

CAYMAN ISLANDS



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PRACTICE DIRECTION No. 14/2014
(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**



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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 his or her 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