

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 27 OF 2014

EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE
(AMENDMENT) RULES 2014

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**EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE
(AMENDMENT) RULES 2014**

**THE EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE
(AMENDMENT) RULES 2014 MADE BY THE CHIEF JUSTICE AND TWO
OTHER JUDGES OF THE SUPREME COURT, BEING THE AUTHORITY
EMPOWERED BY SECTION 17 OF THE SUPREME COURT ORDER 1967 (SI
1967 No. 223) TO MAKE RULES REGULATING THE PRACTICE AND
PROCEDURE OF THE COURT OF APPEAL AND THE HIGH COURT.**

1. Citation and commencement

These Rules may be cited as the **Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules 2014** and come into force on the 12th day of May, 2014.

2. Amendments to the Eastern Caribbean Supreme Court Civil Procedure Rules 2000

The amendments to the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 are set out in the Schedule.

3. Reference to the Rules

It is not necessary to include the Schedule in the annual volume of the Laws of Montserrat, but a reference may be made to the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 in the annual volume of the Laws of Montserrat and the reference is sufficient.

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SCHEDULE

(Rule 2)

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ARRANGEMENT OF RULES

Rules

1. Citation
2. Commencement
3. Interpretation
4. Amendment of Rule 2.2
5. Amendment of Rule 2.4
6. Amendment of Rule 3.7
7. Amendment of Rule 5.12
8. Amendment of Rule 12.10
9. Amendment of Rule 20.1
10. Insertion of Rule 20.4
11. Amendment of Rule 61.2
12. Amendment of Rule 61.5
13. Amendment of Rule 61.6
14. Amendment of Rule 61.7(8)
15. Insertion of Rule 62.2A
16. Amendment of Rule 62.3
17. Insertion of Rule 62.3A
18. Amendment of Rule 62.6(3)
19. Amendment of Rule 62.10
20. Amendment of Rule 62.11(1)

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21. Amendment of Rule 62.12
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Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules, 2014

In exercise of the powers conferred by section 17 of the Supreme Court Order 1967 (SI 1967 No. 223), the Chief Justice and two other Judges of the Supreme Court make these Rules:

1. Citation

These Rules may be cited as the Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules 2014.

2. Commencement

These Rules come into effect on the 12th day of May, 2014.

3. Interpretation

In these Rules “**the principal Rules**” means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

4. Amendment of Rule 2.2

Rule 2.2 of the principal Rules is amended by deleting paragraph (3) and substituting the following –

“(3) These Rules do not apply to the following –

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

except that Part 62 shall apply to sub-paragraphs (a) and (b) and criminal appeals, to the extent that the Court of Appeal Rules 1968 are silent as to procedure in respect of criminal appeals.”.

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5. Amendment of Rule 2.4

Rule 2.4 of the principal Rules is amended by deleting the definition of “procedural appeal”.

6. Amendment of Rule 3.7

Rule 3.7 of the principal Rules is amended by deleting paragraph (1) and substituting the following –

“(1) A document may be filed by –

- (a) delivering it;
- (b) posting it;
- (c) sending it by FAX; or
- (d) transmitting it by other electronic means of communication as authorized by the Chief Justice in a practice direction

to the court office where the claim is proceeding or intended to proceed.”.

7. Amendment of Rule 5.12

The principal Rules is amended by deleting rule 5.12 and substituting the following –

“Proof of service by Electronic Means

5.12 (1) Service by electronic means is proved by an affidavit of service by the person responsible for transmitting the claim form to the person to be served.

(2) The affidavit must exhibit a copy of –

- (a) the document served;
- (b) any cover sheet or e-mail to that document;
- (c) the transmission record; and
- (d) proof of electronic service of the document,

and must state the –

- (i) electronic means by which the document was served;
- (ii) e-mail address or FAX number to which the document was transmitted; and

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(iii) date and time of the transmission.

- (3) Electronic confirmation of delivery may be treated as proof of service for a document that is served electronically and may include a written e-mail response, a read receipt, a successful FAX transmission notification or an automated response that a document was posted in an online shared drive.”

8. Amendment of Rule 12.10

Rule 12.10(1) of the principal Rules is amended by deleting subparagraph (b) and substituting the following –

“(b) an unspecified sum of money - must be judgment for the payment of an amount to be decided by the court and must be in Form 32.”

9. Amendment of Rule 20.1

The principal Rules is amended by deleting rule 20.1 and substituting the following –

“Changes to statement of case

- 20.1 (1) A statement of case may be amended once, without the court’s permission, at any time prior to the date fixed by the court for the first case management conference.
- (2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.
- (3) When considering an application to amend a statement of case pursuant to Rule 20.1(2), the factors to which the court must have regard are –
- (a) how promptly the applicant has applied to the court after becoming aware that the change was one which he wished to make;
 - (b) the prejudice to the applicant if the application were refused;
 - (c) the prejudice to the other parties if the change were permitted;
 - (d) whether any prejudice to any other party can be compensated by the payment of costs, interest or both;
 - (e) whether the trial date or any likely trial date can still be met if the application is granted;

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- (f) the administration of justice.
 - (4) A statement of case may not be amended without permission under this rule if the change is one to which any of the following applies –
 - (a) rule 19.4 (special provisions about adding or substituting parties after the end of a relevant limitation period); and
 - (b) rule 20.2 (changes to statement of case after the end of relevant limitation period).
 - (5) An amended statement of case must include a certificate of truth under Rule 3.12.
 - (6) The Chief Justice may, by practice direction, set out the procedure for –
 - (a) making an application to change a statement of case where the Court’s permission is required;
 - (b) setting out changes to an amended statement of case.
- Rule 27.3(1) deals with the fixing of case management conference.”.

10. Insertion of Rule 20.4

The principal Rules is amended by inserting after Rule 20.3 the following –

“Amendments to statements of case and time for service

- 20.4 (1) Where an amended statement of claim is served on a defendant –
- (a) the defendant, if he has already served a defence on the claimant, may file and serve an amended defence;
 - (b) the period for filing and serving an amended defence is the period of 28 days after the date of service of the amended statement of claim;
 - (c) if the defendant has not already served a defence on the claimant, the period for filing and serving a defence is the period of 28 days after the date of service of the amended statement of claim.

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- (2) Where an amended defence is served on the claimant by a defendant –
 - (a) the claimant, if he has already served a reply on that defendant, may amend his reply; and
 - (b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.
- (3) In paragraphs (1) and (2), references to a defence and a reply include references to a counterclaim and a defence to a counterclaim respectively.
- (4) Where a party has filed a statement of case in answer to another statement of case which is subsequently amended and served on him under this rule, then, if that party does not amend his statement of case in accordance with this rule, he shall be taken to rely on it in answer to the amended statement of case.
- (5) This rule shall apply *mutatis mutandis* to an amended ancillary claim.”.

11. Amendment of Rule 61.2

Rule 61.2 of the principal Rules is amended –

- (a) in paragraph (3) by deleting the word “notice” after the word “application”; and
- (b) by deleting paragraph (4) and substituting the following –

“(4) The court office must fix a date for the hearing of the application and specify the date, time and place of that hearing.”.

12. Amendment of Rule 61.5

Rule 61.5 of the principal Rules is amended by deleting paragraphs (3) and (4) and substituting the following –

- “(3) An application made under the Constitution must be served on the Attorney General and all parties to which the application relates.
- (4) An application other than an application referred to in paragraph (3) must be served on –

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- (a) the party whose application it is to state the case;
- (b) the party who requested the case stated; and
- (c) all parties to which the case relates.”.

13. Amendment of Rule 61.6

Rule 61.6 of the principal Rules is amended –

- (a) in paragraph (2) by deleting the words “fixed date” before the words “claim form”; and
- (b) in paragraph (9) by deleting the word “It” and substituting the words “The claim”.

14. Amendment of Rule 61.7(8)

Rule 61.7(8) of the principal Rules is amended by deleting the word “It” and substituting the words “The notice of appeal”.

15. Insertion of Rule 62.2A

The principal Rules is amended by inserting after Rule 62.2 the following–

“Judicial Review appeals

- 62.2A (1) Where leave to apply for judicial review has been refused at a hearing in the court below, the person seeking that leave may apply to the court for leave to appeal.
- (2) An application in accordance with paragraph (1) must be made within 7 days of the decision of the court below to refuse to give leave to apply for judicial review.
- (3) On an application under paragraph (1), the court may, instead of giving leave to appeal, give leave to apply for judicial review.
- (4) Where the court gives leave to apply for judicial review in accordance with paragraph (3), the claim will proceed in the court below, unless the court orders otherwise.”.

16. Amendment of Rule 62.3

The principal Rules is amended by deleting Rule 62.3 and substituting the following rule –

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“How to appeal

- “62.3 (1) In the case of an appeal from the High Court, an appeal is made by filing a notice of appeal –
- (a) at the court office where the judgment was entered; or
 - (b) by electronic means of communication, in accordance with the relevant practice direction issued by the Chief Justice.
- (2) In the case of an appeal from a Magistrate’s or District Court or a tribunal, an appeal is made by filing a notice of appeal -
- (a) at the court office; or
 - (b) by electronic means of communication, in accordance with the relevant practice direction issued by the Chief Justice.
- (3) A notice of appeal takes effect on the day that it is filed at the appropriate court office.”.

17. Insertion of Rule 62.3A

The principal Rules is amended by inserting after Rule 62.3 the following –

“Method of filing documents in an appeal

“62.3A (1) A document in an appeal may be filed by:

- (a) delivering it;
- (b) posting it;
- (c) sending it by FAX; or
- (d) transmitting it by other electronic means of communication as authorized by the Chief Justice in a practice direction,

to the court office where the appeal is proceeding or intended to proceed.”.

18. Amendment of Rule 62.6(3)

Rule 62.6 of the principal Rules is amended by deleting paragraph (3) and substituting the following –

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“(3) The Chief Justice shall assign the matter to a single judge of the court to determine whether the appeal should be dealt with summarily, and if the judge so determines, the judge must give such case management directions as are appropriate to enable the appeal to be dealt with summarily, including dispensing with any procedural requirements in this Part with regard to an appeal proceeding under this rule.”.

19. Amendment of Rule 62.10

Rule 62.10 of the principal Rules is amended by deleting paragraphs (5), (6), (7) and (8) and substituting the following –

- “(5) Consideration of the appeal must take place not less than 14 days after the filing of the notice of appeal, unless the court otherwise directs.
- (6) The Court may direct that there be an oral hearing and the parties shall be entitled to make oral submissions.”.

20. Amendment of Rule 62.11(1)

Rule 62.11(1) of the principal Rules is amended by deleting the number “42” and substituting the number “52”.

21. Amendment of Rule 62.12

Rule 62.12 of the principal Rules is amended by –

- (a) in paragraph (3), deleting “rule 62.9(b)” and substituting “ rule 62.9(1)(a)”;
- (b) deleting sub-paragraph (3)(e) and substituting the following –
“(e) the chronologies under rule 62.11.” ; and
- (c) deleting paragraphs (5) and (6) and substituting the following –
“(5) Where a record of appeal is filed electronically, the appellant shall prepare and file such number of hard copies of the record and core bundle as authorized by the Chief Justice in a practice direction.
- (6) The appellant must immediately serve one copy of the record or (if paragraph (4) applies) one copy of any core bundle on every respondent.
- (7) Any application to correct the record must be made in writing to the Chief Registrar no later than 21 days after the service

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of the record or core bundle in accordance with paragraph (4).”.

22. Amendment of Rule 62.16A

The principal Rules is amended by deleting Rule 62.16A and substituting the following rule –

“Variation, discharge or revocation of an order, direction or decision of a single judge

“62.16A (1) Any order, direction or decision made or given by a single judge may be varied, discharged or revoked by two judges where the order, direction or decision relates to an appeal of a class which may be heard and determined by two judges and by the full court in any case.

(2) An application to vary, discharge or revoke an order, direction or decision made or given by a single judge may be made within 14 days of the date of the order, direction or decision.

- See The Windward Islands and Leeward Islands (Court’s) Order in Council, 1959 (SI 1959 No. 2197), section 10(3) and CPR 2.5 (4) and (5) which provide for actions that may be heard and determined by two judges of the court and actions that may be heard and determined by the full court.”.

23. Deletion of Rule 62.28

The principal Rules is amended by deleting Rule 62.28.

24. Amendment of Appendix

The Appendix to the principal Rules is amended by –

(a) deleting Form 7 and substituting the following –

Form 7: Request for Default Judgment

[Rule 12.7]

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(Heading as in Form 1)

Request for Entry of Judgment In Default

I/We _____ the claimant/claimant's Legal practitioner request entry of judgment against the defendant in default of —

Acknowledgment of service YES/NO

Defence YES/NO

(in case of failure to enter acknowledgment of service) Evidence of service of the claim form and statement of claim is filed with this form.

(in case or failure to serve defence) I/We certify that —

- (a) the time for the defendant to file and serve a defence has expired (including any extension of time agreed between the parties);
- (b) no defence or counterclaim has been served on me/us; and
- (c) the defendant has not paid any monies in settlement of the claim except such sum as is stated below;
- (d) (where appropriate) permission to enter judgment was given by the court on (date).

Judgment should be entered for claim for a specified sum: -

Amount claimed \$

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Court fees on claim	\$
Legal practitioner's fixed costs on issue	\$
Together with interest from date of issue to today	\$
Court fees on entering judgment	\$
Legal practitioner's fixed costs on entering judgment	\$
Total	\$
Less paid since issue of claim	\$
Amount for which judgment is to enter	\$

to be paid [immediately] [on (state date)] or by weekly/monthly instalments
 of \$

OR

Judgment should be entered for claim for an amount to be decided by the Court: [r. 12.10(1)(b)]

Is the claimant in a position to prove the amount of the damages **Yes / No**

If *Yes*

State the estimate of the time the Claimant requires to deal with the assessment

If *No*

State the period of time that will elapse before the Claimant will be in a position to prove the amount of

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damages.

OR

Judgment should be entered for a claim for goods: [r. 12.10(1)(c)]

Requiring the defendant either to deliver the goods
or pay their value as assessed by the court

Yes / No

Requiring the defendant to pay the value of the goods as assessed by the court

Yes / No

OR

Judgment should be entered for some other remedy: [r. 12.10(4)] **Yes / No**

NOTE: Application to determine the terms of the judgment should be made to the court [r. 12.10(5)]

Dated

Signed

[Legal practitioner for the] Claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, FAX xxx.xxxx. The office is open

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between [..... a.m.] and [..... p.m.] to except public holidays.

(b) inserting after Form 31 the following –

Form 32: Form of Judgment for amount to be decided by the Court

[Rule 12.10(1)(b)]

(Heading as in Form 1)

Form of Judgment for amount to be decided by the Court

NO ACKNOWLEDGEMENT OF SERVICE/DEFENCE having been filed by the Defendant herein, it is this day adjudged that Judgment be entered for the Claimant for an amount to be decided by the Court.

BY THE COURT

REGISTRAR

NOTICE:

The matter is adjourned to Chambers for assessment of damages on the day of , 20 .

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The parties are to have regard to rule 16.2 of the Civil Procedure Rules 2000 as amended in relation to the assessment of damages.

Made this 5th day of May 2014.

(Sgd.) Dame Janice M. Pereira
Chief Justice

(Sgd.) Davidson K. Baptiste
Justice of Appeal

(Sgd.) Francis Belle
High Court Judge

Published by the Cabinet Secretary by exhibition at the Office of the Legislature, Farara Plaza, Brades, this 12th day of May, 2014.

(Sgd.) Angela Greenaway
CABINET SECRETARY