



BERMUDA

CRIMINAL PROCEDURE RULES 2013

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PART 5 MANAGEMENT OF CRIMINAL JURISDICTION OF THE COURT

5.1 Supervision of cases

The Chief Justice, in exercise of the power conferred by section 540 of the Criminal Code Act 1907, makes the following Rules:

PRELIMINARY CITATION, COMMENCEMENT

Citation and commencement

1 These Rules may be cited as the Criminal Procedure Rules 2013 and shall come into operation on the commencement date.

PART 1 THE OVERRIDING OBJECTIVE

The overriding objective

- 1.1 (1) The overriding objective of this new code is that criminal cases be dealt with justly.
- (2) Dealing with a criminal case justly includes—
 - (a) acquitting the innocent and convicting the guilty;
 - (b) dealing with the prosecution and the defence fairly;
 - (c) recognising the rights of a defendant, particularly those under section 6 of the Bermuda Constitution;

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- (d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;
- (e) dealing with the case efficiently and expeditiously;
- (f) ensuring that appropriate information is available to the Court when bail and sentence are considered; and
- (g) dealing with the case in ways that take into account—
 - (i) the gravity of the offence alleged;
 - (ii) the complexity of what is in issue;
 - (iii) the severity of the consequences for the defendant and others affected; and
 - (iv) the needs of other cases.

The duty of the participants in a criminal case

- 1.2 (1) Each participant, in the conduct of each case, must—
- (a) prepare and conduct the case in accordance with the overriding objective;
 - (b) comply with these Rules, practice directions and directions made by the Court; and
 - (c) 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 these Rules, any practice direction or any direction of the Court.
- (2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.
- (3) For the purposes of paragraph (1)(c) of this rule, a failure is significant if it might hinder the Court in furthering the overriding objective.

The application by the Court of the overriding objective

- 1.3 The Court must further the overriding objective in particular when—
- (a) exercising any power given to it by legislation (including these Rules);
 - (b) applying any practice direction; or
 - (c) interpreting any rule or practice direction.

PART 2

UNDERSTANDING AND APPLYING THE RULES

When the Rules apply

- 2.1 (1) In general, the Criminal Procedure Rules 2013 apply in all cases filed in—

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- (a) the Supreme Court's original jurisdiction; and
- (b) the Magistrates' Court criminal jurisdiction in relation to an offence triable either way where summary trial has been elected.

(2) These Rules apply on and after the commencement date, but unless the Court otherwise directs they do not affect a right or duty existing under any directions made prior to that date in pending cases.

Definitions

2.2 (1) In these Rules, unless the context otherwise requires—

“business day” means any day other than a Saturday, Sunday or other public holiday;

“commencement date” means 4 April 2013;

“Court” means the Supreme Court and the Magistrates' Court;

“court officer” means the appropriate member of the staff of a court;

“judge” includes a magistrate;

“Registrar” means the Registrar of the Supreme Court or Court of Appeal or a court officer acting with the Registrar's authority.

(2) Definitions of other expressions are set out in the rules in which they apply.

Representatives

2.3 Under these Rules, unless the context otherwise provides, anything that a party may or must do may be done—

- (a) by a legal representative on that party's behalf;
- (b) by a person with the corporation's written authority, where that party is a corporation;
- (c) with the help of a parent, guardian or other suitable supporting adult where that party is a defendant—
 - (i) who is under 18 years of age; or
 - (ii) whose understanding of what the case involves is limited.

PART 3

CASE MANAGEMENT

Scope of this Part

3.1 This Part applies to the management of each case (including an appeal to the Court) until the conclusion of that case.

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Duty of the Court

- 3.2 (1) The Court must further the overriding objective by actively managing the case.
- (2) Active case management includes—
- (a) the early identification of the real issues;
 - (b) the early identification of the needs of witnesses;
 - (c) 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;
 - (d) monitoring the progress of the case and compliance with directions;
 - (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;
 - (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;
 - (g) encouraging the participants to co-operate in the progression of the case; and
 - (h) making use of technology.
- (3) The Court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

Duty of the parties

- 3.3 Each party must—
- (a) actively assist the Court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and
 - (b) apply for a direction if needed to further the overriding objective.

Court's case management powers

- 3.4 (1) In fulfilling its duty under rule 3.2 the Court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with any legislation, including these Rules, or applicable case law.
- (2) In particular, the Court may—
- (a) nominate a judge to manage the case;
 - (b) give a direction on its own initiative or on application by a party;
 - (c) ask or allow a party to propose a direction;
 - (d) for the purpose of giving directions, receive applications and representations by letter, by telephone, video conference or by any other means of electronic communication, and conduct a hearing by such means;
 - (e) give a direction—

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- (i) at a hearing, in public or in private, or
 - (ii) without a hearing;
 - (f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (g) shorten or extend (even after it has expired) a time limit fixed by a direction;
 - (h) require that issues in the case should be determined separately, and decide in what order they will be determined; and
 - (i) specify the consequences of failing to comply with a direction.
- (3) The Court may give a direction that will apply in the Magistrates' Court if the case is to continue there.
- (4) Any power to give a direction under this Part includes a power to vary or revoke that direction.
- (5) If a party fails to comply with a rule or a direction, the Court may—
- (a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - (b) impose such other sanction as may be appropriate.

Application to vary a direction

- 3.5 (1) A party may apply to vary a direction if—
- (a) the Court gave it without a hearing;
 - (b) the Court gave it at a hearing in his absence; or
 - (c) circumstances have changed.
- (2) A party who applies to vary a direction must—
- (a) apply as soon as practicable after he becomes aware of the grounds for doing so; and
 - (b) give as much notice to the other parties as the nature and urgency of his application permits.

Agreement to vary a time limit fixed by a direction

- 3.6 The parties may agree to vary a time limit fixed by a direction, but only if—
- (a) the variation will not—
 - (i) affect the date of any hearing that has been fixed; or
 - (ii) significantly affect the progress of the case in any other way; and
 - (b) the Court has not prohibited variation by agreement.

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Case preparation and progression

3.7 (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.

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

- (a) if the defendant is absent, decide whether to proceed nonetheless;
- (b) take the defendant's plea (unless already taken) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;
- (c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial;
- (d) in giving directions, ensure continuity in relation to the Court and to the parties' representatives where that is appropriate and practicable; and
- (e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

(3) In order to prepare for a trial, the Court must conduct a plea and case management hearing unless the circumstances make that unnecessary.

(4) 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.

Readiness for trial or appeal

3.8 (1) This rule applies to a party's preparation for trial or appeal, and in this rule and rule 3.9 trial includes any hearing at which evidence will be introduced.

(2) In fulfilling his duty under rule 3.3, each party must—

- (a) comply with directions given by the Court;
- (b) take every reasonable step to make sure his witnesses will attend when they are needed;
- (c) make appropriate arrangements to present any written or other material; and
- (d) promptly inform the Court and the other parties of anything that may—
 - (i) affect the date or duration of the trial or appeal; or
 - (ii) significantly affect the progress of the case in any other way.

(3) The Court may require a party to give a certificate of readiness formally certifying that the party is ready to proceed to trial.

Conduct of trial or appeal

3.9 In order to manage a trial or an appeal, the Court—

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- (a) must establish, with the active assistance of the parties, what are the disputed issues and what facts can be formally agreed;
- (b) must consider setting a timetable that—
 - (i) 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;
- (c) 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 the 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 appeal and, if appropriate, the Court may give directions for the exchange and filing of lists of authorities and skeleton arguments; and
- (d) may limit—
 - (i) the examination, cross-examination or re-examination of a witness; and
 - (ii) the duration of any stage of the hearing.

Case management forms and records

3.10 (1) The case management forms set out in any practice direction must be used, and where there is no form then no specific formality is required.

(2) The Court must make available to the parties a record of directions given.

(3) Where a person is entitled or required to attend a hearing, the court officer must give as much notice as reasonably practicable to—

- (a) that person; and
- (b) that person's custodian (if any).

PART 4
SERVICE OF DOCUMENTS

When this Part applies

4.1 The rules in this Part apply to the service of every document in a case to which these Rules apply, subject to any special rules in other legislation (including other Parts of these Rules) or in the Practice Direction.

Methods of service

4.2 (1) A document may be served by any of the methods described in rules 4.3 to 4.5 (subject to rule 4.6), or in rule 4.7.

(2) Where a document may be served by electronic means, the general rule is that the person serving it will use that method.

Service by handing over a document

4.3 (1) A document may be served on—

- (a) an individual by handing it to him or her;
- (b) a corporation by handing it to a person holding a senior position in that corporation;
- (c) an individual or corporation who is legally represented in the case by handing it to that representative;
- (d) the prosecution by handing it to the prosecutor or to the prosecution representative;
- (e) the Registrar by handing it to a court officer with authority to accept it at the relevant court office.

(2) If an individual is under 18 years of age, a copy of a document served under paragraph (1)(a) must be handed to his or her parent, or another appropriate adult, unless no such person is readily available.

Service by leaving or posting a document

4.4 (1) A document may be served by leaving it at the appropriate address for service under this rule or by sending it to that address by post.

(2) The address for service under this rule on—

- (a) an individual is an address where it is reasonably believed that he or she will receive it;
- (b) a corporation is its principal office, and if there is no readily identifiable principal office then any place where it carries on its activities or business;
- (c) an individual or corporation who is legally represented in the case is that representative's office;

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- (d) the prosecution is the prosecutor's office;
- (e) the Court is the relevant court office.

Service by electronic means

- 4.5 (1) A document may be served by electronic means where—
- (a) the person to be served—
 - (i) has given an electronic address; and
 - (ii) has not refused to accept service by that method; or
 - (b) the person to be served is legally represented in the case and the representative has given an electronic address.
- (2) Where a document is served under this rule the person serving it need not provide a paper copy as well.

Documents that must be served by specified methods

- 4.6 (1) The documents listed in paragraph (2) may be served—
- (a) on an individual, only under rule 4.3(1)(a) (handing over) or rule 4.4(1) and (2)(a) (leaving or posting); and
 - (b) on a corporation, only under rule 4.3(1)(b) (handing over) or rule 4.4(1) and (2)(b) (leaving or posting).
- (2) Those documents are—
- (a) a summons or witness summons;
 - (b) a notice of when and where an adjourned hearing will resume;
 - (c) a notice or order requiring payment.
- (3) An application alleging contempt of Court may be served—
- (a) on an individual, only under rule 4.3(1)(a) (by handing it to him or her);
 - (b) on a corporation, only under rule 4.3(1)(b) (by handing it to a person holding a senior position in that corporation).

Service by a person in custody

- 4.7 (1) A person in custody may serve a document by handing it to the custodian addressed to the person to be served.
- (2) The custodian must—
- (a) endorse it with the time and date of receipt;
 - (b) record its receipt; and
 - (c) forward it promptly to the addressee.

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Service by another method

- 4.8 (1) The Court may allow service of a document by a method—
- (a) other than those described in rules 4.3 to 4.5 and in rule 4.7;
 - (b) other than one specified by rule 4.6, where that rule applies.
- (2) An order allowing service by another method must specify—
- (a) the method to be used; and
 - (b) the date on which the document will be served.

Date of service

- 4.9 (1) A document served under rule 4.3 or rule 4.8 is served on the day it is handed over.
- (2) Unless the contrary is shown, a document served on a person by any other method is served—
- (a) in the case of a document left at an address, on the next business day after the day on which it was left;
 - (b) in the case of a document sent by post on the second business day after the day on which it was posted or despatched;
 - (c) in the case of a document transmitted by electronic means, on the next business day after it was transmitted; and
 - (d) in any case, on the day on which the addressee responds to it, if that is earlier.
- (3) Unless something different is shown, a document produced by a court computer system is to be taken as having been sent by first class post, or by the equivalent of first class post, to the addressee on the business day after the day on which it was produced.
- (4) Where a document is served on or by the court officer, “business day” does not include a day on which the court office is closed.

Proof of service

4.10 The person who serves a document may prove that by signing a certificate explaining how and when it was served.

Court’s power to give directions about service

- 4.11 (1) The Court may specify the time as well as the date by which a document must be—
- (a) served under rule 4.3 or rule 4.7; or
 - (b) transmitted by electronic means, if it is served under rule 4.5.

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(2) The Court may treat a document as served if the addressee responds to it even if it was not served in accordance with the rules in this Part.

PART 5

MANAGEMENT OF CRIMINAL JURISDICTION OF THE COURT

Supervision of cases

5.1 (1) The Chief Justice or one of the Puisne Judges designated by the Chief Justice shall exercise supervisory control over the cases filed in the original jurisdiction of the Supreme Court.

(2) The Senior Magistrate shall exercise supervisory control over the cases filed in the original jurisdiction of the Magistrates' Court.

Made this 1st day of April 2013

Chief Justice