

ANTIGUA AND BARBUDA



**EASTERN CARIBBEAN SUPREME COURT (SEXUAL OFFENCES CASE
MANAGEMENT PROCEDURE) RULES, 2019**

STATUTORY INSTRUMENT

2019, No. 4

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In exercise of the powers conferred under section 17 of the Supreme Court Order, CAP 422A, Laws of Antigua and Barbuda, the Chief Justice and two other Judges of the Supreme Court make the following Rules:

1. Citation and commencement

(1) These Rules may be cited as the Eastern Caribbean Supreme Court (Sexual Offences Case Management Procedure) Rules, 2019.

(2) These Rules when brought into force, take effect as part of the law of Antigua and Barbuda pursuant to section 86 of the Eastern Caribbean Supreme Court Act, CAP 143, Laws of Antigua and Barbuda.

(3) These Rules come into force on 1st February, 2019.

2. Interpretation

In these Rules –

“**Court**” means the High Court of Antigua and Barbuda;

“**Chief Justice**” means the Chief Justice of the Eastern Caribbean Supreme Court;

“**Judge**” means a Judge or Master of the High Court and includes a person appointed to act in either office;

“**Registry**” means of the Registry of the High Court of Antigua and Barbuda.

3. Application of Rules

(1) These Rules –

(a) apply to indictable sexual offences in the state of Antigua & Barbuda; and

(b) establish case management procedure rules for indictable sexual offences to ensure the timely management and expeditious hearing of trials.

4. Sexual Offence Cases List

(1) All indictable sexual offence cases to be heard by the Court, will be managed in a list known as the Sexual Offence Cases List by a Judge, as nominated by the Chief Justice.

(2) The Judge managing the Sexual Offence Cases List referred to in paragraph (1) will be supported by the Registry.

(3) The Registry must provide the judge with a sexual offence case file when it is formally received by the High Court, whether with indictment or not, following committal from the Magistrates Court.

(4) A case progression officer must be appointed to actively manage the Sexual Offence Cases List.

(5) A case progression officer must:

- (a) monitor compliance with directions;
- (b) collate statistics to reflect the progression and disposal of cases;
- (c) make arrangements to facilitate the use of special measures in the proceedings;
- (a) make sure that the court is kept informed of events that may affect the progress of a case;
- (e) act promptly and reasonably in response to communications about a case;
- (j) ensure that he or she can be contacted promptly about a case during ordinary business hours; and
- (g) monitor orders made by the judge to keep cases moving on a timely basis ; and
- (h) review all pending cases to ensure that proper notification has been given and other necessary action taken.

(6) If the case progression officer is unavailable for any reason, the Registrar shall appoint a substitute to perform these duties.

5. Case Management

(1) A sexual offence case committed from the Magistrate's Court must be listed for plea and directions before a judge within 28 days of the indictment being preferred, such time must not include the Court's vacation period.

(2) A judge must convene a case management hearing during or shortly after the defendant's first appearance in the Court, and must conduct further case management afterwards as necessary.

(3) Notwithstanding any other provision in any law for the time being in force, the Director of Public Prosecutions or his or her appointee, as a matter of good practice, shall prefer the indictment in a case on the sexual offences case list, unless reasonably impracticable, within 28 days of the case file being formally received at the High Court Registry following committal of the defendant from the Magistrates Court to the jurisdiction of the High Court.

6. The Court's Case Management Powers

(1) 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 these Rules.

(2) In particular the Court may –

- (a) set a trial date;
- (b) direct that preliminary issues, such as admissibility of evidence, be determined at a hearing before the trial;
- (c) give a direction on its own initiative or on application by a party;
- (a) ask or allow a party to propose a direction;
- (e) set time limits;
- (j) fix, postpone, bring forward, extend, cancel or adjourn a hearing; or
- (g) shorten or extend (even after it has expired) a time limit fixed by a direction.

(2) Any power to give a direction under these Rules includes a power to vary or revoke that direction.

7. Role of the Judge

A judge, with the assistance of prosecution and defence counsel, will actively manage the Sexual Offence Cases List through –

- (a) the early identification of the issues;
- (b) the early identification of the needs of witnesses;
- (c) achieving certainty where possible as to what must be done, by whom, and when, in particular where appropriate by the early setting of a timetable for the progress of the case;
- (a) monitoring the progress of the case and compliance with directions;

- (e) encouraging the participants to co-operate in the progression of the case; and
- (j) making use of technology, and in particular video and audio equipment, to include, where appropriate, directing the use of live video link facilities to receive evidence under **s7(5) Evidence (Special Provisions) (Amendment) Act 2016** or other applicable law, whether an application for such a direction is made or not.

8. Duty of a party

A party must actively assist the Court in fulfilling its duty under these Rules, with or without a direction, and apply for a direction if needed to further the objective of these Rules.

9. Case preparation and trial progression

(1) At every hearing, if a case cannot be concluded, the Court must give directions so that it can be concluded at the next hearing or as soon as possible thereafter.

(2) At every hearing the Court must, where relevant –

- (a) if the defendant is absent, decide whether to proceed nonetheless; and
- (b) 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.

(3) To prepare for the trial, the Court must take every reasonable step to –

- (a) encourage and to facilitate the attendance of witnesses when they are needed; and
- (b) to facilitate the participation of a person, including the defendant.

(4) To manage a trial, the Court may enquire of a party –

- (a) what disclosure is sought;
- (b) whether an interpreter is required;
- (c) details of any alibi;
- (a) which witnesses are required to give evidence in person;
- (e) the order in which witnesses should give evidence;
- (j) whether an order is required to compel attendance of a witness;
- (g) what arrangements are desirable to facilitate the giving of evidence by a witness;

- (h) what arrangements are desirable to facilitate the participation of any other person, including the defendant;
- (i) what written evidence is intended;
- (j) what evidence can be agreed;
- (k) what other material, if any, is intended to be made available to the Court during the presentation of the case; and
- (l) whether there is an intention to raise any point of law or ancillary application that could affect the conduct of the trial.

(5) The Court may limit –

- (a) the examination, cross-examination, or re-examination of a witness;
- (b) the style, content, or complexity of questions; and
- (c) the duration of any stage of the hearing.

(6) When the Court accepts guilty pleas –

- (a) where a defendant is unrepresented, before accepting a plea of guilty to any or all of the charges, the judge must be satisfied by enquiring of the defendant whether he or she acknowledges guilt and enters the plea voluntarily with an appropriate understanding of the consequences; and
- (b) if a plea of guilty is not accepted, or is vacated, the fact of the guilty plea having been offered is not admissible as evidence of that person's guilt in any subsequent trial in respect of that alleged offence.

(7) Where 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 must re-list the case within such time as may be reasonably practicable.

10. Time limits

(1) This rule sets out the maximum time-limits for the disposal of cases commencing from the date these rules are in force and does not prohibit efforts made to dispose of cases as soon as reasonably practicable.

(2) A matter tried on the Sexual Offence Cases List should so far as reasonably practicable be concluded within a period not exceeding **18 months** from the date of the First Hearing at the Magistrates Court.

(3) Notwithstanding sub-rule (2), every case involving a complainant under the age of 14 to be tried on the Sexual Offence Cases List should so far as reasonably practicable be concluded within a period not exceeding **12 months** from the date of the First Hearing at the Magistrates Court.

(4) Notwithstanding sub-rule (2), where an adult defendant is remanded in custody, his or her trial must be concluded so far as is reasonably practicable, within a period not exceeding **18 months**, unless there are exceptional circumstances, from the date of the First Hearing at the Magistrates Court, failing which he or she is to be considered eligible for bail.

11. Adjournments

(1) The adjournment of a trial may only be granted if the Court is satisfied that –

- (a) there is good reason for an adjournment; and
- (b) an adjournment is in the interest of justice.

(2) Where there has been one adjournment granted in a case for a similar reason as requested, the Court must only grant a further adjournment if exceptional circumstances are shown.

(3) Where an application for an adjournment of a trial is made by the prosecution or defence, the court must consider –

- (a) the seriousness of the charge and the level of the public interest which demands that a scheduled trial take place;
- (b) the age of the complainant and any other significant witnesses;
- (c) whether the defendant is in custody;
- (d) whether the refusal of an adjournment may compromise the defendant's ability to fully present a defence; and
- (e) the history of adjournments, at whose request any previous adjournments have been made, and the reasons provided.

12. Case Management Form

(1) The Case Management Form contained in the appendix to these Rules must be completed –

- (a) in the case of a represented defendant, by the defence and prosecution counsel; or
- (b) in the case of an unrepresented defendant, by the judge with the assistance of the prosecution counsel.

13. Practice Directions and Practice Guides

(1) The Chief Justice may issue Practice Directions and Practice Guides under these rules to supplement the rules in relation to the practice and procedure to be followed.

(2) A Practice Direction and Practice Guide must be –

(a) published in the Gazette; and

(b) displayed and made available at each Court Office.

(3) A party must comply with a Practice Direction and Practice Guide unless there is good reason for not doing so.

(4) Where the provisions of a Practice Direction and Practice Guide conflict with these rules, these rules prevail.

Made this 25th day of January, 2019

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

**Mr. Mario Michel
Justice of Appeal**

**Mr. Iain Morley
High Court Judge**

APPENDIX

Sexual Offence Cases List Case Management Form

(Rule 12(1))

Heading

NOTE: One form per defendant to be completed legibly, by prosecution and defence counsel together, then to be annotated by the Judge.

1. Date: _____
DD /MM /YYYY

2. Name defendant: _____

3. Names of counsel:

4. What are the charges?

5. Does the indictment need amending, to what? YES / NO

6. Date of allegation: _____
DD /MM /YYYY

7. At the time, was the defendant, complainant, or any witness under 18 YES / NO

i. if so, who, and what age?

8. If case more than 18 months old, why?

9. If in custody, how long? _____

10. Is the defendant fit to plead? YES / NO

11. Does the defendant have relevant previous convictions, YES / NO

a. and if so, what, with what sentences?

12. Is the defendant considering pleading guilty? YES / NO

a. If no, has the defendant been advised of leniency for early plea: YES / NO

b. Is a Goodyear indication of sentence sought: YES / NO

c. If pleading, to what: _____

d. Is there an agreed or written basis of plea: YES / NO

e. Is a pre-sentence report requested? YES / NO

13. If a trial, how long? _____

14. Is this a retrial, YES / NO

a. are there transcripts? YES / NO

15. What are the issues in the case?

16. What legal arguments are anticipated?

17. Are special measures required? YES / NO

For who, and why:

a. Screens: YES / NO

b. Video link, YES / NO
i. to where: _____

c. Pre-recorded ABE video as evidence in chief: YES / NO

d. Pre-recorded cross-examination: YES / NO

e. Witness anonymity, and how?

18. Which witnesses are necessary for cross-examination?

a. Which necessary witnesses are not in Antigua?

b. Are any necessary witnesses in a special category (e.g. minors, vulnerable, experts, state’s evidence, etc)? YES / NO

c. What evidence can be reduced to ‘agreed facts’?

d. Total number of live prosecution witnesses? _____

19. Will there be an application to cross-examine on previous sexual history? YES / NO

20. If unrepresented, how is it proposed there will be cross-examination of the complainant?

21. Have witness ABE video transcripts been edited? YES / NO

22. Have defendant police interviews been edited? YES / NO

23. Has there been disclosure? YES / NO

24. Is an opening note required? YES / NO

25. What questions, if any, should be asked of the jury?

26. Is an interpreter needed, YES / NO
a. who, and for whom?

27. Is an intermediary needed, YES / NO
a. who, and for whom?

28. Has the complainant been shown the courtroom? YES / NO

29. Need there be removal of wigs and gowns? YES / NO

30. Should questioning be limited: YES / NO

a. As to examination in chief; YES / NO

b. As to cross-examination; YES / NO

c. Should questions be submitted in advance? YES / NO

31. Is a “Ground Rules” hearing required? YES / NO

32. Any other matters?

To be completed by the Court

Date for trial – fixed or warned: _____

Case Progression Officer: _____

Court Orders (if not annotated above): _____