of any interested parties and confirm that they have been sent a copy of this letter*.)

9. The details of any information sought

(*Set out the details of any information that you seek. This may include a request for a fuller explanation of the reasons for the decision that is being challenged.*)

l 0. The details of any documents that are considered relevant and necessary

(*Set out the details of any documentation or policy in respect of which you seek disclosure and explain why these are relevant. If you rely on a statutory duty to disclose, you should specify that duty.*)

11. The address for reply and service of court documents

(*Insert the address (including post-office box number) to which the defendant should reply, including, where relevant, a fax number and/or email address.*)

12. Proposed reply date

(*The precise time will depend upon the circumstances of each individual case. Although a shorter or longer time may be appropriate in a particular case, in most circumstances it is reasonable to allow 14 days.*)

SECTION 2 - ADDRESS FOR SENDING THE LETTER BEFORE ACTION

Letters before action sent to statutory authorities should be addressed to the relevant Chief Executive Officer, Managing Director, or Director as the case may be. Letters before action to statutory tribunals should be addressed to the Chairperson of the Tribunal.

All letters before action should be copied to the Hon. Attorney General, Government Administration Building, 133 Elgin Avenue, George Town, P.O. Box 907, Grand Cayman KYl-1103, Cayman Islands.

ANNEX B

RESPONSE TO A LETTER BEFORE ACTION

INFORMATION REQUIRED IN A RESPONSE TO A LETTER BEFORE ACTION

Proposed claim for Judicial Review

1. Applicant

   (*Insert the title, first and last names and the address (including post-office box number) to which any reply should be sent. If responding to an attorney, the letter should also be sent by fax and/or email if the attorney's details are available.*)

2. From

   (*Insert the name and address of the defendant.)*

3. Reference details

   (*Set out the relevant reference numbers for the matter in dispute and the identity of those within the public body who have been handling the issue.*)

4. The details of the matter being challenged

   (*Set out details of the matter being challenged, providing a fuller explanation of the decision, where this is considered appropriate.*)

5. Response to the proposed application

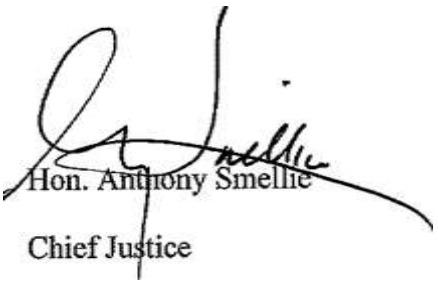
(*Set out whether the defendant concedes the issue in question in part, or in full, or will contest it. Where the defendant does not propose to disclose any information that the applicant has requested, the defendant should explain the reason for this. Where the defendant is sending an interim reply and there is a realistic prospect of settlement, it should include details.*)

6. Details of any other interested parties

(*Identify any other parties whom the defendant considers to have an interest in the issue to the extent that the applicant has not already confirmed that (s)he has sent to them a copy of the letter before action, and confirm that they have been sent a copy of this response letter and of the letter before action.*)

7. Address for further correspondence and service of court documents

(*Set out the address (including post-office box number and fax number and/or email address) for any future correspondence on this matter, and an address (including post-office box number for service of any court documents.*)



Hon. Anthony Smellie

Chief Justice

December 12, 2013

GRAND COURT PRACTICE DIRECTION NO. 1 OF 2014

PRACTICE GUIDANCE

Use of portable cameras, recording and electronic devices, including cellular phones and laptop computers, in and from court buildings, courtrooms and judges' chambers

The prevalent use of recorders, cellular phones, laptops and other devices, whether electronic or otherwise, and live text-based forms of communication (including texts and "Twitter") in court buildings and in particular in and from courtrooms and chambers has made it necessary to provide directions on their usage by attorneys and counsel and their assistants and employees attending court or chambers. Separate guidance is issued for the press and the general public **(see paras 1 to 16 in Practice Guidance below)**.

1. The following definitions shall apply:

(a) "**court**" means any courtroom or equivalent, including judge's chambers, or any other place in which judicial business is being carried out whatever type of matter is being or will be heard therein;

(b) "**court building**" means any building in which a court is located, whether permanently or temporarily;

(c) "**electronic device**" means, for these purposes:

(i) any type of portable phone or computer or any other device that is capable of receiving, transmitting, making, saving or recording messages or transcripts, whether verbal or written, images, sounds, data or other information by electronic or any other means;

(ii) any camera, whether a separate instrument or integrated within some other device and regardless of whether it operates electronically, mechanically or otherwise and whether it

records still or moving images by using digital technology, film, or any other means;

(iii) any recording device regardless of whether it operates electronically, mechanically or otherwise and whether it uses digital technology, tape or any other means.

(d) "**Judge**" includes, for this purpose, a Magistrate and a Justice of the Peace.

2. Possession and use of electronic devices:

(a) Generally: Subject to inspection by court security personnel and the restrictions in this Practice Direction, an electronic device, other than a separate camera, may be brought into a court building and used other than in a court in session for the purpose of making and receiving phone calls and electronic messages by e-mail, text, Twitter or otherwise for any lawful purpose not otherwise prohibited provided that no electronic device may be used to take photographs or in any manner whatsoever that interferes with proceedings in any court or with the work of any court or Judicial Administration staff or other official personnel in any way. Without prejudice to this generality, verbal use of any electronic device may not take place near the workstation or place of work of any member of such staff or personnel or near the door to any court in session.

(b) Court

(i) All electronic devices shall be turned off before entering a court in session and, subject to (ii) below, shall remain turned off while inside the court and no electronic device shall be used while in the court.

(ii) A presiding Judge will, in that Judge's discretion in the particular circumstances, usually allow the attorneys and counsel appearing in the hearing in the court (and their assistants and employees) to make reasonable and lawful use of electronic devices in the court in connection with the hearing concerned, provided that such use is not verbal, that

the electronic device is in "silent" mode or similar mode and that such use does not interfere in any way with the proceedings or inconvenience the Judge or anyone else present.

(iii) Under the direction of the Judge, electronic communication linking an on-site electronic device to an off-premises receiving device or network may be specifically permitted for the purpose of assisting the Court in its duties consistent with the provisions of the Practice Direction and Guidance.

(c) Security or privacy in a particular case: If, in the discretion of the presiding Judge the circumstances of a particular case or hearing raise security or privacy issues that the Judge considers justify a restriction on the use of electronic devices or any of them, the Judge may make a direction or order limiting or prohibiting such use in the court or in any other area of the court building designated by the Judge for the purpose. Such direction or order may provide for the collection by a marshal or court security official of all electronic devices in the possession of those present in the court or other designated area of the court building and their return when the persons who were in possession of such electronic devices leave the court or other designated area.

(d) Breach of Practice Direction

(i) A marshal or court security official, whether on the order or direction of a Judge or otherwise, may confiscate and retain any electronic device that is used in breach of this Practice Direction or of any order or direction of a Judge. Confiscation or retention shall operate subject to the direction or order of the court.

(ii) A Judge may direct the person in possession of any electronic device to delete any images or recordings made which are prohibited under this Practice Direction.

(iii) A marshal or court security official, on the order or direction of a Judge, may delete any images or recordings made which are prohibited under this Practice Direction

(iv) A person who willfully or persistently breaches this Practice Direction or any direction or order by a Judge in relation to any electronic device may be found in contempt of Court.

Dated the 6th day of January 2014

Hon. Anthony Smellie Q.C.
Chief Justice

PRACTICE GUIDANCE

1. This Practice Guidance (the Guidance) applies to court proceedings which are open to the public and to those parts of the proceedings which are not subject to reporting restrictions. It is issued (as guidance and not a Practice Direction) following a consultation relating to the use of live, text-based communications. Those consulted included the judiciary, the Attorney General, the Director of Public Prosecutions, the Bar, the Law Society, and Editors in addition to interested members of the public via the Judicial website.

2. The Guidance clarifies the use which may be made of live text-based communications, such as mobile email, social media (including Twitter) and internet enabled laptops in and from courts in the Cayman Islands. For the purposes of this Guidance these means of communication are referred to, compendiously, as live, text-based communications.

3. The Guidance is consistent with the general practice of the Courts to prohibit the taking of photographs in court and the use of sound recording equipment in court unless the leave of the judge has first been obtained. In addition, there is the general requirement that nothing should be published which is likely to prejudice a fair trial.

General principles

4. The Judge or Magistrate has an overriding responsibility to ensure that proceedings are conducted consistently with the proper administration of justice, and to avoid any improper interference with its processes.

5. A fundamental aspect of the proper administration of justice is the principle of open justice. Fair and accurate reporting of court proceedings forms part of that principle. The principle is however subject to well-known exceptions. Two such exceptions are the prohibitions, set out in paragraph 3, on photography in court and on making sound recordings of court proceedings.

6. The prohibition on photography in court, by any means, is absolute in the context of court hearings and in relation to those within the precincts of the court. Any equipment which has photographic capability must not have that function activated.

7. Sound recordings are also prohibited unless, in the exercise of its discretion, the court permits such equipment to be used. Some of the factors relevant to the exercise of that discretion are:

   (a) the existence of any reasonable need on the part of the applicant for leave, whether a litigant or a person connected with the press or broadcasting, for the recording to be made;

   (b) the risk that the recording could be used for the purpose of briefing witnesses out of court;

   (c) any possibility that the use of the recorder would disturb the proceedings or distract or worry any witnesses or other participants.

Use of live, text-based communications: general considerations

8. The normal, indeed almost invariable, rule has been that cellular phones must be turned off in court. There is however no statutory prohibition on the use of live, text-based communications in open court.

9. Where a member of the public, who is in court, wishes to use live text-based communications during court proceedings an application for permission to activate and use, in silent mode, a cellular phone, small laptop or similar piece of equipment, solely in order to make live, text-based communications of the proceedings, will need to be made. The application may be made by sending a written request to the judge through court staff.

10. It is presumed that a representative of the media or a legal commentator using live, text-based communications from court does not pose a danger of interference to the proper administration of justice in the individual case. This is because the most obvious purpose of permitting the use of live, text-based communications would be to enable the media to produce fair and accurate reports of the proceedings. As such, a representative of the media or a legal commentator who wishes to use live, text-based communications from court may do so without making an application to the court. To ensure the proper application of this direction, it will be necessary to maintain a register of accredited media representatives similar to that maintained by the Cayman Islands Parliament.

11. When considering, either generally or on its own motion, or following an application by a member of the public, whether to permit live, text-based communications, and if so by whom, the paramount question for the Judge will be whether the application may interfere with the proper administration of justice.

12. In considering the question of permission, the factors identified in relation to sound recordings above are likely to be relevant (paragraph 7 above).

13. Without being exhaustive, the danger to the administration of justice is likely to be at its most acute in the context of criminal trials, e.g. where witnesses who are out of court may be informed of what has already happened in court and so coached or briefed before they then give evidence, or where information posted on, for instance, Twitter about inadmissible evidence may influence members of a jury. However, the danger is not confined to criminal proceedings; in civil, and sometimes family proceedings, simultaneous reporting from the courtroom may create pressure on witnesses, distracting or worrying them.

14. It may be necessary for the Judge or Magistrate to limit live, text-based communications to representatives of the media for journalistic purposes but to disallow its use by the wider public in court. That may arise if it is necessary, for example, to limit the number of mobile electronic devices in use at any given time because of the potential for electronic interference with the court's own sound recording equipment, or because the widespread use of such devices in court may cause a distraction in the proceedings.

15. Subject to these considerations, the use of an unobtrusive, hand-held, silent piece of modern equipment for the purposes of simultaneous reporting of proceedings to the outside world as they unfold in court by accredited media representatives is generally unlikely to interfere with the proper administration of justice.

16. Permission to use live, text-based communications from court may be withdrawn by the court at any time if the presiding judge considers that the circumstances so require.

Dated the 6th day of January 2014

GRAND COURT PRACTICE CIRCULAR NO. 1 OF 2014

REQUIREMENT FOR STRICT COMPLIANCE WITH COURT ORDERS MADE IN THE FAMILY DIVISION OF THE GRAND COURT

1. Orders made by the Family Division of the Grand Court are not preferences, requests or mere indications; they are orders. Practitioners and those who appear before the Grand Court are reminded that orders, including interlocutory orders, must be complied with to the letter and on time.

2. In **Re W (A Child); Re H (Children)** [2013] EWCA Civ 1177 at paras. 52 & 53, Sir James Munby, President of the Family Division in England and Wales, stated:

> *'The court is entitled to expect - and from now on family courts will demand - strict compliance with all such orders. Non-compliance with orders should be expected to have and will usually have a consequence.*
> *Let me spell it out. An order that something is to be done by 4pm on Friday, is an order to do that thing by 4pm on Friday, not by 4.21 pm on Friday let alone by 3.01pm the following Monday or some time later the following week. A person who finds himself unable to comply timeously with his obligations under an order should apply for an extension of time before the time for compliance has expired. It is simply not acceptable to put forward as an explanation for non-compliance with an order the burden of other work. If the time allowed for compliance with an order turns out to be inadequate the remedy is either to apply to the court for an extension of time or to pass the task to someone else who has available the time in which to do it."*[3]

[3] Underlining made for the purposes of the Practice Circular

3. Sir James Munby reiterated these views at page **6** of the **7th View from the President's Chambers, January 2014**:

> *"What .... is for me a real concern is something symptomatic of a deeply rooted culture in the family courts which, however long established, will no longer be tolerated. I refer to the slapdash, lackadaisical and on occasions almost contumelious attitude which still far too frequently characterises the response to orders made by family courts. There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with to the letter and on time. Too often they are not. They are not preferences, requests or mere indications; they are orders. This principle applies as much to orders by way of interlocutory case management directions as to any other species of order. The court is entitled to expect - and from now on family courts will demand - strict compliance with all such orders. Both parties and non-parties to whom orders are addressed must take heed. Non-compliance with an order by anyone is bad enough. It is a particularly serious matter if the defaulter is a public body. Non-compliance with orders should be expected to have and will usually have a consequence: see Re W (A Child), Re H (Children) [2013] EWCA Civ 1177."*

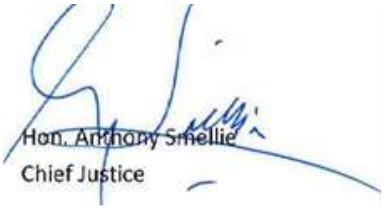
4. Regrettably the concerns expressed by the President of the Family Division in England and Wales are equally applicable to the response to orders from a number of attorneys and parties involved in proceedings before the Family Division of the Grand Court.

5. This Circular reaffirms the intention of the Judges that due regard be paid to the guidance given in the case law as summarised above by Sir James Munby.

6. Accordingly, persons who appear before the Grand Court are expected to comply with their plain and unqualified obligation to comply with the terms of a Court order made against or in respect of them, unless or until it is discharged. This obligation applies to all forms of orders including interlocutory case management directions.

7. If parties are unable to comply with the terms of an order, they are not entitled to agree a variation of the order without obtaining the Court's approval, and therefore must make the appropriate application to the Grand Court before the time for compliance has expired.

Issued by the Chief Justice following discussion with the Judges of the Family Division.



29 January 2014

GRAND COURT PRACTICE DIRECTION NO. 2 OF 2014

COMMUNICATIONS BETWEEN COUNSEL AND THE COURT ETC.

Communications with the trial Judge

1. There have been recent instances of counsel attempting to communicate directly with the Judge, particularly by e-mail. This is not permissible, may compromise the integrity of the proceedings concerned and should cease.

2. The general rule is that all out of court communications between counsel and the Court, whether written or oral, should take place with or through the Registrar, Listing Officer or Clerk of Court.

3. It has also become common place to find correspondence between the attorneys included in the court bundles. Normal party and party correspondence should not be included in bundles submitted to the court. There are occasional exceptions, such as where properly exhibited in an affidavit as evidence on a matter in issue, where necessary to support an application for a wasted costs order or where inclusion is expressly directed by the court.

Correspondence with the Registry

4. Normal party and party correspondence should not be copied to the Registry. The only correspondence which should be directed to the Registry is that which covers a filing, seeks a date or seeks some other form of action from the Registry.

5. Save as regards applications which are properly made on an ex parte basis without notice to any other party, no party should communicate with the Court without notice to all parties affected. In particular, save in such circumstances, all correspondence with the Court should be copied to the other parties.

Ex parte Applications

6. Counsel should note that an ex parte application is not the normal or ordinary means of applying for an injunction and the jurisdiction of the court to entertain an ex parte application for an injunction is predicated upon urgency. Thus GCR. 29 r. 1(2) provides:

> "(2) Where the case is one of urgency such application may be made *ex parte* on affidavit but, except as aforesaid, such applications must be made by motion or summons."

7. Counsel should also note that even where an ex parte application is justified on grounds of urgency, the application should ordinarily be made ex parte on notice unless the giving of notice is likely to defeat the application by reason of delay or may precipitate the action the application is designed to prevent: see the Supreme Court Practice 1999 Ed. at 29/1A/21 and 29/1A/25. Where prior notice of an ex parte application is not given, the supporting affidavit should ordinarily explain why.

Implementation of Orders

8. Counsel are reminded that in the case of Orders requiring action from the Registry (e.g. the setting of a date, or an order requiring the removal of a matter from the list) the attorney or firm having carriage of the Order should write to the Registry asking that the order be implemented.

Dated this 6th day of January 2014

The Hon. Anthony Smellie Q.C.

Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 3 OF 2014

JURY TRIALS

It is fundamental to a fair trial that jurors must have regard only to the evidence presented to them by the Court in arriving at their verdict. Jurors are invariably warned by the trial judge that taking account of irrelevant or extraneous matters will lead to unjust verdicts.

This fundamental principle applies with equal force to information that jurors might themselves encounter by use of the internet and by use of "social media". Miscarriages of justice have been known to occur when jurors resort to these sources of information during the course of trials.

The following direction is aimed at ensuring that jurors are advised against this improper practice and of the likely consequencies.

Jurors will be advised by the trial judge at the commencement of the trial that they must not post on the internet or in any social media any reference to the trial nor should they search the internet for anything related to the case. It is of critical importance that jurors take account only of evidence presented to them in court or information brought to their attention under a direction of the court. Jurors will be warned that any failure to comply with these directions will be treated as a contempt of court.

The following form of words may be used to convey these important messages at the discretion of the trial judge:

> "Everyone is entitled to a fair trial and to have their guilt or innocence decided only on the evidence put before the court during the trial; as a member of the jury in this case, you have sworn to try it in a fair and impartial manner.

Jurors must not look for information about the case themselves. You must not search the internet or any other source for information that may affect your consideration of the case. You must not take any account of any information that comes to your attention about the trial other than the evidence with which you are presented in court or which is brought to your attention under the direction of the court.

Jurors are not to post on the internet or in any "social media" (such as Face Book or Twitter) any reference at all to the trial. This includes any allegations, evidence or arguments during the trial.

Any accessing of the internet or any posting of comments on the social media will be a contempt of court and could result in you being sent to prison or fined."

Dated this 6th day of January 2014

The Hon. Anthony Smellie Q.C.
Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 4 OF 2014

ORDERS FOR SALES BY PRIVATE TREATY PURSUANT TO SECTIONS 75 AND 77 OF THE REGISTERED LAND ACT ("THE RLL").

This Practice Direction supplements Practice Direction No. 5 of 2012.

PREAMBLE

Applications to the court for orders sanctioning sales by private treaty pursuant to Section 77 of the RLL, are sought by way of variation of the operation of Section 75 which allows the chargee to sell by way of public auction acting "in good faith and hav(ing) regard to the interests of the chargor."

Practice Direction No. 5 of 2012 directs that the objectives of a public auction as contemplated by Section 75 can be achieved by way of listing on the Multiple Listing System by reference to a reserve sale price that reflects the fair market value of the property. This will usually be achieved by using two independent valuations (taking the median of the values where the valuers disagree). Where the reserve price is not met within a reasonable time, the discretion in the chargee to instruct its agent gradually to lower the reserve until the true market price is realised, must also be recognised.

1. This practice direction confirms that an application for leave to sell by private treaty will not be entertained unless there has been a fair attempt to market the property for sale on the open market, including by way of public auction in keeping with Practice Direction No. 5 of 2012.

2. Where that open market process yields an offer which the chargee wishes to accept but is concerned (for reason that the offer price is significantly below the reserve price or for some other good reason) to seek the sanction of the court pursuant to Section 77, such an application may be granted at

the discretion of the court. The court will, however, always be mindful of the fact that a chargee is not obliged to seek the sanction of the court in the exercise of its power of sale granted by Section 75 and will reserve its discretion as to the appropriate order for costs that it might make upon any application.

3. Where it is represented to the listing officer that an application must be taken urgently in order to comply with contractual deadlines for closure of sales, the listing officer may provide an urgent listing.

Dated this 6th day of January 2014

The Hon. Anthony Smellie, Q.C.
Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 5 OF 2014

(Court Fees (Amendment) (No. 3) Rules 2013)

1. Where, in accordance with the *Court Fees Rules (as amended and revised)*, Rule 3(10) (as amended), the Grand Court or the Court of Appeal authorises a bill to be taxed by a person other than the Clerk of the Court, the taxing officer shall be a person appointed as such and listed within Schedule 1 to this Practice Direction (as amended from time to time).

2. In determining whether to make that authorisation, the Court may consider whether the taxation can thereby be dealt with more expeditiously taking account of the amount of the bill and the complexity of the taxation.

3. The Court having made a direction in accordance with Rule 3(10), the allocation to a particular taxing officer will be made by the Clerk of Court also taking into account the likely nature and complexity of the taxation and any potential for a conflict of interest between any of the taxing officers and any of the parties involved in the taxation.

4. Where the Court has made a direction in accordance with Rule 3(10) any of the parties to the taxation may make representations to the Clerk of the Court regarding any potential conflict of interests with any of the taxing officers listed in Schedule 1 at any time up to 7 days after the lodging of the bill for taxation.

5. The Clerk of Court will allocate a taxation to a taxing officer within 10 days of the lodging of the bill for taxation and will notify the parties of the identity of the taxing officer and the fees that are payable under paragraph 5(2)(a) of Part C of the First Schedule to the Rules. No taxation will commence until the fees payable have been received.

6. Where fees are payable in accordance with paragraph 5(2)(b), the parties will be notified by the Clerk of Court of the amount payable within 7 days of the receipt by the Clerk of Court of the taxed bill. The certificate will not be issued until these fees are paid.

7. Where appropriate in a particular case, the Clerk of Court may delegate the functions described under paragraphs 3- 6 to a Deputy Clerk of Court or to the Registrar of the Court of Appeal.

Dated this 17th day of January 2014

The Hon. Anthony Smellie Q.C.
Chief Justice

TAXING OFFICERS APPOINTED BY THE CHIEF JUSTICE
(Grand Court Rules, Order 62 r. 3(1))

December 2013

Mrs. Delene Cacho (Legal Aid and general civil cases)

January 2014

Mrs. Eileen Nervik Q.C.
Huw Moses O.B.E.
William Helfrecht
Derek Jones

GRAND COURT PRACTICE DIRECTION NO. 5 OF 2014 (Amended)

1. Authority

1.1. This Practice Direction is made by the Chief Justice in accordance with *Court Fees Rules (as amended and revised)*, Rule 3(10), the Grand Court or the Court of Appeal authorizes a bill to be taxed by a person other than the Clerk of the Court, the taxing officer shall be a person appointed as such as listed within Schedule 1 to this Practice Direction (as amended from time to time) pursuant to Order 62, Rule 3 of the *Grand Court Rules (as amended and revised)* ("the GCR").

2. Commencement

2.1. This Practice Direction No. 5 of 2014 Amendment will come into effect on the 21st January 2021.

3. Introduction

3.1. In furtherance of the objectives of GCR Order 62 Rule 3, *Legal Aid Act, 2015* Section 28(7) and *Court Fees Rules (as amended and revised)*, Rule 3(10), this Practice Direction provides for the filing and an assigned attorney-at-law shall in due course submit their bill of costs to the Clerk of the Court for taxation. The filing and processing of these documents will improve access to justice by increasing efficiencies, timeliness and reducing costs.

3.2. This Practice Direction applies to all existing cases as well as new cases commenced on or after 21st January 2021 and can be used to file documents to commence or continue cases that are already before the Court.

3.3. The filing of documents for taxation means must be done in accordance with this Practice Direction.

3.4. Where, in accordance with the *Court Fees Rules (as amended and revised)*, Rule 3(10), the Grand Court or the Court of Appeal authorises a bill to be taxed by a person other than the Clerk of the Court, the taxing officer shall be a person appointed as such and listed within Schedule 1 to this Practice Direction (as amended from time to time).

3.5. In determining whether to make that authorisation, the Court may consider whether the taxation can thereby be dealt with more expeditiously taking account of the amount of the bill and the complexity of the taxation.

3.6. The Court having made a direction in accordance with Rule 3(10), the allocation to a particular taxing officer will be made by the Clerk of Court also taking into account the likely nature and complexity of the taxation and any potential for a conflict of interest between any of the taxing officers and any of the parties involved in the taxation.

3.7. Where the Court has made a direction in accordance with Rule 3(10) any of the parties to the taxation may make representations to the Clerk of the Court regarding any potential conflict of interests with any of the taxing officers listed in Schedule 1 at any time up to 7 days after the lodging of the bill for taxation.

3.8. The Clerk of Court will allocate a taxation to a taxing officer within 10 days of the lodging of the bill for taxation and will notify the parties of the identity of the taxing officer and the fees that are payable under paragraph 5(2)(a) of Part C of the First Schedule to the Rules. No taxation will commence until the fees payable have been received.

3.9. Where fees are payable in accordance with paragraph 5(2)(b), the parties will be notified by the Clerk of Court of the amount payable within 7 days of the receipt by the Clerk of Court of the taxed bill. The certificate will not be issued until these fees are paid.

3.10. Where appropriate in a particular case, the Clerk of Court may delegate the functions described under paragraphs 3- 6 to a Deputy Clerk of Court or to the Registrar of the Court of Appeal.

Dated this 21st day of January 2021

The Hon. Anthony Smellie Q.C.

Chief Justice

Schedule 1

TAXING OFFICERS APPOINTED BY THE CHIEF JUSTICE

(Grand Court Rules, Order 62 r. 3(1))

December 2013

Mrs. Delene Cacho (Legal Aid and general civil cases) – retired effective January 2021

January 2014

Mrs. Eileen Nervik Q.C. – retired effective January 2021

Huw Moses O.B.E.

William Helfrecht – retired effective 2019

Derek Jones

January 2021

Derek Jones (Legal Aid and general civil cases)

Robert Jones (Legal Aid and general civil cases)

GRAND COURT PRACTICE DIRECTION NO. 6 OF 2014

Procedure for making Summary Court Applications pursuant to the *Police Act (as amended and revised)* on Weekends and Public Holidays

Where an application for an order to extend the period of time a person may be kept in detention by the police requires to be made to a Summary Court on a weekend or a public holiday, the following protocol will be observed:-

1. The responsible officer of the Royal Cayman Islands Police Service ("RCIPS") shall communicate the need for an application to Crown Counsel, who will in turn contact the "designated court officer" (that is, the person identified by the Court Administrator or Clerk of Court for that purpose) and for these purposes telephone and email contact details of the designated court officer will be provided by notice to all interested parties. An appointed time for appearance for a hearing before a Summary Court will then be provided.

2. The responsible officer of the RCIPS must notify the Defence Counsel identified by the detainee to represent that detainee of the appointed time for attendance before the court.

3. When contacting the designated court officer, Crown Counsel will
   a. confirm that notice of the intended application was served on the detainee
   b. provide the name of Defence Counsel (if any) to be present, and
   c. advise whether an Interpreter is required for the hearing.

4. The designated court officer will ensure that
   a. the designated Magistrate is contacted as soon as possible after being advised of the time for the hearing

b. all necessary arrangements for the conduct of the hearing are made

c. Crown Counsel (and when known Defence Counsel) are advised of the courtroom and time fixed for the hearing

d. the attendance of a court Interpreter, should one be required, is arranged and

e. the attendance of a RCIPS Auxiliary Officer assigned to the courts as security officer is arranged.

5. The responsible officer of the RCIPS will transport the detainee to and (where an extension of the period of detention is allowed) from Court and will liaise with the RCIPS Auxiliary Officer for access to the Courthouse.

Dated this 30th day of April 2014

The Hon. Anthony Smellie, Q.C.
Chief Justice

GRAND COURT PRACTICE DIRECTION NO. 7 OF 2014

(Remand Proceedings by way of teleconference) - Criminal Procedure Code (as amended and revised)

1. Where the Court directs that remand proceedings be conducted by teleconference in accordance with section 60 of the *Criminal Procedure Code (as amended and revised)* ("CPC"), an accused person confined in prison will appear before the court by live television link from His Majesty's Prisons ("HMP") whether or not also represented by counsel present in court.

Scheduled Hearings

2. Where the Court makes a direction in accordance with section 60 of the CPC, hearings by teleconference will be scheduled on Tuesdays and Fridays, or on any other day that Criminal Mention Hearings are fixed.
3. Teleconference hearings between the Court and HMP will commence at 12 noon, or at any other time fixed by the presiding Magistrate and communicated to the parties in advance.
4. The time allotted for the appearance of each defendant on a remand hearing will be no more than 15 minutes unless the Court otherwise directs.

Unscheduled Hearings

5. Where it becomes apparent that an unscheduled hearing by teleconference would be the most appropriate way to proceed, the Director of Prisons or Defence Counsel may request that the Court so directs.

6. A request for an unscheduled hearing must be made to the "designated court officer" (that is, the person identified for that purpose by the Court Administrator or Clerk of Court. The designated officer (to be identified in Court Lists published weekly and available at www.judicial.ky) will seek the appropriate direction of the Chief Magistrate.

7. Where the Court so directs, the designated court officer will inform or direct that all persons concerned are informed of the date and time fixed for the hearing, and will ensure that arrangements are made for the hearing; including co-ordination with the Director of Prisons.

Service of Documents

8. If during the course of a teleconference hearing it becomes necessary or appropriate to serve documents (such as prosecution evidentiary or disclosure material) on a defendant who is confined at HMP, the documents may be served on Defence Counsel representing the defendant in court and Defence Counsel will be responsible for the delivery of the documents to the defendant at HMP unless the court is persuaded to otherwise direct.

9. Where the defendant is unrepresented, Crown Counsel will be responsible for the delivery of the documents to the defendant at HMP unless the court is persuaded to otherwise direct.

Pre-Court Conferences

10. Where a hearing has been scheduled in accordance with section 60 of the CPC, the Court will facilitate one half-hour private Pre-Court Conference by television link between Defence Counsel and the respective defendants detained at HMP.

11. Such a Pre-Court Conference shall be attended by Defence Counsel and by the assigned social worker or probation officer (if Defence Counsel so indicates in advance on behalf of the defendant) and no other person will be permitted to attend unless the Court so directs.

12. Pre-Court Conferences may be scheduled on Mondays, Wednesdays or Thursdays between the hours of 2.00 pm and 4.00 pm by contacting the designated officer who will allot the respective times for use of the court television link facilities. Requests for links for Pre –Court Conferences must be made at least 24 hours in advance to allow notification by the courts to HMP to ensure that the defendant will be produced at the other end of the link at HMP at the time arranged.

13. If for any reason it is not possible for the Court to facilitate a Pre-Court Conference, Defence Counsel will nonetheless remain responsible for taking such instructions from defendants as may be necessary for their representation at the scheduled remand hearing.

Co-ordination with HMP: Scheduled hearings and Pre-Court Conferences

14. By no later than 2:00 pm on the day prior to any Scheduled hearing or any Pre-Court Conference, the Courts will notify the Director of Prisons by email or fax of the name(s) of the defendant(s) who will appear by television link and of the time allotted for the appearance of each defendant, and the Director of Prisons will be responsible for ensuring the production of the defendant for the appearance at HMP at the appointed time. These email (or fax) notices will be copied to the respective Defence Counsel and to the Office of the Director of Public Prosecutions.

15. By no later than 9:30 am on the morning of any hearing (or in the case of a Pre-Court Conference, at least half hour before the appointed time) the Director of Prisons will be responsible for notifying the designated officer of any anticipated difficulty with ensuring the appearance of a defendant for the time appointed for that defendant's appearance.

16. By no later than 9:45 am, the court will be notified of any such difficulty to allow for the making of any alternative directions as may be appropriate in the circumstances.

Dated this 30th day of April 2014

The Hon. Anthony Smellie, Q.C.
Chief Justice

GRAND COURT PRACTICE CIRCULAR No. 9 OF 2014

(GCR O.1, r.12)
(GCR O. 52)
(GCR O.6(11)

COMMITTAL FOR CONTEMPT OF COURT – FAMILY DIVISION and IN "COURT OF PROTECTION MATTERS"

1. It is a fundamental principle of the administration of justice in the Cayman Islands that applications for committal for contempt should be heard and decided in public, that is, in open court.

2. The Grand Court when dealing with matters concerning the property of a person under disability or when dealing with the applications arising out of proceedings relating to a child,[4] is vested with a discretionary power to hear a committal application in private protection matters. This discretion should be exercised only in exceptional cases where it is necessary in the interest of justice. The fact that the committal application is being made in respect of a protection matter does not of itself justify the application being heard in private. Moreover the fact that the hearing of the committal application may involve the disclosure of material which ought not to be published does not of itself justify hearing the application in private if such publication can be restrained by an appropriate order.

3. If, in an exceptional case, a committal application is heard in private and the court finds that a person has committed a contempt of court it must state in public as required by Order 52 rule 6(2) of the Grand Court Rules:

[4] That is: in terms of GCR O.52(5)(i)(a) in relation to children: "where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of a child, or rights of access to a child".

(a) the name of that person;

(b) in general terms the nature of the contempt of court in respect of which the committal order ["committal order" for this purpose includes a suspended committal order] is being made; and

(c) the punishment being imposed.

This is mandatory; there are no exceptions. There are never any circumstances in which any one may be committed to custody without these matters being publicly stated.

4. Committal applications should at the outset be listed and heard in public. This applies to every committal application without exception. The application should be shown in the public court list as follows:

FOR HEARING IN OPEN COURT
Application by [full names of applicant] for
The Committal to prison of
[full names of the person alleged to be in contempt]

5. Whenever the court decides to exercise its discretion to sit in private the judge should, before continuing the hearing in private, give reasons in public for doing so. At the conclusion of any hearing in private the judge should sit in public to comply with the requirements set out in paragraph 3. If the judge, having decided to continue in private, adjourns the hearing to a future date the application should be shown in the public court list as:

FOR HEARING IN PRIVATE
Application by [full names of applicant] for
The Committal to prison of
[full names of the person alleged to be in contempt]

6. A person who is not a party to the proceedings is not entitled as of right to a copy of the application notice. The court may, however, authorise such a person to obtain a copy. If in an exceptional case the court decides that a copy of the application notice is not to be made available to a person who requests it, the judge must set out in writing the reasons for doing so.

7. Whenever a committal application is being heard in public the judge and the attorneys should be robed.

DATED this 2nd day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice

GRAND COURT PRACTICE DIRECTION No. 10 OF 2014

(GCR O.1, r.12)
(Section 9(4) of the Children Act (as amended and revised)

COURT WELFARE OFFICER'S REPORTS

1. Duties of reporter

1.1 Where the court directs an enquiry and report by a court welfare officer,[5] the *Children Act (as amended and revised)* provides[6] that it is the function of that officer to assist the court by investigating the circumstances of the child, or children, concerned and the important persons in their lives, to report what that officer sees and hears, to offer the court that officer's assessment of the situation and, where appropriate to make a recommendation. In such circumstances, it is not the role of the welfare officer to attempt conciliation, although that officer may encourage the parties to settle their differences if the likelihood of a settlement arises during the course of that officer's enquiries.

[5] A social worker, employed by the Department of Children and Family Services or such other person as the Department considers appropriate.
[6] Section 9 of the 2012 Revision which also (in subsection (4) provides that it shall be the duty of Department of Children and Family Services to comply with the direction of the Court.

1.2 The report must be filed by the court welfare officer at the court by or on the ordered date. If exceptional circumstances necessitate an extension of time to enable completion of the report, the welfare officer must make a timely written request to the court. The court welfare officer, in that officer's written request for an extension of time to file the report, shall set out detailed reasons why this is required, the date that the case was allocated to the court welfare officer and the requested new date for submission. It is not to be assumed that an extension will be granted and the welfare officer must proceed to meet the deadline unless and until the judge grants the extension.

1.3 Where in the course of preparing a report in private law proceedings, the court welfare officer becomes aware that a child may have been abused, the reporter is not fettered from exercising that officer's independent discretion in reporting that officer's findings to the Department of Children and Family Services or to the police. However, that officer must inform the Judge of the steps that officer has taken at the earliest opportunity so that the Judge can consider the impact of the development and the need for consequential directions.

2. Confidential nature of the report

2.1 The following wording must be boldly endorsed on all court welfare reports filed in Family Division proceedings and on all copies which are supplied to the parties and their attorneys.

"This report has been prepared for the court and should be treated as confidential. It mustnot be shown nor its contents revealed to any person other than a party or a legal adviserto such a party. Such legal adviser may make use of the report in connection with an application for legal aid."

3. General considerations when requesting a court welfare officer's report

3.1 When a report is ordered, the court shall promptly complete a written Referral Form [7] which shall be promptly submitted to the Department of Children and Family Services. The Referral Form shall contain a very brief note of the background to the case, details of the order/directions made at the time of the referral, the required submission date for the report and an indication whether the court welfare officer is required to attend the hearing. Subject to any order that the court may make, if a party no longer requires the attendance of the court welfare officer at the hearing that party must notify the court at least five clear working days prior to the hearing.

3.2 The court shall specify in the Referral Form those matters on which the report is to be made.

3.3 Such specifications will not prevent the reporting officer from bringing to the notice of the court any other matters which the reporting officer considers that the court should have in mind.

3.4 The court when submitting the Referral Form to the Department of Children and Family Services shall attach a copy of the Background Information Form[8] to facilitate the court welfare officer in making initial contact with the parties.

3.5 Before ordering a report, the court should balance the need for a report against the effect of delay caused by the preparation of the report.

[3] Appendix 1.
[4] Appendix 2.

3.6 In deciding whether a report should be ordered, consideration should be given to:

(a) determining what issues require a report and how important they are;

(b) whether these issues are likely to be resolved by mediation. If they can, the court should consider whether a decision on ordering a report should be postponed until mediation has taken place;

(c) whether the report is likely to produce factual information which the court needs to resolve the issues;

(d) whether the court, depending on the nature of the issues involved, needs professional advice;

(e) what delay will the preparation of the report cause and how detrimental would that be; and

(f) whether it is appropriate to delay a decision on whether to order a report.

3.7 Bearing in mind that contested *Children Act (as amended and revised)* cases often take several days to be heard, in cases where the attendance of the reporting officer is required, the parties shall agree a convenient date and time for the reporting officer's attendance before the court.

Dated this 2nd day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice

APPENDIX 1

REFERRAL FORM – COURT WELFARE OFFICER'S REPORT

For the Attention of: The Cayman Islands Department of Children and Family Services

Please note: Section 9 (4) of the Children Act (as amended and revised) provides that "it shall be the duty of the Department to comply with any request for a report under this section."

Cause No **/20**

Judge:

Applicant:

Respondent:

Child: **(DOB) –Aged - Male/Female**

Referred to: Investigative ☐ Counselling ☐

Report on issue of

requested:

TO BE FILED NO LATER THAN_____ – No extensions will be given without permission of the Court, to be granted only upon written application to the Court by the Court Welfare Officer

Interim ☐ Special Request ☐ Comprehensive ☐

Order:

(1) (directions and orders made) .

(2)

(3)

(4)

(5) The reporting officer(, who will be notified of the date,) is to attend the final hearing(at am/pm on day of 20) of this matter unless notified otherwise by the Court.

(6) The parties are to notify the Court by no later than 5 working days prior to the final hearing if they do not require the Reporting Officer to attend the hearing

Further Details:

(set out brief background)

The Court seeks a report in relation to

The Welfare officer is requested to

Report ordered by:

Date: day of 20

Appendix 2

GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION
BACKGROUND DETAILS FORM

CAUSE NO._____

PARTIES:

Applicant:	**Respondent:**
_____	vs. _____

Applicant's Address/ Contact Details:	**Respondent's Address/Contact Details:**
House/Apt #:_____	House/Apt #:_____
Street: _____	Street:_____
District: _____	District:_____
Work Phone: _____	Work Phone: _____
Cell Phone:_____	Cell Phone: _____
Email: _____	Email:_____
Other Email: _____	Other Email: _____

Applicant's Attorney:	**Respondent's Attorney:**
Name: _____	Name:_____
Firm: _____	Firm: _____
Phone: _____	Phone: _____
Email: _____	Email: _____

Dated this day of 20 .

GRAND COURT PRACTICE DIRECTION No. 11 OF 2014

(GCR O.1, r.12)

COURT BUNDLES IN FAMILY PROCEEDINGS IN THE FAMILY DIVISION OF THE GRAND COURT

1. Introduction

1.1 In Re X and Y (Bundles) [2008] 2 FLR 2053, Munby J (as he was then) issued a stern warning in open court to all practitioners, pointing out that far too often the requirements of the 2006 Practice Direction in England and Wales concerning court bundles were not observed and that this was unacceptable. Munby J indicated that orders for costs can be made against either the party in default or against the defaulting lawyers. Furthermore, he warned that in particularly flagrant cases, defaulters may be publicly identified in open court.

1.2 Regrettably, the concerns expressed are equally applicable to the Cayman Islands due to frequent non-compliance with Practice Direction No. 2/96. Bundles are often incomplete or not up to date. Bundles often arrive late or not at all. Too often bundles, skeleton arguments and other preliminary documents are handed in on the evening before or on the morning of the hearing.

1.3 This Practice Direction is issued to achieve consistency in the preparation of court bundles and in respect of other related matters heard in the Family Division of the Grand Court. The Practice Direction sets out very prescriptive requirements as to the content and format of the 'preliminary documents' which are to be included in every bundle. This will enable the judge to embark upon the necessary pre-reading in a structured and focused way and thereby, at the outset of the hearing,

allowing the parties to proceed immediately to the heart of the matter, without the need for any substantial opening andwith the parties focusing upon previously identified issues. The practice direction will also ensure that the bundles are paginated, in an organised form and encourage careful consideration to what documents should actually be included in the bundle. The objective is to shorten the length of hearings and to ensure that litigants who comply with practice directions do not suffer delay and prejudice as a result of the default or poor preparation of others.

2. Application of the practice direction

2.1 The following practice applies to all hearings in the Family Division of the Grand Court except for:

(a) cases listed for one hour or less; and

(b) the hearing of any urgent application where and to the extent that it is impracticable to comply with the practice.

3. Responsibility for the Preparation of the bundle

3.1 A bundle for the use of the court at the hearing shall be provided by the party in the position of applicant at the hearing (or, if there are cross-applications, by the party whose application was first in time) or, if that person is a litigant in person, by the first listed respondent who is not a litigant in person.

3.2 The party preparing the bundle shall paginate it. If possible the contents of the bundle shall be agreed by all parties.

4. Contents of the bundle

4.1 The bundle shall contain copies of all documents relevant to the hearing, in chronological order from the front of the bundle, paginated and indexed, and divided into separate sections (each section being separately paginated) as follows:

(a) preliminary documents (see paragraph 4.2) and any other case management documents required by any other practice direction;

(b) applications and orders;

(c) statements and affidavits (which must be dated in the top right corner of the front page);

(d) care plans (where appropriate);

(e) experts' reports and other reports (including those of a social worker or children's guardian ad litem); and

(f) other documents, divided into further sections as may be appropriate.

4.2 At the commencement of the bundle there shall be inserted the following documents (the preliminary documents):

(a) an up to date summary of the background to the hearing confined to those matters which are relevant to the hearing and the management of the case and limited, if practicable, to one A4 page;[9]

(b) a statement of the issue or issues to be determined (1) at that hearing and (2) at the final hearing;

(c) a position statement by each party including a summary of the order or directions sought by that party (1) at that hearing and (2) at the final hearing;

(d) an up to date chronology, if it is a final hearing or if the summary under 4.2(a) is insufficient;

[1] Note that GCR Order 66 r.1 provides that unless impracticable, every document prepared by a party for use in the Court must be on letter sized paper and suggests that A4 paper should only be used where unavoidable.

(e) skeleton arguments, if appropriate, with copies of all authorities relied on; and

(f) a list of essential reading for that hearing.

4.3 Each of the preliminary documents shall state on the front page immediately below the heading the date when it was prepared and the date of the hearing for which it was prepared.

4.4 The summary of the background, statement of issues, chronology, position statement and any skeleton arguments shall be cross-referenced to the relevant pages of the bundle.

4.5 The summary of the background, statement of issues, chronology and reading list shall in the case of a final hearing, and shall so far as practicable in the case of any other hearing, each consist of a single document in a form agreed by all parties. Where the parties disagree as to the content the fact of their disagreement and their differing contentions shall be set out at the appropriate places in the document.

4.6 Where the nature of the hearing is such that a complete bundle of all documents is unnecessary, the bundle (which need not be repaginated) may comprise only those documents necessary for the hearing, but

(a) the summary (paragraph 4.2(a)) must commence with a statement that the bundle is limited or incomplete; and

(b) the bundle shall if reasonably practicable be in a form agreed by all parties.

4.7 Where the bundle is re-lodged in accordance with paragraph 8.2, before it is re-lodged:

(a) the bundle shall be updated as appropriate; and

(b) all superseded documents (and in particular all outdated summaries, statements of issues, chronologies, skeleton arguments and similar documents) shall be removed from the bundle.

5. Format of the bundle[10]

5.1 The bundle shall be contained in one or more A4 size ring binders (each ring binder being limited to no more than 350 pages). Bundles not exceeding 50 pages in length may be firmly stapled in the top left hand corner and shall be punched with a hole for filing.

5.2 All ring binders shall have clearly marked on the front and the spine:

(a) the title and number of the action;

(b) the court where the case has been listed;

(c) the hearing date and time;

(d) if known, the name of the judge hearing the case; and

(e) a description or index of the documents contained therein; and

(f) where there is more than one ring binder, a distinguishing letter (A, B, C etc).

6. Timetable for preparing and lodging the bundle

6.1 The party preparing the bundle shall, whether or not the bundle has been agreed, provide a paginated index to all other parties not less than 5 working days before the hearing.

6.2 The bundle (with the exception of the preliminary documents if and insofar as they are not then available) shall be lodged with the court not less than 3 working days before the hearing, or at such other time as may be specified by the judge.

[2] See GCR Order 66 r.5

6.3 The preliminary documents shall be lodged with the court no later than 9.30 am on the day before the hearing and if the name of the judge is known, shall at the same time be sent by email to the judge's personal assistant.

7. Lodging the bundle

7.1 Unless the judge has given some other direction as to where the bundle in any particular case is to be lodged (for example a direction that the bundle is to be lodged with the judge's personal assistant) the bundle shall be lodged at the office of the Family Proceedings Unit at the Grand Court.

7.2 Any bundle sent to the court by post or courier shall be clearly addressed to the appropriate office and shall show the date and place of the hearing on the outside of any packaging as well as on the bundle itself.

7.3 Parties shall:

(a) if the bundle or preliminary documents are delivered personally, ensure that they obtain a receipt from the clerk/court officer accepting it or them;

(b) if the bundle or preliminary documents are sent by post, ensure that they obtain proof of posting or dispatch; and

(c) if the bundle or preliminary documents are sent by courier obtain proof of delivery.

The receipt (or proof of posting, dispatch or delivery, as the case may be) shall be brought to court on the day of the hearing and must be produced to the court if requested.If the receipt (or proof of posting dispatch or delivery) cannot be produced to the court the judge may:

(i) treat the bundle as having not been lodged; and

(ii) take the steps referred to in paragraph 11.

7.4 Bundles or preliminary documents delivered after 9.30 am on the day before the hearing will not be accepted by the Family Proceedings Unit and shall be delivered directly to the judge's personal assistant.

8. Removing and re-lodging the bundle

8.1 Following completion of the hearing the party responsible for the bundle shall retrieve it from the court immediately or, if that is not practicable, (for instance, if needed by the judge for writing a ruling or judgment), shall collect it from the court within 5 working days. Bundles which are not collected in due time may be destroyed.

8.2 The bundle shall be re-lodged for the next and any further hearings in accordance with the provisions of this practice direction and in a form which complies with paragraph 4.7.

9. Time Estimates

9.1 In every case a time estimate (which shall be inserted at the front of the bundle) shall be prepared which shall so far as practicable be agreed by all parties and shall:

(a) specify separately:

(i) the time estimated to be required for judicial pre-reading; and

(ii) the time required for hearing all evidence and submissions; and

(b) be prepared on the basis that before they give evidence all witnesses will have read all relevant filed statements and reports.

9.2 Once a case has been listed, any change in time estimates shall be notified immediately by telephone (and then immediately confirmed in writing) to the Listing Office.

10. Taking cases out of the list

10.1 As soon as it becomes known that a hearing will no longer be required, whether as a result of the parties reaching agreement or for any other reason, the parties and their representatives shall immediately notify the court by telephone and by letter. The letter, which shall wherever possible be a joint letter sent on behalf of all parties with their signatures applied or appended, shall include:

(a) a short background summary of the case;

(b) the written consent of each party who consents and, where a party does not consent, details of the steps which have been taken to obtain that party's consent and, where known, an explanation of why that consent has not been given;

(c) a draft of the order being sought; and

(d) enough information to enable the court to decide:

(i) whether to take the case out of the list; and

(ii) whether to make the proposed order.

11. Penalties for failure to comply with the practice direction

11.1 Failure to comply with any part of this practice direction may result in the judge removing the case from the list or putting the case further back in the list and may also result in a "wasted costs" order or some other adverse costs order.

DATED this 2nd day of May 2014

The Hon. Anthony Smellie, QC

Chief Justice

GRAND COURT PRACTICE DIRECTION No. 12 OF 2014

(GCR O.1, r.12)

ARRIVAL OF CHILDREN IN THE CAYMAN ISLANDS BY AIR

1. Where a person seeks an order for the return to that person of children about to arrive in the Cayman Islands by air and desires to have information to enable that person to meet the aircraft, the Judge should be asked to include in that Judge's order a direction that the airline or person operating the flight, and, if that person has the information, the immigration officer at the appropriate airport, should supply such information to that person.

2. To obtain such information in such circumstances in a case where a person already has an order for the return to that person of children, that person should apply to a judge *ex parte* for directions for those purposes.

DATED this 2nd day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice

GRAND COURT PRACTICE DIRECTION No. 13 OF 2014

(GCR O.1, r.12)

CONTRIBUTION ORDERS

1. Paragraph 19(6) of Schedule 2 to the *Children Act (as amended and revised)* provides that where –
   (a) a contribution order is in force;
   (b) the Department of Children and Family Services serve another contribution notice; and
   (c) the contributor and the Department reach an agreement under paragraph 18(7) in respect of that other contribution notice, the effect of the agreement shall be to discharge the order from the date on which it is agreed that the agreement shall take effect.
2. Where the Department of Children and Family Services notifies the court of an agreement reached under paragraph 19(6) of Schedule 2 to the *Children Act (as amended and revised)*, the notification must be sent in writing to the designated officer of the court.

DATED this 2nd day of May 2014

The Hon. Anthony Smellie QC,
Chief Justice

GRAND COURT PRACTICE DIRECTION No. 14 OF 2014

(GCR O.1, r.12)

RECOMMENDED PRACTICES IN THE FAMILY DIVISION OF THE GRAND COURT WHEN INITIATING DIRECT JUDICIAL COMMUNICATION WITH A JUDGE IN A FOREIGN COURT

Introduction

Judges in the Cayman Islands may have to communicate directly with judges in foreign jurisdictions, in particular in cases involving allegations of abduction of children. This may happen when there are concurrent proceedings relating to the same parties in each jurisdiction. It involves communication between judges, with the knowledge of the parties, possibly in a joint hearing with the parties and their attorneys at law present. The purpose of the communication is to coordinate and harmonise the proceedings so that a resolution of all of the outstanding issues can be reached in a just, timely and cost effective manner. The communications do not relate to the merits of either proceedings.

This Practice Direction and the guidance it contains are intended to establish a consistent and fair procedure which does not interfere with the judicial independence of either court.

1. Due process and transparency

1.1 Every Judge engaging in direct judicial communication must respect the law in that Judge's jurisdiction.

1.2 Notification of the parties about communication: - The parties and/or attorneys at law involved should be notified in advance if possible of the nature of the proposed communication provided that such notice does not unduly delay the process.

1.3 Record of the communication —

(a) Judges involved in a particular communication should keep a record of what was discussed preferably using a recording device or court reporter.

(b) The record should be available to the parties and the judge in the other jurisdiction if requested.

(c) Any correspondence, emails or other written communication between judges should be preserved for the record.

1.4 Participation of the parties —

(a) If both judges involved in the communication agree, the parties or their attorney at law may be permitted to be present during the communication.

(b) If both judges involved in the communication agree to permit one party or attorney at law to be present, then the other party or attorney at law should be permitted to be present.

(c) Unless it would unduly delay the process, parties or their attorney at law would be encouraged to be present for example via conference call facility.

(d) If both judges involved in the communication agree, the parties or their attorney at law may be permitted to speak during the communication.

(e) If the judges involved in the communication agree to permit one party or attorney-at-law to speak, then the other party or attorney at law should be permitted a chance to answer.

(f) Consideration may be given to allow the attorneys at law to submit a question or provide information relating to the proposed communication.

1.5 Language — Because of the necessity for clarity and precision, where there are language differences, and where interpretation is needed, professional interpreters are preferred.

1.6 Consensus or Arrangements: - Confirmation of any consensus or arrangements reached as between judges should be confirmed in writing and made available to the parties.

2. Nature of the request to communicate

2.1 Is there a question of foreign law or procedure to discuss with a judge in the foreign jurisdiction?

a) Is there a case pending before the foreign court?

b) If so, is there a need to speak with the judge who actually handled portions of the case, or will any judge in the foreign jurisdiction suffice?

c) If no case is pending, consider the difficulty in finding a judge with whom to communicate in the foreign jurisdiction. In this instance, if the case is a Hague Convention case, if there is a Hague Network judge, consider contacting that judge.

2.2 The judge involved in the communication should avoid discussions with the foreign judge about the merits of the case.

2.3 If it is a Hague Convention case, can the question be answered or dealt with by the Central Authority in your jurisdiction or the Central Authority in the foreign jurisdiction? If it can, consider having the Central Authority address the issue or obtain the information.

2.4 Specific examples of questions of foreign law or procedure that may arise in Hague Convention cases include —

(a) scheduling of the case in the foreign jurisdiction

(i) making of interim orders, e.g. support, protection orders;

(ii) availability of expedited hearings;

(b) availability of protective orders for the child or either parent;

(c) can the foreign court accept and enforce undertakings offered by the parties in your jurisdiction?

(d) is the foreign court willing to entertain a mirror order (same order in both jurisdictions) if the parties are in agreement?

(e) are criminal charges pending in the foreign jurisdiction against an abducting parent?

(f) can the abducting parent return to the foreign jurisdiction if an order is made returning the child to that jurisdiction?

(g) what services are available to the family or the child upon the return of the child?

(h) logistics of returning the child.

3. Setting up the communication and initiating the contact

3.1 Where appropriate, the initiating judge should invite the parties or their attorneys at law to make submissions as to whether there should be direct judicial communication and the nature of the communication;

3.2 If the initiating judge decides such communication should be made he/she may do so by —

(a) contacting the judge directly; or

(b) contacting the Hague Network judge for the Cayman Islands who will assist in facilitating communication between the initiating judge and the appropriate judge in the other jurisdiction.

3.3 The initial communication should be in writing (fax or e-mail) and should identify —

(a) the initiating judge;

(b) the nature of the case (with due regard to confidentiality concerns);

(c) the issue on which communication is sought;

(d) whether further documents should be exchanged;

(e) when the communication should occur (with due regard to time differences);

(f) any specific questions which the initiating judge would like answered;

(g) any other pertinent matters.

3.4 Unless the initiating judge decides otherwise, all written communications should be copied to the parties or their attorney-at-law.

3.5 If the other jurisdiction is not English speaking, the initiating judge should make their best efforts to have the initial communication appropriately translated.

DATED this 2nd day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice

GRAND COURT PRACTICE DIRECTION No. 15 OF 2014

(GCR O.1, r.12)

INHERENT JURISDICTION (INCLUDING WARDSHIP) PROCEEDINGS

1. The Nature of Inherent Jurisdiction Proceedings

1.1 It is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and properly taken care of. The court may in exercising its inherent jurisdiction make any order or determine any issue in respect of a child unless limited by case law or statute. Such proceedings should not be commenced unless it is clear that the issues concerning the child cannot be resolved under the *Children Act (as amended and revised).*

1.2 The court may under its inherent jurisdiction, in addition to all of the orders which can be made in family proceedings, make a wide range of injunctions for the child's protection of which the following are the most common –

(a) orders to restrain publicity;

(b) orders to prevent an undesirable association;

(c) orders relating to medical treatment;

(d) orders to protect abducted children, or children where the case has another substantial foreign element; and

(e) orders for the return of children to and from another state.

1.3 The court's wardship jurisdiction is part of and not separate from the court's inherent jurisdiction. The distinguishing characteristics of wardship are that –

(a) custody of a child who is a ward is vested in the court; and

(b) although day to day care and control of the ward is given to an individual or to the Department of Children and Family Services,

no important step can be taken in the child's life without the court's consent.

2. Parties

2.1 Where the child has formed or is seeking to form an association, considered to be undesirable, with another person, that other person should not be made a party to the application. Such a person may be made a respondent only to an application within the proceedings for an injunction or committal. Such a person should not be added to the title of the proceedings nor allowed to see any documents other than those relating directly to the proceedings for the injunction or committal. That person should be allowed time to obtain representation and any injunction should in the first instance extend over a few days only.

3. Removal from jurisdiction

3.1 A child who is a ward of court may not be removed from the Cayman Islands without the court's permission. Practice Direction No. 16 of 2014 (International Child Abduction) deals in detail with locating and protecting children at risk of unlawful removal.

3.2 Where care and control has been given to the Department of Children and Family Services, or to an individual, it is permissible for the court to give general leave to make arrangements to remove the ward for temporary visits abroad in suitable cases, thereby obviating the need to make application for leave, each time it is desired to remove the ward from the jurisdiction. General leave is conditional upon the party obtaining the order lodging at the registry of the Family Division at least seven days before each proposed departure:

(a) a written consent in unqualified terms by the other party or parties to the ward's leaving the Cayman Islands for the period proposed;

(b) a statement in writing, giving the date on which it is proposed that the ward shall leave the Cayman Islands, the period of absence and the whereabouts of the ward during such absence; and, unless

otherwise directed, a written undertaking by the applicant to return the ward to the Cayman Islands at the end of the proposed period of absence.

On compliance with these requirements a certificate, for production to the Department of Immigration, stating that the conditions of the order have been complied with, may be obtained from the Registry.

4. Interviewing the Ward for the Proceedings

4.1 A ward may be seen by a welfare officer appointed by the court for the purposes of preparation of a welfare report, or by that ward's Guardian Ad Litem for instructions to an attorney for the purposes of presenting that ward's case. In those circumstances leave is not required. For an independent reporter (being a person appointed by a party to report to the court) seeking to interview a ward of court, leave of the court must be obtained.

5. Criminal Proceedings

5.1 Where a child has been interviewed by the police in connection with contemplated criminal proceedings and the child subsequently becomes a ward of court, the permission of the court deciding the wardship proceedings ("the wardship court") is not required for the child to be called as a witness in the criminal proceedings; provided any necessary leave of the trial court is obtained.

5.2 Where the police need to interview a child who is already a ward of court, an application must , other than in the exceptional cases referred to in paragraph 5.5, be made to the wardship court for permission for the police to do so. Where permission is given the order should, unless there is some special reason to the contrary, give permission for any number of interviews which may be required by the prosecution or the police. If a need arises to conduct any interview beyond the permission contained in the order, a further application must be made.

5.3 The above applications must be made with notice to all parties.

5.4 Where a person may become the subject of a criminal investigation and it is considered necessary for the child who is a ward of court to be interviewed without that person knowing that the police are making inquiries, the application for permission to interview the child may be made without notice to that party. Notice should, however, where practicable be given to the child's guardian.

5.5 There will be other occasions where the police need to deal with complaints, or alleged offences, concerning children who are wards of court where it is appropriate, if not essential, for action to be taken straight away without the prior permission of the wardship court, for example –

(a) serious offences against the child such as rape, where a medical examination and the collection of forensic evidence ought to be carried out promptly;

(b) where the child is suspected by the police of having committed a criminal act and the police wish to interview the child in respect of that matter;

(c) where the police wish to interview the child as a potential witness.

5.6 In such instances, the police should notify the parent or foster parent with whom the child is living or another 'appropriate adult'[11] so that that adult has the opportunity of being present when the police interview the child. Additionally, if practicable the child's guardian (if one has been appointed) should be notified and invited to attend the police interview or to nominate a third party to attend on the guardian's behalf.

[1] 'appropriate adult' means (i) the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation; (ii) a social worker of a local authority; (iii) failing these, some other responsible adult aged 18 or over who is not a police officer.
A person, including a parent or guardian, should not be an appropriate adult if they are: (i) suspected of involvement in the offence; (ii) the victim; (ii) a witness; or (iv) involved in the investigation

A record of the interview or a copy of any statement made by the child should be supplied to the child's guardian. Where the child has been interviewed without the guardian's knowledge, the guardian should be informed at the earliest opportunity of this fact and (if it be the case) that the police wish to conduct further interviews. The wardship court should be informed of the situation at the earliest possible opportunity thereafter by the child's guardian, parent, foster parent (through the local authority) or other responsible adult.

6. Wards of Court: Disclosure of Evidence

6.1 In wardship cases, leave must be required to disclose evidential documents to persons who are not parties, e.g. psychiatrist, psychologist and medical experts or any other person. Disclosure without prior leave may be a contempt of court, and this is nonetheless the case where the purpose of the disclosure is only to obtain advice from the expert concerned as to whether the relevant expert evidence would be forthcoming or would be helpful to the court.

7. Wards of Court: Psychiatric, Psychological or Medical Examination

7.1 It is a firmly established principle in wardship cases that the ward should not be subjected to psychiatric or psychological examination without leave of the court.

7.2 An order for leave should normally be made only if the minor is separately represented and that minor's representative supports the application or if the application is supported by the Department of Children and Family Services if they have the care or supervision of the ward.

7.3 An order for leave should not normally be made unless there is or is suspected to be a specific and identifiable problem or potential problem on which the court needs assistance, which can only, or most conveniently be provided by a qualified psychiatrist or psychologist.

7.4 Where the court has given such leave, the costs of the examination and report will normally be allowed on taxation, either *inter partes* or out of the legal aid fund, as appropriate, subject to the taxing officer's discretion as to the amount.

7.5 Where no such leave has been obtained, the court may refuse to admit the report in evidence and may direct that the costs of obtaining any examination and report should be disallowed.

7.6 If the necessary parental consent is given there is no need to apply for leave to subject a ward to an examination which is purely physical (i.e. when neither psychiatric nor psychological examination is involved). The termination of a pregnancy (for the protection of the life of the ward in keeping with section 141 of the *Penal Code (as amended and revised)*, and other form of surgery or invasive procedure or the taking of a blood or other bodily sample from the ward will require leave.

DATED this 30th day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice

GRAND COURT PRACTICE DIRECTION No. 16 OF 2014

(GCR O.1, r.12)

INTERNATIONAL CHILD ABDUCTION (INCLUDING 1980 HAGUE CONVENTION)

PART 1

1. Introduction

1.1 This Practice Direction explains what to do if a child has been brought to, or kept in, the Cayman Islands without the permission of anyone who has rights of custody in respect of the child in the country where the child was habitually resident immediately before the removal or retention. It also explains what to do if a child has been taken out of, or kept out of, the Cayman Islands without the permission of a parent or someone who has rights of custody in respect of the child. These cases are called "international child abduction cases" and are dealt with in the Grand Court. This Practice Direction also explains what to do if you receive legal papers claiming that you have abducted a child.

1.2 If you have rights of custody in respect of a child and the child has been brought to the Cayman Islands without your permission, or has been brought here with your permission but the person your child is staying with is refusing to return the child, then you can apply to the Grand Court for an order for the return of the child.

1.3 How you make an application to the Grand Court, what evidence you need to provide and what orders you should ask the court to make are all explained in this Practice Direction.

1.4 If your child is under 16 years of age and has been brought to the Cayman Islands from a country which is a party (a "State party") to the 1980 Hague Convention on the Civil Aspects of International Child

Abduction ("the 1980 Hague Convention") then you can make an application to the Grand Court for an order under that Convention for the return of your child to the State in which that child was habitually resident immediately before being removed or being kept away. This is explained in Part 2 below.

1.5 If your child is over 16 years of age and under 18, or has been brought to England or Wales from a country which is not a State party to the 1980 Hague Convention, then you can make an application for the return of your child under the inherent jurisdiction of the Grand Court with respect to children. In exercising this jurisdiction over children, the Grand Court will make your child's welfare its paramount consideration. How to make an application under the inherent jurisdiction of the Grand Court with respect to children is explained in Part 3 below.

1.6 It might be necessary for you to make an urgent application to the court if you are not sure where your child is, or you think that there is a risk that the person who is keeping your child away from you might take the child out of the Cayman Islands or hide them away. Part 4 below explains how to make an urgent application to the Grand Court for orders to protect your child until a final decision can be made about returning the child and also how to ask for help from the police and government agencies if you think your child might be taken out of the country.

PART 2

2. Hague Convention Cases

2.1 States which are party to the 1980 Hague Convention have agreed to return children who have been either wrongfully removed from, or wrongfully retained away from, the State where they were habitually resident immediately before the wrongful removal or retention. There are very limited exceptions to this obligation.

2.2 "Wrongfully removed" or "wrongfully retained" means removed or retained in breach of rights of custody in respect of the child attributed to a person or a body or an institution. "Rights of custody" are interpreted very widely (see paragraph 2.12 below).

2.3 The text of the 1980 Hague Convention and a list of Contracting States (that is, State parties) can be found on the website of The Hague Conference on Private International Law at http://www.hcch.net. The Cayman Islands are a party to the Convention.

2.4 In each State party there is a body called the Central Authority whose duty is to help people use the 1980 Hague Convention.

2.5 If you think that your child has been brought to, or kept in, the Cayman Islands, and your State is a State party to the 1980 Hague Convention, then you should get in touch with your own Central Authority who will help you to send an application for the return of your child to the Central Authority for Cayman Islands. However, you are not obliged to contact your own Central Authority. You may contact the Central Authority for the Cayman Islands directly, or you may simply instruct attorneys at law in the Cayman Islands to make an application for you.

2.6 The Central Authority for the Cayman Islands

The Central Authority for the Cayman Islands is located in the Office of the Solicitor General/Attorney General and its contact details are as follows:

DMS House
Genesis Close, George Town
PO Box 907
Grand Cayman KY1-1103

CAYMAN ISLANDS
Tel: (345) 946-0022
Fax: (345) 946-0019
Contact: Suzanne Bothwell
Email: Suzanne.Bothwell@gov.ky

In an emergency (including out of normal working hours) contact should be made with the Grand Court on: (345) 323 0341

2.7 What the Central Authority will do

When the Central Authority receives your application for the return of your child, unless you already have a legal representative in the Cayman Islands whom you want to act for you, it will send your application to an attorney at law whom it knows to be experienced in international child abduction cases and ask them to take the case for you. You will then be the attorney at law's client and the attorney at law will make an application for public funding to meet your legal costs if you are unable to pay. The attorney at law will then apply to the Grand Court for an order for the return of your child

2.8 Applying to the Grand Court - The Form and Content of Application

An application to the Grand Court for an order under the 1980 Hague Convention must be made in the Registry of the Family Division in Form C53 (attached).

2.9 The application must include –

(a) the names and dates of birth of the children;

(b) the names of the children's parents or guardians;

(c) the whereabouts or suspected whereabouts of the children;

(d) the interest of the applicant in the matter (e.g. mother, father, or person with whom the child lives and details of any order placing the child with that person);

(e) the reasons for the application;

(f) details of any proceedings (including proceedings not in the Cayman Islands, and including any legal proceedings which have finished) relating to the children;

(g) where the application is for the return of a child, the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is thought to be.

2.10 The application should be accompanied by all relevant documents including (but not limited to) –

(a) an authenticated copy of any relevant decision or agreement;

(b) a certificate or an affidavit from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State.

2.11 As the applicant you may also file a statement in support of the application, although usually your attorney at law will make and file a statement for you on your instructions. The statement must contain and be verified by a statement of truth in the following terms:

> "I make this statement knowing that it will be placed before the court, and I confirm that to the best of my knowledge and belief its contents are true."

2.12 Rights of Custody

"Rights of custody" includes rights relating to the care of the child and, in particular, the right to determine the child's place of residence. Rights of custody may arise by operation of law (that is, they are conferred on someone automatically by the legal system in which they are living) or by a judicial or administrative decision or as a result of an agreement having legal effect. The rights of a person, an institution or any other body are a matter for the law of the State of the child's habitual residence, but it is for the State which is being asked to return the child to decide: (i) if those rights amount to rights of custody for the purposes of the 1980 Hague Convention; (ii) whether at the time of the removal or retention those rights were actually being exercised; and (iii) whether there has been a breach of those rights.

2.13 In the Cayman Islands a father who is not married to the mother of their child does not necessarily have "rights of custody" in respect of the child. An unmarried father in the Cayman Islands who has parental responsibility for a child has rights of custody in respect of that child. In the case of an unmarried father without parental responsibility, the concept of rights of custody may include more than strictly legal rights and where immediately before the removal or retention of the child that unmarried father was exercising parental functions over a substantial period of time as the only or main carer for the child that unmarried father may have rights of custody. An unmarried father can ask the Central Authority or that unmarried father's legal representative for advice on this. It is important to remember that it will be for the State which is being asked to return the child to decide if the father's circumstances meet that State's requirements for the establishment of rights of custody.

2.14 Sometimes, court orders impose restrictions on the removal of children from the country in which they are living. These can be orders under the *Children Act (as amended and revised)* ("section 10" orders) or orders under the inherent jurisdiction of the Grand Court (sometimes called "injunctions"). Any removal of a child in breach of an order imposing such a restriction would be wrongful under the 1980 Hague Convention.

2.15 The fact that court proceedings are in progress about a child, does not of itself give rise to a prohibition on the removal of the child by a parent with sole parental responsibility unless:

(a) the proceedings are Wardship proceedings in the Cayman Islands (in which case removal would breach the rights of custody attributed to the Grand Court and fathers with no custody rights could rely on that breach); or

(b) the court is actually considering the custody of the child, because then the court itself would have rights of custody.

Defending Abduction Proceedings

2.16 If you are served with an application - whether it is under the 1980 Hague or the inherent jurisdiction of the Grand Court - you must not delay. You must obey any directions given in any order with which you have been served, and you should seek legal advice at the earliest possible opportunity, although neither you nor the child concerned will automatically be entitled to legal aid.

2.17 It is particularly important that you tell the court where the child is, because the child will not be permitted to live anywhere else without the permission of the court, or to leave the Cayman Islands, until the proceedings are finished.

2.18 It is also particularly important that you present to the court any defence to the application which you or the child might want to make at the earliest possible opportunity, although the orders with which you will have been served are likely to tell you the time by which you will have to do this.

2.19 If the child concerned objects to any order sought in relation to them, and if the child is of an age and understanding at which the court will take account of their views, the court is likely to direct that the child is seen by an officer of the Department of Children and Family Services.

You should cooperate in this process. Children are not usually made parties to abduction cases, but in certain exceptional circumstances the court can make them parties so that they have their own separate legal representation. These are all matters about which you should seek legal advice.

PART 3

3. Non-Convention Cases

3.1 Applications for the return of children wrongfully removed or retained away from States which are not parties to the 1980 Hague Convention or in respect of children to whom that Convention does not apply, can be made to the Grand Court under its inherent jurisdiction with respect to children. Such proceedings are referred to as "non-Convention" cases. In proceedings under the inherent jurisdiction of the Grand Court with respect to children, the child's welfare is the court's paramount consideration. The extent of the court's enquiry into the child's welfare will depend on the circumstances of the case; in some cases the child's welfare will be best served by a summary hearing and, if necessary, a prompt return to the State from which the child has been removed or retained. In other cases a more detailed enquiry may be necessary (see: *Re J (Child Returned Abroad: Convention Rights) [2005] UKHL 40; [2005] 2 FLR 802).*

3.2 Every application for the return of a child under the inherent jurisdiction must be made in the Registry of the Family Division and heard in the Grand Court.

3.3 The Form and Content of the Application

An application for the return of a child under the inherent jurisdiction must be made in Form C54 (attached) and must include the information in paragraph 2.9 above.

3.4 You must file a statement in support of your application, which must exhibit all the relevant documents. The statement must contain and be verified by a statement of truth in the following terms:

> "I make this statement knowing that it will be placed before the court, and confirm that to the best of my knowledge and belief its contents are true."

PART 4

4. General Provisions

4.1 When a child has been abducted and a judge considers that publicity may help in tracing the child, the judge may adjourn the case for a short period to enable representatives of the Press to give the case the widest possible publicity.

DATED this 30th day of May 2014

The Hon. Anthony Smellie, QC
Chief Justice

GRAND COURT PRACTICE DIRECTION NO 1 OF 2015[12] (as amended and revised)

Applications for Sealing Orders and for inspection of Court Files in Civil Proceedings Grand Court Rules Order 63 r 3

The current provisions of Order 63 provide for a Register of Judgments and a Register of Writs and Other Originating Process which are open for inspection by the public (O. 63 rules 7 and 8). The balance of a Court file is open to inspection only by the parties: O. 63 r. 3(3); although a non-party may apply for inspection pursuant to O. 63 r. 3(5) (see below). A judge of the Court may order that all or part of a Court file may be sealed and therefore not open to inspection by anyone without leave of the Court: O. 63 r. 3(4). Such leave is granted upon application by any person who is not a party: O. 63 r. 3(5). Order 63 has no application to matrimonial, probate, winding up or bankruptcy proceedings, all of which are governed by their own rules.

In furtherance of the rules, the following practice shall apply:

An application under O. 63 r. 3(4) to seal all or part of a Court file may be made to the Court or by letter to the Clerk of the Court and may be determined by a Judge administratively. An application to the Clerk of Court will be referred to a Judge with or without recommendation by the Clerk of Court. The application should contain:

1. the identity of the applicant;
2. a concise statement of the reason for the request;

[7] To be read with Practice Direction on Publication of Chambers Proceedings; 1997 CILR Note I.

3. a description of the portion of the Court file to be sealed, which should be no broader than is necessary to protect the privacy interest in question; and

4. a statement of the duration for which the order is required, which should be no longer than is necessary to protect the privacy interest in question.

A sealing order under O. 63 r. 3(4) may be made by a Judge of the Court on that Judge's own motion if that Judge is satisfied that such an order is necessary in the interests of justice.

Where a file has been ordered to be closed, the Clerk of Court shall ensure that the file, both in its documented version and electronic version, is appropriately marked as sealed and access is restricted. The Judicial Enforcement Management System (JEMS) will be programmed to ensure that the sealed electronic files are not accessible except to certain levels of staff without leave of the court; such access to be granted after the Clerk of Court has obtained leave from a Judge.

Where a sealing order has been made by a Judge, the successful applicant must provide:

1. A cover letter addressed to the Clerk of Court advising that such an order has been made;

2. Sufficient copies of the documents to be sealed; and

3. A fully endorsed cover sheet for an envelope of a type to be provided by the Registry, setting out the file number, names of the parties, the date and duration of the sealing order, and listing the contents of the envelope.

The Civil Registry will contact counsel to fix a date and time for the file (or documents) to be sealed in the presence of counsel or that counsel's representative. The envelope will be date stamped and endorsed with the names of the persons present.

Application for inspection of Court Files

An application under O. 63 r. 3(5) for leave to inspect a Court file may be made by letter to the Clerk of the Court and may be determined administratively by the Clerk of Court unless the Clerk is of the view that the matter should be referred to a Judge for determination. The application should contain:

1) The identity of the person seeking leave to inspect and, where that person is an attorney or agent, the identity of that person's principal. Where the person applying is an agent, written authority of the principal must be furnished.

2) A concise statement of the reason for the request; and

3) A description of the portion of the Court file that the applicant wishes to inspect.

Application for inspection of a sealed file[13]

1. An application under O. 63 r. 3(5) for leave to inspect a file which has been sealed by order of the court must be made in writing to the Clerk of Court and notified to the party or parties who obtained closure of the file.

2. Any objection to inspection and reasons therefor shall be submitted in writing to the Clerk of the Court by no later than 3:00 pm on the fifth day following receipt of notice of the application, for consideration by the Judge who made the sealing order (or, in that Judge's absence, another Judge).

3. The application and any objection shall immediately be submitted by the Clerk of Court for consideration by the judge.

All orders made under O. 63 rules 3(4) and (5) shall be endorsed on the cover of the file.

Hon. Anthony Smellie
Chief Justice

February 20 2015

(Amended on the 13th July 2015)

[1] This direction was added upon the advice of the Court of Appeal given in Civil Appeal No. 23 of 2014, Cause FSD 96 of 2014 (AJJ), *Sasken Communications Technologies Limited and Spreadrum Communications Inc., transcript of written judgment delivered 10th May 2015.*

GRAND COURT PRACTICE DIRECTION NO 2 OF 2015

Applications for inspection of Criminal Court Files Section 193 of the Criminal Procedure Code

Section 193 of the Criminal Procedure Code

Where a person applies for inspection of a Criminal Court File pursuant to section 193 of the *Criminal Procedure Code (as amended and revised)* as a 'person affected', that person shall explain and provide proof of the basis upon which that person applies as a person affected.

The Clerk of Court, if satisfied that the person is applying as a person affected, may provide the document or record requested in keeping with section 193, provided that the document or record is not of a class in respect of which inspection has been otherwise curtailed by order of the Court or by this Practice Direction.

Applications for inspection other than under section 193 of the Criminal Procedure Code

An application for leave to inspect a Criminal Court file may be made by letter to the Clerk of the Court and may be determined administratively by the Clerk of Court unless the Clerk is of the view that the matter should be referred to a Judge for determination. The application should contain:

1. The identity of the person seeking leave to inspect and, where that person is an attorney or agent, the identity of that person's principal. Where the person applying is an agent, written authority of the principal must be furnished. Where the person applying is a guardian, parent or person *in loco parentis*, proof of the relationship must be furnished.

2. A concise statement of the reason for the request; and

3. A description of the portion of the Court file that the applicant wishes to inspect.

The following documents will not be open to inspection unless ordered by a Judge:

1. Public Interest Immunity material, so deemed by order of the court.
2. Witness Statements involving the evidence of witnesses in sensitive cases.[14]
3. A document which was sealed by the Court during the trial or other stage of the criminal proceedings.
4. Letters or other communication presented to the Judge for consideration but not adduced into evidence,
5. Any other document that is not in the public domain (for example: Psychiatric or Probation reports)
6. Files relating to sexual offence cases.

Hon. Anthony Smellie
Chief Justice

February 20 2015

[1] For the purpose of this Practice Direction, sensitive cases are defined as cases involving firearms offences, sexual offences, or cases involving witnesses in protection or in respect of whom anonymity orders have been made.

GRAND COURT PRACTICE DIRECTION No 3 OF 2015

(GCR O. 96, r. 3(5))

LIST OF APPROVED REAL ESTATE APPRAISERS

This is the list of independent real estate appraisers currently approved by the Grand Court Rules Committee (the "**Rules Committee**") pursuant to GCR Order 96, rule 3(5). In compiling this list the Rules Committee has adopted the criteria for inclusion in the Cayman Islands Government Valuation Panel compiled by the Valuations and Estates Office of the Cayman Islands Government.

The Valuations and Estates Office has certified that the firms listed below meet the minimum professional qualification and experience criteria for appointment to the Cayman Islands Government Valuation Panel and are hereby approved by the Rules Committee pursuant to GCR Order 96, rule 3(5):

- BCQS International
- Blue Point Consultants Ltd.
- Bould Consulting Ltd.
- Charterland Ltd.
- DDL Studio
- Integra Realty Resources – Caribbean
- JEC Property Consultants Ltd.

In each case the appraisal is to be completed or countersigned by an appraiser who has attained the Chartered Valuation Surveyor professional designation from the Royal Institute of Chartered Surveyors.

Issued by the Grand Court Rules Committee on the 9th day of July 2015.

The Hon. Anthony Smellie, Q.C., Chief Justice
The Hon. Samuel Bulgin, Q.C., Attorney General
Colin D. McKie, Q.C., Legal Practitioner
Hector Robinson, Legal Practitioner

GRAND COURT PRACTICE DIRECTION No 4 OF 2015

(GCR O. 1, r. 12)

WITNESS STATEMENTS AND AFFIDAVITS (GCR O. 38 AND O. 41) TAKING EVIDENCE FROM WITNESSES, AFFIANTS AND DEPONENTS WHO DO NOT SPEAK ENGLISH

1. If a witness or affiant or deponent (a "Witness") is not capable of reading or speaking English then a witness statement or affidavit or deposition (a "Statement") from that person must be prepared in that person's native language before being translated into English. Where the Statement is in a foreign language –

   (1) the party wishing to rely on it must –

   (a) have it translated into English; and

   (b) file the foreign language Statement at the Court and serve it on the other parties; and

   (2) the translator must swear an affidavit certifying that the exhibited translation is a faithful and accurate translation into English.

2. There must be clarity about the process by which a Statement in a foreign language has been created. In all cases, the Statement should contain an explanation of the process by which it has been taken: for example, face-to-face, over the telephone, by Skype/video-link, or based on a document written in the Witness' native language.

   If an attorney has been instructed by the party, that attorney should be fully involved in the process described above and should not defer or delegate it to that attorney's client.

3. If an attorney is presented with a Statement in English from a witness whom the attorney is not reasonably satisfied is able to read, speak and testify in English, the attorney should question its provenance and not simply seek to adduce the document as a proof of evidence.

4. The Witness should be spoken to wherever possible, using an interpreter, and a draft Statement should be prepared in the native language for the Witness to read and sign and for the interpreter to read. If the attorney is fluent in the foreign language then it is permissible for that attorney to act in the role of the interpreter. However, this must be made clear either within the body of the Statement or in a separate affidavit from the attorney (in that attorney's role as interpreter).

5. A litigant in person should where possible use an interpreter when preparing a Statement.

6. If the Witness is not able to read or write in their own native language, the interpreter must carefully read the Statement to the Witness in that Witness's own native language and set out the fact that the interpreter has done so in the translator's jurat or affidavit, using the words provided in Annex 1 or 2.

7. Once the witness has completed that witness's Statement in that witness's native language and signed it, the Statement should be translated by a translator who must then either: sign a jurat confirming that the translation is a faithful and accurate translation of the Statement; or provide a short affidavit to the same effect.

8. If a Witness is to testify either in person or by video-link, a copy of the original Statement in that Witness's native language and the English translation thereof must be provided to the Witness well in advance of the hearing.

9. If a deposition or other Statement has been obtained and prepared abroad in compliance with the relevant country's laws, a translation of that deposition or other Statement must be filed at Court and served on the other parties together with the original document.

10. If a party files and serves a Statement in English (not being a translation into English) then the Court will be entitled to presume that this is a representation from that party and that party's attorney to the Court and to the other parties that the Witness is fluent in English and that the Witness is willing and able to testify in English. In the event that the Court is subsequently satisfied that the Witness is not willing or able to testify in English, the Court will make such case-management orders as it sees fit, including, without limitation:
    (1) Whether or not the party is to be permitted to rely on the Statement;
    (2) Whether or not the party is to be permitted to adduce a new Statement from the Witness in a foreign language in compliance with the terms of this Practice Direction;
    (3) Whether or not to adjourn any hearing and, if so, whether a court translator will be required to attend the adjourned hearing;
    (4) Whether or not the party should bear the costs thrown away and, if so, whether those costs should be on the standard basis or indemnity basis; and
    (5) Whether or not a wasted costs order should be made against the party's attorney.

11. This Practice Direction applies to all Divisions of the Grand Court except the Criminal Division. Practice Direction No 8 of 2014 (Taking evidence from non-English speakers in the Family Division of the Grand Court) is hereby revoked.

Dated this 9th day of July 2015

The Hon. Anthony Smellie, Q.C.

Chief Justice

Annex 1

Certificate to be used where an affiant is unable to read or sign an affidavit written in that affiant's native language.

Sworn at … [*place*]
this … day of … 20..
Before me,
[*and either*]

I having first read over the contents of this affidavit to the affiant [*if there are exhibits, add the words* and explained the nature and effect of the exhibits referred to in it], who appeared to understand it and approved its content as true and accurate, and signed/made* his/her* mark on the affidavit in my presence.

[*Name and signature of notary or other person authorised to administer oath where affidavit sworn*]

[*or*]

the witness to the mark of the affiant having been first sworn that the witness had read over the contents of this affidavit to the affiant [*if there are exhibits, add the words* and explained the nature and effect of the exhibits referred to in it], who appeared to understand it and approved its content as true and accurate, and that the witness saw the affiant sign/make* his/her* mark on the affidavit.

[*Name and signature of witness.*]

[*Name and signature of notary or other person authorised to administer oath where affidavit sworn*]

* delete as appropriate

Annex 2

Certificate to be used where a witness is unable to read or sign a witness statement written in that witness's native language.

I certify that I [*name and address of authorised person*] have read over the contents of this witness statement and the statement of truth to the witness [*if there are exhibits, add the words* and explained the nature and effect of the exhibits referred to in it] who (a) appeared to understand the witness statement and approved its content as true and accurate and (b) appeared to understand the statement of truth and the consequences of making a false witness statement, and signed/made* his/her mark* in my presence.

[*Signature of witness.*]

GRAND COURT PRACTICE DIRECTION No. 5 OF 2015

CAYMAN ISLANDS SUMMARY COURT - CRIMINAL CASE MANAGEMENT

1. Purpose

1.1 The purpose of this Practice Direction is to establish a procedure for case management in criminal proceedings in the Summary Court to reduce delays and improve efficiency.

2. Context

2.1 In this Practice Direction:

2.1.1 "Court" means the Summary Court.

3. The Overriding Objective

3.1 The overriding objective of this Practice Direction is that criminal cases be dealt with justly and expeditiously.

3.2 Dealing with a case in furtherance of the overriding objective includes –

(i) Acquitting the innocent and convicting the guilty;

(ii) Dealing with the Prosecution and the Defence fairly;

(iii) Recognising the fundamental rights and freedoms protected by the Constitution of the Cayman Islands.

(iv) Respecting the interests of witnesses, victims and keeping them informed of the progress of the case;

(v) Dealing with the case efficiently and expeditiously;

(vi) Dealing with cases in ways that take into account –

(a) The gravity of the offence alleged;

(b) The complexity of what is in issue;

(c) The severity of the consequences for the defendant and others affected; and

(d) The needs of other cases.

4. The duty of the parties in a criminal case

4.1 Each of the parties, in the conduct of each case, must:

(i) Prepare and conduct the case in accordance with the overriding objective;

(ii) Comply with Practice Directions and directions made by the Court including times set within which actions must be taken either under this Practice Direction or by rules of the court; and

(iii) At once inform the Court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by this Practice Direction or any direction of the Court;

4.2.1 A failure is significant if it might hinder the Court in furthering the overriding objective.

4.2.2 Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this Practice Direction.

5. The application by the Court of the overriding objective

5.1 The Court must further the overriding objective in particular when exercising any power given to it by legislation, applying any Practice Direction, or interpreting any Practice Direction.

6. The duty of the Court

6.1 The Court must further the overriding objective by actively managing the case. Active case management includes:

(i) The early identification of the real issues;

(ii) The early identification of the needs of the witnesses;

(iii) Achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;

(iv) Monitoring the progress of the case and compliance with directions;

(v) Ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;

(vi) Discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

(vii) Encouraging the participants to co-operate in the progression of the case; and

(viii) Making use of technology as appropriate and available.

6.2 The Court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

7. The duty of the parties

7.1 Each party must actively assist the Court in fulfilling its duty under paragraph 6.1, with or without a direction - and apply for a direction if needed to further the overriding objective.

8. The Court's case management powers

8.1 In fulfilling its duty under paragraph 6, the Court may give any direction and take any step to actively manage a case unless that direction or step would be inconsistent with legislation, or this Practice Direction.

8.2 In particular the Court may:

(i) Direct that preliminary issues, such as admissibility of evidence, are determined at a hearing before the trial;

(ii) Nominate a Magistrate to manage a case;

(iii) Give a direction on its own initiative or on application by a party;

(iv) Ask or allow a party to propose a direction;

(v) For the purpose of giving directions, the Court will receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;

8.3 Give a direction:

(i) At a hearing, in public or in private, or

(ii) Without a hearing

(iii) Fix, postpone, bring forward, extend, cancel or adjourn a hearing;

8.4 Shorten or extend (even after it has expired) a time limit fixed by a direction;

8.5 Require that issues in the case should be:

(i) Identified in writing,

(ii) Determined separately, and decide in what order they will be determined; and

(iii) Specify the consequences of failing to comply with a direction.

8.6 Any power to give a direction under this Practice Direction includes a power to vary or revoke that direction.

8.7 If a party fails to comply with a rule or direction, the Court may:

(i) Fix, postpone, bring forward, extend, cancel or adjourn a hearing;

(ii) Exercise its powers to make a costs order; and/or

(iii) Impose such other sanction as may be appropriate.

9. Case preparation and progression

9.1 At every hearing, if a case cannot be concluded there and then, the Court must give directions so that it can be concluded at the next hearing or as soon as possible after that.

9.2 At every hearing the Court must, where relevant:

(i) Take the defendant's plea (unless already done) or, if no plea can be taken, find out whether the defendant is likely to plead guilty or not guilty;

(ii) Set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial;

(iii) Where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

9.3 In order to prepare for the trial, the Court must take every reasonable step, to encourage and to facilitate the attendance of witnesses when they are needed; and to facilitate the participation of any person, including the defendant.

10. Conduct of a trial and ancillary proceedings

10.1 In order to manage a trial and any ancillary proceedings, such as confiscation, the Court:

10.1.1 Must establish, with the active assistance of the parties, what are the disputed issues;

10.1.2 Must consider setting a timetable:

(i) That takes account of those issues and of any timetable proposed by a party; and

(ii) May limit the duration of any stage of the hearing;

10.1.3 May require a party to identify:

(i) Which witnesses that party wants to give evidence in person;

(ii) The order in which that party wants those witnesses to give their evidence;

(iii) Whether that party requires an order compelling attendance of a witness;

(iv) What arrangements are desirable to facilitate the giving of evidence by a witness;

(v) What arrangements are desirable to facilitate the participation of any other person, including the defendant;

(vi) What written evidence that party intends to introduce;

(vii) What other material, if any, that person intends to make available to the Court in the presentation of the case; and

(viii) Whether that party intends to raise any point of law that could affect the conduct of the trial or ancillary application; and

10.1.4 May limit:

(i) The examination, cross-examination or re-examination of a witness; and

(ii) The duration of any stage of the hearing.

10.1.5. The Case Management Form issued with this Practice Direction shall be completed (in the case of a represented defendant) by the Defence and Prosecution counsel and in the case of an unrepresented defendant by the presiding Magistrate with the assistance of the Prosecution Counsel.

11. TIME LIMITS

Note: The directions in this Part set down the maximum time-limits within which it is desirable that every case should be disposed of. Every effort must still be made to dispose of cases as soon as reasonably practicable, which in some cases will result in a substantially quicker disposal. The directions in this part do not apply to proceedings which are before the Drug Treatment Court or other diversionary programmes.

Timeframe for the completion of proceedings: summary matters

11.1 (i) Every matter to be tried before the Summary Court should aim to be concluded within a period not exceeding 12 months from the date of the First Hearing.

(ii) In the event of conviction, the defendant should be sentenced by the Court before which the defendant was convicted within a period not exceeding 56 days from the date of conviction, save only in the case of exceptional circumstances.

Custody Cases

11.2 In the event that a defendant is remanded to custody, that defendant's trial shall be concluded:

(i) In the case of a matter triable in the Summary Court, within a period not exceeding 9 months, unless there are exceptional circumstances, from the date of the first hearing.

12. ADJOURNMENTS
Criteria for Grant of Adjournment

12.1 Adjournments shall be granted only if the Court is satisfied that:

(i) There is good cause for an adjournment; and

(ii) An adjournment is necessary in meeting the interests of justice.

12.2 (i) Where there have been two or more adjournments for the same reason(s), the Court shall only grant a further adjournment if exceptional circumstances are shown.

(ii) Case involving defendants in custody and cases in which the trial has already been adjourned must not be adjourned unless exceptional circumstances can be shown to the satisfaction of the Court.

(iii) Once a trial has been commenced, an adjournment shall only be granted where the grounds for the application could not reasonably have been known at the time the trial started or where there are exceptional reasons for justifying the delay.

12.3 Applications for an adjournment should be rigorously scrutinised, in particular, the following factors to be taken into consideration:

(i) Summary justice should be speedy justice;

(ii) The more serious the charge, the more the public interest demands that a trial take place;

(iv) The age of the complainant and any other significant witnesses;

(v) Whether or not the refusal of an adjournment would compromise the defendant's ability to fully present that defendant's defence; and

(vi) The history of adjournments, at whose request any previous adjournments have been made and the reasons provided.

Note:

1. The overriding objective of this Practice Direction is the just and expeditious disposal of cases. This cannot be achieved by the Court readily granting adjournments without good cause being shown. Particular care is required in respect of applications that are made once a trial has been commenced and the general presumption in such cases should always be against an adjournment being granted.

2. This Part applies equally to cases in which a defendant's attorney has failed to attend. An attorney is obliged to notify the Court immediately should they become aware of a conflicting fixture. A defendant is not entitled to repeated adjournments to secure the right to legal representation: R v Robinson (1985) 32 WIR 330, PC. The overriding consideration must be the requirements of justice, for both the Prosecution and the defence; R v De Oliveira [1997] Crim L.R. 600.

13. PROCEDURAL STAGES and TIMETABLE: SUMMARY COURT

The First Hearing

13.1 (i) The First Hearing in each case shall be conducted by a Magistrate.

(ii) At the First Hearing the following should occur, where practicable and without hampering the disposal of the weekly Mentions List:

(a) verification of the defendant's identity, current address and contact details;

(b) if the defendant is, or intends to be represented, details of representation shall be provided;

(c) if the defendant is not represented any intention or request on the part of the defendant that that defendant will be legally represented shall be recorded;

(d) an unrepresented defendant should be given an explanation of that defendant's rights, including, where appropriate, the right to:

(i) bail;

(ii) silence, save in respect of confirmation of that defendant's name and contact details;

(iii) a trial;

(iv) an interpreter; and

(e) consideration of bail for unrepresented defendants in custody and any application for represented defendants, shall be taken (or adjourned to next earliest date);

(iii) oral notification shall be given to the defendant of the date for the next hearing.

Second Hearings

13.2 (i) For summary only matters, every defendant shall be required to enter a plea at the second hearing and a trial date shall be set if a not guilty plea is entered.

(ii) For either way matters, the defendant shall be required to enter a plea at the second hearing if the court determines that it is to be tried summarily.

(iii) For indictable matters not yet committed for trial in the Grand Court, the defendant shall be asked whether or not the defendant wishes to indicate a plea at the start of every hearing in the Summary Court.

Venue Hearing

13.3 (i) A Venue Hearing shall only take place in either way cases.

(ii) Venue Hearings are to be conducted by a Magistrate and, wherever possible, this should be done at the same time as the First Hearing.

(iii) The purpose of the Venue Hearing is to determine whether the matter should be tried or sentenced, as appropriate taking into

account any plea indication, in the Summary Court or the Grand Court.

Accepting Guilty pleas

13.4 (i) Where a defendant is represented, before accepting a plea of guilty to any or all of the charges, the Magistrates must satisfy themselves (either by questioning the defendant personally or by calling upon counsel to confirm the position or to lead the questioning), that the defendant acknowledges guilt; that the plea is entered voluntarily and that it is made with an appropriate understanding of the consequences.

(ii) Where a defendant is unrepresented, before accepting a plea of guilty to any or all of the charges, the Magistrates must satisfy themselves by enquiring of the defendant that the defendant acknowledges guilt and enters the plea voluntarily with an appropriate understanding of the consequences.

(iii) A Magistrate may refuse to accept any plea of guilty if the Magistrate is not satisfied that any of the conditions set out in sub-Rule (i) above are not met and/or that it is not in the interests of justice to do so.

(iv) If a plea of guilty is not accepted, the fact of the guilty plea having been given shall not be admissible as evidence of that person's guilt in any subsequent trial in respect of that alleged offence.

13.5 If the defendant is prepared to plead guilty to alternative offences from the one(s) with which the defendant has been charged, the defendant shall inform the Prosecution and the court upon arraignment.

13.6Where the prosecutor requires an adjournment to consult with the Office of the Director of Public Prosecutions before accepting a plea to an alternative offence, the Court shall list the case for a hearing to take place in no later than 28 days.

Notes:

When accepting a guilty plea, the court must enquire whether that plea was offered by the defendant at an earlier stage in the proceedings. If

so, the Prosecution must explain why it was not reasonable for that offer to have been accepted before.

Preliminary Inquiries

13.7 (i) The defence shall notify the Prosecution if the Preliminary Inquiry is to be contested at least 7 days before it is due to be heard;

14. Effective Date

14.1 This Practice Direction shall come into effect on the 1st day of September 2015.

Dated this 29th day of July 2015

The Hon. Anthony Smellie

Chief Justice

Summary Court Case Management Form

Case Number	
Date NG Plea entered	
Trial date	
Trial estimate	

This form is to be completed by counsel for the Prosecution and for the Defence in all cases when a Not Guilty plea is entered in the Summary Court by a defendant who is represented. Copies are to be provided to the Court in advance of the first Case Management Hearing.
Where a defendant is unrepresented, the form will be completed by the Court with the assistance of the Prosecution.
Any information that is unavailable at the First Hearing should be entered as soon as possible or at the Case Management Hearing.
Failure to provide accurate information may lead to case dismissal (in the case of the Prosecution) or a costs order.

1. Offence Details

Charge(s)	
Date of offence	

2. Contact Details

Defendant(s)

Name(s)		Date(s) of Birth	
D1		*D1*	
D2		*D2*	
D3		*D3*	

Status				
D1	☐ Bail	Conditions:	☐ Custody	
D2	☐ Bail	Conditions:	☐ Custody	:
D3	☐ Bail	Conditions:	☐ Custody	

Will the Defendant be legally represented at trial?

If yes, please provide name and contact details for attorney

D1 ☐ Yes ☐ No
D2 ☐ Yes ☐ No
D3 ☐ Yes ☐ No

Prosecution

Name		Email	
Address		Fax	

3. Trial Management

Case Management Hearing listed for:

Has the case file been received by Prosecution Branch? ☐ Yes ☐ No
If not, court directs that case file be submitted by:

Has disclosure been provided to Defendant? ☐ Yes ☐ No
If not, court directs that disclosure be provided by:

Is any further evidence expected from the prosecution? ☐ Yes ☐ No
If yes, court directs that any additional evidence be disclosed by:

Is an adjournment being sought? ☐ Yes ☐ No
If yes, give brief details, including details of any previous adjournments granted:

What evidence will the prosecution rely upon at trial:
Tick/delete as appropriate

- witness/search evidence ☐
- caution statement/admission ☐
- firearm/drug/DNA/expert evidence ☐
- hearsay ☐
- CCTV ☐

If electronic evidence is to be used, please indicate what equipment is needed for trial:

What will be the disputed issues of fact at trial?
The Defendant shall not be compelled to provide this information, but it will help the court to set appropriate directions for trial. Any information provided may be used in evidence.

Please indicate if there are any issues of evidence admissibility / law that will need to be determined:
Court directs that a pre-trial hearing to determine these issues is listed for:

Please indicate what, if any, expert evidence will be relied upon at trial (including firearms, drugs, DNA etc.)
Court directs that a meeting between experts, if appropriate, take place by:

4. Witness List

The court must be informed of any changes to the witness list immediately and in advance of the trial

Name of Witness	Pros or Def	Agreed?	If no, material/disputed evidence	Time for Evidence

Can any part of the witness statements, which are not in dispute, be recorded into a written admission? ☐ Yes ☐ No
If yes, court directs that written admissions be filed with the court by:

Please indicate if any of the witnesses require special or other measures (including an interpreter):

5. Ancillary Orders

Failure to complete this Part will not bind the prosecution from applying for an ancillary order in the case of a conviction

In case of a conviction, does the prosecution intend to apply for:

Pre-sentence report ☐ Destruction ☐ Compensation ☐

Forfeiture ☐ Pecuniary penalty order ☐ Other ☐

If other, please specify:

6. Signatures

First Hearing:

..... Date:
Magistrate

Case Management Hearing:

..... Date:
Magistrate

GRAND COURT PRACTICE DIRECTION No. 1 OF 2016

(GCR O.1, R.12)

FINANCIAL SERVICES DIVISION - PROCEDURE RELATING TO THE COMMENCEMENT AND MANAGEMENT OF FINANCIAL SERVICES PROCEEDINGS

1. Appointment of Registrar of the FSD

1.1 With effect from February 2016, Mrs. Shiona Allenger, the Registrar of the FSD (appointed pursuant to Rule 2(1) of the Grand Court (Amendment) Rules 2009) on a full time basis.

1.2 All communications with the Registrar should be —

(a) by hand delivery at the FSD Registry, 3rd Floor, Kirk House; or

(b) by e-mail addressed to shiona.allenger@judicial.ky; or

(c) by telephone 244 3808.

2. Assignment of proceedings to a Judge of the FSD

2.1 It is the responsibility of the Registrar, acting in conjunction with the Chief Justice, to assign every financial services proceeding, as defined in GCR O.72, r.1(2) to a named judge of the FSD at the time the proceeding is commenced.

2.2 It is the responsibility of the petitioner/plaintiff's attorney to provide the Registrar with any and all information which appears to that attorney to be relevant in determining which judge should be assigned to the matter. For example —

(a) If the plaintiff's attorney considers that it would be appropriate for two or more related matters to be assigned to the same judge, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process; or

(b) If the plaintiff's attorney considers that it would be inappropriate for a matter to be assigned to a particular judge, for whatever

reason, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process.

2.3 As soon as a judge has been assigned, the Registrar will —

(a) notify the parties' attorneys; and

(b) deliver the Court file to the assigned judge .

2.4 Attorneys can expect to be notified about the name of the assigned judge on the next business day following the day on which the originating process is filed at the FSD Registry.

2.5 The Registrar will ensure that the docket of the financial services proceedings assigned to each Judge of the FSD is kept up to date and circulated weekly to the Chief Justice.

2.6 Attorneys are reminded that GCR O.5, r. 1(7) requires that the initials of the assigned judge be included in the title of the proceeding as part of the cause number. It follows that the assigned judge's initials must be included as part of the cause number as it appears in all pleadings, affidavits and orders.

3. Procedure for listing hearings

3.1 The Registrar is responsible, pursuant to GCR O. 72, r.5, for listing the hearing of all matters pending in the FSD.

3.2 With effect from 15th February 2016, all communications relating to the listing of the hearing of any FSD matter shall be addressed to the Registrar who will consult with the Grand Court Listing Officer.

3.3 For the purpose of this Practice Direction the expression "hearing" shall include summonses for directions, case management conferences ("CMCs") (which may take the form of video or telephone conference calls), interlocutory applications and trials.

3.4 No matter can be listed for hearing unless and until the proceeding has been assigned to a judge of the FSD who has had an opportunity to review the Court file.

3.5 Practice Direction #1/2000 (Listing Forms) does not apply to the FSD.

3.6 Notwithstanding that a primary objective of the FSD is to ensure the availability of judges, the Registrar of the FSD and Listing Officer are not authorised to fix any hearing date without the prior approval of the assigned judge. If the assigned judge is not already familiar with the issues or cannot readily ascertain the issues relevant to the proposed hearing by reviewing the Court file, the parties may be required to produce an agreed case memorandum in accordance with GCR O.72, r.4(3).

3.7 In the case of trials or other potentially lengthy hearings, the assigned judge in consultation with the Registrar and Listing Officer, will normally fix the hearing date at the hearing of a summons for directions or at a CMC in which all parties' attorneys (and their leading counsel) will be required to participate.

3.8 The Registrar will publish a monthly list (on the 1st of each month) of hearings scheduled in the FSD for the ensuing month.

4. Listing procedure in respect of Capital Reductions

4.1 When presenting a petition for an order confirming a resolution for reducing the share capital of a company (under s.15 of the *Companies Act (as amended and revised)*) the petitioner's attorney is required (pursuant to GCR O.102, r.6) to issue a summons for directions at the same time as presenting the petition.

4.2 The petitioner's attorney must provide the Registrar with a draft of the proposed order for directions including the timetable for the company meeting(s) and court hearing(s), together with a covering letter which explains whether and, if so, why the matter is particularly time sensitive.

4.3 If upon reading the petition, affidavit and written submissions, the assigned Judge is satisfied that settling a list of creditors should be dispensed with under s.15(3) or that the reduction is not an exceptional case where settlement of a list of creditors is required under s.15(2), and the materials filed do not disclose any other reason for the assigned judge to require additional evidence or submissions, then that Judge may make an order for directions without the need for a hearing. In all other cases that Judge will direct the Registrar to fix a hearing in chambers.

5. Listing procedure in respect of petitions for supervision orders under s.124.

5.1 Attorneys should anticipate that supervision orders pursuant to s.124 of the *Companies Act (as amended and revised)* will normally be made without the need for any hearing (pursuant to CWR O.15 , r.5(1).)

5.2 In the event that the petition gives rise to any issue in respect of which further evidence or submissions are required, the assigned judge may convene a CMC or (in consultation with the Registrar) direct the Listing Officer to fix a date for hearing the petition in open court.

6. Applications for an order that a company be restored to the Register

6.1 With effect from Monday 27th September 2010 applications made by a company or one of its members, which are governed by GCR O.102, r.17, are determined by the Registrar of the FSD rather than the Clerk of the Court and Form Nos. 66 and 67 should be amended accordingly.

6.2 If the Registrar decides, pursuant to GCR O.102, r.17(6)(c), that an application ought to be referred to a judge for an oral hearing, the Registrar will -

(a) assign the application to a judge of the FSD;

(b) fix a hearing date; and

(c) give notice of the hearing to the applicant by e-mail.

6.3 Applications made by creditors, which are governed by GCR O.102, r.18, will continue to be heard in open court by a judge of the FSD.

6.4 At the same time as assigning a creditor's application to a judge of the FSD, the Registrar will fix a hearing date. To enable the petitioner to advertise the petition and give other creditors an opportunity to be heard, the hearing will be fixed on a date not less than 21 days or more that 28 days after the date on which the petition is presented.

7. Applications for a direction that payment of court fees be deferred

7.1 An application by an official liquidator or officeholder for a direction, pursuant to Rule 6(4) of the *Court Fees Rules (as amended and revised)*, that payment of court fees be deferred must be made to the assigned judge.

7.2 Such applications should be made by letter signed by the official liquidator or officeholder personally, addressed to the assigned judge and sent to the Registrar.

7.3 The application will be determined by the assigned Judge and that Judge’s decision will be communicated to the applicant and the Registrar by the judge's personal assistant.

7.4 In the event that the application is refused, the official liquidator or officeholder shall have the right to ask the Judge to reconsider that Judge’s decision, for which purpose the applicant may ask the Judge's personal assistant to fix an appointment for that applicant to appear before the Judge in person.

7.5 The purpose of Rule 6(4) is to ensure that an officeholder who is required or entitled to make an application to the Court in the performance of a legal duty in circumstances where the court fees will be payable out of a fund under that officeholder's control, should not be deterred from performing that officeholder's duty by being put in the position of having to pay the court fees out of that officeholder's own pocket.

7.6 For the purposes of determining whether an official liquidator has under that liquidator's control "sufficient money with which to pay the fees immediately" within the meaning of Rule 6(4), the judge will have regard to the general rules as to priority contained in CWR Order 20, the effect of which is that court fees rank ahead of an official liquidator's remuneration.

7.7 If the officeholder does have some cash or cash equivalent assets under that officeholder's control, that officeholder's application letter must state (a) the amount which is immediately available; (b) the amount which is likely to become available to that officeholder within the next 90 days; (c) the purposes for which the officeholder intends to spend such cash over the next 90 days; and (d) whether the officeholder has received any remuneration or holds funds in trust for that purpose.

8. Applications for a direction that multiple proceedings be treated as "consolidated" for the purposes of assessing court fees

8.1 An application by a petitioner/plaintiff for a direction that two or more separate proceedings governed by the *Companies Winding Up Rules* or GCR O.102 be treated as consolidated into one for the purposes of calculating the amount of fixed fees and/or court hearing fees payable pursuant to Rules 3 and/or 5 of the *Court Fees Rules (as amended and revised)* must be made to the Registrar.

8.2 Such applications should be made by letter addressed to the Registrar at the time of filing the originating process.

8.3 The application will be determined by the assigned judge and the provisions of paragraphs 7.3 and 7.4 above shall apply.

9. Case Management Conferences

9.1 Without prejudice to the requirements of O.72, r.4(2), the assigned Judge may convene a CMC whenever that Judge thinks fit.

9.2 A CMC may take the form of a telephone conference call, especially if foreign lawyers and leading counsel have been retained by any of the parties or the assigned judge is likely to be off the Island.

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

9.4 The etiquette for telephonic CMCs requires that all participating attorneys (apart from leading counsel or foreign lawyers who may participate remotely) must be present in the court room or Judge's chambers and be on line before the appointed time, so that the Judge will be the last person to join the conference, whereupon the Judge will ask all the participants to identify themselves.

Where the CMC will not be determinative of substantive issues, the judge may, in advance to the hearing dispense with the need for the attorney(s) to be present at Court and, in which event, the other provisions of this practice direction will apply accordingly.

9.5 Telephonic CMC's may not be tape recorded without the consent of the Judge. If the Judge permits or directs that the CMC be tape recorded, the Judge will direct that a written transcript be prepared, sent to the judge and circulated amongst the parties. Whenever a CMC is not tape recorded, the note taken or approved by the judge will constitute the official record.

9.6 Hearing dates may be fixed by the assigned judge during the course of a CMC and, in appropriate cases, CMCs may be convened for the principal purpose of fixing the date for the trial or further hearings.

10. Availability of the Judges of the FSD

10 .1Judges of the FSD may conduct CMCs and, in appropriate cases, hear summonses for directions and interlocutory applications by means of telephone or video conferences when they are off the Island.

10.2Paragraphs 9.4 and 9.5 above shall apply to any hearing which takes place by telephone or video conference.

11. This Practice Direction shall come into force on the 15th day of February, 2016. With effect from 15th day of February, 2016 Practice Direction No. 6 of 2015 is hereby revoked.

Hon, Anthony Smellie

Chief Justice

8th day of February, 2016

GRAND COURT PRACTICE DIRECTION NO: 1 OF 2017

Payments into Court of trust funds under section 69 of the Trusts Act and Grand Court Rules Order 92 (GCR O. 92).

Payments into Court of trust funds under section 69 of the *Trusts Act (as amended and revised)* and *Grand Court Rules (as amended and revised)* Order 92 (GCR O. 92).

1. Section 69 of the *Trusts Act (as amended and revised)* prescribes a special jurisdiction and procedure for payments into court by trustees. It is a form of relief afforded to trustees who may, for a variety of recognised reasons, wish to relieve themselves of the responsibility for holding trust funds. Examples are where a trustee is unable to obtain a discharge for the funds (such as where the beneficiary of the trust is a minor or a patient) or where a beneficiary refused to consent to the sale of trust property against the wishes of the majority of beneficiaries. If a trustee is in doubt as to who is entitled to a fund in that trustee's hands, GCR O.85 is generally available for the purpose of getting the point decided and if so, this course should be followed instead of the funds being lodged in Court under section 69 of the *Trusts Act (as amended and revised).*

2. For the purposes of section 69, the applicable rule is GCR Order 92 rule 2. Where there are as yet no proceedings before the Court, the applicable rule is sub-rule 2(3), in which case the required affidavit prescribed by sub-rule 2(1) must be filed with the Accountant General of the Court, instead of directly with the Court.

3. In the case of a trust fund which is already the subject of proceedings before the Court, the applicable procedure is prescribed by sub-rule 2(2) which requires the affidavit prescribed by sub-rule (1) to be filed directly with the Court and a copy served upon the Accountant General of the Court.

4. Monies paid in under sub-rule 2(2) or 2(3) will be held in escrow in a bank account by the Accountant General.

5. Notice of the payment in must be served upon every interested party by the trustee in keeping with rule 3.

6. Any interested party will then be able to apply to the Court for payment out under rule 4.

7. This practice is to be distinguished from that for dealing with payments into Court in relation to actions for debt or damages (see GCR Order 22); or in relation to orders for security for costs (as permitted by GCR Order 23 rule 2); or in relation to interpleader proceedings (GCR Order 17 rule 4(c)).

Hon. Anthony Smellie
Chief Justice

l August 2017

GRAND COURT PRACTICE DIRECTION NO. 2 OF 2017

Registration of Foreign Maintenance Orders or Judgments Sections 14, 22 and 23 of the *Maintenance Act (as amended and revised)* ("the Law")

INTRODUCTION

The *Maintenance Act (as amended and revised)* ("the Law") in sections 14, 22 and 23, provides for the enforcement in the Island s of certain foreign orders and judgments by way of registration. In broad terms, these are the orders or judgments of the courts of England, Ireland and Jamaica and of courts of countries (or of jurisdictions within countries) which are designated by Order made by the Cabinet and referenced within schedules to the Law. To date only the courts of Belize and two Canadian Provinces (the Yukon and Ontario) have been referenced within schedules by Orders made under the Law.

The process of registration is meant to be simple and direct, avoiding the need to prove the foreign order or judgment by way of suit. It is nonetheless essential that, as provided by the Law, once registered, the order or judgment is enforceable as if it had been made by a local court. To this end the process requires that the foreign order or judgment is enforced by order of a judge of the Grand Court or (if it emanates from a foreign court which is not a court of superior jurisdiction) by an order of a Magistrate of the Summary Court.

This practice direction explains the procedure - adopted from Grand Court Rules Order 71 which prescribes the procedure for the enforcement of foreign judgments under the *Foreign Judgments Reciprocal Enforcement Act (as amended and revised)* (the "F.J.R.E.L."). Like under the Law, under the F.J.R.E.L., only the judgments of those foreign countries or territories scheduled by Order of the Cabinet (and in the case of the F.J.R.E.L regarded as providing reciprocity) can be enforced by way of registration. Here too

under F.J.R.E.L, at present, only the judgments of a limited number of courts are enforceable by registration - those of the Superior Courts of Australia and its External Territories.

Other than under the Law and under the F.J.R.E.L, it remains the position that foreign judgments can be enforced within the Islands only by way of being sued upon at common law.

DIRECTIONS:

1. The Clerk of the Court shall be the "Prescribed Officer" for the purposes of section 14, 22 and 23 of the Law.

2. The Prescribed Officer shall maintain a Register of Foreign Maintenance Orders and Judgments ("the Register"). The Register will be a public record.

3. Upon receipt of an order or judgment of a foreign court capable of registration under the Law, the Prescribed Officer shall apply to the Grand Court by ex parte originating summons for the registration of the foreign order or judgment. Where the foreign order or judgment was made by a court which is not a court of superior jurisdiction, the Prescribed Officer shall apply to the Summary Court.

4. An application for registration must be supported by an affidavit by the Prescribed Officer:
   (a) exhibiting the order or judgment or certified (or otherwise duly authenticated) copy thereof and where the judgment is not in the English language, a translation thereof in the English language certified by a notary public or authenticated by affidavit;
   (b) stating the name and the usual or last known place of abode or business of the judgment creditor and judgment debtor

respectively, so far as known to the prescribed officer or as disclosed in the foreign order or judgment;

(c) stating to the best of the information or belief of the Prescribed Officer:

(i) that the foreign order or judgment is a certified copy thereof of the relevant foreign court duly transmitted to the Governor in keeping with section 14 of the Law.

(ii) As the case may require, either that at the date of the application the foreign order or judgment has not been satisfied, or that the amount in respect of which it was made remains unsatisfied.

5. (a) An order of the Grand Court giving leave to register the foreign order or judgment shall be drawn up by the Prescribed Officer on behalf of the judgment creditor and presented to the Judge or (in the case of a foreign order or judgment made by a court which is not a court of superior jurisdiction) to a Magistrate of the Summary Court, for grant of registration.

(b) An Order of the Grand or Summary Court giving leave to register shall state the period of time for compliance with the terms of the foreign order or judgment, and that failing which, the Prescribed Officer will have leave automatically to take steps for enforcement as if the foreign order or judgment had been originally made by the Grand Court or Summary Court, respectively.

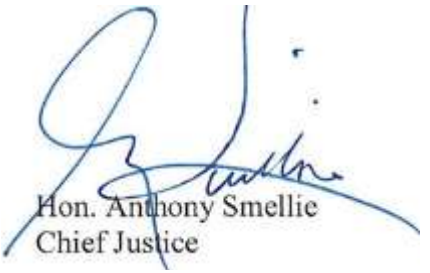
(c) Upon grant of registration of the foreign order or judgment it shall be entered in the Register and served upon the judgment debtor by notice of its registration;

(d) Notice of registration of a foreign order or judgment (with the order or judgment of the foreign court attached) must be served upon the judgment debtor by delivering it to the judgement debtor personally at that judgment debtor’s usual or last known place of

abode or business as identified in keeping with paragraph 4(b) above.

6. Execution shall not issue for a foreign order or judgment registered under the Law until after the period of time for compliance with the terms of the foreign order or judgment has expired.

7. An application for execution shall be supported by an affidavit of service of the notice of registration of the foreign order or judgment and the order granting leave for its registration.



l August 2017

GRAND COURT PRACTICE DIRECTION NO 3 OF 2017

Court Stenographer Services

Introduction

From time to time questions have arisen about the responsibility of the stenographers to cover civil proceedings and to provide transcripts in criminal cases. Recently, the question also arose whether they are obliged to provide copies of any back up audio recordings ("BUARs") that they may make for the purpose of assisting them in producing the transcripts of proceedings in criminal cases.

The stenographers are engaged to provide verbatim records of proceedings in Grand Court criminal cases. While section 53(3) of the *Criminal Procedure Code (as amended and revised)* ("the CPC") contemplates that this would include criminal proceedings before the Summary Courts, resources have only ever allowed for this to be done in the Grand Court.

The notes kept by the Chief Magistrate and Magistrates will continue to comprise the official record of proceedings in the Summary Courts. Consideration is being given to the introduction of a digital audio recording system for the recording of proceedings in the Summary Courts and further practice directions will be issued when that system is in place.

Section 53(1) of the CPC provides generally that, in the absence of other specific statutory provision, the Judge may give directions as to the manner in which evidence is recorded in any proceedings before any criminal court.

These directions proceed on the basis of that provision (and of course on the basis of the authority vested by section 95(7) of the Constitution) and are intended to explain and clarify the established practice.

1. Criminal Cases:

Official Transcripts

The transcript of criminal proceedings recorded by the stenographers and certified as correct by certificates given by the stenographers in keeping with the terms of section 53 (4) of the CPC, will be the official transcripts of the proceedings. In the production and certification of the final transcripts, the stenographers will be at liberty to confirm any details of the evidence or arguments with the defence or prosecution attorneys and, especially as to the details of the judge's summation to the jury, with the trial judge. Experience has shown that even the BUARs kept by the stenographers will sometimes fail to record clearly nuances of pronunciation. For such reasons, attorneys are encouraged to make available to the stenographers copies of written submissions and the judges, copies of written summations.

Daily transcripts

In an ideal world, daily transcripts would be provided on the ongoing basis during trials. This is not however, a tenable proposition because nearly as much time may be required out of court for tidying up the transcripts for certification before release, as needed for recording them in court.

Transcripts will therefore not be available on the daily basis during criminal trials.

It has however been agreed with the stenographers and is now established practice, that daily transcripts in draft (or so much of them as needed) will be provided to the judges if required for the purposes of directing the trials. As these will be in draft, the obvious reason why the same service may not be extended to the attorneys (or defendants in person), is the likelihood that they would seek to rely upon the draft transcripts as a conclusive record of whatever aspect of the proceedings they seek to emphasise, even while they have not yet been certified. More specifically, attorneys would seek to rely upon the draft transcript for the purposes of examining or cross-examining the present or

upcoming witnesses, an exercise that would be permissible only if the transcript is certified.

Attorneys will nonetheless still be able to call upon the stenographers, as the need may arise from time to time during a trial, to confirm any aspect of the evidence from their notes.

2. Transcripts for criminal appeal cases

By direction of the Court of Appeal,[15] in an appeal against any conviction by the Grand Court, the appellant shall be entitled to receive free of charge a transcript of any stenographer's note made at the trial, at the arraignment of the plea entered to the indictment and the judge's summing up to the jury. In the case of an appeal against any sentence by the Grand Court, the appellant shall also be entitled to receive free of charge a transcript of any stenographer's note of the sentencing proceedings. Court of Appeal Rule 33A goes on to direct that further aspects of the transcripts of criminal trials will be provided to parties only where truly necessary for the preparation and presentation of appeals. As the need for these further transcripts should arise well in advance of the Court of Appeal hearing, an application must be made in writing to a judge of the Grand Court explaining the need for them in keeping also with Rule 33A. In making such an application, the applicant shall state precisely which further parts of the trial transcript are sought, giving brief reasons why each part of the transcript sought is required. It is therefore clear that an objective of the rule, is to ensure that applicants do not require more of the transcripts than will reasonably suffice for the filing and presentation of appeals.

3. Recording and transcribing of ex tempore judgments in the Court of Appeal and the Grand Court

The stenographers have been extremely helpful in the Court of Appeal and the Grand Court by recording and transcribing *ex tempore*

[8] See Court of Appeal Rule 33A, as introduced by the Court of Appeal (Amendment) Rules 2009.

judgments in both criminal and civil appeals and cases. In Grand Court criminal cases the stenographers will provide directly to the judge the transcript they have prepared of any *ex tempore* judgment or ruling.

The judge will then make any amendments, if necessary, and return the transcript directly back to the stenographer. If it is required for purposes of an appeal, that transcript will be included in the appeal bundle. (In the case of distribution to other judges and/or for the Law Reports, the stenographer will put that transcript in Word and PDF formats and email it to the officer responsible for distribution of judgments).

In the Court of Appeal the transcription of *ex tempore* judgments has usually been **provided for criminal cases although exceptionally, the Court may require this service for** a civil case. In the Grand Court where the stenographers cover all criminal proceedings, the transcription of *ex tempore* judgments will for civil cases, be provided if exceptionally required by a judge.

This practice will continue subject to the directions below which will apply more generally to the practice in civil cases.

4. <u>Stenographers notes and transcripts for civil cases.</u>

The Judicial Administration remains unable to provide stenographer services for civil cases generally although this may change with changes to Government personnel policy to allow for the engagement of stenographers to provide this service.

For the time being, it therefore remains the obligation of the parties, with the approval of the judge, to make their private arrangements for these services in civil cases.

By the agreement of the parties and with the approval of the judge, the private stenographer's notes and transcriptions may be deemed the official record of the proceedings. Failing such agreement and approval, the judge's notes of the proceedings will be the official record.

5. <u>Digital audio recording for chambers proceedings.</u>

The Judicial Administration will continue to provide digital audio recording equipment for the recording of chambers proceedings in all divisions of the Grand Court.

Such recordings will be made (with the prior approval of the judge) and the disc provided to the parties for transcription at their expense.

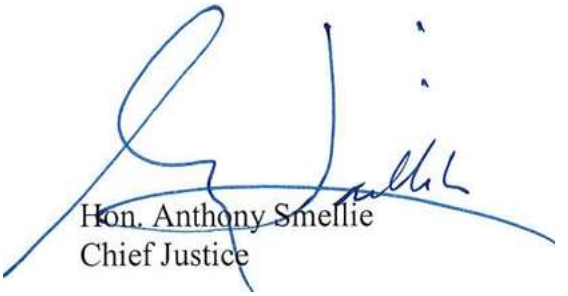
The transcription will not be regarded as an authorised transcript of the proceedings unless and until so approved by the judge; failing which, the judge's notes of the proceedings will be the official record.

6. Back Up Audio Recordings (BUARs)

- Such recordings will be made (with the prior approval of the judge) and the disc provided to the parties for transcription at their expense.
- BUARs, where they are made, will be the work product of the stenographers, kept for their assistance in providing the official transcripts of the court.
- The BUARs are not expected to be provided to anyone unless so ordered by the court under the following circumstances.
- Upon a written application explaining why it is thought that any part of an official transcript is erroneous, a judge may direct that the BUARs are played back by the stenographer for comparison with the official transcript. This will be allowed in criminal cases only and when Defence and Crown Counsel are both present or where the applicant is a defendant in person, only

  when the defendant (or an authorised representative) and Crown Counsel are both present.
- A written record will be made of the exercise and of the outcome by the stenographer and must be signed by the stenographer and both parties.

- Where a discrepancy is found as between the BUARs and the official transcript, this will immediately be brought to the attention of a judge (preferably the trial judge if available) who will decide (if appropriate after consultation with the parties) what steps if any should be taken.
- In no circumstances will BUARs simply be handed over to any party.[2]
- BUARs (when kept and relied upon by the stenographer for provision of transcripts) will be kept for a period of 5 years to allow for the expiry of any time for appeal.



4 August 2017.

[2] This direction, while recognising the right of an accused person under section 7 of the Constitution to any record of the proceedings (cf State of Mauritius [2017] UK PC 16), also recognises the need for the proper management of the Court Records of and of the demands upon the time of Court officials, in particular the court stenographers.

GRAND COURT PRACTICE DIRECTION NO: 4 OF 2017

Filing of Winding Up Petitions

The filing of a petition to wind up a company if publicised can cause irreparable harm to its reputation, even if the petition is ultimately dismissed for lack of merit.

To address this mischief, the Companies Winding Up Rules (CWRs) prescribe a certain procedure for the filing of winding up petitions. These are in CWR Rules 5, 1 and 14, dealing respectively with the Creditor's, Contributory's and Cayman Islands Monetary Authority's petitions.

1. **Creditor's Petition**

   (a) In keeping with CWR Rule 5, prior to presenting a creditor's petition, the petitioner's attorney must apply in writing (by letter or email) to the FSD Registrar to have the proceeding assigned to a Judge and to fix a hearing date.

   (b) A creditor's petition shall not be filed or entered upon the Register of Writs and Actions (the "Register") unless and until the proceeding has been assigned to a Judge and a hearing date has been fixed and endorsed on the petition or stated in a notice of hearing filed simultaneously with the petition.

   (c) Where the Judge has made an order restricting the filing or otherwise the publication of the petition, the petition may not be entered on the Register other than in keeping with the terms of the order or subsequent order.

2. **Contributory's Petition**

   (a) Upon presentation of a contributory's petition, the petitioner must at the same time issue a summons for directions in respect of the matters contained in CWR Rule 12, which will include directions as to whether or not the petition is to be advertised.

(b) Prior to presenting a contributory's petition and issuing the summons for directions in respect of it, the petitioner's attorney must apply in writing (by letter or by email) to the FSD Registrar to have the proceeding assigned to a Judge and to fix a date for hearing the summons for directions.

(c) Unless and until the Judge has fixed a date for hearing the summons for directions or otherwise directs, the petition shall not be entered upon the Register.

3. Authority's Petition

(a) Prior to presenting a petition, the Authority's attorney must apply in writing (by letter or email) to the FSD Registrar to have the proceeding assigned to a Judge and to fix a date for hearing the summons for directions.

(b) Upon the presentation of a petition by the Authority, the Authority must at the same time issue a summons for directions in respect of the matters contained in CWR Rule 15. A petition presented by the Authority shall not be advertised or entered in the Register unless and until the Judge otherwise directs.

Chief Justice

4 August 2017

GRAND COURT PRACTICE DIRECTION No: 1 of 2018

Court-to-court communications and cooperation in cross-border insolvency and restructuring cases

The Guidelines – what they cover and when they should be used.

1. This practice direction deals with the use and adoption in cases pending before the Grand Court of the Cayman Islands (Court) of published guidelines relating to court-to-court communications and cooperation in cross-border insolvency and restructuring proceedings.

2. There are two main sets of guidelines (Guidelines) for court-to-court communications and cooperation which might be adopted in this jurisdiction, with appropriate modifications. These are the American Law Institute/International Insolvency Institute Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases and The Judicial Insolvency Network Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters. Copies of the current versions of both sets of Guidelines are attached to this Practice Direction.

3. The Guidelines primarily cover the procedural rules that may be adopted and applied in particular cross-border cases for regulating the manner of communications between the courts involved, the appearance of counsel in each court, notification to parties in parallel proceedings, the acceptance as authentic of official documents or orders made in the foreign jurisdiction or court and joint hearings. They are to be applied either by being incorporated in a protocol between the respective officeholders which protocol is then approved by the Court (and other courts involved as required) or by a separate order of the Court without a protocol (and orders of the other courts involved as

required), in each case subject to such modifications as may be required in the circumstances.

4. The Guidelines are relevant where the insolvency or restructuring proceedings are being supervised by, or involve related applications to, courts in more than one jurisdiction. Such proceedings will include liquidation (including provisional and voluntary liquidation) and other insolvency or restructuring proceedings involving applications to court. Accordingly, the Guidelines will be relevant to schemes of arrangement relating to a company being supervised by the Court which also involve a parallel scheme (or debt adjustment proceeding) or ancillary proceedings in another jurisdiction (and may also be relevant in cases in which the Court has appointed a receiver or other officer of the Court and where the Cayman Islands Monetary Authority has appointed a controller pursuant to the Cayman Islands regulatory laws). The Guidelines can apply whether the officeholder is appointed by the Court or is appointed out of Court and whether the person is appointed in respect of a company (incorporated in the Cayman Islands or abroad) other legal entity (established in the Cayman Islands or abroad) or an individual.

5. Officeholders appointed in the Cayman Islands, companies subject to restructuring proceedings supervised by the Court and other interested parties involved in cross-border insolvency cases should consider, at the earliest opportunity, whether to incorporate some or all of the Guidelines with suitable modifications either into an international protocol to be approved by the Court or an order of the Court adopting the Guidelines.

Official liquidators of Cayman Islands companies

6. Official liquidators of Cayman Islands incorporated companies subject to an official liquidation under Part V of the *Companies Act (as amended and revised)* are already under a duty, pursuant to Order 21, r.2(1) of the Companies Winding Up Rules (CWRs), to consider whether or not it is appropriate to enter into an international protocol with any foreign officeholder (in a case in which the company in liquidation is subject to a concurrent bankruptcy proceeding under the law of a foreign country or has assets located in a foreign country which are the subject of a bankruptcy proceeding or receivership under the law of that country).

   The purpose of such a protocol is to promote the orderly administration of the estate of the company to avoid duplication of work and conflict between the official liquidator and the foreign officeholder (CWR O.21, r.2(2)) and the protocol only takes effect when approved both by the Court and the foreign court (CWR O.21, r.2(3)). The CWRs provide that the protocol may define and allocate responsibilities between the official liquidator and the foreign officeholder in respect of the various matters set out in CWR O.21, r.3. These include procedures for the exchange of information between the officeholders; procedures for reporting to creditors and/or contributories and procedures for coordinating sanction applications made to the Grand Court and the foreign court.

   Consideration should be given by official liquidators to the incorporation of the Guidelines into the international protocol.

7. While official liquidators of Cayman Islands incorporated companies are required to consider whether to enter into an international protocol which deals with the matters set out in CWR O.21, r.3 they are not required to limit any protocol they enter into to such matters. The protocol may, subject to the approval of the Court, cover other matters

including court-to-court communications and cooperation as provided for in the Guidelines. In addition, even if official liquidators conclude that a protocol is not appropriate (or that it is not appropriate to incorporate the Guidelines into such a protocol) the Guidelines with suitable modifications may be adopted by an order of the Court which gives directions with respect to the procedures to be followed.

Other Cayman Islands officeholders

8. While it is only official liquidators of Cayman Islands incorporated companies subject to an official liquidation who have a duty under the CWR to consider entering into an international protocol, other Cayman Islands officeholders or companies subject to restructuring proceedings supervised by the Court may enter into a protocol incorporating the Guidelines or may apply for an order adopting the Guidelines and this Practice Direction will apply in such cases.

9. To the extent that Cayman Islands officeholders or companies subject to restructuring proceedings supervised by the Court are unclear as to the manner in which to use and apply the Guidelines in any particular case, they may apply to the Court at any early stage in the proceedings for directions.

Hon. Anthony Smellie
May 31, 2018

GRAND COURT PRACTICE DIRECTION NO. 1 OF 2019

DIRECTIONS FOR PROCEEDINGS BROUGHT UNDER SECTION 238 OF THE COMPANIES ACT

Upon the presentation of a petition pursuant to section 238 of the *Companies Act (as amended and revised)*, the party presenting the petition must at the same time issue a summons seeking directions in respect of the following matters:

1. The opening and population of, and access to, an indexed electronic data room (or other proposal) for maintaining documents relevant to the fair value of the subject company as of the relevant valuation date (the "**Valuation Date**").

2. The discovery and inspection of documents relevant to the fair value of the subject company as at the Valuation Date (including any documents that should be specifically discovered), inclusive of documents existing both before and after the Valuation Date.

3. The provision of any lay evidence (if appropriate).

4. The provision of any expert evidence including:
   (a) the instruction and disciplines of expert witnesses;
   (b) the convening and conduct of meetings between expert witnesses and members of the management of the subject company;
   (c) the request by, and responses to, expert witnesses for documents and information relevant to the fair value of the subject company;
   (d) the exchange of expert witness reports;
   (e) meetings of experts and the provision of a joint expert memorandum; and
   (f) the exchange of supplemental expert witness reports.

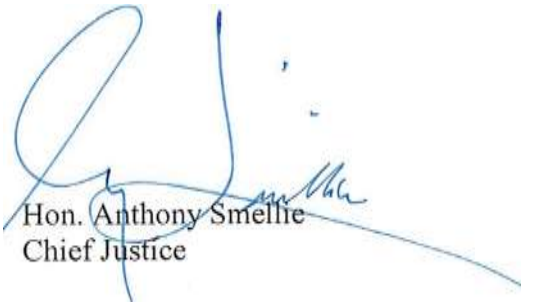
5. The manner in which evidence is to be given.

6. If evidence is directed to be given by affidavit, directions relating to cross-examination of the deponent/s.

7. The listing of any case management conference.

8. The listing of the trial of the petition.

9. Such other procedural matters as the party thinks fit.



Hon. Anthony Smellie
Chief Justice

February 26, 2019

GRAND COURT PRACTICE DIRECTION No. 2 OF 2019

Adoption of Judicial Insolvency Network Modalities

For Court-To-Court Communications

1. The Grand Court Financial Services Division ("FSD") adopted the Judicial Insolvency Network ("JIN") Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Cases on 31 May, 2018 (see Practice Direction No. 1 of 2018).

2. JIN adopted the Modalities of Court-to-Court Communication on 25 July 2019 (the "Modalities"). The Modalities are designed to establish an administrative framework within which the JIN Guidelines will operate.

3. The FSD hereby adopts the Modalities as set out in the Appendix hereto with effect from 1 August 2019.

4. Pursuant to paragraph 5 of the Modalities, the FSD appoints Justice Ian RC Kawaley of the FSD as the Facilitator.

5. Pursuant to paragraph 7 of the Modalities, the FSD identifies English as the language in which initial communications may be made.

Dated this 31st day of July 2019

Hon. Anthony Smellie
Chief Justice

APPENDIX

MODALITIES OF COURT-TO-COURT COMMUNICATION

Scope and definitions

1. These Modalities apply to direct communications (written or oral) between courts in specific cases of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction ("Parallel Proceedings"). Nothing in this document precludes indirect means of communication between courts, such as through the parties or by exchange of transcripts, etc. This document is subject to any applicable law.

2. These Modalities govern only the mechanics of communication between courts in Parallel Proceedings. For the principles of communication (e.g., that court to-court communications should not interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings, etc.), reference may be made to the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (the "Guidelines") issued by the Judicial Insolvency Network in October 2016.

3. These Modalities contemplate contact being initiated by an "Initiating Judge" (defined below). The parties before such judge may request that Judge to initiate such contact, or the Initiating Judge may seek it on that Intitating Judge's own initiative.

4. In this document:
   (a) "Initiating Judge" refers to the judge initiating communication in the first instance;

(b) "Receiving Judge" refers to the judge receiving communication in the first instance;

(c) "Facilitator" refers to the person(s) designated by the court where the Initiating Judge sits or the court where the Receiving Judge sits (as the case may be) to initiate or receive communications on behalf of the Initiating Judge or the Receiving Judge in relation to Parallel Proceedings.

Designation of Facilitator

5. Each court may designate one or more judges or administrative officials as the Facilitator. It is recommended that, where the Facilitator is not a judge, a judge be designated to supervise the initial steps in the communication process.

6. Courts should prominently publish the identities and contact details of their Facilitators, such as on their websites.

7. Courts should prominently list the language(s) in which initial communications may be made and the technology available to facilitate communication between or among courts (e.g. telephonic and/or video conference capabilities, any secure channel email capacity, etc.).

Initiating communication

8. To initiate communication in the first instance, the Initiating Judge may require the parties over whom that Judge exercises jurisdiction to obtain the identity and contact details of the Facilitator of the other court in the Parallel Proceedings, unless the information is already known to the Initiating Judge.

9. The first contact with the Receiving Judge should be in writing, including by email, from the Facilitator of the Initiating Judge's court to the Facilitator of the Receiving Judge's court, and contain the following:

(a) the name and contact details of the Facilitator of the Initiating Judge's court;

(b) the name and title of the Initiating Judge as well as contact details of the Initiating Judge in the event that the Receiving Judge wishes to contact the Initiating Judge directly and such contact is acceptable to the Initiating Judge;

(c) the reference number and title of the case filed before the Initiating Judge and the reference number and title (if known; otherwise, some other identifier) of the case filed before the Receiving Judge in the Parallel Proceedings;

(d) the nature of the case (with due regard to confidentiality concerns);

(e) whether the parties before the Initiating Judge have consented to the communication taking place (if there is any order of court, direction or protocol for court-to-court communication for the case approved by the Initiating Judge, this information should also be provided);

(f) if appropriate, the proposed date and time for the communication requested (with due regard to time differences); and

(g) the specific issue(s) on which communication is sought by the Initiating Judge.

Arrangements for communication

10. The Facilitator of the Initiating Judge's court and the Facilitator of the Receiving Judge's court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation of counsel or the parties unless otherwise ordered by one of the courts.

11. The time, method and language of communication should be to the satisfaction of the Initiating Judge and the Receiving Judge, with due regard given to the need for efficient management of the Parallel Proceedings.

12. Where translation or interpretation services are required, appropriate arrangements shall be made, as agreed by the courts. Where written communication is provided through translation, the communication in its original form should also be provided.

13. Where it is necessary for confidential information to be communicated, a secure means of communication should be employed where possible.

Communication between the Initiating Judge and the Receiving Judge

14. After the arrangements for communication have been made, discussion of the specific issue(s) on which communication was sought by the Initiating Judge and subsequent communications in relation thereto should, as far as possible, be carried out between the Initiating Judge and the Receiving Judge in accordance with any protocol or order for communication and cooperation in the Parallel Proceedings.

15. If the Receiving Judge wishes to by-pass the use of a Facilitator, and the Initiating Judge has indicated that that Initiating Judge is amenable, the judges may communicate with each other about the arrangements for the communication without the necessity for the participation of counsel or the parties.

16. Nothing in this document should limit the discretion of the Initiating Judge to contact the Receiving Judge directly in exceptional circumstances.[1]

[1] http://jin-global.org/content/jin/pdf/Modalities_for_court-to-court_communication.pdf

GRAND COURT PRACTICE DIRECTION No. 3 OF 2019

PROCEEDINGS IN THE FAMILY DIVISION OF THE GRAND COURT: COSTS ESTIMATES

The costs incurred in the Family Division of the Grand Court are, in a great number of cases, disproportionally high in relation to (i) the value of assets involved; or (ii) the realistic amount of child/spousal maintenance being claimed, or (iii) the nature of the children issues. Often a Judge will be unable to make a realistic determination in financial ancillary relief proceedings without an indication of costs incurred and/or an approximate indication of anticipated costs of each side. It is, moreover, in the interests of the parties themselves that each should be aware, throughout the proceedings, of the actual and potential liability for costs.

Therefore:

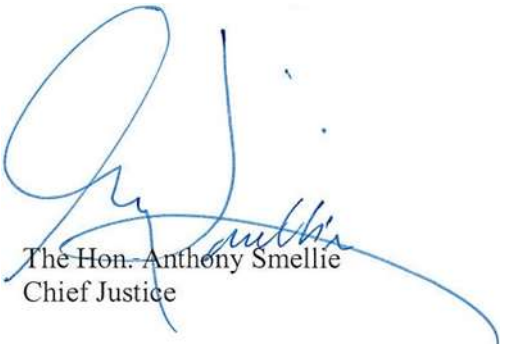
(I) Subject to paragraph (2), no later than 3 p.m. on the last working day prior to each court hearing each party shall exchange with each other and deliver to the court a written estimate in Form A of the costs incurred by each party up to the date of that hearing.

(2) Not less than 14 days before the date fixed for the final hearing of an application for ancillary relief, each party must (unless the Court directs otherwise) file with the Court and serve on the other party a statement in Form B giving full particulars of all costs in respect of the proceedings which each party has incurred or expects to incur, to enable the court to take account of the parties' liabilities for costs when deciding what order (if any) to make for ancillary relief.

Non-compliance with this Practice Direction may have a consequence. To the extent necessary for the proper management or disposal of the case that compliance be insisted upon, orders for costs can be made against either party in default or against defaulting lawyers. Those who default may find

that their case is put to the end of the court list or the case may be taken out of the list altogether.

Dated this 25th day of September 2019



The Hon. Anthony Smellie
Chief Justice

Attachments: Form A
Form B

Form A

(Heading in the Cause)

ESTIMATE OF COSTS

[Petitioner]
[Respondent] (Husband / Wife)

Estimated costs incurred up to and including the current hearing

	Apportionment (Please provide approximate breakdown, if known)			**Total Costs CI$**
	Main Suit	Children	Ancillary Relief	
1. Attorney's Costs *(include any costs incurred by previous attorneys, whether privately instructed or assigned by the Director of Legal Aid)*				
2. Disbursements *(include any disbursements incurred by previous attorneys, whether privately instructed or assigned by the Director of Legal Aid)*				
SUB-TOTAL:				

I acknowledge that these costs have been brought to my attention.

Signed

(Name of party)

Signed

(Name of Firm of attorneys)

Date:

Form B

(Heading in the Cause)

[Petitioner]
[Respondent] (Husband / Wife)

ESTIMATE OF COSTS

Estimated costs after the current or last hearing up to and including the Trial

	Apportionment (Please provide approximate breakdown, if known)			**Total Costs CI$**
	Main Suit	Children	Ancillary Relief	
1. Attorney's Costs *(include any costs incurred by previous attorneys, whether privately instructed or assigned by the Director of Legal Aid)*				
2. Disbursements *(include any disbursements incurred by previous attorneys, whether privately instructed or assigned by the Director of Legal Aid)*				
SUB-TOTAL:				

I acknowledge that these costs have been brought to my attention.

Signed

(Name of party)

Signed

(Name of Firm of attorneys)

Date:

GRAND COURT PRACTICE DIRECTION No. 4 OF 2019

Criminal Procedure - Remand Warrants where defendant found unfit to plead - Committal Warrants where defendant found to be not guilty by reason of insanity

l. By sections 48 and 122 (2) of the Criminal Procedure Code ("the Code"), persons who are found to be unfit to plead are described as " *of unsound mind and incapable of making (his or her) defence"* or as *"insane and unfit to stand triaI"*. Such persons are awaiting trial as defendants and, where not released on bail into the custody of a guardian in keeping with section 48(2), are remanded by the Court on report to the Governor, pending fitness to stand trial. The Governor may then order the defendant to be detained in any hospital or other place appointed which will usually be His Majesty's Prison [(Northward or Fairbanks) as the case may be] because there is, for the time being, no other facility available.

It is therefore required that warrants for remand of such defendants suitably describe their condition by specifying the basis upon which they are remanded.

Accordingly, a warrant for remand of such a defendant shall specify, in keeping with section 48(3) of the Code, that *"the defendant has been found by the Court to be un fit to stand trial and is remanded to His Majesty's Prison [(Northward or Fairbanks) as the case may be] until further order of the Court or until discharged by order of the Governor"*.

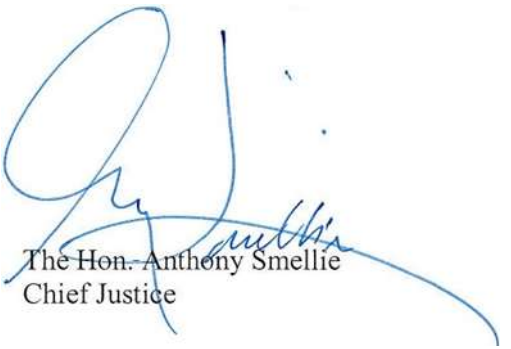
In keeping with section 50 of the Code, the proceedings may be later resumed by the direction of the Court.

2. Similar concerns attend the committal of persons who have been found not guilty by reason of insanity pursuant to section 158 and are to be remanded pursuant to section 159 of the Code.

   Section 159(1) provides that the Court shall order such persons to be conveyed to any hospital or other place for the time being appointed under any law to be a mental hospital and for the reception of criminally insane persons, there to be kept until discharged by the Governor. For the time being, the place appointed is His Majesty's Prison Northward [(or Fairbanks as the case might be)].

   Accordingly, a warrant for committal of such a person shall specify that *"he/she has been found to be not guilty by reason of insanity and shall be conveyed to His Majesty 's Prison Northward [(or Fairbanks)] as the place for the time being appointed for the reception of criminally insane persons there to be kept until discharged by order of the Governor"*.

3. This Practice Direction will be revised and reissued once another place is appointed for the reception of persons who are found to be unfit to plead or not guilty by reason of insanity.



The Hon. Anthony Smellie
Chief Justice

October 21, 2019

GRAND COURT PRACTICE DIRECTION No. 1 OF 2020

MEDIATION INFORMATION AND ASSESSMENT RULES 2020

Introduction

Mediation of family disputes offers many advantages over resolution of disputes through the court. Consequently, the court actively monitors all family disputes to determine whether the couples concerned should attend a meeting with a family mediator to learn about the mediation process and the merits of mediation over litigation in court.

Although mediation is suitable for many family disputes, it is not suitable in all cases and the *Mediation Information and Assessment Rules (as emended and revised)* ("MIAM Rules") provide for exemptions. It is also recognised that drug and/or alcohol abuse, and/or mental illness, are likely to prevent couples from participating effectively in mediation.

Summary

1. The purpose of this Practice Direction is to provide guidance in respect of the MIAM Rules and to set out good practice to be followed by respondents who are expected to also attend a MIAM.

2. Under the MIAM Rules it is now presumed that if a person makes certain kinds of applications the parties will be ordered to attend a MIAM before continuing with the application. (A list of these applications is set out in Rule 6.) The court has a general power to adjourn proceedings in order for non-court dispute resolution to be attempted, including attendance at a MIAM to consider family mediation and other options.

3. A MIAM is a short meeting that provides information about mediation as a way of resolving disputes. A MIAM is conducted by a trained mediator who will assess whether mediation is appropriate in the circumstances. A MIAM should be held within 28 days after an order for referral from the court.

4. There are exemptions to the MIAM presumption. They are set out in the MIAM Rules.

5. The effect of the MIAM presumption and the MIAM Rules is that a person who makes certain kinds of applications to the court must first attend a MIAM unless a ' MIAM exemption' applies. These exemptions are set out in Rule 8.

6. When making certain kinds of applications (see paragraphs 12 and 13 below), an applicant must therefore provide on the relevant form one of the following —
   (i) confirmation from a mediator that (s)he has attended a MIAM; or
   (ii) a claim that a MIAM exemption applies. An applicant who claims an exemption from the MIAM requirement is not required to attach any supporting evidence with that applicant's application, but should bring any supporting evidence to the first appointment hearing.

7. If an applicant claims a MIAM exemption, at the first appointment hearing before the Grand Court or at the initial hearing before the Summary Court, the court will inquire into the exemption claimed. At the first appointment hearing before the Grand Court or at the initial hearing before the Summary Court, the court may review any supporting evidence in order to ensure that the MIAM exemption was validly claimed. As set out in more detail below, if a MIAM exemption has not been validly claimed, the court may direct the parties to attend a MIAM, and may adjourn proceedings for that purpose.

Background: Consideration of mediation and other non-court dispute resolution

8. The adversarial court process is not always best suited to the resolution of family disputes. Such disputes are often best resolved through discussion and agreement, where that can be managed safely and appropriately.

9. Family mediation is one way of settling disagreements. A trained mediator can help the parties to reach an agreement. A mediator who conducts a MIAM is an independent facilitator who can also discuss other forms of dispute resolution if mediation is not appropriate.

10. Attendance at a MIAM provides an opportunity for the parties to a dispute to receive information about the process of mediation and to understand the benefits it can offer as a way to resolve disputes. At that meeting, a trained mediator will discuss with the parties the nature of their dispute and will explore with them whether mediation would be a suitable way to resolve the issues on which there is disagreement.

The applications to which the MIAM presumption applies

11. The MIAM presumption applies to private law proceedings relating to children and proceedings for a financial remedy as set out in Rule 1.

Making an application

12. An application to the court in any of the proceedings specified above must be accompanied by the relevant court form which must contain either: (a) a confirmation from a mediator that the applicant has attended a MIAM; or (b) a claim by the applicant that a MIAM exemption applies (the list of MIAM exemptions is set out in Rule 8(l)).

13. The relevant form can be completed either by the applicant or that applicant's attorney. Any reference in this Practice Direction or in the Rules to completion of the form by an applicant includes a reference to completion by an attorney.

MIAM exemptions

14. Rule 8(1) sets out the circumstances in which the MIAM presumption does not apply. These are called MIAMS exemptions.

15. In order to claim that a MIAM exemption applies, an applicant will need to complete the relevant form.

16. Applicants should note that some of the MIAM exemptions require that certain evidence is available. This evidence does not need to be provided with the application but applicants should bring such evidence to the first appointment hearing because the court will inquire into such evidence in order to determine whether the MIAM exemption has been validly claimed.

Finding a family mediator

17. As set out in Rule 9, only a family mediator may conduct a MIAM. Under that Rule, a family mediator is a Grand Court Judge who is assigned to the Family Division, or a Magistrate, or one of the persons or class of persons identified in the Schedule to this Practice Direction as may be issued from time to time by the Chief Justice.

18. Further information about mediation including a list of family mediators and their contact details can be found at www.judicial.ky.

MIAM exemption: Inquiries by the court

19. Where a MIAM exemption requires that an applicant supply certain evidence to support that applicant's claim to the exemption, (s)he should bring that evidence to the first appointment hearing. At that hearing the court will inquire into that evidence to determine whether (s)he has a valid claim to that MIAM exem ption.

20. The court may, if appropriate, adjourn proceedings where the applicant is unable to supply that evidence or it may give directions about how and when the applicant is to file such evidence with the court.

21. If the court determines that the applicant has not validly claimed a MIAM exemption, it may direct the parties, to attend a MIAM and may adjourn proceedings pending attendance at that MIAM.

Definitions

22. For the purpose of this Practice Direction the definitio ns in the MIAM Rules apply. Pursuant to Rule 1 of the MIAM Rules the Schedule to this Practice Direction sets out a list of family mediators.

Revocation of Practice Direction No 2 of 2016

23. Practice Direction No 2 of 2016 is hereby revoked.

Hon. Anthony Smellie QC
Chief Justice

2 January 2020

SCHEDULE TO PRACTICE DIRECTION No 1 OF 2020

Chief Justice Anthony Smellie
Justice Richard Williams
Justice Robin McMillan
Justice Cheryll Richards

Chief Magistrate Nova Hall
Magistrate Kirsty Gunn
Magistrate Angelyn Hernandez
Magistrate Philippa McFarlane

Mrs. Leslie Talbot

GRAND COURT PRACTICE DIRECTION No. 2 OF 2020

COVID 19: GUIDANCE FOR THE FAMILY DIVISION - 25 MARCH 2020

1. This Guidance, which is issued by the Chief Justice, is intended to be followed with immediate effect in the Grand Court Family Division.

2. The aim of the Guidance is to 'Keep Business Going Safely'. There is a strong public interest in the Family Justice System continuing to function as normally as possible despite the present pandemic. At the same time, in accordance with government guidance, there is a need for all reasonable and sensible precautions to be taken to prevent infection and, in particular, to avoid non-essential personal contact.

3. The government guidance is, however, primarily aimed at the social setting, rather than the business/work environment. Depending on the circumstances there may be the need, and no harm involved, in having a number of people present in court for an oral hearing.

4. Taking these competing factors together, whilst the default position should be that, for the time being, all Family Division hearings should be undertaken remotely either via email, telephone, video or Zoom, etc ['remote hearing'], where the requirements of fairness and justice require a court-based hearing, and it is safe to conduct one, then a court-based hearing should take place. The Court will ensure that the appropriate distancing measures set out in the Family Division protocols are put in place.

Practice Directions and Guidance

5. Grand Court Practice Directions No. 2 of 2004 “Proceedings by way of Video Conferencing Civil or Criminal” and the accompanying ‘Video Conferencing Guide” were issued by the Chief Justice on 16th May

2004. The use of remote hearings in appropriate cases is consistent with the Court's duty under the Overriding Objective to deal with every cause or matter in a just, expeditious and economical way. Video conferencing has been used in the Grand Court for a number of years. The Family Division has in appropriate cases held hearings and received evidence by telephone or by using any other method of direct oral communication. In the current circumstance where facilities are available to the court and the parties, the Court should consider making full use of technology, including electronic information exchange and video or telephone conferencing.

Remote hearings

6. There is no category of case that may be listed in the Family Division which necessarily requires the physical attendance of key participants in the same courtroom. The determination of whether or not a remote hearing is to take place will not therefore turn on the estimated length of the hearing but upon other case specific factors.

7. The following categories may be suitable for remote hearings:

a. All directions and case management hearings

b. Public Law Children:

i. Emergency Protection Order

ii Interim Care/Supervision Orders

c. Private Law Children:

i. First appointment Hearings on Family Mention Days

ii. Other interim hearings

iii. Simple short contested cases

d. Injunction applications where there is no evidence that is to be heard (or only limited evidence)

e. Financial Cases

f. Appeals

g. Other hearings as directed by the judge concerned

8. Where a case in one category listed in paragraph 7 above has already been listed for a hearing at which the parties are due to attend court then, if it is possible to make arrangements for a fixed hearing to be conducted remotely, the hearing should go ahead remotely without any personal attendance at court. **A draft directions order is at Appendix A below.**

9. It is possible that other cases may also be suitable to be dealt with remotely. As the current situation is changing rapidly, the question of whether any particular case is heard remotely must be determined on a case-by-case basis.

10. Where a case cannot be listed for a remote hearing as matters stand then any existing listing should be adjourned and the case must be listed promptly for a directions hearing, which should be conducted remotely. The primary aim of the directions hearing should be to identify the optimal method of conducting the court process in order to achieve a fair and just hearing of the issues but, at the same time, minimising as much as possible the degree of inter-personal contact between each participant. In appropriate cases, this may involve the use of a remote hearing where it is possible to conduct the court process in a manner that achieves a fair and just consideration of the issues. Although consideration may be given as to whether it is possible to conduct a complicated extensive multi-party hearing using the Zoom system, in such cases it may be necessary for the personal attendance at court, for some or all of the hearing, by some or all of the participants.

11. At any directions hearing to discuss the future hearing arrangements, judges should also require the parties to focus on the realistic options that are currently available to meet the child's welfare needs during the present straitened circumstances.

Urgent Cases

12. Even where a case is urgent, it should be possible for arrangements to be made for it to be conducted remotely. The default position should be that the hearing is conducted remotely. Where a case is genuinely urgent, and it is not possible to conduct a remote hearing and there is a need for pressing issues to be determined, then the court should endeavour to conduct a face-to-face hearing in circumstances (in terms of the physical arrangement of the court room and in the waiting area) which minimise the opportunity for infection.

Remote Hearings: technical matters

13. Remote hearings may be conducted using the following facilities as appropriate to the individual case:
    a. By way of an email exchange between the court and the parties;
    b. By way of telephone using conference calling facilities;
    c. By way of the court's video-link system, if available;
    d. The use of Zoom;
    e. Any other appropriate means of remote communication, for example Skype or Face Time.

    The Court IT Department will assist to make the arrangements for Zoom and will provide advice to participants about to use Zoom.

    If you are unfamiliar with Zoom here is the help page from Zoom https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-TutoriaIs and further guidance and video https://learninginbloom.com/use-zoom/

14. The Judge may require certain hearings to be recorded. Where Zoom is used, there is a facility within the software for the digital record of the hearing to be recorded (this is not the same as a typed transcript but may suffice for most purposes).

15. The responsibility for making technical and other arrangements for a remote hearing and for confirming the details of the arrangements for the hearing to the other parties no later than 24 hours prior to the remote hearing taking place is to be undertaken by the following party liaising with the court:
    a. The Department of Children and Family Services in a public law case;
    b. The applicant, if legally represented, in a private law case;
    c. The respondent, if legally represented and where the applicant is not, in a private law case;
    d. The court where no party is legally represented.

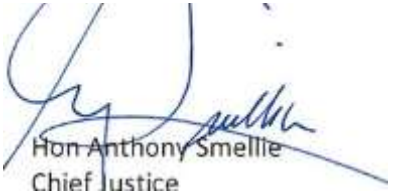
16. When conducting a remote hearing, there is a need for the judge to use their best endeavours to ensure that only those who would be allowed into the court room for an oral hearing are privy to the remote hearing and that all parties understand that the system used by the court will record the proceedings and that no other recording is to be made by any of the parties.

17. On the day before a remote hearing the applicant must electronically file a PDF bundle which complies with Practice Direction No. 11/2014, and which in any event must include as a minimum:
    a. A case summary and chronology;
    b. The parties' positions statements;
    c. The previous orders that are relevant to the remote hearing;
    d. All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;
    e. A draft order;

Final Observation

18. These are exceptional and unprecedented times. The situation is changing daily. This Guidance is intended to deliver a very significant change of direction in the method of working within the Family Division, whilst at the same time enabling the Court to continue to

operate and to meet the pressing needs of those who turn to it for protection and justice.



25 March 2020

APPENDIX A

In the Grand Court
Family Division/
~~The Family Court~~

No: _____

IN THE MATTER OF _____

AND IN THE MATTER OF _____ CHILDREN

BEFORE _____ SITTING AT _____ ON _____

UPON the Court determining that in the exceptional circumstances of the current public health emergency this case is suitable for hearing remotely ('remote hearing') by means of [video link]/ [Skype]/ [telephone]/ [other].

BY ITS OWN MOTION/ BY CONSENT IT IS ORDERED THAT:

1. All hearings in this matter shall take place by way of remote hearing unless the court directs otherwise.
2. The parties and their representatives shall attend all hearings by way of [video link]/[Skype]/[telephone]/[other].
3. No unauthorised person may be present at this hearing. When asked, each legal representative must be able to confirm that no unauthorised person is in attendance or able to listen to the hearing.
4. This matter shall be listed for a remote hearing on_____ at_____ before _____sitting at_____ with a time estimate of _____ .
5. The parties shall arrange and attend remotely an Attorneys Meeting no less than 48 hours before the hearing listed above.
6. The [applicant/respondent] shall be responsible for arranging with the Judge's Personal Assistant/The Court IT Department the necessary facilities to conduct a remote hearing, allowing sufficient time for any necessary testing to take place. This will include provision to the court of the necessary contact details for the parties and their representatives where these are needed to facilitate the remote hearing.
7. The [applicant/respondent) must confirm the details of the arrangements for the hearing to the other parties by no later than 24 hours prior to the remote hearing taking place.
8. The applicant shall by 1600 hrs on the day before the hearing electronically file a PDF bundle, which must include:

(a) A case summary and chronology;
(b) The parties positions statements;
(c) The previous orders that are relevant to the remote hearing;
(d) All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;
(e) A draft order;

9. [Further Directions]...

Dated _____

GRAND COURT PRACTICE DIRECTION No. 3 OF 2020

FAMILY DIVISION - REMOTE HEARINGS

1. This Guidance, which is approved by the Chief Justice, is intended to be followed with immediate effect in the Grand Court Family Division. It should be read in conjunction with (i) the Protocol "COVID19: Guidance for the Family Division" issued by the Chief Justice on 29 March 2020.

2. All family cases which have already been listed for a hearing will be listed promptly for a directions hearing, which should be conducted remotely. The parties will be contacted and provided with the time and date of the hearing. If a party is unable to attend the due date then they must promptly notify Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) and obtain a new date convenient to all the parties.

3. Any new hearing in a family case which is not listed on a Family Mention Day will be listed promptly for a directions hearing. The parties will be contacted and provided with the time and date of the hearing. If a party is unable to attend the due date then they must promptly notify Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) and obtain a new date convenient to all the parties.

4. The primary aim of the directions hearing will be to identify whether the substantive hearing can be heard remotely. If it is unclear whether it can then, at the directions hearing, the Court will consider the optimal method of conducting the Court process in order to achieve a fair and just hearing of the issues but, at the same time, minimising as much as possible the degree of inter-personal contact between each participant.

5. If it decided at the directions hearing that it is possible to make arrangements for the already fixed hearing to be conducted remote ly, then the hearing should go ahead remotely without any personal attendance at Court. A draft directions order is at Appendix A below.

6. The directions hearings and any hearings to be heard remotely will now be dealt with remotely by Zoom. If you are unfamiliar with Zoom here is the help page from Zoom https://support.zoom.us/he/en-us/a rticles/ 206618765 -Zoom-Video-Tutorials and further guidance and video https://learninginbloom.com/use-zoom/.

7. The attorneys and any litigants in person will, well in advance of the hearing, be provided with details of the hearing and a link that they will need to use to enable them to access the Zoom hearing. If they have not received these details then they should contact Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883).

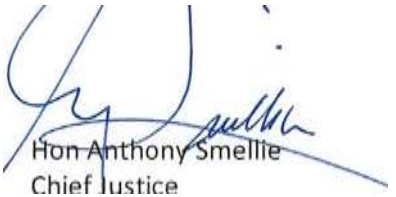
8. It is important that the parties are available to enter the Zoom hearing at the set time and that they be prepared to wait as there may be a delay caused by a previous matter in the list overrunning. A Zoom connection test should be arranged with Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) well in advance of the hear ing.

9. Each litigant and their attorney can attend the Zoom hearing from different locations. The screen will enable each person attending the meeting to be seen and each attendee can be heard. The Court may use the 'speaker view' in which the person speaking will appear as the main image on the screen and the other attendees will appear in sm all individual boxes at the top of the screen. The Judge will lead the meeting and will initially appear as the main image on screen. The Judge will then invite the other attendees to speak in turn and when that person is speaking he/she will appear as the main image on the screen.

It is important that only one person speak at a time and only when invited by the Judge to do so. The Court may also use the 'gallery view' in which each person will appear in an equal size box on the screen throughout the hearing. At the start of the hearing, the Judge will recommend, depending on the number of attendees, which view should be used.

10. If a party is unable to attend by Zoom because they do not have adequate internet access, the Court will arrange for that party to attend the hearing by telephone. That attendee will be able to hear the other attendees speak and be able to speak during the hearing. At the time set for the hearing, the party will need to dial 1-30171-58592 followed by the meeting ID and the # sign. The attendee must contact Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) well in advance of the hearing if telephone attendance is sought in order for them to be provided with the required meeting ID. A Zoom/telephone connection test should be arranged with Mrs. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) well in advance of the hearing.

11. It is important that all litigants and attorneys ensure that Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) is provided with their up-to-date email and telephone details and promptly notified of any changes made to them.



29 March 2020

GRAND COURT PRACTICE DIRECTION No. 4 OF 2020

FAMILY DIVISION - REMOTE HEARINGS - FAMILY MENTION DAYS

1. This Guidance, which is approved by the Chief Justice, is intended to be followed with immediate effect in the Grand Court Family Division. It should be read in conjunction with (i) the Protocol "COVID19: Guidance for the Family Division" issued by the Chief Justice on 29 March 2020 and (ii) Practice Direction No. 6/2012 "Listing of Family Law Proceedings."

2. The days already allocated for Family Mention Days will remain. These dates are 16 April, 17 April, 14 May, 15 May, 28 May, 29 May, 1 June, 12 June, 25 June, 26 June 2020. All cases already listed on a Family Mention Day will still be heard at the same time on the same date. Additional cases will be added to the existing Family Mention Days and new Family Mention Days will be created.

3. All presently listed Family Mention Day cases and any cases added to the Family Mention Day list will now be dealt with remotely by Zoom. If you are unfamiliar with Zoom here is the help page from Zoom https://support.zoom.us/ hc/ en-us/ articles/206618765-Zoom-Video-Tutorials and further guidance and video https://learning inbloom.com/use-zoom/.

4. The attorneys and any litigants in person will, well in advance of the hearing, be provided with details of the hearing and a link that they will need to use to enable them to access the Zoom hearing. If they have not received these details then they should contact Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883).

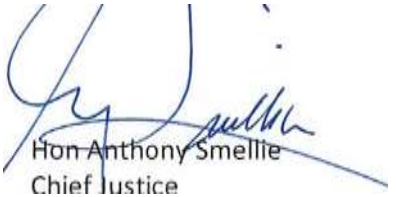
5. It is important that the parties are available to enter the Zoom hearing at the set time and that they be prepared to wait as there may be a delay caused by a previous matter in the list overrunning. A Zoom connection test should be arranged with Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) well in advance of the hearing.

6. Each litigant and their attorney can attend the Zoom hearing from different locations. The screen will enable each person attending the meeting to be seen and each attendee can be heard. The Court may use the 'speaker view' in which the person speaking will appear as the main image on the screen and the other attendees will appear in small individual boxes at the top of the screen. The Judge will lead the meeting and will initially appear as the main image on screen. The Judge will then invite the other attendees to speak in turn and when that person is speaking he/she will appear as the main image on the screen. It is import ant that only one person speak at a time and only when invited by the Judge to do so. The Court may also use the 'gallery view' in which each person will appear in an equal size box on the screen throughout the hearing. At the start of the hearing, the Judge will recommend, depending on the number of attendees, which view should be used.

7. If a party is unable to attend by Zoom because they do not have adequate internet access, the Court will arrange for that party to attend the hearing by telephone. That attendee will be able to hear the other attendees speak and be able to speak during the hearing. At the time set for the hearing, the party will need to dial 1-30171-58592 followed by

the meeting ID number and the # sign. The attendee must contact Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) well in advance of the hearing if telephone attendance is sought, in order for them to be provided with the required meeting ID number. A Zoom/telephone connection test should be arranged with Mrs. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) well in advance of the hearing.

8. It is important that all litigants and attorneys ensure that Ms. Suzanne Miller (Suzanne.Miller@Judicial.ky tel: (345) 244 3883) is provided with their up-to-date email and details and promptly notified of any changes made to them.



29 March 2020

GRAND COURT PRACTICE DIRECTION No. 5 OF 2020

THE USE OF E-MAILS FOR FILING AND ELECTRONIC SIGNATURES, COURT SEALS AND STAMPS

In order to continue to provide access to justice while operating during the Covid -19 crisis, the Courts must use technology as much as possible.

While seeking to comply with Court Rules for the filing of documents and the creation of Court files, in particular Grand Court Rules (GCR) Order 63 Rules 2 and 3, already the Courts have introduced a form of e-filing by way of e-mails.

While the Administration works towards the introduction of the permanent e-filing and e-service platforms, many documents or categories of documents must now be received, by e-mail, processed and authenticated electronically by the use of e-signatures, e-seals and e-stamps.

To this end the administration has acquired a software called **Digicert-Quovadis** which will be used to compile a database of authorised signatures, the Court seals and date stamps, for application to documents which must be authenticated by signature, seal or stamp.

The software will be run on a dedicated on-site Court server where the documents will be kept after signing, sealing or stamping before filing and uploading to the Courts' ***JEMS or Criminal Registry*** platforms.

The original code or "hash" for each signature, seal or stamp will be stored for security purposes, with **Digicert-Quovadis** for such time as deemed necessary, anticipated now to be six months.

Authorised signatures, seals and stamps must not be misapplied and so must be used only by those who are respectively authorised. To ensure this, access to the database will be encrypted and password-protected.

It follows that specimen signatures will be required from each authorised signatory for the creation of individual hashes. Once this database of signatures, seals and stamps is compiled and secured they may then be used for the authentication of documents as the case or situation may require.

The overarching purpose is to administer the authentication and record keeping processes electronically without the need to print documents for the purpose of signing, sealing or stamping.

Following are the Practice Directions for the Application of Authorised Signatures, Seals and Stamps.

1. Upon receipt of a document as an attachment to an email, the document will be downloaded to the dedicated server by the staff of the Registry to which it is directed.

2. The payment of fees contingent upon the filing of the document must be verified.

3. The document will then be forwarded to the authorised officer or signatory for processing.

4. For instance, if the document is a writ, plaint or other originating process, it will be initially reviewed and processed by Registry staff should the signature of the Clerk of Courts be required, then the document would be referred to the Clerk or Deputy Clerk of Court who will apply the e-signature as necessary. The Registry staff will affix the appropriate Court seal and date stamp, evidencing the official receipt of the document as a record of the Court.

5. In keeping with GCR Order 63, Rule 2, the Clerk of Court [or designate] shall create an electronic Court file of every proceeding by assigning the Cause Number and by placing the writ, plaint or other originating pleading on the file immediately prior to issuing the pleading by which the proceeding is commenced.

6. An electronic copy of the authenticated pleading will then be issued by return to the filer who will then be able to serve it on a respondent, with proof of service to come in the first instance electronically by affidavit.

7. Acknowledgements of service will also be accepted electronically, sealed and date stamped and placed upon the respective Court file.

8. In keeping with GCR Order 41 Rule 9 every affidavit used in a cause or matter proceeding in the Court must be filed. This must also be done electronically in the first instance.

9. The foregoing must be in keeping with GCR Order 63, Rule 3(1), which directs that every document required to be filed in any proceeding must be placed on the Court file relating to such proceeding and sealed with a seal showing the date upon which the document was filed.

10. In keeping with GCR Order 63 Rules 7 and 8, the Clerk of Courts shall place [or caused to be placed] a copy of every judgment, order, writ or other originating process upon the registers of judgments, orders, writs and other originating process (unless otherwise ordered by the Court).

11. If the document is a charge or indictment, it will be received by the Criminal Registry, sealed and stamped and a copy returned to the office of the DPP (ODPP). The criminal case file will be opened with the official document and where appropriate in the case of a charge, summons , issued accordingly. See attached draft protocol to be agreed with the ODPP.

12. In keeping with GCR Order 42 if the document is a draft order or default judgment, it will be sealed and date stamped upon receipt electronically and sent to the respective Judge, Magistrate or to the Clerk of Court (as the case might be) for e-signing and return to the Registry. The date of the order or default judgment will then be inserted and the order placed on the respective Court file and register of orders and judgments. An electronic copy will then be returned to the filer (for service if necessary with the leave of the Court pursuant to GCR Order 65).

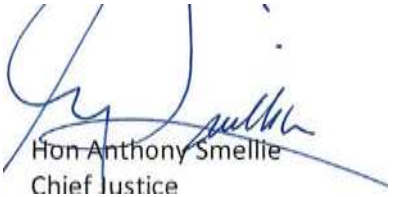
13. When finally approved and signed for issuance and publication, original judgments will, in keeping with GCR Order 42 rule 7(1) be placed upon the respective Court file. Electronic copies will be uploaded to the register of judgments and orders before being issued. When issued they will also be uploaded to the website (unless publication is embargoed by order of the Judge)

14. GCR Order 63 does require the creation and maintenance of hard copy file s and registers. Accordingly, until such time as the permanent e-filing and e-service platforms become operational, and although documents received and processed in keeping with this Practice Direction will become records of the Court, the original hard copies are required to be filed with the Registry as soon as business returns to normal on a date to be announced.

15. Protocols have for some time been in place for the e-filing of social inquiry reports and related documents by the Department of Community Rehabilitation and for the e-filing of tickets issued by the Department of Commerce and Investment. These are also attached. A new protocol for e-filing of reports by the Department of Children and Family Services will now be issued in the form also attached.

16. In relation to admissions pursuant to *Legal Practitioners Act (as amended and revised)*, sections 3(1) and s.4 (1) and Practice Direction 4 of 2012, affidavits that are to be sworn before the Clerk of Court will be taken by Zoom appearance and thereafter the Court seal and e-signature of the Clerk of Court can be affixed to the affidavit and provided to the filer electronically, and uploading to the Courts' JEMS or Civil Registry platform.

17. Formatting: docments must be formatted as they would for conventional filing.



6 April 2020

(4 enclosures - Practice Directions 5A, 5B, 5C, 5D of 2020)

GRAND COURT PRACTICE DIRECTION No. 5A OF 2020

CAYMAN JUDICIAL ADMINISTRATION CASE MANAGEMENT SYSTEM (JEMS) - FAMILY REGISTRY

ELECTRONIC FILING OF COURT REPORTS

FROM THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES (DCFS)

OBJECTIVE:
To deliver reports, electronically to the Courts in respect of Summary and Grand Courts in order to facilitate timely receipt and accessibility by the judiciary, attorneys, parties and relevant agencies.

JEMS is the Judicial Administration's Electronic Management System; it allows for electronic filing and viewing of documents stored in the system to authorised users.

BENEFITS:

- ► To provide reports to the judiciary in advance of hearing.
- ► To allow image to be viewed conveniently on JEMS by those with authorised access only.
- ► To ensure faster response time in processing reports.
- ► Reduce attendance of DCFS personnel at front counter filing reports.
- ► Allow PA to print reports for judges or magistrates in advance of hearing.

INDEX

6. Privacy Issues
7. Format of Documents
8. System or User Errors

1. AUTHORITY

Electronic filing of court reports is achieved by lodging reports electronically to the Family Proceedings Unit of Judicial Administration in accordance with Standards and Principles established by the Clerk of Court with the approval of the Chief Justice.

2. EFFECTIVE DATE

The electronic filing of the reports described below is effective as of the 6th April 2020 until further notice.

3. ELECTRONIC FILING REPORT TYPES

A. The Clerk of Court with the approval of the Chief Justice hereby authorises the filing electronically of the reports described in B below. From time-to-time, additional documents may be authorised to be processed in this way. Documents filed previously in the conventional manner will be scanned and included in the electronic case file.

B. The following documents may be filed electronically:

1. Case Status Reports
2. Other reports from DCFS in r elation to Care Matters;
3. Domestic Violence cases, Family Cases, Divorce Matters, Adoption matters and Welfare Reports that relate to Summary Court, Civil Maintenance and Grand Court Civil matters.

that relate to:

(a) Summary Court (Civil)
(b) Grand Court (civil - indictment)
(c) Youth Court (civil)

(d) Drug Court

4. DEFINITIONS

The following terms are defined as follows:

A. Conventional manner of filing - The filing of paper documents with the Civil/ Family Registry.

B. Electronic Document ("e-document") - An electronic file containing informational text.

C. Electronic Filing ("e-file") - An electronic transmission of information between the Department and Judicial Administration.

D. Electronic Image ("e-image") - An electronic representation of a document that has been transformed to a graphical or image format.

E. Portable Document Format (PDF) - A file format that preserves all fonts, formatting colors and graphics of any source document regardless of the application platform used.

F. Subscriber - One contracting to use the E-Filing system. For the reports covered by this authority, this will be staff of the Civil Registry and Family Proceedings Unit ("FPU") of the Judicial Administration, DCFS, the parties, the attorney acting in an individual case to which the report relates and any other relevant external agency. Other subscribers may be added by the Clerk of Court (after consultation with the DCFS) having regard for the protection of confidential information.

5. METHOD OF FILING

- DCFS to e-file report to Judicial Administration through FTP Server by scanning the report to a folder identified on the judicial administration system (this should be at least 36 working hours before the court hearing date).
- In sending the scan, DCFS **must** include the proper case number (e.g. FAM 0001/2014 or (for Summary Court) SMA0198/2014

(preceded by BC or BT for Brac Courts)) as part of the scanning reference entered into the machine from which the document is scanned:

- Reports transmitted without a case number as the reference will be rejected.
- Reports that do not contain on the first page clear reference to the case number **and** the hearing date will be rejected.

- Civil Registry or Family Proceedings Unit staff will check the folder each working day before 9:00 am. and upload any report to JEMS with the e-sealing certification and date stamp (there is an accompanying "how to" document for Registry staff).
- Civil Registry/Family Proceedings Unit staff will forward the report to the Judge/Magistrate, any attorney identified in the JEMs records and/or the parties themselves.
- Civil Registry and Family Proceedings staff will create an e-record of the report, date stamp and e-seal and upload in JEMs, and place it in the court file.
- Once in JEMS, reports can be viewed and printed (if needed) by PA to the Judge or Magistrate (or the Judge or Magistrate themselves).
- The PAs to Judges and Magistrates will also be able to access the folder into which the report will be scanned in order to view reports not yet uploaded into JEMS (i.e. on the day sent to the court where it is sent after 9:00am) and to print them but must not delete the report from the folder.

6. PRIVACY ISSUES

Since these reports contain personal information, they will be set up within JEMS so that they can be viewed only by subscribers (i.e. authorised personnel) (see 4F above).

7. FORMAT OF DOCUMENTS

All uploaded reports created by word processing programs must be formatted as follows:

(a) the size of the type in the body of the text must be no less than 11 point font ideally Calibri or Arial as these are widely recognized as the clearest fonts – clarity will be particularly important for those viewing the reports within JEMS);

(b) where footnotes are used, these should be no less than 8 point font;

(c) the size of the page must be 8-1/2 by 11 inches (i.e. letter);

(d) the margins on each side of the page should be 1 inch (2.4cm);

(e) the top right 2" x 2" corner of the first page of each Report must be left blank - this will allow the Clerk of the Court's date stamp to be applied without concealing text;

(f) each report must include:

a. the hearing date,

b. the parties' name,

c. the case number,

d. the name, physical and e-mail address and telephone number of the person filing the report .

The maximum file size for the submission of electronically filed documents is currently 8 MB; this is likely to be more than sufficient for almost all reports.

If a report is too large to transmit, the person seeking to file the report should contact the Supervisor of the Civil Registry or the Family Unit to decide how to proceed. If necessary a facility such as *WeTransfer* (wetransfer.com) may need to be used.

8. SYSTEM OR USER ERRORS

Inevitably problems will arise in using this system. Judicial Administration is committed to working with other subscribers to maximise the benefits of

electronic filing and will do all that it can to support subscribers in implementing this procedure.

If a problem appears to arise from the technical operation of the JEMS system or the scanning process, it will be referred initially to the Clerk of Court for onward transmission to the Judicial Administration Network and IT Department. Unless exceptionally urgent, this should be a written description of the problem.

If a problem arises from the receipt or management of documents filed under this procedure, the primary point of contact for Judicial Administration will be the Supervisor of the Civil Registry/Family Proceedings Unit or, in their absence, the Senior Deputy Clerk of Court, Ms. Jenesha Simpson and for DCFS it will be the Senior DCFS Social Case Manager.

Shiona Allenger
Clerk of Court
Issued by approval of the Chief Justice on 6 April 2020.

GRAND COURT PRACTICE DIRECTION No. 5B OF 2020

CAYMAN JUDICIAL ADMINISTRATION CASE MANAGEMENT SYSTEM (JEMS) - CRIMINAL REGISTRY

ELECTRONIC FILING OF COURT REPORTS FROM THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)

OBJECTIVE:

To deliver documents for the Grand and Summary Courts (Criminal) electronically in a way that makes them quickly accessible to judiciary.

JEMS is the Judicial Administration's Electronic Management System; it allows for electronic filing and viewing of documents stored in the system to authorised users.

BENEFITS:

- To provide electronic documents to the judiciary in advance of hearing.
- To allow image to be viewed conveniently on JEMS by those with authorised access only.
- To ensure bundles are not misplaced and are always available.
- Allow PA to print documents for judges in advance of hearing.

INDEX

1 AUTHORITY

Electronic filing of Court documents is conducted by lodging documents with the Criminal Registry of Judicial Administration in accordance with Standards and Principles established by the Court Administrator with the approval of the Chief Justice.

2 EFFECTIVE DATE

The Electronic filing of the documents described below is effective from the 1st May 2018 until further notice.

3 ELECTRONIC FILING DOCUMENT TYPES

A. The Court Administrator hereby authorises the filing electronically of the documents described in B below. From time-to-time, additional documents may be authorised to be processed in this way.

B. The following documents may be filed electronically:

1. Indictments
2. Charges
3. Trial Bundles (and NAEs)
4. Sentencing Bundles
5. Submissions Bundles
6. Other documents, as required that relate to:

a. Grand Court (Criminal)
b. Summary Courts (Criminal)

4 DEFINITIONS

The following terms are defined as follows:

A. Conventional manner of filing - The filing of paper documents with the Criminal Registry.

B. Electronic Document ("e-document") - An electronic file containing informational text.

C. Electronic Filing ("e-file") - An electronic transmission of information between the Department and Judicial Administration

D. Electronic Image ("e-image") - An electronic representation of a document that has been transformed to a graphical or image format.

E. Portable Document Format (PDF) - A file format that preserves all fonts, formatting colors and graphics of any source document regardless of the application platform used.

F. Subscriber - One contracting to use the E-Filing system. For the reports covered by this authority, this will be staff of the Criminal Registry of the Judicial Administration and the Office of the Director of Public Prosecution (ODPP). Other subscribers may be added by the Court Administrator (after consultation with the ODPP) having regard for the protection of confidential information.

5 METHOD OF FILING

- ODPP to e-file report to Judicial Administration through SFTP or DropBox by scanning the report to a folder identified on the judicial administration system.
- In sending the scan, ODPP **must** include the proper case number (e.g. IND 0013/2014) as part of the scanning reference entered into the machine from which the document is scanned;
  - Documents transmitted without a case number as the reference will be rejected.
- Criminal Registry staff will check the folder each working day before 9am and upload any documents to JEMS (there is an accompanying "how to" document for Registry staff.
- If a document is urgent the document should be scanned in the normal manner and an email should be sent to the Deputy Clerk of Court and the Supervisor of the Criminal Registry as well as the PA to the Judge to ensure the document is accessed by the court.
- Criminal Registry staff will print the documents, date stamp it and place it in the Court file.
- Once in JEMS, documents can be viewed and printed by PA to the Judge or Magistrate (or the Judge or Magistrate themselves).
- The PAs to Judges and Magistrates will also be able to access the folder into which the report will be scanned in order to view

documents not yet uploaded into JEMS (i.e. on the day sent to the Court where it is sent after 9am) and to print them but must not delete the report from the folder.

- Documents will be 'filed' at Court at the date and time the documents were sent to the FTP or DropBox.

6 PRIVACY ISSUES

Since these reports contain personal information, they will be set up within JEMS so that they can be viewed only by subscribers (i.e. authorised personnel) (see 4F above).

7 FORMAT OF DOCUMENTS

All uploaded reports created by word processing programs must be formatted as follows:

(a) the size of the type in the body of the text must be no less than 11 point font ideally Calibri or Arial as these are widely recognized as the clearest fonts – clarity will be particularly important for those viewing the reports within JEMS);

(b) where footnotes are used, these should be no less than 8 point font;

(c) the size of the page must be 8-1/2 by 11 inches (i.e. letter);

(d) the margins on each side of the page should be 1 inch (2.4cm);

(e) the top right 2" x 2" corner of the first page of each Report must be left blank – this will allow the Clerk of the Court's date stamp to be applied without concealing text;

(f) each report must include:

a. the hearing date,

b. the defendant's name,

c. the case number ,

d. the name, physical and e-mail address and telephone number of the person filing the report.

8 SYSTEM OR USER ERRORS

Inevitably problems will arise in using this system. Judicial Administration is committed to working with other subscribers to maximise the benefits of electronic filing and will do all that it can to support subscribers in implementing this procedure.

If a problem appears to arise from the technical operation of the JEMS system of the SFTP or DropBox process, it will be referred initially to ITALERTS at ITALERTS@Judicial.ky for onward transmission to the Judicial Administration Network and IT Department. Unless exceptionally urgent, this should be a written description of the problem.

If a problem arises from the receipt or management of documents filed under this procedure, the primary point of contact for Judicial Administration will be the Supervisor of the Criminal Registry or, in their absence, the Deputy Clerk of the Court and for ODPP it will be the Case Manager.

Shiona Allenger
Clerk of Court

Issued by approval of the Chief Justice on Date

Updated 21st May 2020

GRAND COURT PRACTICE DIRECTION No. 5C OF 2020

CAYMAN JUDICIAL ADMINISTRATION CASE MANAGEMENT SYSTEM (JEMS) - CRIMINAL REGISTRY

ELECTRONIC FILING OF COURT REPORTS FROM THE DEPARTMENT OF COMMUNITY REHABILITATION (DCR)

OBJECTIVE:
To deliver reports for the Summary and Grand Courts (Criminal) electronically in a way that makes them quickly accessible to judiciary, prosecuting and defence attorneys and to staff of the relevant agencies.

JEMS is the Judicial Administration's Electronic Management System; it allows for electronic filing and viewing of documents stored in the system to authorised users.

BENEFITS:
- To provide reports to the judiciary in advance of hearing.
- To allow image to be viewed conveniently on JEMS by those with authorised access only.
- To ensure faster response time in processing reports.
- Reduce attendance of DCR personnel at front counter filing reports.
- Allow PA to print reports for judges or magistrates in advance of hearing.

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8. System or User Errors

1. AUTHORITY

Electronic filing of court reports is conducted by lodging reports with the Criminal Registry of Judicial Administration in accordance with Standards and Principles established by the Court Administrator with the approval of the Chief Justice.

2. EFFECTIVE DATE

The Electronic filing of the reports described below is effective from the 1st July 2015 until further order.

3. ELECTRONIC FILING REPORT TYPES

A. The Court Administrator with the approval of the Chief Justice hereby authorises the filing electronically of the reports described in B below. From time to time, additional documents may be authorised to be processed in this way. Documents filed previously in the conventional manner will be scanned and included in the electronic case file.

B. The following documents may be filed electronically:

1. Social Inquiry Reports (SIRs)
2. Case Status Reports (i.e. reports indicating that an SIR will not be available as ordered)
3. Other reports from DCR relating to those appearing in the Drug Rehabilitation Court that relate to:
   (a) Summary Court (Criminal)
   (b) Grand Court (criminal – indictment)
   (c) Youth Court (criminal)
   (d) Drug Court

4. DEFINITIONS

The following terms are defined as follows:

A. Conventional manner of filing - The filing of paper documents with the Criminal Registry.

B. Electronic Document ("e-document") - An electronic file containing informational text.

C. Electronic Filing ("e-file") - An electronic transmission of information between the Department and Judicial Administration.

D. Electronic Image ("e-image") - An electronic representation of a document that has been transformed to a graphical or image format.

E. Portable Document Format (PDF) - A file format that preserves all fonts, formatting colors and graphics of any source document regardless of the application platform used.

F. Subscriber - One contracting to use the E-Filing system. For the reports covered by this authority, this will be staff of the Criminal Registry of the Judicial Administration, the defence attorney acting in an individual case to which the report relates and the Office of the Director of Public Prosecutions (ODPP). Other subscribers may be added by the Court Administrator (after consultation with the DCR) having regard for the protection of confidential information.

5. METHOD OF FILING

- DCR to e-file report to Judicial Administration through FTP Server by scanning the report to a folder identified on the judicial administration system (this should be at least 36 working hours before the court hearing date).
- In sending the scan, DCR **must** include the proper case number (e.g. IND 0013/2014 or (for summary court) 0198/2014 (preceded by BC or BT for Brac Courts)) as part of the scanning reference entered into the machine from which the document is scanned:

- Reports transmitted without a case number as the reference will be rejected.
- Reports that do not contain on the first page clear reference to the case number **and** the hearing date will be rejected.

- Criminal Registry staff will check the folder each working day before 9am and upload any report to JEMS (there is an accompanying "how to" document for Registry staff).
- Criminal Registry staff will forward the report to the ODPP and to any defence attorney identified in the JEMS record.
- Criminal Registry staff will seal and date stamp the Report electronically and place it in the JEMS court file.
- Once in JEMS, Reports can be viewed and printed (if needed) by PA to the Judge or Magistrate (or the Judge or Magistrate themselves).
- The PAs to Judges and Magistrates will also be able to access the folder into which the Report will be scanned in order to view reports not yet uploaded into JEMS (i.e. on the day sent to the court where it is sent after 9am) and to print them but must not delete the Report from the folder.

6. PRIVACY ISSUES

Since these Reports contain personal information, they will be set up within JEMS so that they can be viewed only by subscribers (i.e. authorised personnel) (see 4F above).

7. FORMAT OF DOCUMENTS

All uploaded Reports created by word processing programs must be formatted as follows:

(a) the size of the type in the body of the text must be no less than 11 point font ideally Calibri or Arial as these are widely recognised as the clearest fonts – clarity will be particularly important for those viewing the reports within JEMS)

(b) where footnotes are used, these should be no less than 8 point font;

(c) the size of the page must be 8-1/2 by 11 inches (i.e. letter);

(d) the margins on each side of the page should be 1 inch (2.4cm);

(e) the top right 2" x 2" corner of the first page of each Report must be left blank – this will allow the Clerk of the Court's date stamp to be applied without concealing text;

(f) each Report must include:

a. the hearing date,

b. the defendant's name,

c. the case number,

d. the name, physical and e-mail address and telephone number of the person filing the Report.

The maximum file size for the submission of electronically filed documents is currently 8 MB; this is likely to be more than sufficient for almost all reports.

If a Report is too large to transmit, the person seeking to file the Report should contact the Deputy Clerk of Court or the Supervisor of the Criminal Registry to decide how to proceed. If necessary a facility such as *WeTransfer* (wetransfer.com) may need to be used.

8. SYSTEM OR USER ERRORS

Inevitably problems will arise in using this system. Judicial Administration is committed to working with other subscribers to maximise the benefits of electronic filing and will do all that it can to support subscribers in implementing this procedure.

If a problem appears to arise from the technical operation of the JEMS system or the scanning process, it will be referred initially to the Court Administrator for onward transmission to the Judicial Administration Network and IT Manager (Andrew Doussept). Unless exceptionally urgent, this should be a written description of the problem.

If a problem arises from the receipt or management of documents filed under this procedure, the primary point of contact for Judicial Administration will be the Supervisor of the Criminal registry or, in their absence, the Deputy Clerk of Court, Ms. Cecile Collins and for DCR it will be case manager assigned to the case.

Kevin McCormac
Court Administrator

June 2015
Reissued on 6 April 2020 on direction of the Chief Justice

GRAND COURT PRACTICE DIRECTION No. 5D OF 2020

CAYMAN JUDICIAL ADMINISTRATION CASE MANAGEMENT SYSTEM (JEMS) - CRIMINAL REGISTRY

ELECTRONIC FILING OF TICKETS FROM THE DEPARTMENT OF COMMERCE AND INVESTMENT

OBJECTIVE:
To receive and register electronically delinquent ticketable offences from the Department of Commerce and Investment (DCI) within (48) forty-eight hours of every ticket that remains unpaid.

JEMS is the Judicial Administration's Electronic Management System; it allows for electronic filing and viewing of documents stored in the system to authorised users.

BENEFITS:
- Allow ticket to be viewed conveniently on JEMS.
- To ensure timely receipt of tickets.
- Reduce attendance of Field officers from DCI at front counter filing tickets.

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1 AUTHORITY

Electronic filing of DCI tickets is conducted by lodging tickets with the Criminal Registry of Judicial Administration in accordance with

templates established by the Clerk of Courts with the approval of the ChiefJustice and the DCI.

2 EFFECTIVE DATE

The Electronic filing of the DCI tickets described below has been effective from the 1st September 2015 until further order.

3 ELECTRONIC FILING

A. The Clerk of Courts hereby authorises the filing electronically of tickets described in B below.

From time to time, additional documents may be authorised to be processed in this way. Documents filed previously in the conventional manner will be scanned and included in the electronic case file.

B. The following may be filed electronically:

1. Fixed penalties tickets
2. Summonses

that relate to:

(a) Summary Court

4 METHOD OF FILING

Method 1— Delinquent tickets

- DCI to scan delinquent ticket and summons to Judicial Administration in accordance with the template through FTP Server by scanning the items in B above to a folder identified on the judicial administration system within (48) forty-eight hours.
    - The court has responsibility to schedule the tickets for mention on the following first available mention Tuesday.
- Criminal Registry staff will check ticket folder each working day before 9am and print ticket for registration.
- DCI ticket must include the date of birth (only if the ticket is in the name of a business, the date of birth will not be required).

- As soon as practicable after receipt of a Delinquent ticket and summons, documents are to be registered into JEMS.
- Upon registration a court date will be fixed and copy of ticket and summons will be provided to the Office of Public Prosecution.
- A copy of the summons will also be issued to RCIPS for service on the company/defendant.

Method 2 – Not Guilty plea entered

- Where a "not guilty" plea is entered, the company or individual within 28 days must notify the Summary Court.
    - Notification by company or individual of not guilty plea should be scheduled by the Registry for the first mention Tuesday.
- Ticket is registered and a Court date is provided to the Company or individual. Ticket and summons for Court date are sent to the Office of Public Prosecution.
- Criminal Registry staff will check ticket folder each working day before 9am and upload any tickets to JEMS (there is an accompanying "how to" document for Registry staff);
- In sending the ticket, DCI ticket must include the date of birth (except of course if the ticket is in the name of a business, date of birth will not be required). Tickets will be rejected without a date of birth.
- As soon as practicable after delinquent and "not guilty" tickets are e-filed, tickets are to be entered in JEMS.
- Delinquent tickets and "not guilty" tickets after registration will be returned to DCI and ODPP by e-filing.
- Criminal Registry staff will print the ticket, date stamp it and create a file for the Court.

5 SYSTEM OR USER ERRORS

Inevitably problems will arise in using this system. Judicial Administration is committed to working with other subscribers to

maximise the benefits of electronic filing and will do all that it can to support subscribers in implementing this procedure.

If a problem appears to arise from the technical operation of the JEMS system or the scanning process, it will be referred initially to the Court Administrator for onward transmission to the Judicial Administration Network and IT Manager. Unless exceptionally urgent, there should be a written description of the problem.

If a problem arises from the receipt or management of documents filed under this procedure, the primary point of contact for Judicial Administration will be the Supervisor of the Criminal Registry or, in their absence, the Deputy Clerk of Court.

In the event that a problem arises that cannot be resolved immediately for a ticket to be e-filed, the DCI will revert to the submission of tickets by hand to the criminal registry but must call the criminal registry beforehand for an appointment.

Kevin McCormac
Court Administrator
July 2015
Reissued as updated on 6 Apr 2020.

GRAND COURT PRACTICE DIRECTION No. 5E OF 2020

CAYMAN JUDICIAL ADMINISTRATION CASE MANAGEMENT SYSTEM (JEMS) - CRIMINAL REGISTRY

ELECTRONIC FILING OF CHARGES REPORTS FROM THE ROYAL CAYMAN ISLANDS POLICE SERVICES (RCIPS)

OBJECTIVE:

To deliver documents for the Grand Court and Summary Court (Criminal) electronically in a way that makes them quickly accessible to judiciary.

JEMS is the Judicial Administration's Electronic Management System; it allows for electronic filing and viewing of documents stored in the system to authorised users.

BENEFITS:

- To provide electronic documents to the judiciary in advance of hearing.
- To allow image to be viewed conveniently on JEMS by those with authorised access only.
- To ensure charges are received before the bail dates.
- To allow electronic signature by Justice of the Peace

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1. AUTHORITY

Electronic filing of court documents is conducted by lodging documents with the Criminal Registry of Judicial Administration in accordance with Standards and Principles established by the Court Administrator with the approval of the Chief Justice.

2. EFFECTIVE DATE

The Electronic filing of the documents described below is effective from the May 21, 2020 until further order.

3. ELECTRONIC FILING DOCUMENT TYPES

A. The Court Administrator hereby authorises the filing electronically of the documents described in B below. From time to time, additional documents may be authorised to be processed in this way.

B. The following documents may be filed electronically:-

1. Charges/indictments etc
2. Summons
3. Tickets
4. Bail Bonds
5. Summary of Facts
6. Summonses
7. Breach of bail report
8. Executed warrant
9. Summons to Medical Practitioner (Coroner)
10. Other documents, as required.

that relate to: —

(a) Grand Court (Criminal)

(b) Summary Court (Criminal)

(c) Coroners Court
(d) Drug Rehabilitation Court
(e) Mental Health Court
(f) Special Domestic Violence Court
(g) Youth Court

4. DEFINITIONS

The following terms are defined as follows:-

A. Conventional manner of filing - The filing of paper documents with the Criminal Registry.

B. Electronic Document ("e-document") - An electronic file containing informational text.

C. Electronic Filing ("e-file") - An electronic transmission of information between the Department and Judicial Administration.

D. Electronic Image ("e-image") - An electronic representation of a document that has been transformed to a graphical or image format.

F. Portable Document Format (PDF) - A file format that preserves all fonts, formatting colors and graphics of any source document regardless of the application platform used.

G. Subscriber - One contracting to use the E-Filing system. For the documents covered by this authority, this will be staff of the Criminal Registry of the Judicial Administration and the Royal Caymans Islands Police Service (RCIPS). Other subscribers may be added by the Court Administrator having regard for the protection of confidential information.

5. METHOD OF FILING

- RCIPS to e-file documents to Judicial Administration through SFTP or DropBox by sharing the documents to the appropriate folder identified on the SFTP or DropBox folder on the server of judicial administration system.

- In keeping with provisions of section 14(3) of the *Criminal Procedure Code (as amended and revised)*, charges must be duly signed by a police officer when filing by drop box and must be reviewed and signed by a Justice of the Peace, in exercise of the powers conferred by Section 14(3) of the Law and shall also be read, as circumstances require. This completes the process of filing.
- In sharing a charge document by an enforcement agency -

1. If a charge/summons is filed the following must be specific:
    - If defendant is Agencies in Custody, bail or to be summonsed
    - Defendant's full name and physical address
    - Email address, if any (essential)
    - Contact number (essential)
    - Nationality
2. Other agencies filing documents must specify:
    - A case number on the document
    - Information set out in 5(1) above.

The Case number must be visible to the user without having to open the document as part of the sharing reference entered into the SFTP or DropBox folder from which the document is uploaded;

- Documents transmitted without an indication of a specific reference of bail, custody, summons and a signature will be rejected.
- Criminal Registry staff will check the folder each working day before 9:00 am and upload any documents requiring signature to a Justice of the Peace.
- If a document is urgent the document should not be shared in the normal way as stated above, an email marked "urgent" should be sent to criminalregistry@judicial.ky to notify staff of the urgent court. Unless you provide an email notification the document may not be processed until after 3 p.m.
- Documents sent to the Judicial server will be downloaded to apply the court seal and a Justice of the Peace signature as required on a charge document.

- Where a seal and signature has been applied, a JP's electronic signature, Criminal Registry staff will register the charge by giving a number.
- The number for each charge filed will be provided in a JEMS filing report to accompany the charge document.
- Agencies must apply the number to the charges as assigned in the report to the DPP SFTP or DropBox Folder of the appropriate agency and RCIPS SFTP or DropBox Folder along with the case number in the reference, the sealed file will trigger the creation of a court file, date stamp charge electronically with court seal according to the date received and place documents in the court's file pending hearing.
- Once in JEMS, documents can be viewed and printed by staff with authorisation to view and print from JEMS.
- To avoid duplicate uploading and printing of documents, only persons with access to the SFTP or DropBox folder will be allowed to print documents shared within the folder. Staff will archive documents from folder when uploaded within 14 days.
- Documents uploaded by staff must be deleted from SFTP or DropBox immediately after uploading to avoid duplicate registration and uploading of documents.
- Documents will be 'filed' and date stamped by court at the date and time the documents were sent to the SFTP or DropBox Folder on the Server.

6. PRIVACY ISSUES

Since these documents contain personal information, they will be set up within JEMS so that they can be viewed only by subscribers (i.e. authorised personnel) (see 4G above).

7. FORMAT OF DOCUMENTS

All uploaded documents created by word processing programs must be formatted as follows:

(a) the size of the type in the body of the text must be no less than 11 point font ideally Calibri or Arial as these are widely recognised as the clearest fonts – clarity will be particularly important for those viewing the reports within JEMS)

(b) where footnotes are used, these should be no less than 8 point font;

(c) the size of the page must be 8-1/2 by 11 inches (i.e. letter);

(d) the margins on each side of the page should be 1 inch (2.4cm);

(e) the top right 2"x 2" corner of the first page of each Report must be left blank – this will allow the Clerk of the Court's date stamp to be applied without concealing text;

(f) each document must include:

a. the hearing date, if bailed

b. the defendant's full name, (First-middle-last)

c. Date of birth,

d. Nationality

e. Physical Address,

f. E-mail address and telephone number of the person filing the report

g. Offence(s)

h. Particulars of offence

i. Case number, if any

The maximum file size for the submission of electronically filed documents is currently 8 MB; this is likely to be more than sufficient for almost all reports.

If a report is too large to transmit, the person seeking to file the report should contact the Supervisor of the Criminal Registry or the Deputy Clerk of Court to decide how to proceed.

8. SYSTEM OR USER ERRORS

Inevitably problems will arise in using this system. Judicial Administration is committed to working with other subscribers to maximise the benefits of electronic filing and will do all that it can to support subscribers in implementing this procedure.

If a problem appears to arise from the technical operation of the SFTP or DropBox process, it will be referred initially to the Court Administrator for onward transmission to the Judicial Administration Network and IT Manager (Andrew Doussept). Unless exceptionally urgent, this should be a written description of the problem.

If a problem arises from the receipt or management of documents filed under this procedure, the primary point of contact for Judicial Administration will be the Clerk of Court or a Deputy Clerk of Court. In their absence, the Supervisor of the Criminal registry at criminalregistry@judicial.ky and for RCIPs it will be the RCIPS at RCIPS.process@gov.ky.

Suzanne Bothwell
Court Administrator
Issued by approval of the Chief Justice on May 21, 2020

GRAND COURT PRACTICE DIRECTION No. 6 OF 2020

FINANCIAL SERVICES DIVISION: PRACTICE DIRECTION MODIFYING STANDARD REMOTE HEARING PRACTICE DURING CORONAVIRUS PANDEMIC AND UNTIL FURTHER NOTICE

Introductory

1. On March 28, 2020, the Chief Justice issued a Press Release entitled 'The Courts' response to the Shelter in Place Regulations': www.judicial.ky. In relation to the Financial Services Division ("FSD"), it was stated that:

" • *In the FSD the use of video-conferencing and teleconferencing will be encouraged and implemented where possible. The practice is particularly well established in the FSD where Judges frequently preside over interlocutory proceedings in Court from the UK (and other places) by video-link. However, given the travel bans, it now seems likely that substantive trials will also have to be taken by these means as much as possible, even where the designated judge resides overseas.*

• *And so, in keeping with Grand Court Rules Order 33 rule 1, the Secretary of State for Foreign Affairs has confirmed, through the Office of the Governor that he consents to Grand Court judges presiding from the UK for trials in Cayman by way of video-link. Updated Practice Directions on Video-link Proceedings will be issued shortly.*

• *Parties and their attorneys are advised to contact the FSD Registrar and/or Listing Officer to identify those cases which must proceed by way of video-link and to confirm the arrangements with the designated Judges: bridget.myers@judicial.ky or yasmin.ebanks@judicial.ky.*

• *Subject to the directions of the Judge in each case, the use of electronic bundles is especially encouraged at this time to reduce*

the need for photocopying and circumstances for the transmission of COVID-19."

2. An important aspect of ensuring that more cases than usual can proceed through video conference hearings ("VCR") and/or on the papers is the availability of a mechanism for the electronic filing of cases without having to physically deliver documents to the Court.

   On 6 April 2020, the Chief Justice issued Practice Direction No. 2 of 2020: 'The Use of Electronic Signatures, Court Seals and Stamps'. This may also be viewed on the Court's website: www.judicial.ky.

3. The FSD Judges are available to hear cases remotely notwithstanding the current pandemic using VCR and applications on the papers as the norm rather than the exception. This will, where necessary, extend to trials as well as interlocutory applications. Traditional oral hearings in Court will remain the ideal form of hearing in many cases in which instance it is hoped that the parties will agree adjournments until the case may be orally heard in Court. While the Shelter in Place Regulations remain in force, the FSD will give priority to cases of urgency. As noted in the Chief Justice's 28 March 2020 Press Release reproduced in part above:

   "Parties and their attorneys are advised to contact the FSD Registrar and/or Listing Officer to identify those cases which must proceed by way of video-link and to confirm the arrangements with the designated Judges: bridget.myers@judicial.ky or yasmin.ebanks@judicial.ky."

4. This Practice Direction seeks to clarify the main ways in which the established FSD practice is likely to be modified, on a case by case basis, through the expanded use of remote hearings necessitated by the impracticability of conducting Court hearings as a result of the COVID-19 Pandemic.

Existing practice on remote hearings

5. The Grand Court Rules regulate the circumstances in which hearings may be held outside the jurisdiction (O.32, r.28 applies to interlocutory hearings and O.33, r.1 applies to trials). These are supplemented by practice directions (see the Schedule below) and the FSD Users' Guide (see section B2.4 which is set out in the Schedule below). These FSD protocols for video-conference hearings ("VCF"), developed for part-time and full time non-resident judges and applications on the papers (set out in the Schedule hereto), provide a valuable platform for responding to the present crisis. The key elements of the existing regime which require explicit modification are:

   (a) the requirement that the judge is participating from overseas;

   (b) the restriction of the VCF regime to interlocutory applications;

   (c) the requirement that an application for VCF will be made by a party as opposed to being initiated by the Court;

   (d) the requirement that the parties should be physically present at a hearing in the Court.

6. As far as the applications on the papers regime is concerned, the key elements of the existing regime which require explicit modification are:

   (a) the assumption that an application for a hearing on the papers can only be made by a party as opposed to being proposed by the Court;

   (b) the assumption that a hearing on the papers will only in exceptional circumstances be ordered absent the consent of both parties.

Changing the existing practice on remote hearings: governing legal principles

7. In considering what potential changes should be made to the existing regime, on a case by case basis, the following guiding principles in section 7 of the Bill of Rights (which is substantially based on article 6

of the European Convention on Human Rights) must always be borne in mind:

(a) every litigant has the fundamental right to a fair and public hearing within a reasonable time;

(b) the public may be excluded from proceedings where the Court is empowered by law to do so, *inter alia*, (1) where publicity would prejudice the interests of justice, and (2) in interlocutory proceedings.

8. The *Grand Court Act (as amended and revised)* enables the Court to regulate its practice through its own rules (section 18(1)), but filling any gaps by reference to current English High Court practice. On March 25, 2020, the Master of the Rolls and the Lord Chancellor issued Practice Direction 51Y (PD) in relation to video and audio hearings during the Coronavirus pandemic. The UK Judiciary website (www.judiciary.uk/announcments) describes the main objects of the modified practice in relation to remote hearings as follows:

- *clarify that the court may exercise the power to hold a remote hearing in private where it is not possible for the hearing to be simultaneously broadcast in a court building. It may do so consistently with the power to derogate from the principle of open justice and may do so under the provisions of this PD in addition to the bases for doing so set out in CPR 39.2. Where such an order is made under the PD the provisions in CPR 39.2(5) do not apply;*
- *confirm that the court may not conduct a remote hearing in private where arrangements can be made for a member of the media to access the remote hearing. It makes clear that in such circumstances the court will be conducting the hearing in public;*
- *clarifies that the court may direct that where it conducts a remote hearing in private, the court must, where it is practicable to do so, order that the hearing is recorded. Where*

it has power to do so, it may order the hearing to be video recorded, otherwise where a recording is to be made it should be an audio recording. Available powers to order such hearings to be recorded, and subsequently broadcast, apply to the Court of Appeal (Civil Division) through The Court of Appeal (Recording and Broadcasting) Order 2013 and are expected to apply more generally through s.85A of the Courts Act 2003, which is intended to be inserted by the Coronavirus Bill;

- *where a remote hearing is either audio or video recorded, any person may apply to the court for permission to access the recording."*

9. The English practice confirms that this Court should only have a non-public remote hearing where it is constitutionally permissible to have a private hearing, and that best efforts should be made to provide public access to any remote hearing either while it is taking place or by providing if possible a video recording afterwards.

10. The overriding objective of the Grand Court Rules is that civil cases should be managed in a way which is designed to achieve, inter alia, the following objectives:

"*(a) ensuring that the substantive law is rendered effective and that it is carried out;*

(b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;

(c) saving expense…"

11. GCR O.33, r.1 provides that the trial [regarded as distinct from an interlocutory hearing] of a cause or matter, or any question or issue arising therein, may take place outside the Cayman Islands where for some special reason the Court so orders and the Secretary of State for Foreign and Commonwealth Affairs has certified that neither the Secretary of State nor the authorities in the country concerned have any objection to the Court

sitting in such country. The Secretary of State for Foreign and Commonwealth Affairs has confirmed that for the duration of the Coronavirus emergency the trial of any FSD cause or matter, or any question or issue arising therein, may take place in the United Kingdom.

Remote hearings: the modified approach

12. During the Coronavirus pandemic, and for so long as it is not possible to safely conduct in person hearings which would ordinarily be open to the public or for non-resident judges (and counsel who have obtained limited admission for the relevant application and matter) to travel to the Cayman Islands, FSD Judges may consider the appropriateness in light of the principles summarised above of:

    (a) directing VCF hearings whether or not the Judge, the parties or counsel are in the jurisdiction or abroad;

    (b) directing VCF hearings in respect of final and not just interlocutory matters, provided that appropriate safeguards to ensure public access to the hearing or a record of the hearing can be put in place (and where there is video link to the Court assigned to the matter the requirement for providing sufficient public access will usually be treated as having been satisfied);

    (c) directing that an application which would typically be heard on the papers should be heard on that basis without both parties' consent, where it appears that substantive justice would be more undermined by delay than by directing that an oral hearing should take place.

13. The existing practice of the FSD in relation to the above matters and which are set out in the Schedule below shall continue to apply, subject to such modifications as may be required for any particular case. Any modifications will be guided by the principles set out above.

SCHEDULE: Current Practice Directions

1. PD No, 1/2010,[1] which relates to hearings by telephone and by video link, provides at para.10:

    - *Judges of the FSD may conduct CMCs and, in appropriate cases, hear summonses for directions and interlocutory applications by means of telephone or video conferences when they are off the Island and, pursuant to para 10.2 and paras 9.4 and 9.5, where a hearing takes place by way of a telephone conference call, the etiquette requires that all participating attorneys must be on line before the appointed time, so that the Judge will be the last person to join the conference, whereupon he will ask all the participants to identify themselves. Telephone hearings may not be tape recorded without the consent of the Judge. If the Judge permits or directs that the hearing be tape recorded, he will direct that a written transcript be prepared, sent to the Judge and circulated amongst the parties. Whenever a hearing is not tape recorded, the note taken or approved by the Judge will constitute the official record.*

2. PD2/2012 also relates to interlocutory hearings (whether by telephone or by video link) by a Judge who is physically overseas (but see para B2.4 of the FSD Users Guide below for the usual practice nowadays):

    1. Introduction

    1.1 This practice direction applies to all applications seeking the sanction of the Court for the use of video conferencing (VCF),

    1.2 The purpose of this practice direction is to explain and clarify certain procedures and arrangements necessary in this relatively new method of taking evidence in trials or in other parts of any legal proceedings, for example, interim application case management conferences and pre-trial reviews. Further guidance

[1] Revoked by PD 2 of 2013.

is given in the Video Conferencing Guide appended to this practice direction.

1.3 VCF equipment may be used both (a) in a Courtroom, whether via equipment which is permanently placed there or via a mobile unit, and (b) in a separate studio or conference room. In either case, the location at which the Judge sits is referred to as the "local site". The other site or sites to and from which transmission is made are referred to as "the remote site(s)" and in any particular case any such site may be another Courtroom.

2. Preliminary arrangements

2.1 The Court's permission is required for any part of the proceedings to be dealt with by means of VCF. Before seeking a direction, the applicant should notify the listing officer or other appropriate Court officer of the intention to seek it, and should enquire as to the availability of Court VCF equipment for the day or days of the proposed VCF.

2.2 The application for a direction should be made to any of the Judges of the Grand Court. If all parties consent to a direction, permission can be sought by letter, fax or e-mail, although the Court may still require an oral hearing. All parties are entitled to be heard on whether or not such a direction should be given and as to its terms. If a witness at a remote site is to give evidence by an interpreter, consideration should be given at this stage as to whether the interpreter should be at the local site or the remote site.

2.3 If a VCF direction is given, arrangements for the transmission will then need to be made. The Court will ordinarily direct that the party seeking permission to use VCF is to be responsible for this. That party is hereafter - in civil cases -referred to as 'the VCF arranging party'.

2.4 .The VCF arranging party must contact the listing officer or other appropriate officer of the Court and make arrangements for the VCF transmission. Details of the remote site, and of the equipment

to be used both at the local site (if not being supplied by the Court) and the remote site (including the number of ISDN lines and connection speed), together with all necessary contact names and telephone numbers, will have to be provided to the listing officer or other Court officer. The Court will need to be satisfied that any equipment provided by the parties for use at the local site and that at the remote site is of sufficient quality for a satisfactory transmission.

3. Costs

3.1 Subject to any order to the contrary, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by, the VCF arranging party. All reasonable efforts should be made to keep the transmission to a minimum and so keep the costs down. All such costs will be considered to be part of the costs of the proceedings and the Court will determine at such subsequent time as is convenient or appropriate who, as between the parties, should be responsible for them and (if appropriate) in what proportions.

4. Recording

4.1 The VCF arranging party must arrange for the recording equipment to be provided by the Court so that the evidence may be recorded at the local site.

4.2 Application for a direction from the Court must be made for the provision of recording equipment at the remote site by the arranging party.

4.3 No other recording may be made of any proceedings via VCF, save as directed by the Court.

3. Paragraph B 2.4 of the FSD Users Guide provides as follows:

(a) Ideally an application for a proposed application to be heard by telephone or by video link should be made to the assigned Judge before he or she goes overseas so that all the relevant

considerations can be fully ventilated at an oral hearing in chambers. However, if that is not feasible in the circumstances, the request for a proposed application to be heard by telephone or by video link when the assigned Judge is already overseas will in practice usually be addressed in the first instance to the assigned Judge's PA, who will be in direct contact with the Judge and can most easily and quickly transmit the request direct to the Judge. The request should be supported by a letter from the applicant's attorney explaining in detail why the request is being made, whether the proposed application will be supported or opposed by any other party, why it is not possible or desirable to await the Judge's return, how much supporting documentation in the form of evidence, authorities etc. is involved and how long the hearing is likely to take. It is entirely a matter for the discretion of the assigned Judge whether to hear the application at all while off the Island and, if so, whether by telephone or by video link. All communications with the Judge must be made through the Judge's PA; no direct communication with the Judge is permitted. If the Judge agrees to hear the application by telephone or video link the applicant's attorney must liaise with the Judge's PA who will be responsible for all practical arrangements.

(b) In determining whether or not to hear a proposed application by telephone or video link the assigned Judge will usually consider whether the proposed application is sufficiently urgent and important to justify the time, inconvenience and cost of it being heard by telephone or video link. The Judge will also take into account how long the hearing is likely to take and how long it will be before he or she would be able to hear the application on Island.

(c) The assigned Judge will usually only agree to hear an application by telephone if it is relatively straightforward, not

highly contested and will not last more than a maximum 2 hours unless there are special circumstances.

(d) An application for a witness to be allowed to give evidence by video link, whether in a hearing when the Judge is overseas or in a hearing or trial when the Judge is not overseas, will usually only be granted in very exceptional circumstances. Unless the proposed evidence of the witness is purely formal and will not involve any significant cross-examination, the Court will be very reluctant to grant such an application. Amongst other things, there will be concerns as to the Judge's ability to satisfactorily assess the witness's demeanour, objectivity and reliability over a video link and the ability to ensure that no one else is present unseen with the witness who may be able to prompt the witness. Such concerns will be exacerbated if the witness requires an interpreter. The strong preference of the Court is to see and hear the evidence of a witness in person.

(e) The current video conferencing guide is set out on the next page.

4. The Video Conferencing Guide currently set out in the FSD Users' Guide provides as follows:

VIDEO CONFERENCING GUIDE

This guidance is for the use of video conferencing (VCF) in civil proceedings. It is in part based upon the protocol of the Federal Court of Australia and CPR 32 Practice Direction of the Courts of England and Wales. It is intended to provide a guide to all persons involved in the use of VCF, although it does not attempt to cover all the practical questions which might arise.

VIDEO CONFERENCING GENERALLY

1. VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in

particular, be likely to achieve a material saving of costs. It is, however, inevitably not as ideal as having the witness physically present in Court. Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognised that the degree of control a Court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.

2. *When used for the taking of evidence, the objective should be to make the VCF session as close as possible to the usual practice in a trial Court where evidence is taken in open Court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by VCF: for example, the administration of the oath, ensuring that the witness understands who is at the local site and what their various roles are, the raising of any objections to the evidence and the use of documents.*

3. *It should not be presumed that all foreign governments are willing to allow their nationals or others within their jurisdiction to be examined before a Court by means of VCF. If there is any doubt about this, enquiries should be directed to the Foreign and Commonwealth Office (International Legal Matters Unit, Consular Division) with a view to ensuring that the country from which the evidence is to be taken raises no objection to it at diplomatic level. The party who is directed to be responsible for arranging the VCF (see paragraph 8 below) will be required to make all necessary inquiries about this well in advance of the VCF and must be able to inform the Court what those inquiries were and of their outcome.*

4. Time zone differences need to be considered when a witness abroad is to be examined in the Cayman Islands by VCF. The convenience of the witness, the parties, their representatives and the Court must all be taken into account. The cost of the use of a commercial studio is usually greater outside normal business hours.

5. Those involved with VCF need to be aware that, even with the most advanced systems currently available, there are the briefest of delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there will be a tendency to 'speak over' the witness, whose voice will continue to be heard for a millisecond or so after he or she appears on the screen to have finished speaking.

6. With current technology, picture quality is good, but not as good as a television picture. The quality of the picture is enhanced if those appearing on VCF monitors keep their movements to a minimum.

PRELIMINARY ARRANGEMENTS

7. The VCF arranging party must ensure that an appropriate person will be present at the local site to supervise the operation of the VCF throughout the transmission in order to deal with any technical problems.

8. It is recommended that the Judge, practitioners and witness should arrive at their respective VCF sites about 20 minutes prior to the scheduled commencement of the transmission.

9. If the local site is not a Courtroom, but a conference room or studio, the Judge will need to determine who is to sit where. The VCF arranging party must take care to ensure that the number of microphones is adequate for the speakers and that the panning of the camera for the practitioners' table encompasses all legal representatives so that the viewer can see everyone seated there.

10. The proceedings, wherever they may take place, form part of a trial to which the public is entitled to have access (unless the Court has

determined that they should be heard in private). If the local site is to be a studio or conference room, the VCF arranging party must ensure that it provides sufficient accommodation to enable a reasonable number of members of the public to attend.

11. In cases where the local site is a studio or conference room, the VCF arranging party should make arrangements, if practicable, for the Royal Coat of Arms to be placed above the Judge's seat.

12. In cases in which the VCF is to be used for the taking of evidence, the VCF arranging party must arrange for recording equipment to be provided by the Court which made the VCF direction so that the evidence can be recorded. An associate will normally be present to operate the recording equipment when the local site is a Courtroom. The VCF arranging party should take steps to ensure that an associate is present to do likewise when it is a studio or conference room. The equipment should be set up and tested before the VCF transmission. It will often be a valuable safeguard for the VCF arranging party also to arrange for the provision of recording equipment at the remote site. This will provide a useful back-up if there is any reduction in sound quality during the transmission. A direction from the Court for the making of such a back-up recording must, however, be obtained first. This is because the proceedings are Court proceedings and, save as directed by the Court, no other recording of them must be made. The Court will direct what is to happen to the back-up recording.

13. Some countries may require that any oath or affirmation to be taken by a witness accord with local custom rather than the usual form of oath or affirmation used in the Cayman Islands. The VCF arranging party must make all appropriate prior inquiries and put in place all arrangements necessary to enable the oath or affirmation to be taken in accordance with any local custom.

That party must be in a position to inform the Court what those inquiries were, what their outcome was and what arrangements have been made. If the oath or affirmation can be administered in

the manner normal in the Cayman Islands, the VCF arranging party must arrange in advance to have the appropriate holy book at the remote site. The associate will normally deliver the oath.

14. Consideration will need to be given in advance to the documents to which the witness is likely to be referred. The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the VCF arranging party should then send to the remote site.

15. Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the VCF arranging party should ensure that equipment is available to enable documents to be transmitted between sites during the course of the VCF transmission, Consideration should be given to whether to use a document camera. If it is decided to use one, arrangements for its use will need to be established in advance. The panel operator will need to know the number and size of documents or objects if their images are to be sent by document camera. In many cases, a simpler and sufficient alternative will be to ensure that there are fax transmission and reception facilities at the participating sites.

THE HEARING

16. The procedure for conducting the transmission will be determined by the Judge. The Judge will determine who is to control the cameras. In cases where the VCF is being used for an application in the course of the proceedings, the Judge will ordinarily not enter the local site until both sites are on line. Similarly, at the conclusion of the hearing, he will ordinarily leave the local site while both sites are still on line. The following paragraphs apply primarily to cases where the VCF is being used for the taking of the evidence of a witness at a remote site. In all cases, the Judge will need to decide whether Court dress is appropriate when using VCF facilities. It might be appropriate when transmitting from

Courtroom to Courtroom. It might not be when a commercial facility is being used.

17. At the beginning of the transmission, the Judge will probably wish to introduce themselves and the advocates to the witness. That Judge will probably want to know who is at the remote site and will invite the witness to introduce themselves and anyone else who is with that witness. The Judge may wish to give directions as to the seating arrangements at the remote site so that those present are visible at the local site during the taking of the evidence. The Judge will probably wish to explain to the witness the methods of taking the oath or of affirming, the manner in which the evidence will be taken, and who will be conducting the examination and cross-examination. The Judge will probably also wish to inform the witness of the matters referred to in paragraphs 5 and 6 above (co-ordination of picture with sound, and picture quality).

18. The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the Courtroom. During examination, cross-examination and re-examination, the witness must be able to see the legal representative asking the question, and also any other person (whether another legal representative or the Judge) making any statements in regard to the witness's evidence. It will in practice be most convenient if everyone remains seated throughout the transmission.

5. The FSD Users' Guide also makes the following provision for applications on the papers:

B1.1 APPLICATIONS —ON THE PAPERS

B1.1(a)Although contested applications are usually best determined at an oral hearing, some applications may, in the discretion of the Judge, be suitablefor determination on the papers without the need for an oral hearing.

B1.1(b)If the applicant considers that the application may be suitable for determination on the papers, the applicant should ensure before filing the papers that:

(i) the application, together with any supporting evidence, has been served on the defendant/respondent (if any);

(ii) the defendant/respondent (if any) has been allowed the appropriate period of time in which to serve evidence in opposition;

(iii) any evidence in reply has been served on the defendant/respondent (if any); and

(iv) there is included in the papers the written consent of the defendant/respondent (if any) to the disposal of the application on the papers without an oral hearing.

B1.1(c) An application to be disposed of on the papers will not require a summons. There should however be a supporting letter from the applicant's attorney.

B1.1(d) Only in the most exceptional cases will the Court dispose of an application on the papers in the absence of the consent of the defendant/respondent (if any) to the Court doing so. If an application is or is likely to be opposed the Court will usually require an oral hearing, in which case the applicant should file and serve a summons in the usual way

B1.1(e) The Applicant must submit a draft proposed order with the papers. The draft proposed order must expressly state that the Judge considers the application to be suitable to be disposed of on the papers without the need for an oral hearing.

B1.1(f) Any application for an interim injunction or similar remedy will normally require an oral hearing.

Hon Anthony Smellie
Chief Justice

9 April 2020

GRAND COURT PRACTICE DIRECTION No. 6A OF 2020

FINANCIAL SERVICES DIVISION: PRACTICE DIRECTION MODIFYING STANDARD HEARING PRACTICE DURING CORONAVIRUS PANDEMIC UNTIL FURTHER NOTICE

Introductory

1. This Practice Direction is further to Practice Direction No. 6 of 2020 'Modifying Standard Remote Hearing Practice During Corona virus Pandemic Until Further Notice' issued by the Chief Justice on 9 April 2020.

2. Practice Direction No. 6 addressed the increased use of remote hearings and how the pre-existing practice will be modified. The present Practice Direction addresses the length of hearings and special accommodations for counsel and seeks to introduce a uniform approach in relation to hearings taking place in the Cayman Islands and significantly increased number of cases involving FSD Judges presiding by video-link from London.

3. Notwithstanding the latest changes to the Shelter-in-Place Regulations (SL 43 of 2020) which allow parties and their lawyers to attend court to fulfil legal obligations, because Government's social distancing policies are likely to remain in place for the immediate future, remote hearings will continue to take place unless there is a compelling reason for a hearing to take place in Court.

Sitting times

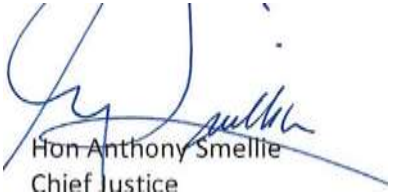
4. A full day hearing will generally last no longer than 4 hours and a half-day hearing no longer than 2 hours. Subject of course to modification as the interests of justice may require, the standard

sitting hours for hearings lasting one or more full days will be as follows (all times are Cayman Islands time):

- 8.30am-10.30 am:½ day
- 10.30-11.00 am: break
- 11.00am-l.00pm: ½ day.

Special accommodations for counsel

5. Counsel may be presented with extenuating personal circumstances arising out of the Coronavirus Pandemic which impact on their availability for scheduled hearings. FSD Judges will be sensitive to the importance of confidentiality and will seek to make special accommodations for counsel, where the interests of justice will not be compromised, without requiring full particulars to be given of the matters concerned.



5 May 2020

GRAND COURT PRACTICE DIRECTION NO 7 OF 2020

Sittings of the Court of Appeal proceeding by way of video-conference

(Issued by the Chief Justice pursuant to section 95(7)(d) of the Cayman Islands Constitution Order 2009 and section 5 of the Court of Appeal Law, in consultation with and by approval of the President of the Court of Appeal).

Sittings of the Court of Appeal proceeding by way of video-conference in response to the Public Health (Prevention, Control and Suppression of COVID-19) (Amendment) Regulations, 2020 ["the Regulations"].

In a Press Release by the Chief Justice on 28 March 2020 it was stated among other things that: "As a result of the prevailing travel restrictions, the President and Justices of Appeal will not be travelling to preside in Court in Cayman for the upcoming April-May session [Spring Session]. However, video-conference arrangements are being made to allow the Court to be convened with the President and Justices presiding from the United Kingdom. The List of appeals to be taken will likely be reduced because of the circumstances. Parties and/or their attorneys should contact the Registrar of the Court of Appeal for the confirmation of listings at 244-3808 or by e- mail to: Jenesha.Simpson@judicial.ky."

The List of Appeals having been settled and published on 11 April 2020, following are directions for the conduct of the various hearings by way of video-conference.

1. The President and Justices of Appeal will appear and preside together in Court 6 or Court 1 (as the cases may require) where the Court of Appeal will be convened by video-links from the United Kingdom.

Except for 29 and 30 April when criminal appeals will commence at 10am, time zone differences will require that proceedings commencing at 8am, local time.

The Registrar and IT Technician will be present in the Courtroom where they will provide necessary administrative and technical support to the Court.

Except in family matters, the proceedings will be in open court and deemed public proceedings. However, in keeping with the need for social distancing as mandated by the Regulations, the physical attendance of persons will not be allowed. Instead the proceedings will be streamed live from the Courtroom via the website: www.judicial.ky.

Members of the public and the Press may hear and view the proceedings by connecting to the link displayed on the home page. The proceedings will be streamed live and a recording will be available through the website link for 30 days after the conclusion of the Spring Session.

It may be necessary from time to time for there to be breaks in transmission to prevent the publication of prejudicial evidence or statements but only as the Court may deem strictly necessary.

Participation in the proceedings will be by password and dial-in access. Parties and their attorneys must obtain these details from the Registrar beforehand.

2. Criminal Appeals
Subject to the directions of the Court as the case may require, Appellants will appear before the Court and participate by way of video-link. Their attorneys may appear in person or by way of video-link.

The technology will allow for Appellants and their attorneys to consult in private with the leave of the Court by way of "break out rooms".

Counsel for the Crown may appear in person or by way of video-link.

3. Family appeals.
The family appeal B.J v D.J listed for 4 and 5 May 2020 will proceed in camera, pursuant to section 5 of the *Court of Appeal Act (as amended and revised)* and in keeping with the private and sensitive nature of such matters.

The parties and their attorneys will appear by way of video-link except with the leave of the Court limited to one party and one attorney on each side appearing in person.

4. Civil appeals.
The parties and their attorneys will appear by way of video-link except with the leave of Court limited to one party and one attorney on each side appearing in person.

5. The proceedings will be recorded via ZOOM or in such other manner as the Court might direct. On the application of any person, any recording so made is to be accessed by application to the Registrar, with the consent of the Court.

Hon. Anthony Smellie
Chief Justice

13 April 2020.

GRAND COURT PRACTICE DIRECTION 8 OF 2020

PUBLIC ACCESS TO COURT PROCEEDINGS BY AUDIO OR VIDEO LINKS DURING THE COVID-19 PANDEMIC

Open justice is a fundamental principle in our court systems, and will continue to be so as we increase the use of audio and video technology in response to the COVID-19 pandemic. In considering the use of telephone and video technology, the judiciary will have regard to the principles of open justice, as they do now. As they do now, judges (including the magistrates), may determine that a hearing should be held in private if this is necessary to secure the proper administration of justice. In particular, recognising the sensitivities of such cases, the usual practice in family and *Children Act (as amended and revised)* proceedings will be to not broadcast those proceedings and in Criminal proceedings the broadcast may be suspended to prevent transmission to subsequent witnesses. However, a range of measures will continue to support the principle of open justice:

- Access to open hearings by way of live-streaming if and where a public gallery is available at which the integrity of the proceedings can be safeguarded, or a third party such as a member of the press may join the hearing remotely by password access. For the time being live-streaming of proceedings, will be done to the Town Hall, "Constitution Hall", George Town, where members of the public may have access for observation only, subject to social distancing protocols.
- Transcripts of hearings in those courts where they are available, now. Any party or interested person is able to request a transcript. Judges may direct that the transcript be made available at public expense where appropriate and public access to transcripts, notes or other information relating to court proceedings will, of course, be in keeping with applicable law and court rules.

- With the permission of the judge, an audio recording of a hearing can be made available to be listened to in a court building.
- With the permission of the judge, in courts where this is already done, the notes of the hearing can be made available on request.
- Publication of the outcome of Grand Court and Court of Appeal hearings, or orders or results will continue to be available, in most instances online.
- Access to hearings and information will be available to accredited media, such as the provision of listings and results information in Magistrates' Courts on the website at www.Judicial.ky or via email if requested.
- Where parties or the press are allowed to observe a hearing remotely they are reminded that it will be a contempt of court to make unauthorised recordings of the proceedings or to use or to allow the use of such recordings to interfere with the administration of justice. Where proceedings are being broadcasted, a note will be included in the course of the streaming at the bottom of the screen to this effect: "This is a formal court proceeding in respect of which the usual rules as set out in Practice Direction 1 of 2014 (attached) will apply. No photographs, filming or recordings may be made except with the approval of the Court.

Requests from the media and others to observe a hearing remotely should be made to the court in advance to allow for inclusion during the hearing set-up.

Hon Anthony Smellie
Chief Justice

5 May 2020

(Enclosure: Practice Direction 1 of 2014)

GRAND COURT PRACTICE DIRECTION No. 9 OF 2020

GUIDANCE FOR THE REMOTE NOTARISATION AND ATTESTATION OF DOCUMENTS BY ELECTRONIC MEANS

1. These Practice Directions shall be read in conjunction with the *Notaries Public Act (as amended and revised)* ("the Law") and the *Notaries Public (Virtual Conduct of Notarial Acts) Regulations (as amended and revised)*, ("the Regulations") made by Cabinet on 17th April 2020 in exercise of the powers conferred by Section 15 of the Law and shall also be read, as circumstances require, in conjunction with the Justices of the Peace Regulations, 2015,[1] including the Schedule thereto.

2. These Directions are primarily intended to allow notarial and Justices of the Peace ("JP") attestation services to continue to be provided for the purposes of court proceedings whilst observing the COVID-19 Shelter-in-Place Regulations. However, they will, where necessary, continue to allow such services to be provided remotely after the lifting of the Shelter-in -Place Regulations.

3. **Conditions for conduct of notarial acts by use of communication technology**
   Where any act by a notary public allowed by the Law is to be carried out virtually by use of communication technology (as defined by the Regulations), the following conditions shall apply —
   (a) the remotely located individual seeking notarial services ("the individual") must demonstrate that that individual is physically situated in the Islands ;
   (b) the individual shall transmit to the notary public via facsimile, email or other electronic means, a legible copy of the relevant document in relation to which notarial acts are to be performed ;

[1] Made under the Summary Jurisdiction Law (2006 Revision).

(c) the notary public may, after observing the signature or requisite act of the individual, notarise the transmitted copy of the document and return it via facsimile, email or other electronic means;
(d) the notary public shall record the details of the notarial act performed in the Notarial Acts Book in accordance with Section 13 of the Law and in so doing shall indi cate that the notarial act was performed in accordance with the Regulations;
(e) where the individual is not personally known to the notary public, the individual shall present valid photo identification to the notary public during the real time transmission interaction.

4. Recording of notarial act

A notary public who uses communication technology to —

(a) administer an oath shall record, or cause to be recorded, the performance of that notarial act;

(b) perform an act (other than the act of administering an oath) required to be performed by a notary public under any law including the provisions of any treaty or convention and any protocol to such treaty or convention that is applicable to the Islands may, upon prior notification of the individual, record, or cause to be recorded, the performance of the act.

5. Filing of notarial certificate with the Court

(a) Where required for the purposes of filing with the Court, a notarial certificate must disclose that the notarisation was conducted using communication technology.
(b) The document so certified may then be filed by the individual by email with the Court and accepted as a duly sworn document for court related purposes.
(c) The individual will be required to provide an undertaking to the Court that the original document will be filed once the Court reopens to the public.

6. Justices of the Peace

The procedures set out above are also to be observed, *mutatis mutandis*, as they relate to att estations by Justices of the Peace. And, in part icular, Justices of the Peace shall keep a written record of any attestation by use of communication technology which is to be filed with the court, in compliance with Regulation 12 of the Justices of the Peace Regulations, 2015.

5 May 2020

GRAND COURT PRACTICE DIRECTION No. 10 OF 2020

1. DRAWING UP AND FILING OF JUDGMENTS AND ORDERS

2. FORM OF ORDERS MADE BY THE COURT APPROVED AS TO FORM AND CONTENT OR WITH THE CONSENT OF THE PARTIES

3. PROVISION OF ORDERS OF THE COURT BY THE CLERK OF COURT

Preamble

This Practice Direction is to be read in conjunction with Grand Court Rules Order 42, rules 5 and 5A as those rules relate respectively to the provision of orders, filed with the Court, by the Clerk of Court; to the drawing up and filing of judgments and orders; and to the form and contents of orders of the Court made with the consent of the parties to a cause or matter.

Drawing up and filing of Judgments and Orders (GCR. 0.42, r. 5 and r.5A)

1. GCR Order 42, r. 5 deals with the drawing up and filing of orders. Rule 5(5) provides that the attorney for the successful party shall draw up the order and circulate it to the attorneys for the other parties who shall endorse it "approved as to form and content". Paragraphs (6) and (7) then provide what is to be done by the Clerk of the Court upon receipt of a draft order depending upon whether it complies with paragraphs (6) or (7) or rule 5A. In keeping with these rules the following practice shall apply:

    (i) Every judgment or order should be dated with the date upon which it is made. A judgment or order is made when the judge pronounces it.

    (ii) The attorney responsible for drawing up a judgment or order should include the date upon which it was made in the draft

which is presented for signature. Unsigned draft orders must not be sealed.

(iii) The date upon which a judgment or order is filed in the Registry should be the date upon which it is signed. After having been signed the judgment or order will be sealed with the respective Court seal and the date of filing will be inserted either by the judge or a Court Registry official.

2. Form and content of orders made by the Court approved as to form and content by the parties or with the consent of the parties (GCR. 0. 42, r.5(5) or r.5A(3).

Orders encompassed by these rules should be in the following format:

Under the style of cause:

"IN CHAMBERS/IN OPEN COURT/RESPECTIVE DIVISION

DATE OF ORDER

BEFORE HON. JUSTICE

ORDER or ORDER BY CONSENT OF THE PARTIES

(as the case may be)

UPON hearing counsel for the applicant etc.

IT IS HEREBY ORDERED THAT:

DATED the

FILED the

_____ _____

JUDGE OF THE GRAND COURT or CLERK OF THE COURT (as the case may be)

And on a separate page, not forming part of the Order, with signatures as required:

"Approved as to form and content by the Parties"

OR

"By consent of the parties"

(as the case may be)

3. Order 42 r.5(8) provides:

> ***"The Clerk of the Court shall notify the party who drew up the judgment or order when it has been filed and shall provide such party with as many sealed copies as he may require upon payment of the prescribed fee."***

The obligation of the Clerk of the Court is to notify the successful party (through that successful party's attorney), who drew up the draft order, that the order has been filed and to provide copies to that attorney. There is no requirement to notify and/or supply copies to other parties. However, in light of the Court of Appeal's recent pronouncement in ***H.E.B. Enterprises Limited et al v Bernice Richards (as PR of Estate of Anthony Richards Deceased)*** Judgment delivered 21 September 2020, this practice should be enhanced and the practice will accordingly be as follows:

The Clerk of the Court shall supply copies of sealed orders to the attorneys of all parties (or to any party acting in person) rather than just to the party who has submitted the draft order.

4. Practice Direction No.2 of 1999 and Practice Direction No. 2 of 2006 are hereby repealed and replaced.

Made this 29th Day of September 2020.

Hon Anthony Smellie

Chief Justice

GRAND COURT PRACTICE DIRECTION No. 11 OF 2020

ELECTRONIC FILING (E-FILING) AND E-SERVICE IN THE GRAND COURT OF DOCUMENTS VIA THE JUDICIAL ADMINISTRATION E-FILING PLATFORM

1. Authority

1.1. This Practice Direction is made by the Chief Justice pursuant to Order 1, Rule 12(1) of the *Grand Court Rules (as amended and revised)* ("the GCR").

2. Commencement

2.1. This Practice Direction will come into effect on 8th January 2021.

3. Introduction

3.1. In furtherance of the objectives of GCR Order 63 Rule 3 and Order 5 Rules 1(5) and (6) this Practice Direction provides for the filing and service of documents ("e- filing and e-service") by electronic means. The introduction of an electronic means of filing and service of documents will improve access to justice by increasing efficiencies, timeliness and reducing costs.

3.2. This Practice Direction applies to all existing cases as well as new cases commenced on or after January 8, 2021 and can be used to file documents to commence or continue cases that are already before the Court.

3.3. The filing of documents by electronic means must be done in accordance with this Practice Direction.

4. Operation of Electronic filing system

4.1. The Judicial Administration has acquired an e-filing platform ("APEX CURIA" the "Platform"). The Platform may be accessed via an internet Portal on the Judicial Website ("www.judicial.ky").

4.2. The Platform enables parties to issue proceedings and file documents online to the Civil (in all Divisions) and Criminal Registries of the Courts at any time during or outside normal Court Office opening hours including weekends, public holidays and during Court breaks.

5. Electronic Submission of Documents

5.1. In order to file documents using the Platform, a party must —

a. Access the Portal by visiting the Judicial Administration website at www.judicial.ky and clicking on the link to the e-filing Portal;

b. Register a new account or log into an existing account in the fields of data required by the Platform.

a. Enter details of a new case or an existing case as required by the fields of data of the Platform;

b. Upload the document(s) associated with that case;

c. Pay the appropriate fee online by way of the e-filing Portal; and

d. Submit the document(s).

6. Format of Documents

6.1. A document to be filed by electronic means must be submitted in a format supported by the software of the Platform and so in keeping with the following directions.

6.2. Documents submitted electronically must not be password protected and must be: —

a. Prepared electronically using MS Word or open office or any other Word Processor in .doc, .dox, .txt, .rtf, .pdf formats: and

b. Converted into Portable Document Format (PDF) before uploading.

6.3. Where the document is not a text document, the document must be scanned using an image resolution of 300 dpi (dots per inch) and saved as a PDF document.

6.4. Documents submitted through the e-filing Portal must comply with the requirements specified in the GCR Order 66 and explained in the Explanatory Memorandum thereof (as amended and revised) Paragraph 16, sub-paragraph 16.2 which sets out the following: —

Paper size:	letter size of approximately 11 inches (28 cm) long by 8.5 inches (21.5 cm) wide
Margins:	1.5 inches (3.5 cm) at top and bottom
	1.5 inches (3.5 cm) at the left side
	1 inch (2.5 cm) at the right side

6.5. The aggregate size of a document cannot exceed 100 MB (megabytes) for one submission.

6.6. Where the aggregate size of a document exceeds 100 MB (megabytes) that large document must be separated into multiple smaller documents not exceeding 100 MB ((megabytes) each. Thereafter, each document must be submitted as one part of the whole, e.g., - "part 1 of 3", "part 2 of 3, "part 3 of 3" and so on.

6.7. Exhibits must be uploaded and submitted separately from the corresponding principal document but identified as related to it.

6.8. Each exhibit must be uploaded and identified separately, e.g., - "exhibit one Contract", "exhibit two cheque", "exhibit three Certificate of title", and so on.

7. Identity of Party Filing Documents (GCR O.63 r.5)

7.1. Every document filed in, or process issued out of the Court Office shall identify the filing party in keeping with the requirements of GCR Order 63, Rule 5 and as required by the Platform.

8. Electronic Signatures

8.1. The Platform supports the use of electronic signatures on documents subscribed by the registered filing party. A document which requires signature must be signed when submitted for filing by electronic means and must be an electronic copy of the original signed document. A document which requires attestation must be attested to when submitted for filing by electronic means and must be an electronic copy of the original attested document.

8.2. Where parties file documents using the Platform, all original documents filed electronically must be made available for inspection if required by another party to the proceedings and/or by order of the Court.

9. Filing outside business hours

9.1. Any document submitted through the Platform for filing outside business hours (8:30 am to 5:00 pm Mondays to Fridays) or on a public holiday, Saturday, or Sunday, or any other period during which the Registry is closed, will be deemed filed as soon as the Registry is next open.

9.2. Documents will be ascribed times of e-filing and if for any reason the Platform becomes non-operational the time of filing will be regarded as the time ascribed when the document was filed rather than when the process of filing was completed.

10. Fees

10.1. The prescribed fees set out in the *Court Fee Rules (as amended and revised)* are payable for all documents filed electronically as they would be for documents filed non- electronically and at the time of filing, whereupon a receipt from the Clerk of Court will be generated through the online payment system.

11. Processing by the Registry

11.1. The Registry will review all documents submitted for filing for compliance with the Grand Court Rules ("GCR") and this Practice Direction.

a. Where a document has been submitted using the Platform, an automated notification will be generated which will appear in the message centre of the account registered to the filing party and also sent to that party by email.

b. A document submitted using the Platform that complies with the GCR and this Practice Direction shall be filed.

A document submitted for filing that does not comply with the GCR and this Practice Direction shall not be filed and a notice of the reasons for non- acceptance shall be sent to the message centre of the filing party and by email to that party with a notice of the reason(s) for non-acceptance. The document may be amended and resubmitted for filing accordingly.

c. Each filed document shall be stamped, dated and paginated sequentially based on the case number under which the document is filed or based on the case number that is assigned to the document if the document filed commences a new case.

d. An electronic certificate will be applied to all documents accepted by the registry for filing. The electronic certificate validates the authenticity of the document as being duly filed in the Registry.

e. Once a document has been duly filed in the Registry, an automated notification will be generated which will appear in the message centre of the account registered to the filing party and will also be sent by email, as the case may be, to the filing party to confirm that the document has been filed and to confirm the date and time of filing.

f. Once a document has been duly filed in the Registry, copies will be generated electronically for placement on the Public Registers in keeping with GCR Order 63 Rule 8 unless embargoed by direction issued under GCR Order 63 Rule 3(4).

11.2. Subject to paragraph 9 above, a document to which an electronic certificate has been applied shall be deemed to be filed on the date and time that the document was submitted to the Platform, provided that where a document has not been accepted for filing and is resubmitted through the Platform, the date and time of filing shall be the date and time of resubmission of that document.

12. Electronic Service of documents

12.1. Subject to the requirements of the GCR for personal service of documents in the first instance, it is directed that in addition to the means set out in GCR Order 65 Rule 5(1) for substituted service, any documents requested by the filing party to be served may be served electronically by way of the e-filing and e-service systems of the Platform.

12.2. Electronic service of e-filed documents may be effected through the electronic service address of a party which includes:

a. An electronic mail (email) address.

b. Other given electronic media address (SMS or text message).

12.3. A party specifically consents to accept electronic service by: —

a. serving and filing a notice or written consent on any other party, that the party accepts electronic service. The electronic service address at which the party agrees to accept service must be stated in the notice or written consent;

b. electronically filing any document or acknowledging service of any document electronically. The party is deemed to agree to accept service at the electronic service address from which the electronic filing or acknowledgment is made, provided that self-represented parties must affirmatively consent to electronic service as provided under subparagraph (a);

c. including an electronic service address in the address for service in the prescribed form of originating process filed pursuant to GCR Order 5;

d. registering an account on the Platform. The email address provided during registration shall be the electronic service address for the registered party.

12.4. An electronic service address is presumed valid for a party if the party files electronic documents with the Court from that address and has not filed and served notice that the address is no longer valid.

12.5. A party who has consented to electronic service under 12.3 must promptly notify the Court and other parties electronically of any change in their electronic service address.

12.6. A party who receives a document that is served electronically and is unable to view or download the document must promptly notify the serving party and the serving party shall take all reasonable steps to ensure that the document can be viewed and downloaded.

12.7. A document served to an electronic service address is considered served on the date and time that it is sent.

13. Proof of service

13.1. Electronic confirmation of delivery shall serve as proof of service for all documents served electronically provided that if any dispute arises as to whether service occurred, it shall be resolved by a Judge.

13.2. Electronic confirmation of delivery shall include:

a. E-mail delivery or read receipt;

b. Confirmation that an embedded hyperlink in the message envelope was accessed;

c. Acknowledgement of receipt by the recipient party, by the recipient party's Attorney-at- Law; or

d. Other means sufficient to satisfy the Court that the document(s) came to the notice of the recipient party such as an electronic certificate of e-service generated by the platform.

14. Electronic Service by or on the Court

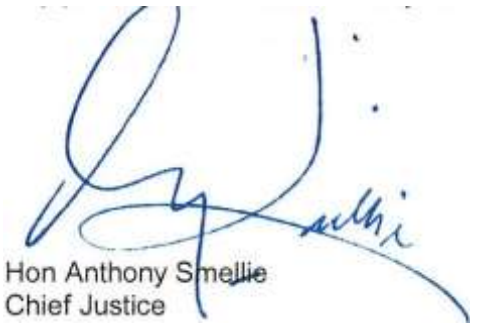
14.1. The Court may electronically serve any notice, order, judgment, or other document issued by the Court on a party to a case or respondent to the judicial process by delivering same to the electronic service address given by that party or respondent.

14.2. A party may serve a document which is required to be served on the Court by filing and serving same through the Platform for delivery to the email address of the Clerk of Court.

15. Discontinuation

15.1. The use of emails for the filing of documents pursuant to Practice Direction 5 of 2020 is discontinued from the 8th January 2021until further notice.

Issued by the Honourable Chief Justice of the Cayman Islands pursuant to Order 1, Rule 12(1) of the CR on this 14th day of December 2020.



Hon Anthony Smellie
Chief Justice

GRAND COURT PRACTICE DIRECTION No. 2 OF 2021

COURT FEES RULES (as amended and revised) ("the Rules") - GRAND COURT RULES ORDER 62 RULE 3(1)

1. Where, in accordance with Rule 3(10(b) of the Rules, the Grand Court or the Court of Appeal authorises a bill to be taxed by a person other than the Clerk of the Court, the taxing officer shall be a person appointed as such from among those listed within Schedule 1 to this Practice Direction (as amended from time to time).

2. In determining whether to make that authorisation, the Court will consider whether the taxation can thereby be dealt with more expeditiously and effectively taking account of the amount of the bill and the complexity of the taxation.

3. The Court having made a direction in accordance with Rule 3(1O)(b), the allocation to a particular taxing officer will be made by the Clerk of Court who will also taking into account the likely complexity of the taxation and any potential for a conflict of interest between any of the taxing officers and any of the parties involved in thetaxation.

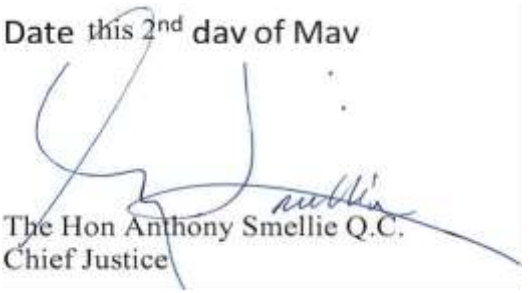
4. Where the Court has made a direction in accordance with Rule 3(1O)(b) any of the parties to the taxation may, at any time up to 7 days after the lodging of the bill for taxation, make representations to the Clerk of the Court regarding any potential conflict of interests with any of the taxing officers listed in Schedule 1.

5. The Clerk of Court will allocate a taxation to a taxing officer within 10 days of the lodging of the bill for taxation and will notify the parties of the identity of the taxing officer and the fees that are payable under paragraph 5(2)(a) of Part C of the First Schedule to the Rules. No taxation will commence until the fees payable under paragraph 5(2)(a) have been received.

6. Where fees are payable in accordance with paragraph 5(2)(b) of Part C of the First Schedule, the parties will be notified by the Clerk of Court of the amount of fees payable within 7 days of the receipt by the Clerk of Court of the taxed bill. The certificate will not be issued until these fees are paid.

7. Where appropriate in a particular case, the Clerk of Court may delegate the functions described under paragraphs 3- 6 hereof to a Deputy Clerk of Court or to the Registrar of the Court of Appeal.

Dated this 2nd day of May



(Schedule 1)

TAXING OFFICERS APPOINTED BY THE CHIEF JUSTICE

(Grand Court Rules, Order 62 r. 3(1))

Effective 1st January 2021

Ms Cherry Bridges	Attorney-at-Law
Mr William Helfrecht	Attorney-at-Law
Mr Delroy Murray	Attorney-at-Law
Mr Derek Jones	Attorney-at-Law
Mr Robert Jones	Attorney-at-Law

GRAND COURT PRACTICE DIRECTION No. 3 OF 2021

EXHIBITS IN CRIMINAL CASES

1. This Practice Direction relates to orders and safe custody of Exhibits and Relevant Investigative Material and shall be read and construed in keeping with the Exhibits Rules.

2. Following the commencement of proceedings for an offence, the Court shall consider at the first case management hearing (or on arraignment in the Summary Court if the case is to be then disposed of) what orders should be made in relation to the inspection, retention, transfer, return, destruction or other disposal of items intended to be produced in evidence (in whole or in part) at trial or to be represented by Exhibits in another form ("Relevant Investigative Material"), including orders for the form in which they are to be exhibited. All parties will be expected to have clear instructions in this regard prior to that hearing, particularly in cases involving perishable items, dangerous items, controlled drugs (in keeping with section 8 of the *Misuse of Drugs Act (as amended and revised)*, items of high monetary/personal value, or items requiring large amounts of storage space.

3. Before any item is marked as an Exhibit at trial, careful consideration should be given to whether this is necessary or whether it may be possible to adduce the evidence in another manner (e.g. by producing it for temporary inspection by the tribunal of fact, or by the use of other evidence of it whether by schedule, photograph, other media or otherwise).

4. Where the Court considers it appropriate to do so, e.g. on grounds of health, safety, security, convenience, or by the agreement of the parties, it may order that an Exhibit that is no longer required in Court is transferred to the safe custody of the relevant Law Enforcement Agency (or otherwise) on such terms as shall be expedient.

5. The Court retains a discretion to make case-specific orders at or before the conclusion of trial relating to the retention, transfer, return, destruction or other disposal of individual Exhibits and Relevant Investigative Material, including specifying the form in which they may be retained and, exceptionally, orders varying the minimum retention periods as set out in the Exhibits Rules.

6. Parties have a duty to consider what further or other orders in respect of exhibits and Relevant Investigative Material are required or appropriate at the conclusion of trial. They should endeavour to agree any such orders and, if they cannot, identify in an agreed note all issues of contention for determination at the conclusion of trial.

7. The Court may, in the interests of justice and in an appropriate case, hear representations from interested third parties as to the disposal of individual Exhibits or Relevant Investigative Material.

8. Parties have a duty to ensure that any Exhibit that has been opened or unsealed in Court for inspection or otherwise is resealed at the first appropriate time and during any adjournment.

9. The Office of the Director of Public Prosecutions shall forthwith notify in writing the relevant Law Enforcement Agency of any order relating to Exhibits or Relevant Investigative Material and provide to it a copy of the same.

10. On notification by His Majesty's Cayman Islands Prison Service of the release or discharge of a person to whom Rule [.7] of the Exhibits Rules applies, the Office of the Director of Public Prosecutions shall forthwith notify in writing the relevant Law Enforcement Agency of the same.

Hon Anthony Smellie QC

Chief Justice

The Cayman Islands

29 November 2021

GRAND COURT PRACTICE DIRECTION No. 1 OF 2022

LISTING AND CUSTODY TIME LIMITS IN CRIMINAL MATTERS

Judicial Listing Officers' responsibility and key principles

Much of this Direction is based upon the English Criminal Practice Direction 2015 and it must be read in conjunction with the Criminal Procedure Rules 2019 and Practice Direction No. 5 of 2015 (Criminal Case Management in the Summary Court).

Listing as a judicial responsibility and function

A1. Listing is both a judicial and administrative function. The purpose is to ensure that all cases are brought to a hearing or trial in accordance with the interests of justice, that the resources available for criminal justice are deployed as effectively as possible, and that cases are heard by an appropriate judicial officer or bench with the minimum of delay.

(a) The Chief Justice and the Chief Magistrate, in consultation with the Listing Officer and Case Progression Offices respectively of the Grand and the Summary Court (CPO) shall have the overall responsibility for approving the weekly list of all Grand Court and Summary Court matters, respectively. The Chief Justice will assign day to day responsibility to the Head of the Grand Court Criminal Divisions for the listing of criminal cases.

(b) The Listing Officer and the CPO respectively of the Grand Court and Summary Courts is responsible for carrying out the day-to-day operation of listing practice under the direction of the Chief Justice and Chief Magistrate. The Listing Officer/CPO has one of the most important functions at the Courts and makes a vital contribution to the efficient running of Court and to the efficient operation of the administration of criminal justice;

(c) In the Grand Court, the CPO, subject to the daily supervision of the Judge responsible for the Criminal Division, is responsible for liaising with the Listing Officer to settle the list of Grand Court criminal hearings and trials. To this end the CPO and the Listing Officer shall meet every week on Thursday to settle the List of criminal cases for the ensuing week.

(d) In the Summary Courts, the CPO, subject to the supervision of the Chief Magistrate, is responsible for administering the listing practice. The day-to-day setting of that listing practice is the responsibility of the Chief Magistrate in consultation with the Magistrates and with the assistance of the CPO.

Key principles of listing

A2. When approving the lists, the Chief Justice [or the assigned Judge] and Chief Magistrate respectively will take into account the following principles:

(a) Ensure the timely trial of cases and resolution of other issues (such as confiscation) so that justice is not delayed. The following factors are relevant:

i. In general, each case should be tried within as short a time of its arrival in the Court as is consistent with the interests of justice, the needs of victims and witnesses, and with the proper and timely preparation by the prosecution and defence of their cases in accordance with the directions and timetable set;

ii. Priority should be accorded to the trial of young defendants, and cases where there are vulnerable or young witnesses. In R v Barker [2010] WWCA Crim 4, the Lord Chief Justice of England and Wales highlighted "the importance to the trial and investigative process of keeping any delay in a case involving a child complainant to an irreducible minimum";

iii. Custody time limits imposed by the *Constitution*, the *Police Act* or habeas corpus principles should be observed;

iv. Every effort must be made to avoid delay including in cases in which the defendant is on bail;

(b) Ensure that in the Summary Courts, unless impracticable, non-custody anticipated guilty plea cases are listed no longer than 14 days after a charge is filed with the Court, and non-custody anticipated not guilty pleas are listed no longer than 28 days after a charge is filed [See also in this regard, the provisions of paragraph 13.4 – 13.6 of Practice Direction No. 5 of 2015];

(c) Provide, when possible, for certainty and/or as much advance notice as possible, of the trial date; and take all reasonable steps to ensure that the trial date remains fixed:

(d) Ensure that a Judge or Magistrate (with any necessary authorisation and of appropriate experience) is available to try each case and, wherever desirable and practicable, there is judicial continuity, including in relation to post-trial hearings.

(e) Strike an appropriate balance in the use of resources, by taking account of:

i. The efficient deployment of the judiciary in the Grand Court and the Summary Courts;

ii. The proper use of the courtrooms available at the courts and in this regard schedules for allocation of courtrooms will be prepared in consultation with the Court Administrator and published along with the Lists on the weekly basis;

iii. The provision in long and/or complex cases for adequate reading and judgment writing time for the judiciary; [See in this regard Practice Direction No.1 of 2012]

iv. The facilities in the available courtrooms including the security needs (such as secure dock), size and equipment, such as video and live link facilities;

v. The proper use of the facilities by those who attend the Courts as jurors;

vi. The availability of and need for certified interpreters in the Courts;

vii. The need to return those remanded or sentenced to custody as soon as possible after the remand is made or sentence is passed, and to facilitate the efficient operation of the prison services;

(f) Provide where practicable and within available legal aid resources:

i. the defendant with the advocate of their choice where this does not result in any delay to the trial of the case.

(g) Meet the need, in consultation with the Head of Security (and where appropriate the RCIPS and Prison Services), for special security measures for high-risk defendants;

(h) Ensure that proper time (including judicial reading time) is afforded to hearings in which the court is exercising powers that impact on the rights of individuals, such as applications for investigative orders, bail hearings or warrants'

(i) Consider the significance of ancillary proceedings, such as confiscation hearings, and the need to deal with such hearings promptly and, where possible, for such hearings to be conducted by the trial judge.

A3 Although the listing practice for each Court will take these principles into account the listing practice adopted may vary depending particularly on the number of courtrooms and the facilities available, the workload, its volume and type.

Discharge of judicial responsibilities

A4. The Presiding Judicial Officer of each court is responsible for —

i. ensuring that good practice is implemented throughout the Court, such that all hearings commence on time;

ii. ensuring that the cause of trials that do not proceed on the date originally fixed are examined to see if there is any systematic issue;

iii. monitoring the general performance of the Court and the listing practices;

iv. monitoring the timeliness of cases and reporting any cases of serious concern to the Chief Justice or Chief Magistrate (as the case might be).

B Listing of trials, Custody Time Limits and transfer of cases [Custody Time Limits have been the subject of consultation with the Criminal Justice Reform Committee (CJRC) and the Attorney General]

Estimates of trial length

B1. Under the regime set out in the Criminal Procedure Rules, the parties will be expected to provide an accurate estimate of the length of trial at the hearing where the case is to be managed (CMH 1) based on a detailed estimate of the time to be taken with each witness to be called, and accurate information about the availability of witnesses.

B2. At the hearing the Court will ask the prosecution to clarify any custody time limit ("CTL") dates which may be applicable. Once the CTL is clarified and approved by the Court, the Court must direct the court clerk to ensure the CTL date is marked clearly on the court file or electronic file. When a case is subject to a CTL all efforts must be made at the first hearing to list the case within the CTL and the Judge or Magistrate should seek to ensure this. Further guidance on listing CTL cases can be found below.

Cases that should usually have fixed trial dates

B3. The cases where fixtures should be given should usually include the following:

i. Cases involving persons in custody;

ii. Cases involving serious indictable offences;

iii. Cases involving protected, vulnerable and intimidated witnesses (including domestic violence cases), whether or not special measures have been ordered by the court;

iv. Cases where the witnesses are under 18 or have to come from overseas;

v. Cases estimated to last more than a certain time – the period chosen will depend on the availability of judicial officers, counsel (defence and prosecution) and courtrooms;

vi. Cases where a previous hearing has not been effective;

vii. Re-trials; and

viii. Cases involving expert witnesses.

Custody Time Limits

B4. Unlike in England and Wales1,[1] in the Cayman Islands there are no specific custody time limits imposed by statute other than those which control police powers to keep persons in custody pending investigations under section 65 of the Police Act.

To help to address this deficit, by Rule 9 of the Criminal Procedure Rules 2019 (CPR) time- frames for the taking of arraignments and the fixing of trial dates are imposed. Also, by paragraph 11 of Practice Direction 5 of 2015 timeframes for conclusion of criminal proceedings in the Summary Courts are identified.

The Directions which follow below are intended to reaffirm and clarify the responsibility of the Courts and the parties to ensure that cases are disposed of as soon as reasonably practicable and in so doing to ensure also that custody time limits (CTLs) are strictly observed.

It must be emphasised that in keeping with section 7(1) of the Constitutional Bill of Rights, everyone has the right to a fair and public hearing in the determination of that person's legal rights and obligations by an independent and impartial court within a reasonable time. This right becomes even more compelling when a person is in custody awaiting trial.

Accordingly the following timeframes and CTLs should be observed and paragraph 11 of Practice Direction 5 of 2015 must be read as if amended by implication:

i. Every case involving a defendant in custody to be tried before the Summary Court should aim to be concluded, save only in exceptional circumstances, within 3 months from the date of first hearing;

ii. Every case involving a defendant in custody before the Summary Court to be committed for trial in the Grand Court[2] should aim to be committed, save only in exceptional circumstances, within 6 weeks from the date of first appearance in the Summary Court.

iii. Every case involving a defendant in custody to be tried before the Grand Court should aim to be concluded, save only in exceptional circumstances, within 9 months from the date of first appearance in the Grand Court and in keeping with Rule 9(4) of the CPR, a date for trial shall be fixed within 6 months of arraignment.

[1] Section 22 of the Prosecution of Offences Act 1985 enables the Secretary of State by regulations to set time limits in relation to preliminary stages of criminal proceeding. This is done by way of the Prosecution of Offences Custody Time Limit Regulations 1987 which set time limits for cases to be brought to arraignment.

[2] Pursuant to section 88 of the Criminal Procedure Code (2019 Revision)

iv. Accordingly and in keeping with Rule 9(3) of the CPR, arraignments should ordinarily proceed no later than 28 days following committal or transmittal of a case to the Grand Court except where there are outstanding experts' reports as to fitness to plead or the Court is satisfied that the case is complex or involved.

In furtherance of the foregoing, at the first hearing, the prosecution will inform the court of any applicable CTL when the CTL lapses and the CTL will be endorsed on the case file.

i. All efforts must be made to list the case within the CTL.

ii. If suitable, the case should be given priority and listed on a date not less than 2 weeks before the CTL expires, and the case may be placed in a warned list.

iii. The CTL must be kept under continual review by the parties (the Defence and ODPP), HMPS and the presiding judicial officer.

iv. If the CTL is at risk of being exceeded, an additional hearing should take place and should be listed before the trial judge or other judge nominated by the Chief Justice or Chief Magistrate (as the case may be).

v. Where courtroom or judge availability is an issue, the court must itself list the case to consider the extension of any CTL.

vi. Where courtroom or judge availability is not in issue, but all parties and the court agree that the case will not be ready for trial before the expiration of the CTL, a date may be fixed outside the CTL. This may be done without prejudice to any application to extend the CTLs or with the express consent of the defence; and this must be noted on the case file.

B5. As legal argument may delay the swearing in of a jury, it is desirable to extend the CTL to a date later than the first day of the trial.

Re-trials ordered by the Court of Appeal and Grand Court

B6. The Court must comply with the directions of the Court of Appeal and cannot vary directions for retrials without reference to the Court of Appeal.

B7. In cases where a re-trial is ordered by the Court of Appeal without a time-frame being directed, the CTL will be 90 days starting from the date that the new indictment is preferred i.e. from the date that the indictment is delivered to the Grand Court. In cases where a re-trial is ordered of a charge before the Summary Court, whether by the Court of Appeal or the Grand Court, the CTL will be 56 days from the date that the new charge is preferred i.e. from the date that the charge is delivered to the Summary Court. The Courts shall notify the HMPS of this.

Changes to the date of fixed cases

B8. Once a trial date or window is fixed, it should not be vacated or moved without good reason. Under the Criminal Procedure Rules, parties are expected to be ready by the trial date.

B9. The Listing Officer or CPO may, in circumstances determined by the presiding judicial officer, agree to the movement of the trial to a date to which the defence and prosecution both consent, provided the timely hearing of the case is not delayed. The prosecution will be expected to have consulted the witnesses before agreeing to any change. For indictments changes to trial dates should only be made on approval of Head of Grand Court Criminal Division or the Judge who has conduct of the case. The Listing Officer or CPO may in circumstances determined by the Head of the Grand Court Criminal Division, agree to changes of other listings. For example, changes in dates for sentencing where SIRs and VIRs are not ready.

B10. In all other circumstances, requests to adjourn or vacate fixtures or trial windows must be referred to the Assigned Judge or Magistrate for that person's personal attention.

Listing of hearings other than trials

C.1. In addition to trials, the court's listing practice will have to provide court time for shorter matters, such as those listed below at C3. These hearings are important, often either for setting the necessary case management framework for the proper and efficient preparation of cases for trial, or for determining matters that affect the rights of individuals. They must be afforded the appropriate level of resource that they require to be considered properly, and this may include judicial reading and judgment writing time, as well as an appropriate length of hearing.

C.2. The applicant is responsible for notifying the court, and the other party if appropriate, and ensuring that the papers are served in good time, including a time estimate for judicial reading time and for the hearing. The applicant must endeavor to complete the application within the time estimate provided unless there are exceptional circumstances.

C.3. Hearings other than trials include the following:

i. Applications for search warrants and Production Orders, sufficient reading time must be provided, see C.8. below;

ii. Bail applications;

iii. Applications to vacate or adjourn hearings;

iv. Applications for dismissal of charges;

v. Preparation for trial hearings, plea and trial preparation hearings, and other pre-trial case management hearings;

vi. Applications for disclosure by the Crown of further unused material;

vii. Case progression or case management hearings (CMHs);

viii. Applications in respect of sentence indications not sought at the CMH;

ix. Sentences;

x. Applications under the Criminal Procedure Code or Evidence Act;

xi. Appeals from the Summary Courts: it is essential in all cases where witnesses are likely to be needed on the appeal to check availability before a date is fixed;

xii. Appeals from the Youth Court: a directions hearing will be required to consider special measures, ground rules and appropriate adjustments for the hearing of a re-trial.

C.4. Short hearings should not generally be listed before a judge such that they may delay the start or continuation of a trial at the Grand Court. It is envisaged that any such short hearing will be completed by 10:30am or start after 4:30pm.

C.5. Each Court equipped with a video link with the prisons or RCIPS Detention Center must have in place arrangements for the conduct of remand hearings, pre-trial hearings and sentencing hearings.

Notifying sureties of hearing dates

C.6. Where a surety has entered into a recognisance in the Summary Court in respect of a case allocated or sent to the Grand Court and where the bail order or recognisance refers to attendance at the first hearing in the Grand Court, the defendant should be reminded by the presiding Magistrate (or by the CPO or Court Clerk acting upon the direction of the presiding Magistrate) that the surety should attend the first hearing in the Grand Court in order to provide further recognisance if ordered by the Grand Court. If attendance is not arranged, the defendant may be remanded in custody pending the recognisance being provided.

C.7. The Court should also notify sureties of the dates of the hearing at the Grand Court at which the defendant is ordered to appear as far in advance as possible: see the observations of Parker LJ in R v Crown Court at Reading ex p. Bello [1992] 3 All ER 353. See also the Criminal Procedure Rules, rule 8 by which the Grand Court may impose new bail conditions and require new bail forms to be completed.

Application for Production Orders and Search Warrants

C.8. The use of production orders and search warrants involves the use of intrusive state powers that affect the rights and liberties of individuals. It is the responsibility of the court to ensure that those powers are not abused. To do so, the court must be presented with a properly completed application, on the appropriate form, which includes a summary of the investigation to provide the context for the order, a clear explanation

of how the statutory requirements are fulfilled, and full and frank disclosure of anything that might undermine the basis of the application. Further directions on the proper making and consideration of such applications will be provided by Practice Direction. However, the complexity of the application must be taken into account in listing it such that the judge is afforded appropriate reading time and the hearing is given sufficient time for the issues to be considered thoroughly, and a short judgment given.

Confiscation and Related Hearings

C.9. By virtue of section 44 of the *Proceeds of Crime Act (as amended and revised)* (POCA), applications for restraint orders should be determined by a Judge of the Grand Court.

C.10. In order to prevent possible dissipation of assets of significant value, applications under the POCA should be considered urgent when lists are being fixed. In order to prevent potential prejudice, applications for the variation and discharge of orders, for the appointment of receivers, and applications to punish alleged breaches of orders as a contempt of court should similarly be treated as urgent and listed expeditiously.

Confiscation Hearings

C.11. It is important that confiscation hearings take place in good time after the defendant is convicted or sentenced.

Publication of Lists

The Listing Officer or CPO of the Grand Court and Summary Court, will, in consultation with the Chief Justice and Chief Magistrate respectively continue to publish weekly lists of hearings in those Courts. Lists will show the courtrooms which are respectively allocated to each Court on the weekly basis. The Registrar of the Court of Appeal will continue to publish lists in advance for each session in consultation with the President of the Court of Appeal

Effective Date

This Practice Direction shall come into effect on 14th April 2022

Dated this 7th day of April 2022

Hon. Anthony Smellie, Q.C.

Chief Justice

GRAND COURT PRACTICE DIRECTION No. 2 OF 2022

PROCEDURE RELATING TO THE COMMENCEMENT AND MANAGEMENT OF FINANCIAL SERVICES PROCEEDINGS

Financial Services Division

1. Appointment of Registrar of the FSD

1.1 With effect from February 2016, Mrs. Shiona Allenger, the Clerk of the Court was also designated as the Registrar of the FSD (appointed pursuant to Rule 2(1) of the Grand Court (Amendment) Rules 2009) and became directly responsible for administrative case management as the focal contact person for attorneys and other persons doing business with the FSD.

With effect from 30 October 2020 Mrs Bridget Clare (nee Myers) was appointed Acting Registrar of the FSD. The FSD Registry will continue to fall under the supervision of the Clerk of Courts and Mrs Clare with Mrs Clare being the first person to contact.

1.2 All communications with the FSD Registry should be-

(a) by hand delivery at the FSD Registry, 3rd Floor, Kirk House; or

(b) by e-mail addressed to bridget.clare@judicial.ky and/or shiona.allenger@judicial.ky

(c) by telephone 244 3808.

1.3 References hereinafter to the Registrar will include the Acting Registrar and vice versa as circumstances may require.

2. Assignment of proceedings to a Judge of the FSD

2.1 It is the responsibility of the Registrar, acting on the directions of the Chief Justice, to assign every financial services proceeding, as defined in GCR O.72, r.1(2) to a named judge of the FSD at the time the proceeding is commenced.

2.2 It is the responsibility of the petitioner's or plaintiff's attorney to provide the Registrar with any and all information which appears to be relevant in determining which judge should be assigned to the matter. For example-

(a) If the plaintiffs attorney considers that it would be appropriate for two or more related matters to be assigned to the same judge, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process: or

(b) If the plaintiff's attorney considers that it would be inappropriate for a matter to be assigned to a particular judge, for whatever reason, this fact should be drawn to the attention of the Registrar in a letter delivered with the originating process.

2.3 As soon as a judge has been assigned, the Registrar will -

(a) notify the parties' attorneys; and

(b) deliver the Court file to the assigned judge.

2.4 Attorneys can expect to be notified about the name of the assigned judge on the next business day following the day on which the originating process is filed at the FSD Registry.

2.5 The Registrar will ensure that the docket of the financial services proceedings assigned to each Judge of the FSD is kept up to date and circulated weekly to the Chief Justice.

2.6 Attorneys are reminded that GCR O.72, r. 2(6) requires that the initials of the assigned judge be included in the title of the proceeding as part of the cause number. It follows that the assigned judge's initials must be included as part of the cause number as it appears in all pleadings, affidavits and orders.

3. Procedure for listing hearings

3.1 Mrs Yasmin Ebanks will continue to serve as Listing Officer for the Grand Court including the FSD and will continue to make Listings in consultation with the Acting Registrar of the FSD.

3.2 Listing for FSD cases will be primarily managed by the Acting FSD Registrar in liaison with the Listing Officer. All requests for FSD listings must be made by email addressed to Bridget.Clare@judicial.ky or to Shiona.Allenger@judicial.ky, copied to Yasmin.Ebanks@judicial.ky.

3.3 For the purposes of this Practice Direction the expression "hearing" shall continue to include summonses for directions, case management conferences ("CMCs") (which may take the form of video or telephone conference calls), interlocutory applications and trials.

3.4 No matter can be listed for hearing unless and until the proceeding has been assigned to a judge of the FSD who has had an opportunity to review the Court file.

3.5 All applications whether made by summons or by letter (where the application is for a matter to be taken on the papers in keeping with FSD Users Guide Section Bl) must be filed with the FSD Registry and the appropriate fees paid before presentation to the judge.

3.6 Practice Direction #1/2000 (Listing Forms) does not apply to the FSD.

3.7 Notwithstanding that a primary objective of the FSD is to ensure the availability of judges, the Registry of the FSD and Listing Officer are not authorised to fix any hearing date without the prior approval of the assigned judge. If the assigned judge is not already familiar with the issues or cannot readily ascertain the issues relevant to the proposed hearing by reviewing the Court file, the parties may be required to produce an agreed case memorandum in accordance with GCR O.72, r.4(3).

3.8 In the case of trials or other potentially lengthy hearings, the assigned judge in consultation with the Acting Registrar and Listing Officer, will normally fix the hearing date at the hearing of a summons for directions or at a CMC in which all parties' attorneys (and their leading counsel) will be requiredto participate.

3.9 The Acting Registrar in conjunction with the Listing Officer will publish a monthly list (on the 1st of each month) of hearings scheduled in the FSD for the ensuing month.

4. Listing procedure in respect of Capital Reductions

4.1 When presenting a petition for an order confirming a resolution for reducing the share capital of a company (under s.15 of the Companies Act) the petitioner's attorney is required (pursuant to GCR O.102, r.6) to issue a summons for directions at the same time as presenting the petition.

4.2 The petitioner's attorney must provide the Registrar with a draft of the proposed order for directions including the timetable for the company meeting(s) and court hearing(s), together with a covering letter which explains whether and, if so, why the matter is particularly time sensitive.

4.3 If upon reading the petition, affidavit and written submissions, the assigned Judge is satisfied that settling a list of creditors should be dispensed with under s.15(3) or that the reduction is not an exceptional case where settlement of a list of creditors is required under s.15(2), and the materials filed do not disclose any other reason for the assigned Judge to require additional evidence or submissions, then that Judge may make an order for directions without the need for a hearing. In all other cases that Judge will direct the Registrar to fix a hearing in chambers.

5. Listing procedure in respect of petitions for supervision orders under s.124

5.1 Attorneys should anticipate that supervision orders pursuant to s.124 of the *Companies Act (as amended and revised)* will normally be made without the need for any hearing (pursuant to CWR O.15, r.5(1).)

5.2 In the event that the petition gives rise to any issue in respect of which further evidence or submissions are required, the assigned judge may convene a CMC

or (in consultation with the Registrar) direct the Listing Officer to fix a date for hearing the petition in open court.

6. Applications for an order that a company be restored to the Register

6.1 Applications made by a company or one of its members, which are governed by GCR O.102, r.17, are determined by the Registrar of the FSD and Form Nos. 66 and 67 should be amended accordingly.

6.2 If the Registrar decides, pursuant to GCR O.102, r.17 (6) (c), that an application ought to be referred to a judge for an oral hearing, the Registrar will -

(a) assign the application to a judge of the FSD;

(b) fix a hearing date; and

(c) give notice of the hearing to the applicant by e-mail.

6.3 Applications made by creditors, which are governed by GCR O.102, r.18, will continue to be heard in open court by a judge of the FSD.

6.4 At the same time as referring a creditor's application to a judge of the FSD, the Registrar will fix a hearing date. To enable the petitioner to advertise the petition and give other creditors an opportunity to be heard, the hearing will be fixed on a date not less than 21 days nor more than 28 days after the date on which the petition is presented.

7. Applications for a direction that payment of court fees be deferred

7.1 An application by an official liquidator or other officeholder (hereinafter "officeholder) for a direction, pursuant to Rule 6(4) of the *Court Fees Rules (as amended and revised)*, that payment of court fees be deferred, must be made to the assigned judge.

7.2 Such applications should be made by letter signed by the officeholder personally, addressed to the assigned judge and sent to the Registrar.

7.3 The application will be determined by the assigned judge and that person’s decision will be communicated to the applicant and the Registrar by the judge's personal assistant.

7.4 In the event that the application is refused, the officeholder shall have the right to ask the Judge to reconsider that Judge’s decision, for which purpose the applicant may ask the judge's personal assistant to fix an appointment for the officeholder to appear before the Judge in person.

7.5 The purpose of Rule 6(4) of the Court Fees Rules is to ensure that an officeholder who is required or entitled to make an application to the Court in the performance of a legal duty in circumstances where the court fees will be payable out of a fund under that officeholder’s control, should not be deterred

from performing that officeholder's duty by being put in the position of having to pay the court fees out of that officeholder's own pocket.

7.6 For the purposes of determining whether an officeholder has under that officeholder's control "sufficient money with which to pay the fees immediately" within the meaning of Rule 6(4), the judge will have regard to the general rules as to priority contained in CWR Order 20, the effect of which is that court fees rank ahead of an officeholder's remuneration.

7.7 If the officeholder does have some cash or cash equivalent assets under that officeholder's control, the officeholder's application letter must state (a) the amount which is immediately available; (b) the amount which is likely to become available to that officeholder within the next 90 days; (c) the purposes for which the officeholder intends to spend such cash over the next 90 days; and (d) whether the officeholder has received any remuneration or holds funds in trust for that purpose.

7.8 As court fees must be paid in priority to other claims including a liquidator's remuneration, an officeholder will be obliged to ensure the payment of court fees in keeping with that priority. Court fees deferred are a debt owed to the Government and will be enforceable as such

8. Applications for a direction that multiple proceedings be treated as "consolidated" for the purposes of assessing court fees

8.1 An application by a petitioner/plaintiff pursuant to Rule 6(5) of the *Court Fees Rules (as amended and revised)* for a direction that two or more separate proceedings governed by the *Companies Act and the Companies Winding Up Rules* or GCR O.102 be treated as consolidated into one for the purposes of calculating the amount of fixed fees and/or court hearing fees payable pursuant to Rules 3 and/or 5 of the *Court Fees Rules (as amended and revised)* must be made to the Registrar.

8.2 Such applications shall be made by letter addressed to the Registrar at the time of filing the originating process.

8.3 The application will be determined by the assigned judge and the provisions of paragraphs 7.3 and 7.4 above shallapply.

8.4 In deciding upon an application under Rule 6(5) the assigned judge will have regard to the fact that the filing of each proceeding will have engaged the time and effort of the Registrar and support staff and whether instead of ordering that only one set of fees shall be payable, the additional fees paid or some reasonable

proportion of them, shall be applied to cover fees which will be due for the hearing of the consolidated proceeding going forward.[1]

9. Case Management Conferences

9.1 Without prejudice to the requirements of 0.72, r.4 (2), the assigned Judge may convene a CMC whenever that Judge thinks fit.

9.2 A CMC may take the form of a telephone conference call, especially if foreign lawyers and leading counsel have been retained by any of the parties or the assigned judge is likely to be off the Island.

9.3 When a CMC takes the form of a video conference or telephone call, the Registrar will direct the IT Department to set up the call and circulate the log-in instructions to the Judge and all the parties. Where the CMC takes the form of a telephone call, the Registrar will direct one of the parties (usually the applicant) to set up the call and circulate the dial in instructions and codes to the Judge and all the parties.

9.4 The etiquette for video conference (or telephone) CMCs requires that all participating attorneys (apart from leading counsel or foreign lawyers who may participate remotely) must be present in the court room or Judge's chambers and be on line before the appointed time, so that the Judge will be the last person to join the conference, whereupon the Judge will ask all the participants to identify themselves.

Where the CMC will not be determinative of substantive issues, the Judge may, in advance to the hearing, dispense with the need for the attorney(s) to be present at Court and, in which event; the other provisions of this practice direction will apply accordingly.

9.5 Video conference (or telephonic) CMC's may not be recorded without the consent of the Judge. If the Judge permits or directs that the CMC be recorded, the Judge will direct that a written transcript be prepared, sent to the judge for approval and circulated amongst the parties. Whenever a CMC is not recorded, the note taken or approved by the Judge will constitute the official record.

9.6 Hearing dates may be fixed by the Judge during the course of a CMC and, in appropriate cases, CMCs may be convened for the principal purpose of fixing the date for the trial or further hearings.

10. Availability of the Judges of the FSD

[1] Direction 8.4 recognises the authority given by Rule 6(5) (with the approval of Cabinet) for the ordering of abatement of fees while also recognising that section 41(ba) of the Public Management and Finance Act (2018 Revision) provides that ".4 ministry or portfolio shall not - (ba) waive any revenues".

10.1 Judges of the FSD may conduct CMCs and, in appropriate cases, hear summonses for directions and other interlocutory applications by means of telephone or video conferences when they are off the Island.

10.2 Paragraphs 9.4 and 9.5 above shall apply to any hearing which takes place by telephone or video conference.

10.3 As explained at [11) of Practice Direction 6 of 2020 Trials of any FSD cause or matter or any question or issue arising therein, may take place in the United Kingdom. This will continue until further notice.

10.4 Practice Directions 6 and 6A of 2020 will continue to apply generally to FSD causes or matters until further notice.

11. This Practice Direction shall come into force on the 13th day of April, 2022. With effect from 13th day of April, 2022 Practice Direction No. 1 of 2021 is revoked.

Hon Anthony Smellie

12 April 2022

GRAND COURT PRACTICE DIRECTION No. 3 OF 2022

JUDICIAL MEDIATION GUIDELINES

Purpose

1. The Courts of the Cayman Islands are committed to resolving disputes in the most efficient manner possible, including the use of non-adjudicative processes. Accordingly, Judges and Magistrates will in appropriate cases encourage parties to engage in mediation.
2. By the Overiding Objective the Court's duty is to manage cases so as to help the parties to settle the whole or part of the proceedings. To this end several members of the judiciary have been trained and certified as mediators. They are ably supported by a professionally trained co-ordinator.
3. The purpose of this practice note is to set out the guidelines for the referral of matters to judicial mediation and the procedures for the conduct of judicial mediations in other than family cases. The mediation procedure applicable to the Family Division will continue to apply.

Referral to Judicial Mediation

4. A matter may be referred by the Court to judicial mediation at any stage in the proceeding in keeping with the Overriding Objective, the MIAMs procedure in the Family Division of the Grand Court and Practice Direction 4 of 2022 on the Listing of Civil Proceedings in the Civil Division Short Summonses and Assigned Judges.
5. By virtue of section 29 of the Grand Court Act, a judge acting as a judicial mediator has the same immunity as a judge acting judicially.

Criteria for Referral to Judicial Mediation

6. A matter referred to mediation will usually have one or more of the following features:
    - an earlier unsuccessful private mediation;
    - one or more parties with limited resources;
    - a substantial risk that the costs and time of a trial would be disproportionately high compared to the amount in dispute or the subject matter of the dispute;
    - an estimated trial length that would occupy substantial judicial and other court resources; or

- aspects that otherwise make it in the interests of justice that the matter be referred to judicial mediation.

7. There are proceedings which, as a matter of policy, may not be appropriate for mediation. The following disputes will not ordinarily be referred for mediation:
   - cases involving the resolution of a matter of public importance which, in the public interest, ought to be heard in open court;
   - cases in which the Court is to review the exercise of a statutory power or discretion;
   - cases in which the commission of a crime or serious misconduct is alleged in the context of a civil proceeding; and
   - cases in which there is a litigant in person.

Preparation for the judicial mediation

8. Directions regarding preparation for the mediation will be made at a MIAM or preliminary case conference.
9. The parties will be told when and where the mediation will take place and who is to attend. Parties will usually be provided with a statement of the proposed course of the mediation. Representatives are welcome to attend.
10. Parties will be informed prior to the commencement of a mediation of any pre-conditions, expectations or particular requirements. These may include a requirement to provide specified documents and other information, position papers or confidential offers.

Confidentiality

11. Parties and other participants are to protect the confidentiality of all that is said and done by any person in the course of the conduct of a mediation.
12. It will be the usual practice of the mediator to destroy all materials provided to or prepared by the mediator and any other court officer participating in the mediation, following completion of the mediation, whether successful or not.

Attendance at mediations

13. A mediator may authorise the attendance at a mediation of persons other than the parties and their legal representatives. Participation of all persons in the mediation will be under the direction and control of the mediator.

14. In the absence of the mediator's express authorisation to the contrary, it is expected that the mediation will be attended by parties or representatives of the parties who have full authority to settle the proceeding. Participation by telephone or video-link will be allowed only in exceptional circumstances.

15. The mediator will inform the parties of the identity of all attendees prior to the commencement of the mediation.

Legal advice or assistance

16. A A mediator will not evaluate issues in dispute or provide legal advice to parties, and will not assist with the preparation of any terms of settlement. When agreement is reached the mediator may give guidance for the settling of the terms of agreement

16.B. The settled tenns of agreement, may with the consent of the parties, be embodied in an order of the Court to be executed by the mediator in that mediator's judicial capacity and in which event, will become binding as such.

Meeting Separately with the Parties - Caucusing

17. Mediation styles and practices will differ between judicial mediators. Some mediators may be prepared to caucus, depending on the nature and circumstances of the case. Other mediators may not be prepared to do so.

18. A mediator will not meet separately with a party and their legal representatives, or with the legal representatives of a party, in the absence of some or all of the other parties, without the express approval of all parties to the mediation.

19. Information provided by a party to a mediator in a separate session will not be disclosed to any other party unless the mediator has been expressly authorised to do so. This will not restrict the mediator from terminating the mediation upon receiving information which by its nature is open to an interpretation of illegal, improper or unethical conduct.

Adjournment

20. A mediator may adjourn the mediation to continue at a later date, either under the conduct of the same or a different mediator.

21. If the proceeding fails to settle at mediation, the mediator may give directions for the further conduct of the proceeding in their capacity as a judge or associate judge.

Subsequent trial

22. No member of the Court will hear and determine an issue in a proceeding in which that person acted as a mediator, or where that person has become acquainted with any confidential information relating to the mediation of the dispute (e.g. where confidential information was provided in preparation for a mediation that was subsequently conducted by another judicial officer.

15 August 2022

GRAND COURT PRACTICE DIRECTION No. 4 OF 2022

LISTING OF CIVIL PROCEEDINGS IN THE CIVIL DIVISION, SHORT SUMMONSES AND ASSIGNED JUDGES

1. Application and Commencement

This Practice Direction applies to civil proceedings other than proceedings in the Family Division which are covered by Practice Direction No. 6/12 and proceedings in the Financial Services Division which are covered by Practice Direction No. I of 2021 ("Civil Proceedings").

2. Short Summonses

2.1 This Practice Direction will take effect from 1st October 2022 and will apply to every interlocutory summons issued pursuant to GCR O.32 having endorsed upon it a time estimate of½ hour or less (hereafter called a "Short Summons").

2.2 The presiding judge in the Civil Division (currently Madame Justice Ramsay-Hale) (the "Presiding Judge") will sit on Thursday of each week (commencing 6th October 2022) for the purpose of hearing Short Summonses and the listing officer shall list Short Summonses to be heard on such days of the week.

2.3 Parties are reminded of GCR O.32, r.(2) (4) which imposes a duty to notify the Listing officer if, for whatever reason, the time estimate is no longer considered to be accurate.

2.4 Applications for consent orders should only be made by Short Summons if the order involves the exercise of a judicial discretion. If the parties are entitled to the order as of right, it should be processed administratively in accordance with GCR O.42, r.(5) and (5)A.

2.5 Summonses with a time estimate of more than ½ hour shall continue to be listed by the Listing Officer in the usual way.

3. Assignment of cases to judges

3.1 In order to maximise the efficiency and cost effectiveness with which Civil Cases are dealt with in the Grand Court consideration will be given by the Presiding Judge on a continuing basis, in conjunction with the Chief Justice as appropriate, as to whether cases that are more time consuming or complex

("Complex Cases") will benefit from being assigned to a particular judge (the "Assigned Judge").

3.2 This decision may be taken early in the life of a case e.g. at the inter-partes hearing of an injunction, on an application for leave for judicial review pursuant to GCR O. r. 53, r.3, at the hearing of a summons for directions issued pursuant to GCR O. 25, r.l (1) or, as the matter progresses towards or is set down for trial.

3.3 If a party considers that it would be inappropriate for a matter to be assigned to a particular judge, for whatever reason, this fact should be drawn to the attention of the Presiding Judge at the time.

3.4 If a Complex Case is allocated to an Assigned Judge then the Listing Officer will be so informed and, thereafter, unless a matter is urgent and the Assigned Judge is unavailable, after consultation with the Assigned Judge the Listing Officer will ensure that interlocutory summonses and, the trial itself, will be listed before the Assigned Judge.

3.5 In accordance with the Overriding Objective as set out in the preamble to the *Grand Court Rules (as amended and revised)*, the Assigned Judge will be expected to consider, at all times, how best to manage the Complex Cases which are assigned to them and to exercise appropriate and proportionate case management powers as they shall think fit including, in consultation with the parties via the Listing Officer, convening case management conferences and giving directions pursuant to e.g. GCR O.25, r.3 and GCR O.28, r.4.

3.6 The allocation of a particular Complex Case to an Assigned Judge shall remain a matter for the Presiding Civil Judge in consultation with the Chief Justice and shall remain within their discretion to change if that becomes necessary, for whatever reason.

3.7 Matters that are not designated as Complex Cases shall remain to be heard by any available judge.

Hon Anthony Smellie

15 August 2022

GRAND COURT PRACTICE DIRECTION No. 5 OF 2022

PROCEDURE RELATING TO THE COMMENCEMENT AND MANAGEMENT OF PROCEEDINGS UNDER SECTION 7 OF THE *LEGAL PRACTITIONERS ACT (as amended and revised)*

1. By virtue of section 7(1) of the *Legal Practitioners Act (as amended and revised)* ("LPA"), Judges of the Grand Court are vested with the authority, for reasonable cause shown, to suspend an attorney-at-law from practicing or to order that that person's name be struck off the Court Roll.
2. A judge charged with the responsibility to determine a disciplinary complaint may not be the same person who determines whether or not disciplinary charges are to be instituted. See in this regard, the judgment of the Court of Appeal in Attorney "A" v The Attorney General C/CA {Civil) Appeal No. 13 of 2021 ("LPDC 1 of 2017"} 27 October 2021.
3. This Practice Direction explains the procedure which will be engaged when a disciplinary complaint is made against an attorney. The procedure will involve the Chief Justice as head of the Judiciary and the Attorney General (the latter as ex officio head of the legal profession of the Cayman Islands pursuant to section 25 of the *Grand Court Act (as amended and revised)* and as representative of the Crown in the Courts in all matters in which rights of a public character come into question).
4. When a complaint about the conduct of an attorney is received, whether from a judge, a client of that attorney, another attorney or other third party, it shall be referred to the Chief Justice. The Chief Justice will consult with the Attorney General and consider whether, prima facie, the conduct described in the complaint may warrant the commencement of proceedings under section 7 of the LPA in the public interest. If, after consultation with the Attorney General, the Chief Justice considers that there is no case to answer this will be communicated to the complainant and no further steps will be taken.
5. If the Chief Justice, after consultation with the Attorney General, is of the view that there is a prima facie case against the attorney, the Chief Justice (if necessary with the assistance of the Attorney General or the Attorney Genernal's designate) will consider the charges to be made against the attorney and will afford the attorney an opportunity to explain in writing within 14 days (or such longer period as the Chief Justice shall provide) why the charge(s) should not be pursued.
6. After further consultation with the Attorney General if the Chief Justice remains of the view that charge(s) should proceed the Chief Justice will ask the Solicitor General to draft a Notice of Originating Motion setting out the charges and the basis therefor.

7. The Notice of Originating Motion will not be placed on the Register of Writs and other Originating Process open to public inspection and will instead be placed on the Restricted Register of Writs and Other Originating Processes. While the Notice of Originating Motion is on the Restricted Register it will be open to public inspection only with the leave of the Court.

8. The Notice of Originating Motion will be allocated to a judge other than the Chief Justice.

9. The Solicitor General will cause the Notice of Originating Motion to be filed and served on the subject attorney and the Attorney General and the matter shall then proceed in accordance with the Grand Court Rules.

10. Proceedings under section 7 of the *Legal Practitioners Act (as amended and revised)* will be heard in private, and pleadings and documents anonymised, until the Court otherwise orders.

11. The burden and standard of proof shall be the same as in criminal proceedings.

12. If an order is made suspending an attorney, or striking an attorney's name from the Roll, the Court shall direct the date on which the proceedings in which the order is made shall cease to be private. On this date, or as soon as reasonably practicable thereafter, the Clerk of the Court shall place the Notice of Originating Motion on the Register of Writs and Originating Process and the judgment on the Register of Judgments.

13. Throughout the proceedings the Attorney General or Solicitor General or a designate shall act as amicus curiae in that person's capacity as custodian of the public interest and ex officio head of the legal profession under section 25 of the *Grand Court Act (as amended and revised).*

14. EFFECTIVE DATE

    The Practice Direction shall come into effect on the 31 August 2022

15 August 2022

GRAND COURT PRACTICE DIRECTION No. 6 OF 2022

PUBLIC ACCESS TO CRIMINAL COURTS

INTRODUCTION

1. Open justice and the transparency of the legal process are fundamental tenets of the Cayman legal system. Public access in respect of criminal proceedings is an aspect of and administered in accordance with this open justice principle; however, it is subject to limitations as recognised in law. The courts have inherent jurisdiction to determine how the principle should be applied in particular cases.
2. Fair and accurate reporting of proceedings is encouraged as integral to the Rule of Law and the Courts will continue to have regard to the open justice principle in considering the use of technology and access by the media.
3. Where a representative of the media requests access to material referred to in a court proceeding, there is a presumption in favour of providing access, in recognition of the role of the press as 'public watchdog' in a democratic society. The purpose of media access is to enable the public to understand and scrutinise the justice system
4. The presumption in favour of granting access does not mean that representatives of the media are 'entitled to disclosure', or that it should take place 'by default'. Not all documents need or may be provided. The assigned or sitting Judge or Magistrate ("the Appropriate Judicial Officer") may refuse access where there are compelling reasons against it. The presumption of providing access is capable of rebuttal for good and justifiable countervailing reason. Each decision must be reached on a case-by-case and document-by-document basis.

MEDIA REPRESENTATIVES

5. For the purposes of this Practice Direction, a representative of the media is a registrant on the Courts Media Register (a "Registrant") or such other person as a Judge or Magistrate may, in that person’s discretion, grant temporary recognition as a representative of a media outlet.

GENERAL RULE

6. In accordance with the Constitution, criminal proceedings are generally held in public, save in such special and limited cases as may be prescribed by law or determined in interests of justice. Section 10 of the *Criminal Procedure Code (as amended and revised)* (the "Code") provides that the place in which a criminal court sits to try or hear proceedings relating to an offence shall generally be an open court.

Hearings must accordingly be held in a place accessible to the public without physical barrier so that members of the public, which expression includes representatives of the media, may enter without appointment.

7. Section 7(10) of the Bill of Rights scheduled to the Cayman Islands Constitution Order 2009 and Section IO of the Code also provide for discretionary powers to exclude the public generally or particular persons from the place or proceedings for a number of reasons, including when necessary to safeguard court proceedings or the integrity of the justice system.

8. The principles that apply to hearings in private apply also to the anonymisation of a party or witness. The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

9. When such powers are exercised, reasons for their exercise shall be given publicly with appropriate opportunity provided for representations by affected persons. The court may receive such representations orally or in writing and determine the issue:

   9.1. at a hearing, in public or in private; or

   9.2. without a hearing;

   9.3. applications for anonymity or screening of witnesses should be heard in public save in exceptional circumstances in the interests of the administration of justice, such as when the prosecution may appropriately apply ex parte and without notice pursuant to section 7 of the Criminal Evidence (Witness Anonymity Act) (2014 Revision), for an anonymity order.

LIVE STREAMING

10. Access to open court hearings may, if practical and appropriate and insofar as the integrity of proceedings can be safeguarded, be by live streaming. Live streaming is not to be regarded as the norm or as a right but may be a discretionary supplement to the usual court access that underlies the open justice principle. Where available a live stream will be accessible outside the precincts of the Courts to Registrants by way of encrypted access.

Court of Appeal

Whether or not proceedings are live streamed is a matter for the discretion of the Court taking into account the particular circumstances of the case. Typically, since the onset of the Covid-19 pandemic in order to ensure public access remotely and in keeping with Practice Direction 7 of 2020, appeals to the Court of Appeal are live-

streamed and available for public view on the Judicial Website. The nature of appeals differs from that of proceedings at first instance in that appeals are usually confined to legal argument and thus the considerations may differ. Nonetheless, there may be cases in which that is not so or, for a variety of reasons, the Court of Appeal may decide that particular appeals will not be live-streamed. As in other Courts, the warning required by paragraph 15 below will apply.

REPRESENTATIVES OF THE MEDIA

12. Representatives of the media may apply to the Court to receive remote access to Court proceedings by way oflive stream as an alternative to sitting in the courtroom. There is no entitlement to do so, and each case will be decided on its merits by the Appropriate Judicial Officer taking into account, inter alia, cost and practicality. If a live stream is available it will be accessible by way of the media portal on the Judicial Website and with use of a password and all parties to the proceedings in court shall be notified that live streaming has been permitted.

13. Applications from representatives of the media and others to observe a hearing remotely should be made in advance to allow for inclusion during hearing setup. Such applications should be made to the Deputy Clerk of the Court (Criminal), the Clerk of the Court, or such other person as they shall designate (the "Administrative Officer"). These applications will usually be considered at any case management hearing.

OVERFLOW CASES

14. At the Court's discretion, live streaming may be permitted outside the courtroom but within the precincts of the Court to maximise public access. This may be in circumstances, for example, in a case of great public interest where the courtroom proves insufficient to accommodate all who wish to attend. If and when a public gallery is available elsewhere, the Judge or Magistrate may permit live streaming as an exceptional measure. It is not to be taken as the usual course when the public gallery in a courtroom cannot accommodate all who wish to attend. The open justice principle will usually be satisfied if there is public access to an open court.

15. Where live streaming is available, recording of the stream is prohibited without express consent of the Court. Those allowed to observe a hearing remotely are reminded that it will be a contempt of court to make unauthorised recordings of the proceedings or to use or to allow the use of such recordings to interfere with the administration of justice. In keeping with section 111 of the *Penal Code (as amended and revised)* and established practice, where such proceedings are being live streamed, a warning note shall be included at the bottom of the screen in the course of the streaming to this effect: "This is a formal court proceeding in respect of which the usual rules as set out in Practice Direction 1 of 2014 apply. No photographs, filming, recordings, or dissemination may be made except with the approval of the Court."

RESTRICTIONS ON CASE INFORMATION IN LIMITED CIRCUMSTANCES

16. The Courts may hold proceedings in private and place restrictions on access to court documents or reporting when necessary, in the interests of the administration of justice or as otherwise prescribed by law. For example, names may be redacted in judgments, rulings, or orders. Cases in which the Courts' jurisdiction to hear evidence in private may be exercised and/or redaction may be necessary include those where there is a risk of:

    16.1. prejudicing law enforcement action or the administration of justice, (which includes risk of disruption);

    16.2. affecting national security;

    16.3. putting anyone's safety at risk;

    16.4. identifying an anonymous witness. It is an offence to disclose information in contravention to a witness anonymity order pursuant to the *Criminal Evidence (Witness Anonymity) Act (as amended and revised)*;

    16.5. identifying young persons;

    16.6. breaching the prohibition imposed by section 31 of the *Criminal Procedure Code (as amended and revised)* upon the reporting of the identity of a complainant in a rape case;

    16.7. breaching medical confidentiality;

    16.8. breaching legal privilege;

    16.9. contravening the protection of personal information (particularly in the case of the vulnerable) which is sensitive or if disclosed could give rise to a risk of harm; or

    16.10. breaching a contempt of Court order.

Such decisions as to restrictions or redactions are judicial decisions and can only be taken on a case-by-case basis within legal proceedings.

17. A rationale for decisions protecting information that is sensitive or could give rise to a risk of harm or be damaging or would breach any right of confidence (especially for the vulnerable such as young persons or the mentally disabled) is that there is no obvious public interest in public disclosure.

18. In any case in which an embargo on the publication of open court proceedings is considered necessary for the proper administration of justice, the Court will give reasons, if practical in writing, and seek to ensure that the public and representatives of the press are notified of the embargo to avoid the risk of non-compliance.

19. Judges should consider at the end of each hearing, with a view to possible future requests for a recording, transcript, or inspection, whether a note should be made for the case file to indicate that redaction may be necessary.

POSTPONEMENT OF REPORTING

20. In criminal cases, broadcasting or otherwise reporting on proceedings may be suspended in the interests of justice, for example, to prevent transmission to subsequent witnesses or otherwise compromise proceedings.

21. Subject to the limited exceptions to an open hearing (referred to in this Practice Direction) or as otherwise specified in relevant legislation, legal argument before a Judge will be held in public. It may be in the absence of the jury if there is one but in the presence of representatives of the media, and this will usually be subject to an order for delayed reporting. Where there is a jury, the Judge will usually order that media publication of this part of the proceedings (legal submissions in absence of jury) be postponed until the jury have reached their conclusion. This would usually be on the ground that there is a risk of substantial prejudice to the administration of justice because the jury might read about the submissions and be improperly influenced by them.

PUBLIC NOTICE OF HEARINGS

22. An Administrative Officer shall no later than in the week before each hearing of an offence in the Grand Court and the day before each hearing of an offence in the Summary Court cause to be published on the Judicial Website and/or in the public precincts of the Court a listing containing the following information in relation to cases:

22.1. The name of the defendant;

22.2. The Indictment or charge number, as appropriate;

22.3. The nature of the charge or indictment and of the hearing;

22.4. The court in which the hearing is to take place;

22.5. The name of the Judge or Magistrate assigned to that Court.

23. In the event that any matter is brought before a court in circumstances that make such publication impossible within the specified timeframe, the Administrative Officer shall cause publication to be made as soon as possible.

PUBLICATION OF REGISTER OF CRIMINAL PROCEEDINGS ON THE JUDICIAL WEBSITE

24. Subject to redaction or other exclusion in the interests of justice or otherwise prescribed by law, directed or ordered in accordance with this Practice Direction, the following case information shall be published on the Judicial Website or otherwise be available to the public:

24.l. Charges and indictments;

24.2. Final orders, directions, rulings and judgments;

24.3. Applications for orders or directions (excluding factual material);

24.4. The dates of public hearings;

24.5. The Judge or Magistrate by whom a decision, order direction or judgment at a public hearing was made;

24.6. Summary of Allegations.

EMBARGO OR RESTRICTION ON PUBLICATION

25. [n cases in which a restriction on publication is prescribed by law (for example, in cases involving children) the prosecutor shall supply the Deputy Clerk of the Court (Criminal) with a copy of the relevant document suitably redacted or anonymised to be published on the Judicial Website or otherwise.

26. In other cases, where a prosecutor or defendant seeks to omit, redact, anonymise or delay the publication of any information required by paragraph 22 or 24, that prosecutor shall apply in writing, providing to the Deputy Clerk of the Court (Criminal), in a timely manner, details of the proposed omission and/or a draft of any proposed redaction or anonymisation and/or what information should be subject to

delay in publication. The application should be accompanied by reasons that it is contrary to law or the interests of justice for the full information to be published or for there to be a delay in such publication. An Administrative Officer shall forthwith place the matter before the Appropriate Judicial Officer for decision. The Appropriate Judicial Officer shall consider the extent to which it is appropriate to allow timely representations from any other party and when and to whom reasons for the decision should be given.

OFFICIAL RECORDING OF PROCEEDINGS

27. A recording is deemed to be a document for the purposes of this Practice Direction.

28. A recording of proceedings will be kept in accordance with established court practices and the *National Archives and Public Records Act (as amended and revised)* as amended or revised and policies made thereunder.

29. Court stenographers are engaged to provide the verbatim records of proceedings in Grand Court in criminal cases. In Summary Court, the notes kept by the Chief Magistrate and Magistrates will continue to comprise the official record of procedures until an official digital recording system is engaged.

30. Transcripts in criminal appeals are provided to parties only where truly necessary for the preparation and presentation of an appeal. Preparation of transcripts is burdensome and costly. Neither the public nor the media has an entitlement to a transcript. Transcripts of criminal proceedings whether in the Grand Court or Summary Courts are not routinely made. See Practice Direction 3 of 2017 (Court Stenographer Services) and *Court of Appeal Rules (as amended and revised)* rule 33A.

31. Where transcripts of open court hearings are (I) available or (2) otherwise sought for good reason, copies (or extracts) may, subject to direction or order, be obtained on application to the Deputy Clerk of the Court (Criminal) explaining the purpose to which the transcript will be put and on payment of the prescribed fee. The Judge or Magistrate shall determine whether or not provision of the same will be disproportionately costly or burdensome. The Deputy Clerk of Court (Criminal) shall keep a written record by way of receipt that a transcript has been provided and to whom and on what date.

TEXT-BASED COMMUNICATIONS, RECORDINGS, PHOTOGRAPHS

32. Readers are reminded that the Practice Guidance issued with Practice Direction 1 of 2014 remains in force as amplified by this Practice Direction.

33. Unless otherwise specifically ordered, live text-based communications by legal commentators or registered representatives of the media for the sole purpose of fair and accurate reporting are permitted at all public heatings. Phones, laptops, and other electronic devices must be used silently. Unregistered representatives of the media and legal commentators shall be required to identify themselves as such before or at the outset of the relevant hearing and may be required to produce evidence of their status and identity. The Court shalI have discretion as to whether such status should be recognised and whether or not a proper journalistic or legal commentary purpose is served.

34. Other members of the public who wish to make records in this way must apply for permission to the Judge or Magistrate charged with the conduct of the hearing

35. Except as set out above, mobile phones and other recording electronic devices must be switched off.

36. No sound recording may be taken except with the permission of the Judge or Magistrate charged with conduct of the hearing. Where appropriate the Judge or Magistrate may permit a legal commentator or registered representative of the media to record proceedings. In all cases in which a recording of proceedings is allowed, it shall be permitted only so long as it is used as an aide memoire to fair and accurate reporting; the recording must not be broadcast or used for any other purpose. It will be a matter for the Court to decide whether or not a proper journalistic or legal commentary purpose is served.

37. Photographs or other images, still or moving, in court or within the precincts of the court are not permitted. Jurors and vulnerable parties and witnesses, especially, must be protected from publicity.

INSPECTING A COURT FILE BY AN ATTORNEY, DEFENDANT IN PERSON, OR YOUNG PERSON

38. Where an attorney is on record for a defendant or a defendant acts in person, that person shall be allowed to review case documents, upon satisfying the Administrative Officer as to that person's status, without having to complete a formal application. In the event that a document is within the categories set out in paragraph 61 herein or by direction or order made in accordance with this Practice Direction redacted or otherwise excluded in the interests of justice or as prescribed by law, the Administrative Officer shall before such review consult with the Appropriate Judicial Officer as to the appropriate course.

39. An affected Young Person, that person's parents, legal guardian(s), other person in loco parentis and attorneys of record may inspect and/or obtain copies of select Youth Court documents (or documents in other Court proceedings affecting the Young Person) by making application in writing in Form [l]. There may be a risk that the interests of another Young Person are thereby prejudiced and in such a case or in respect of any document that may fall within the categories set out in paragraph 61 herein, the Administrative Officer shall consult with the Appropriate Judicial Officer before granting the application. Photo identification and other documents deemed appropriate might be requested to confirm the identity of the applicant before allowing the viewing of a Youth Court document. Youth Court documents will not be emailed.

40. The Administrative Officer will arrange by agreement with the applicant a suitable and timely date and time to view case documents.

PUBLIC ACCESS TO MATERIAL IN PROCEEDINGS

41. As set out in paragraphs 22 and 24 herein, information will be published on the Judicial Website. Application for other information and material may involve significant clerical and judicial time. The open justice principle is not unlimited and as explained there may be countervailing principles or rights that outweigh it in a particular case. Open justice forms part of the overriding principle that justice must be done. The principle serves two primary purposes: namely, to enable public scrutiny of court decisions and to enable the public to understand how the justice system works and why decisions are taken.

42. The Court does not itself retain all case documents. Some may, for example, be returned to the prosecution. Typically, the Court will return non-documentary exhibits, in particular, to the prosecution for retention in accordance with the Rules. Thus, access granted by the Court on application relates to court records, namely those records retained by the Court.

43. Not all records retained by the Court are accessible or disclosable. Materials may be disclosed in a case but not referenced in the proceedings, and so may not be accessible. Some records may have personal annotations made merely for ease of reference by the Judge or Magistrate; such annotations are therefore not accessible. Access will usually be granted to material actually seen or referred to in the course of the proceedings, including documents such as maps, photographs, CCTV footage, audio, and videotapes. Accessible documents may, with leave of the Court, include applications and supporting evidence for witness anonymity that may be appropriately redacted. They may also include skeleton arguments and written legal submissions that have been referred to in Court but may be redacted or anonymised by order of the Court upon representations from and with the involvement of counsel.

44. Where a witness has given evidence, observing the testimony given in open court is usually sufficient for open justice purposes. The written statement of the witness is not evidence and need not be provided. Parts of statements (and other documents) are often not read out because of their sensitive nature. Where a witness statement (or other document) has been referred to by the Judge or Magistrate and relied on for a ruling or conclusion but not read out, access to the Judgment will usually be sufficient for an understanding of the salient aspects of the witness statement.

45. It will be a matter for the Appropriate Judicial Officer to decide in such cases whether to provide the statement or other document (redacted or otherwise). Where the Appropriate Judicial Officer considers it appropriate, that Judicial Officer may permit a representative of the media to see the whole of a witness statement but only on the condition that those parts not read out (and not relied on) may not be used or reported.

46. A member of the public (including a representative of the media) may be permitted to take a photograph on a hand-held device of a document as a copy in lieu of photocopying on payment of a reasonable cost as may be prescribed. Redaction may be necessary and again a reasonable cost may be charged for the same.

MEDIA ACCESS

47. Where possible, rulings that are likely to affect reporting should be decided at an early stage. The parties should if practicable raise any issue relating to restriction of access, redaction, or other limits on reporting at case management hearings, so that, should the media wish to challenge them, they may do so at the time.

48. Judges and Magistrates should, so long as it does not interfere with the administration of justice, give the media, on request, the opportunity to make representations on matters that are of importance to them. Where time permits, representations should be reduced to writing prior to oral submissions. In appropriate cases, the Court may allow a defendant to be heard on the issues, in which instance the procedure whenever determined may be treated as pait of the proceedings.

49. Making requests during the course of proceedings, particularly at a time of sensitive evidence, may be disruptive to the proceedings and place a great burden on the Court. It may also distress others. Representatives of the media have a responsibility to take this into account and minimise requests that may be time- consuming and distracting from the purpose of any hearing.

50. In complex or high-profile cases, Judges and Magistrates should consider at a case management hearing whether any special arrangements need to be made for media representation, including:

    50.1. the provision or copying of relevant documents;

    50.2. special seating arrangements;

    50.3. overflow room facilities; and

50.4. how any day-to-day requests from the media may be managed without unnecessary interuption to the proceedings.

51. Representatives of the media should, if they wish for special arrangements to be made, submit written representations well in advance of the case management hearing and should be permitted to make oral representation at the hearing.

APP LI CATIONS FOR SUPPLY OF INFORMATION ABOUT PROCEEDINGS

52. Unless expressly otherwise specified in this Practice Direction, when by Form [2] addressed to the Deputy Clerk of the Court (Criminal) specifying, in particular, the information requested and shall pay any fee prescribed. A non-party applying for access to material must explain why such access will advance the open justice principle.

53. Such applications will be considered on their merit, taking into account the open justice principle and the imperative of avoiding disproportionately burdensome and costly disclosure. If the Court holds documents that have not been referenced in Court or adduced in evidence, these need not be disclosed. The public and representatives of the media are not entitled to see documents not referred to or used in open Court. The Administrative Officer may determine the identity and status of an unregistered applicant seeking case information or requesting inspection of case documents.

54. In all cases the open justice principle requires that all applications be dealt with in a timely manner.

55. These provisions are without prejudice to the paragraphs herein relating to Recording of Proceedings.

56. In appropriate circumstances, the Administrative Officer will-

56.1. supply to the applicant, by word-of-mouth or in writing, information about the case; or

56.2. allow the applicant to inspect or copy a document, or part of a document (on payment of the prescribed fee), containing information about the case.

57. Viewing case documents may be by inspection of hard copy, Zoom or other electronic communication or other means deemed by the court to be appropriate.

58. In any case the Court may determine an application:

58.1. at a hearing, in public or in private; or

58.2. without a hearing.

Provision not requiring Written Application

59. Provided that in a case in which the information sought is that set out in paragraphs 22 or 24 herein and for some reason the information is not still on the Judicial Website, the application may be oral. In such a case the Administrative Officer shall record on the case file the application, when and by whom it was made and the outcome of the application.

60. The Administrative Officer, subject to any direction or Court order to the contrary in respect of the same, shall supply-by word-of-mouth or by direction to the Judicial Website-information as to:

60.l. the date of any public hearing (unless any party has yet to be notified of that date);

60.2. the alleged offence, charge or indictment and any plea entered;

60.3. the court's decision in a public hearing;

60.4. the Judge or Magistrate by whom a decision, order, direction, or judgment at a public hearing was made;

60.5. whether the case is under appeal;

60.6. Summary of Allegations

Closed materials

61. The following documents shall not be open to inspection without written permission of the Appropriate Judicial Officer:

61.1. Public Interest Immunity material, so deemed by order of the Court;

61.2. A document that was sealed by current order of the Court at any stage in criminal proceedings;

61.3. Files relating to sexual offences and witness statements involving the evidence of witnesses in firearms cases.

61.4. Youth Court cases;

61.5. Witness statements of those subject to witness anonymity orders or in cases involving the same;

61.6. Letters or communications presented to the Judge or Magistrate for consideration but not adduced into evidence;

61.7. Medical, Probation or social enquiry reports;

61.8. Any other document that is not in the public domain;

62. The Administrative Officer in any case to which paragraphs 16 or 61 herein apply or may apply shall seek direction from the Appropriate Judicial Officer.

63. Before permission for disclosure is given in such a case, opportunity shall be given to the Director of Public Prosecutions and any other interested party to make representations.

Reasons for Refusal

64. In refusing an application for disclosure the Appropriate Judicial Officer should give briefreasons and refer to:

64.1. The application;

64.2. The nature of the material requested;

64.3. Whether the application has 'legitimate journalistic purpose';

64.4. The principle of open justice and relevant Constitutional Rights;

64.5. Any presumption in favour of disclosure;

64.6. The countervailing reasons against disclosure;

64.7. The refusal of the application;

64.8. The grounds for refusal.

APPLICATIONS BY "PERSONS AFFECTED" PURSUANT TO SECTION 193 OF THE CRIMINAL PROCEDURE CODE

65. Applicants are reminded that certain categories of information are published on the Judicial Website. Applications for provision of a copy of an order, ruling, judgment, deposition, or other part of a record of proceedings under the Code pursuant to section 193 of the Code shall be by Form [3] addressed to the Deputy Clerk of the Court (Criminal).

66. The applicant shall therein identify the basis upon which that applicant applies as a person affected and provide such proof as is reasonably requested. The applicant should explain why the already published information is insufficient. The Administrative Officer shall, as appropriate, seek direction from the Appropriate Judicial Officer.

67. The Administrative Officer shall thereafter provide the document or record to a person affected so long as that Administrative Officer is satisfied or directed that such provision is in the interests of justice and is not otherwise precluded by law.

68. In any case to which paragraph 61 applies, before the Appropriate Judicial Officer grants permission to provide the information, opportunity shall be given to the Director of Public Prosecutions and any other interested party to make representations.

69. In any case, the Court may determine an application:

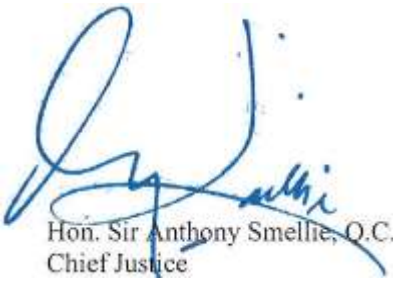
69.1. at a hearing, in public or in private; or

69.2. without a hearing.

TIMELINE

70. Pursuant to this Practice Direction case information will be published on the Judicial Website and thus publicly available. The timeline for dealing with applications in respect of other information or documents will be on a case-by-case basis depending on the circumstances, the nature of what is sought, and the judicial and clerical time required for consideration of the applications. The Court will endeavour to grant permitted access promptly and within 2-5 days of receipt of an application will notify the applicant of the status of the application.

71. This Practice Direction supersedes Practice Directions No. 2 of 2015, entitled "Applications for Inspection of Criminal Court Files, Section 193 of the *Criminal Procedure Code (as amended and revised)*", and (insofar as they relate to criminal proceedings) Practice Direction 8 of 2020 entitled, "Public Access to Court Proceedings by Audio or Video Links". Nothing in this Practice Direction shall be taken to affect Rule 14 of the Criminal Procedure Rules 2019. Practice Direction l of2014 (Use of portable cameras, recording and electronic devices in court buildings) remains in force.



Hon. Sir Anthony Smellie, Q.C.
Chief Justice

10 October 2022

Form [1]
Form for Application for Inspection or Copies of Non-Public Material in Youth Court and Related Criminal Cases

Practice Direction 6 of 2022
[Paragraphs 39 & 61]

Part A: To Be Completed by Applicant

I Title of the Case which is the Subject of this Application:

II Status of Applicant:

1. ☐ An Affected Young Person
2. ☐ The Parent of an Affected Young Person
3. ☐ A Legal Guardian
4. ☐Another Person "in Loco Parentis"
5. ☐ The Attorney of Record

III Photo Identification Provided:

1. ☐Driver's Licence:#_____, or
2. ☐ Passport: Country of Issue: _____ # _____, or
3. ☐ Other accepted identification:

IV Application for Youth Court Document/s:

The Purpose of this Application is to

1. ☐ Inspect, and/or
2. ☐ Obtain copy/ies

Details of the Requested Youth Court Document/s:

1. _____
2. _____
3. _____

V Application for General Criminal Case Document/s Affecting the Young Person:

The Purpose of this Application is to

1. ☐ Inspect, and/or
2. ☐Obtain copy/ies

Details of the D Summary Court or D Grand Court Document/s Affecting the Young Person:

1. _____

2. _____

3. _____

Part B: To Be Completed by the*Administrative Officer & Signed by*Appropriate Judicial Officer

I. *Name of Administrative Officer: _____ (*See Directions 6/2022, paragraph 13)

II. Title of Administrative Officer: _____

III. I have certified that the requested document/s fall within the categories set out in paragraph 61 of Practice Direction No. 6 of 2022: ☐Yes ☐No

IV. Date Arranged for Provision of or Viewing of Requested Documents:

_____

(Please note that Youth Court documents cannot be emailed)

V. In the case of documents included in the categories set out in paragraph 61 of Practice Direction No. 6 of 2022, I hereby undertake to consult with the Appropriate Judicial Officer.

VI. Upon Consultation, the *Appropriate Judicial Officer:

l. has approved ☐ provision and/or ☐ viewing of the following document/s:

i. _____

ii. _____

iii. _____

AND/OR

2. has denied ☐ provision and/or ☐ viewing of the following document/s:

i. _____

ii. _____

iii. _____

_____
Signature Administrative Officer

_____
Signature of* Appropriate Judicial Officer (See paragraph 4, Practice Directions 6/2022)

Form [2]

Procedures for Application for Information about a Case

Practice Direction 6 of 2022

[Paragraph 22, 24, 52 & 60]

Part 1 For Information of Applicant

I Case Information Not Requiring Written Application:

Subject to any court direction or order to the contrary, information about case aspects listed in paragraphs 22, 24, 52, 57, and paragraph 60 of this Practice Direction —

i) may be requested and provided by word-of-mouth, including by direction to www.Judicial.ky, and

ii) in appropriate cases, hard copies of documents may be inspected or viewed via Zoom or other electronic communication, or other means deemed appropriate by the Court, on payment of the prescribed fee.

II To Be Completed by Applicant

A. Title of case subject to the above listed paragraphs: _____

B. Title Date of application: _____ C. Title Name of applicant: _____

For information of applicant: In appropriate cases, the application may be referred to the Appropriate Judicial Officer, who may decide the application at a hearing: in public; in p1ivate; or without a hearing.

_____

For Official Completion

A. Prescribed fee paid: ☐Yes ☐No.

B. Outcome of application: ☐Granted ☐Not Granted

C. Reason for not granting application:

_____

_____

Part 2 Case Information Requiring Written Application:

"Closed Material" requiring written application for disclosure by means of this form is detailed in paragraphs 9, 16, 61, 68 & 70 of this Practice Direction.

To Be Completed by the Deputy Clerk of Court Criminal

In these cases, the following actions and information shall be recorded via this Form by the Deputy Clerk of Court (Criminal):

A. Title of the case which is the subject of application for "Closed Information":

_____

B. Name of applicant: _____

C. Status of applicant: ☐Party to the case ☐Non-Party to case, including registered member of media

D. Identity and status of unregistered non-party to the case: _____

_____

E. Explanation as to reason case access would advance the Open Justice principle:

_____

_____

F. Was the requested information referenced in court and/or introduced into evidence:

☐Yes ☐No

G. Following referral to the Appropriate Judicial Officer, the application was decided —

☐at a hearing: ☐in public; ☐in private; or ☐without a hearing.

H. Before permission for disclosure is given in such a case, opportunity has been given to the Director of Public Prosecutions and any other interested party to make representations:

☐Yes ☐No

I. Upon subsequent direction by the Appropriate Judicial Officer or Court order, the Deputy Clerk of Court (Criminal) may, respectively —

i) supply the applicant with information about the case —

☐in writing; or

☐the applicant may inspect, copy, or view via Zoom or other electronic communication, or other means deemed appropriate by the Court, on payment of a *prescribed fee.

ii) ☐not supply the information

J. Reasons for non-disclosure: In refusing an application for disclosure the Appropriate Judicial Officer shall refer to paragraph 64 and provide a brief summary of reasons for non- disclosure:

_____

K. Timeliness of response to application: Response was made —

☐within 2-5 days' of application; ☐within _____ days. Reason for delay:

_____

_____

***Prescribed Fee Paid: ☐Yes ☐No**

Form [3]
Practice Direction 6 of 2022
[Paragraphs 24 & 65 to 70]
Application by Persons Affected
Pursuant to Section 193 of Criminal Procedure Code

For Copy/ies of
An Order, Ruling, Judgment, Deposition, or Other Part of a Record of Proceedings

Form to be Submitted to the Deputy Clerk of Court (Criminal)

Part A: Details of Application

I. Title of the Case that Is the Subject of this Application:

_____

II. Name of applicant _____

III. Procedures for Consideration of Application by Deputy Clerk of Court (Criminal):

1. Status as an "affected person":

i) ☐ has provided proof

ii) ☐ has not provided proof

2. Applicant's evidence of insufficiency of information available on register of criminal proceedings:

i) ☐ has provided credible evidence;

ii) ☐ has not provided credible evidence.

Part B: Details of Outcome

I. Upon consultation by the Deputy Clerk, the Appropriate Judicial Officer decided the application:

i) ☐ At a public hearing

ii) ☐ At a private hearing

iii)☐ Without a hearing

II. Representations

III. The Appropriate Judicial Officer ruled that disclosure:

i) ☐ is in the interest of Open Justice;

ii) ☐ is not in the interest of Open Justice.

iii)☐ is prohibited by law.

IV. Timeline

1. Information was provided to the applicant within:

   i) ☐ 2 to 5 days of.application

   ii) ☐ Other:

2. Delay in response due to:

   i) ☐ Nature of request

   ii) ☐ Judicial and clerical time required

_____

Signature Deputy Clerk of Court (Criminal)

GRAND COURT PRACTICE DIRECTION No. 7 OF 2022

McKENZIE FRIENDS (CIVIL AND FAMILY COURTS)

1) This Practice Direction applies to civil and family proceedings in the Grand Court and to Family Proceedings in the Summary Courts. It does not apply in criminal cases. It is issued as guidance by the Chief Justice. It is intended to remind courts and litigants of the principles set out in the case authorities and does not change the law. It is issued in light of the increase in personal litigants at all levels of the civil and family courts and in conjunction with the Guide to proceedings in the Grand Court for people without a legal representative, published on the same date. Both are available on the Courts' website at www.judicial.ky.

Reasonable assistance from a McKenzie Friend

2) There is a presumption in favour of permitting a personal litigant to have reasonable assistance from a layperson, sometimes called a McKenzie Friend, a term which has come to be associated with the case of *McKenzie v McKenzie*[1]. Personal litigants assisted by McKenzie Friends remain litigants in person. McKenzie Friends have no independent right to provide assistance. They have no right to act as advocates or to carry out the conduct of litigation but may attend as a friend to lend support as explained below. A person who has legal training but has not been engaged as an attorney may serve as a McKenzie friend.[2]

What McKenzie Friends may do

3) McKenzie Friends may:

   i) provide moral support for personal litigants;

   ii) take notes with the permission of the judge;

   iii) help with case papers;

   iv) quietly give advice on any aspect of the conduct of the case which is being heard.

What McKenzie Friends may not do

4) McKenzie Friends may not:

   i) Conduct the litigation, acting as the personal litigant's agent in relation to the proceedings;

   ii) Manage the personal litigant's cases outside court, for example by signing court documents; or

[1] [1970] 3 All R. 1034 at 1336

[2] See McKenzie v McKenzie (above) a Constable v Constable [20181, Court of Appeal Bermuda, 10 October 2019.

iii) Exercise a right of audience by addressing the court, making oral submissions or examining witnesses unless this has, in very exceptional circumstances, been authorised by the court.

It is a criminal offence to exercise rights of audience or to conduct litigation unless properly qualified and authorised to do so as an attorney or as an officer of an incorporated entity. At present there are no statutorily prescribed exceptions or circumstances in which a McKenzie Friend can apply for rights of audience or to conduct litigation for reward on behalf of another person.

Confidentiality

5) A McKenzie Friend must observe strict confidentiality in relation to any documents they have sight of and any information they hear in relation to the proceedings. Breach of such confidentiality will usually amount to a contempt of court, giving rise to sanctions including a fine and imprisonment.

Exercising the Right to Reasonable Assistance

6) While personal litigants ordinarily have a right to receive reasonable assistance from McKenzie Friends the court retains the power to refuse to permit the giving of such assistance. The refusal may occur on initial application or at any time during the hearing.

7) A personal litigant may be denied the assistance of a McKenzie Friend or a particular McKenzie Friend because its provision might undermine or has undermined the efficient administration of justice. Illustrations of circumstances where this might arise, which are not exhaustive, are:

i) the assistance is being provided for an improper purpose;

ii) the assistance is unreasonable in nature or degree;

iii) the McKenzie Friend is subject to an order such as a civil proceedings order or a civil restraint order or has been declared to be a vexatious litigant; by a court in the Cayman Islands;

iv) the McKenzie Friend is using the case to promote that person's own cause or interests or those of some other person, group or organisation, and not the interests of the personal litigant;

v) the McKenzie Friend is directly or indirectly conducting the litigation;

vi) the court is not satisfied that the McKenzie Friend fully understands and will comply with the duty of confidentiality.

8) The following factors are NOT of themselves sufficient to justify the court refusing to permit a McKenzie Friend to assist a personal litigant:

(i) The case or application is simple or straightforward, or is, for instance, a directions or case management hearing;

(ii) The personal litigant appears capable of conducting the case without assistance;

(iii) The personal litigant is unrepresented through choice;

(iv) The other party is not represented;

(v) The proposed McKenzie Friend belongs to an organisation that promotes a particular cause;

(vi) The proceedings are confidential and the court papers contain sensitive information relating to a family's affairs

9) A personal litigant who wishes to exercise this right should inform the judge as soon as possible indicating the identity of the proposed McKenzie Friend. The proposed McKenzie Friend should produce a short curriculum vitae or other statement setting out relevant experience, confirming that that personal litigant has no personal interest in the case and understands the McKenzie Friend's role and the duty of confidentiality.

10) The court may refuse to allow a personal litigant to exercise the right to receive assistance at the start of a hearing. The court may also circumscribe or remove the right during the course of a hearing, where the court forms the view that a McKenzie Friend, or a particular McKenzie Friend, may give, has given, or is giving, assistance that impedes the efficient administration of justice. The court may in the first instance issue a firm and unequivocal warning to the personal litigant and/or McKenzie Friend. It is likely that the court may give reasons for refusal and the personal litigant, but not the McKenzie Friend, has a right to appeal the decision.

11) Where a personal litigant is receiving assistance from a McKenzie Friend in care proceedings, the court should consider the desirability of the McKenzie Friend's attendance at any joint consultations directed by the court and, if that personal litigant is to attend, the most effective and appropriate way in which that person should be involved in the joint consultation, bearing in mind the limits of their role, and should give directions accordingly.

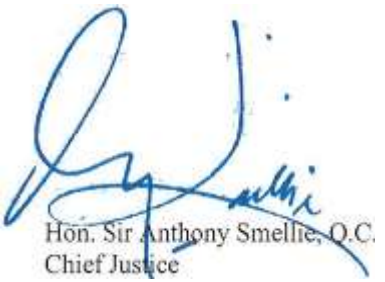
Personal litigants are in general permitted to communicate any information, including filed evidence, relating to the proceedings to McKenzie Friends for the purpose of obtaining advice or assistance in relation to the proceedings. In the case of proceedings involving children, however, this may only be done with the permission of the judge to avoid contravening provisions of the Children Act. This requires an application to the judge for permission and if the judge grants it then ordinarily conditions will be imposed giving further protection to confidentiality.

12) Legal representatives of other parties should ensure that documents are served on personal litigants in good time to enable them to seek assistance regarding their content from McKenzie Friends in advance of any hearing or case management meeting.

Remuneration

13) Personal litigants can enter into lawful agreements to pay certain fees to McKenzie Friends for the provision of reasonable assistance in court or out of court by, for instance, carrying out clerical or mechanical activities, such as photocopying documents, preparing bundles, delivering documents to opposing parties or the court.

14) Such fees are recoverable, in principle, from the opposing party as a recoverable disbursement upon taxation: Grand Court Rules Order 62 rules 19(1) and 19(2).



Hon. Sir Anthony Smellie, Q.C.
Chief Justice

10 October, 2022[3]

[3] This Practice Direction is adopted and adapted, with thanks, from similar directions issued by the High Court of Northern Ireland.

Publication in consolidated form authorised by the Cabinet this 30th day of January, 2024.

Kim Bullings
Clerk of the Cabinet

ENDNOTES

Table of Practice Directions (includes superseded/revoked):

SL #	PD/C #	Practice Direction/Circular	Status	Commence-ment	Gazette	Publica-tion
	2022					
46/2022	PD 7/22	McKenzie Friends (Civil and Family Courts)	Current	13-Oct-22	LG40/2022/s4	13-Oct-22
34/2022	PD 6/22	Public Access to Criminal Courts	Current	13-Oct-22	LG40/2022/s3	13-Oct-22
38/2022	PD 5/22	Procedure Relating to the Commencement and Management of Proceedings Under Section 7 of the Legal Practitioners Act (2022 Revision)	Current	31-Aug-22	LG35/2022/s1	1-Sep-22
34/2022	PD 4/22	Listing of Civil Proceedings in the Civil Division, Short Summonses and Assigned Judges	Current	19-Aug-22	LG32/2022/s2	19-Aug-22
33/2022	PD 3/22	Judicial Mediation Guidelines	Current	19-Aug-22	LG32/2022/s1	19-Aug-22
16/2022	PD 2/22	Procedure Relating to the Commencement and Management of Financial Services Proceedings	Current	13-Apr-22	LG16/2022/s1	14-Apr-22
15/2022	PD 1/22	Listings and Custody Time Limits in Criminal Matters	Current	14-Apr-22	LG16/2022/s1	14-Apr-22
	2021					
91/2021	PD 5/14 (Amended)	(Court Fees (Amendment) (No. 3) Rules 2013)	Current	21-Jan-21	GE102/2021/s1	15-Dec-21
83/2021	PD 3/21	Practice Direction Exhibits in Criminal Cases	Current	30-Nov-21	LG68/2021/s1	30-Nov-21
44/2021	PD 2/21	Court Fees Rules (2021 Revision) ("the Rules") GCR Order 62 Rule 3(1)	Current	7-May-21	GE39/2021/s1	7-May-21
90/2021	PD 1/21	Procedure Relating to the Commencement and Management of Financial Services Proceedings	Revoked[1]	30-Apr-21	GE37/2021/s3	30-Apr-21
	2020					
42/2021	PD 11/20	Electronic Filing (E-Filing) and E-Service in the Grand Court of documents *via* the Judicial Administration E-Filing Platform	Current	8-Jan-20	GE1/2021/s1	6-Jan-21
	PD 10/20	1. Drawing up and Filing of Judgments and Orders 2. Form of Orders made by the Court Approved as to Form and Content or with the Consent of the Parties 3. Provision of Orders of the Court by the Clerk of Court	Current	2-Oct-20	GE83/2020/s1	2-Oct-20

SL #	PD/C #	Practice Direction/Circular	Status	Commence-ment	Gazette	Publica-tion
	PD 9/20	Guidance for the remote notarisation and attestation of documents by electronic means	Current	5-May-20	GE38/2020/s2	5-May-20
	PD 8/20	Public Access to Court Proceedings by Audio or Video Links During the Covid 19 Pandemic	Superseded[2]	5-May-20	GE38/2020/s1	5-May-20
	PD 7/20	Sittings of the Court of Appeal by way of videoconference in response to the Covid Regulations, 2020	Current	14-Apr-20	GE30/2020/s2	14-Apr-20
	PD 6A/20	FSD Modifying Standard Hearing Practice During Pandemic	Current	8-May-20	GE39/2020/s2	8-May-20
	PD 6/20	FSD Modifying Standard Remote Hearing Practice During Coronavirus Pandemic	Current	14-Apr-20	GE30/2020/s1	14-Apr-20
	PD 5E/20	Electronic filing of Charges Reports from the Royal Cayman Islands Police Services (RCIPS)	Current	3-Jun-20	GE45/2020/s2	3-Jun-20
	PD 5D/20	Electronic Filing of Tickets from Department of Commerce and Investment	Current	9-Apr-20	GE29/2020/s8	9-Apr-20
	PD 5C/20	Electronic Filing of Court Reports from Department of Community Rehabilitation	Current	9-Apr-20	GE29/2020/s7	9-Apr-20
	PD 5B/20	Electronic Filing of Court Reports from ODPP	Current	3-Jun-20	GE45/2020/s1	3-Jun-20
	PD 5B/20	Electronic Filing of Court Reports from ODPP	Superseded[3]	9-Apr-20	GE29/2020/s6	9-Apr-20
	PD 5A/20	Family Registry Electronic Filing of Court Reports From DCFS	Current	9-Apr-20	GE29/2020/s5	9-Apr-20
	PD 5/20	Use of Emails for Filing, Electronic Signatures, Court Seals and Stamps	Revoked[4]	9-Apr-20	GE29/2020/s4	9-Apr-20
	PD 4/20	Family Division Remote Hearings Family Mention Days	Current	9-Apr-20	GE29/2020/s3	9-Apr-20
	PD 3/20	Family Division Remote Hearings	Current	9-Apr-20	GE29/2020/s2	9-Apr-20
	PD 2/20	Covid 19 Guidance for the Family Division	Current	9-Apr-20	GE29/2020/s1	9-Apr-20
	PD 1/20	Mediation Information and Assessment Rules 2020	Current	8-May-20	GE39/2020/s2	8-May-20
	2019					
56/2019	PD 4/19	Criminal procedure unfit to plead or not guilty by reason of insanity	Current	30-Oct-19	GE75/2019/s1	30-Oct-19
55/2019	PD 3/19	Proceedings in Family Division Costs Estimates	Current	9-Oct-19	GE69/2019/s1	9-Oct-19
54/2019	PD 2/19	Adoption of Judicial Insolvency Network Modalities For Court To Court Commun-ications	Current	1-Aug-19	G17/2019/s1	19-Aug-19

SL #	PD/C #	Practice Direction/Circular	Status	Commence-ment	Gazette	Publica-tion
53/2019	PD 1/19	Directions for Proceedings brought under s238 Companies Law	Current	23-Aug-19	GE56/2019/s1	23-Aug-19
	2018					
28/2018	PD 1/18	Court-to-court Communications and cooperation in cross-border insolvency and restructuring cases	Current	30-Jul-18	G16/2018/s1	30-Jul-18
	2017					
69/2017	PD 4/17	Filing of Winding Up Petitions	Current	14-Aug-17	G17/2017/s4	14-Aug-17
6872017	PD 3/17	Court Stenographer Services	Current	14-Aug-17	G17/2017/s3	14-Aug-17
67/2017	PD 2/17	Registration of Foreign Maintenance Orders	Current	14-Aug-17	G17/2017/s2	14-Aug-17
66/2017	PD 1/17	Payments into Court of Trust Funds	Current	14-Aug-17	G17/2017/s1	14-Aug-17
	2016					
23/2016	PD 2/16	Mediation Information and Assessment Rules, 2016	Revoked[5]	14-Jun-16	G43/2016/s1	1-Jun-16
7/2016	PD 1/16	Financial Services Division Procedure Relating to the Commencement and Management of Financial Services Proceedings	Revoked[6]	15-Feb-16	G6/2016/s4	14-Mar-16
	PD 1/16	Financial Services Division Procedure Relating to the Commencement and Management of Financial Services Proceedings	Superseded[7]	15-Feb-16	GE10/2016/s5	12-Feb-16
	2015					
36/2015	PD 6/15	Procedure Relating to the Commencement and Management of Financial Services Proceedings	Revoked[8]	10-Aug-15	GE60/2015/s5	12-Aug-15
35/2015	PD 5/15	Cayman Islands Summary Court Criminal Case Management	Current	1-Sep-15	GE60/2015/s4	12-Aug-15
34/2015	PD 4/15	Taking Evidence From Witnesses, Affiants And Deponents Who Do Not Speak English	Current	12-Aug-15	GE60/2015/s3	12-Aug-15
33/2015	PD 3/15	List of Approved Real Estate Appraisers	Current	12-Aug-15	GE60/2015/s2	12-Aug-15
7/2015	PD 2/15	Applications for inspection of Criminal Court Files - Section 193 of the Criminal Procedure Code (2013 Revision)	Superseded[9]	16-Mar-15	G6/2015/s2	16-Mar-15
4/2015	PD 1/15	Applications for Sealing Court Orders and Inspecting Court Files (Civil) (As Amended July 2015)	Current	12-Aug-15	GE60/2015/s1	12-Aug-15
	2014					

SL #	PD/C #	Practice Direction/Circular	Status	Commence-ment	Gazette	Publica-tion
31/2014	PD 16/14	International Child Abduction (Including 1980 Hague Convention)	Current	30-Jun-14	G13/2014/s4	30-Jun-14
30/2014	PD 15/14	Inherent Jurisdiction (Including Wardship) Proceedings	Current	30-Jun-14	G13/2014/s3	30-Jun-14
22/2014	PD 14/14	Direct Communication with a Judge in a Foreign Court	Current	14-May-14	GE33/2014/s9	14-May-14
21/2014	PD 13/14	Contribution Orders	Current	14-May-14	GE33/2014/s8	14-May-14
20/2014	PD 12/14	Arrival of Children in Grand Cayman by Air	Current	14-May-14	GE33/2014/s7	14-May-14
19/2014	PD 11/14	Court Bundles in Family Proceedings	Current	14-May-14	GE33/2014/s6	14-May-14
18/2014	PD 10/14	Court Welfare Officers Report	Current	14-May-14	GE33/2014/s5	14-May-14
17/2014	PD 9/14	Committal for Contempt of Court	Current	14-May-14	GE33/2014/s4	14-May-14
16/2014	PD 8/14	Taking Evidence from Non-English Speakers	Revoked[10]	14-May-14	GE33/2014/s3	14-May-14
15/2014	PD 7/14	Remand Proceedings by way of tele-conference	Current	14-May-14	GE33/2014/s2	14-May-14
14/2014	PD 6/14	Summary Court Applications on weekends and Public Holidays	Current	14-May-14	GE33/2014/s1	14-May-14
5/2014	PD 5/14	(Court Fees (Amendment) (No. 3) Rules 2013)	Superseded[1][1]	10-Feb-14	G3/2014/s1	10-Feb-14
4/2014	PD 4/14	Orders For Sales by Private Treaty pursuant to Sections 75 and 77 of the Registered Land Law (2004 Revision)	Current	28-Jan-14	G2/2014/s4	28-Jan-14
3/2014	PD 3/14	Jury Trials (SL 3 of 2014)	Current	28-Jan-14	G2/2014/s3	28-Jan-14
2/2014	PD 2/14	Communications Between Counsel And The Court Etc.	Current	28-Jan-14	G2/2014/s2	28-Jan-14
6/2014	PC 1/14	Practice Circular - Requirement for Strict Compliance with Court Orders Made In the Family Division of the Grand Court	Current	10-Feb-14	G3/2014/s2	10-Feb-14
1/2014	PD 1/14	Practice Guidance use of Portable Cameras, Recording and Electronic Devices	Current	28-Jan-14	G2/2014/s1	28-Jan-14
	2013					
45/2013	PD 4/13	Pre-Action Protocol For Judicial Review	Current	2-Aug-17	GE63/2017/S3	2-Aug-17
44/2013	PD 3/13	Procedure for Hearing of Winding up Petitions	Current	27-Sep-13	GE78/2013/s2	27-Sep-13
43/2013	PD 2/13	Procedure Relating to the Commence-ment and Management of Financial Services Proceedings	Current	27-Sep-13	GE78/2013/s1	27-Sep-13
17/2013	PD 1/13	Consent Orders In Ancillary Relief Proceedings	Current	1-May-13	G8/2013/s1	22-Apr-13
	2012					

SL #	PD/C #	Practice Direction/Circular	Status	Commence-ment	Gazette	Publica-tion
90/2012	PD 7/12	Payment Schedules - Authorised Signatories	Current	1-Dec-12		
49/2012	PD 6/12	Listing of Family Law Proceedings and Memo from Chief Justice	Current	8-Oct-12	G21/2012/s2	8-Oct-12
	PC 6/12	Practice Circular - Memorandum				
48/2012	PD 5/12	Applications under the Registered Land Law	Current	8-Oct-12	G21/2012/s1	8-Oct-12
15/2012	PD 4/12	Limited Admission as an Attorney-at-Law	Current	26-Mar-12	G7/2012/s7	26-Mar-12
14/2012	PD 3/12	Attire for proceedings in the Grand Court	Current	26-Mar-12	G7/2012/s6	26-Mar-12
13/2012	PD 2/12	Proceedings in the Grand Court in which the Judge Presides from Overseas	Current	26-Mar-12	G7/2012/s5	26-Mar-12
12/2012	PD 1/12	Delivery of Reserved Judgments	Current	26-Mar-12	G7/2012/s4	26-Mar-12
	2011					
9/2011	PD 1/11	Guidelines Relating to the Taxation of Costs		23-May-11	G11/2011/s1	23-May-11
	2010					
30/2010	PD 2/10	Schemes of Arrangements and Compromise under Section 86 of the Companies Law	Current	1-Oct-10	G20/2010/s2	27-Sep-10
29/2010	PD 1/10	Procedure Relating to the Commence-ment and Management of Financial Services Proceedings	Revoked[12]	27-Sep-10	G20/2010/s1	27-Sep-10
	2008					
26/2008	PD 1/08	Register of Judgments Register of Writs	Current	8-Dec-08	G25/2008/s2	8-Dec-08
	2006					
4/2006	PD 2/06	Orders	Revoked[13]			
	PD 1/06	Liquidators' Renumeration	Revoked[14]			
	2004					
3/2004	PD 2/04	Proceedings by way of Video Conferencing Civil or Criminal	Current			
2/2004	PD 1/04	Correction of Judgements and Amended Index of Practice Directions, to replace the current index	Current	5-Apr-04	G7/2004/s1	5-Apr-04
	2003					
	PD 2/03	Remuneration of Official Liquidators	Revoked[15]		G26/2003/s1	

SL #	PD/C #	Practice Direction/Circular	Status	Commence-ment	Gazette	Publica-tion
	PD 1/03	Official Liquidators: Security for the due performance of their duties	Revoked[16]		GE/2009/s2	22-Jan-09
	2002					
	PD 1/02	Schemes of Arrangement and Compro-mise under the Companies Law	Revoked[17]			
	2001					
	PD 1/01	Guidelines relating to the Taxation of Costs	Current	1-Jun-2011	G11/2011/s2	23-May-11
	2000					
	PD 1/00	Listing Forms	Current		G1/2000/s1	4-Jan-00
	1999					
	PD 5/99	Legal Aid - Affidavit of Means	Current		G24/1999/s1	22-Nov-99
	PD 4/99	Indictments	Current		G12/1999/s7	7-Jun-99
	PD 3/99	Short Summons List	Revoked[18]		G5/1999/s9	1-Mar-99
	PD 2/99	Drawing Up and Filing of Judgments and Orders	Revoked[19]		G4/1999/s9	15-Feb-99
	PD 1/99	Filing Documents in Court	Current		G4/1999/s8	15-Feb-99
	1998					
	PD 1/98	Short Summons List	Revoked[20]			
	1997					
	PD 3/97	Confidentiality and Publication of Chamber's Proceedings	Current		G16/2003/s17	11-Aug-03
	PD 2/97	Register of Judgments and Register of Writs, etc.	Current		G10/1997/s5	12-May-97
	PD 1/97	Legal Aid Forms	Current		G10/1997/s4	12-May-97
	1996					
	PD 3/96	Formal Orders in Grand Court	Revoked[21]		G7/1996/s6	1-Apr-96
	PD 2/96	Trial Bundles	Current		G7/1996/s5	1-Apr-96
	PD 1/96	Land Acquisition Law (Revised) – Payment of Compensation into Court	Current		G2/1996/s11	1-Apr-96
	1995					
	PD 5/95	Trial Bundles	Current	22-Jan-96	G2/1996/s9	22-Jan-96
	PD 4/95	Payment Schedules – Authorised Signatures	Revoked[22]	22-Jan-96	G2/1996/s8	22-Jan-96
	PD 3/95	Attachment of Earnings Orders – Method of Payment	Current	1-May-95	GE9/1995/s10	1-May-95
	PD 2/95	Attachment of Earnings Orders – Calculation of Post-Judgment Interest	Current	1-May-95	GE9/1995/s9	1-May-95

SL #	PD/C #	Practice Direction/Circular	Status	Commence-ment	Gazette	Publica-tion
	PD 1/95	Arrangements for Listing of Chamber Summonses	Revoked[23]	1-May-95	GE9/1995/s8	1-May-95

[1] *PD 1 of 2021* — *Revoked by PD 2 of 2022*
[2] *PD 8 of 2020* — *Superseded by PD 6 of 2022 (insofar as it relates to criminal matters)*
[3] *PD 5B of 2020* — *Superseded by republication of PD5B of 2020 in GE45/2020/s1*
[4] *PD 5 of 2020* — *Revoked by PD 11 of 2020*
[5] *PD 2 of 2016* — *Revoked by PD 1 of 2020*
[6] *PD 1 of 2016* — *Revoked by PD 1 of 2021*
[7] *PD 1 of 2016* — *Superseded by republication of PD1 of 2016 in G6/2016/s4*
[8] *PD 6 of 2015* — *Revoked by PD 1 of 2016*
[9] *PD 2 of 2015* — *Superseded by PD 6 of 2022*
[10] *PD 8 of 2014* — *Revoked by PD 4 of 2015*
[11] *PD 5 of 2014* — *Amended by PD 5 (Amended) (GE102/2021/s2) and Superseded by PD 2 of 2021*
[12] *PD 1 of 2010* — *Revoked by PD 2 of 2013*
[13] *PD 2 of 2006* — *Revoked by PD 10 of 2020*
[14] *PD 1 of 2006* — *Revoked by GC (Amdt No.2)Rules 2008,R. 3(2) (GE5/2009/s2)*
[15] *PD 2 of 2003* — *Revoked by PD 1 of 2006*
[16] *PD 1 of 2003* — *Revoked by GC (Amdt No.2) Rules 2008, R.3(1) (GE5/2009/s2)*
[17] *PD 1 of 2002* — *Revoked by PD 2 of 2010*
[18] *PD 3 of 1999* — *Revoked by _____*
[19] *PD 2 of 1999* — *Revoked by PD 10 of 2020*
[20] *PD 1 of 1998* — *Revoked by PD 3 of 1999*
[21] *PD 3 of 1996* — *Revoked by _____*
[22] *PD 4 of 1995* — *Revoked by PD 7 of 2012*
[23] *PD 1 of 1995* — *Revoked by PD 3 of 1999*

(Price: $83.20)