



**PRACTICE DIRECTIONS ON
COMMERCIAL PRE-TRIAL
SETTLEMENT (UNDER HIGH
COURT CIVIL PROCEDURE
AMENDMENT RULES 2020 CI 133)
2024**



COMPENDIUM OF PRACTICE DIRECTIONS &
ADMINISTRATIVE GUIDELINES IN GHANA
2024

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Practice Directions on Commercial Pre-Trial Settlement under High Court Civil Procedure Amendment Rules 2020, C. I. 133:

- H/L Justice Angelina Mensah-Homiah (JA)
- H/L Justice Jerome Noble Nkrumah (JA)
- Mr. Alex Nartey

Practice Directions on Court Connected ADR under High Court Civil Procedure Amendment Rules 2020, C. I. 133:

- H/L Justice Koomson (JSC)
- H/L Justice Angelina Mensah-Homiah (JA)
- H/L Justice Jerome Noble Nkrumah (JA)
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Practice Directions in respect of Prerogative Writs involving Chiefs/Chieftaincy Issues

- H/L Justice Samuel Alan Brobbey (JSC) (Rtd)
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Practice Directions on Plea Bargaining 2024

- H/L Justice Afia Serwaa Asare-Botwe (JA)
- H/L Justice Marie-Louise Simmons (J)
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Practice Directions for Determination of Applications for Interlocutory Injunctions to Restrain Burial of a Deceased Person

- H/L Justice Francis Obiri (J)

Administrative Guidelines on Procedures for Online Publication of Judgments and Rulings:

- H/L Justice Jennifer Abena Dadzie (JA)
- H/L Justice Barbara Tetteh-Charway (J)

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- H/L Justice Tandoh Aboagye (J)
- Mrs. Patricia Naa Afarley Dadson
- Mr. Dennis Adjei Dwomoh

Administrative Directions to aid Expeditious Disposal of Trials by Jury

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Administrative Guidelines on using the Supreme Court Registry

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a. Long Title

A Direction to provide guidelines for Commercial Pre-Trial Settlement.

b. Citation

This practice direction may be cited as [**Practice Direction on Commercial Pre-Trial Settlement under High Court Civil Procedure Amendment Rules 2020, C. I. 133 2024**]

c. Preamble

- Being guided by Order 1 Rule 1[2] of the High Court [Civil Procedure] Rules, C. I. 47, which enjoins the courts to interpret and apply the rules in order to achieve speedy and effective justice, avoid delays and unnecessary expense, while ensuring that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and,
- Noting the expansion of scope of Order 58 from the Commercial Division of the High Court to the High Court in general and the Circuit Court and,
- Being mindful of Order 58 Rule 5[1] of C.I. 133, which provides that *after a reply has been filed or the time for a reply has elapsed, the Administrator or the Registrar of the Court shall within seven days assign the case to a Judge for a pre-trial review conference,*

The following Directions are given to guide the conduct of Pre-trial settlement conferences.

d. APPLICATION

These Directions shall apply to the High Court and Circuit Court only.

1. **No case involving Government of Ghana Ministries, Departments or Agencies shall be referred for external mediation.**
2. By **Order 58 Rule 5(2) of C.I. 133**, the Judge who has been assigned a case in commercial categories set out in order 58 shall within 14 days from the date of assignment, invite the parties for a Pre-trial Review Conference.

e. PROCEDURE AT PRE-TRIAL REVIEW CONFERENCE

3. It is mandatory for the Judge to enquire from the parties if they are amenable to having their dispute resolved via Alternative Dispute Resolution [ADR].**[Order 58 Rule 5(3), C.I. 133]**
4. The Judge upon this enquiry from the parties, shall record their answer in the Court Record Book.
5. Where the parties are amenable, the judge shall present to the parties **Form No. 1**, which shall be in two parts. **Part A** shall contain an Agreement to Pre-Trial Settlement and this shall be signed by the Parties and their lawyers or witnesses.

f. NOMINATION AND REFERAL TO MEDIATOR

6. The Judge shall, proceed to present **Part B** of **Form No. 1**, on which the parties shall indicate their preferred mode of ADR. This form shall be signed and witnessed by Lawyers of the parties or any other witness where the party is not represented by a Lawyer.
7. The Judge shall through the registrar, present the parties with the Court's Register of qualified mediators.

The parties may indicate their preference of Mediator by ticking and signing against three mediators, in order of priority on the **Part B** of **Form No. 1**

8. Parties may also request the Judge to nominate a mediator for them, in which case the Judge may do so and shall sign against the name of the preferred Mediator.

9. The Judge shall stay proceedings for a period of not more than 30 days and shall record the Order for Stay of Proceedings.

Form No. 1 shall be the formal Referral Order and shall be sent to the Registrar by the Court Clerk at the close of the day's proceedings. The /Registrar shall transmit this Referral Order to the nominated Mediator.

10. The parties shall set down briefly and number, a **Summary of Issues** in dispute to be settled by the Mediator in **Form No. 2**. This Summary of Issues shall bear the full names of the parties, physical location, Ghana Post GPS address, postal address as well as email and telephone numbers of the parties and counsel as the case may be. **Form 2 shall** be delivered to the Registrar/.

11. The Registrar/ shall submit **Forms No. 1** and **2** to the selected Mediator.

12. Should the parties opt not to settle their dispute via ADR at the Pre-trial Review Conference, the Judge shall record the refusal and as required under **Order 58 Rule 5(6) C. I. 133**, order the case to proceed in accordance with **Orders 32, 33, 34** of the rules of court.

Under **Order 32**, the Judge shall proceed with Application for Directions, setting down issues and making orders for the filing of witness statements and pre-trial checklist pursuant to **Order 33**, to determine the place and mode of trial pursuant to **Order 34, the Judge shall** set down the action for trial upon compliance with **Rule 2(2)**.

g. PROCEEDINGS BEFORE THE MEDIATOR/ARBITRATOR

13. The Judge shall note that, proceedings before the Mediator shall take place and be concluded within 30 days from the date of referral [**Order 58 Rule 5(5) of C.I.133**]. The mediator may seek extension of time in writing, should the circumstances so determine, from the Judge, through the Registrar at least **10 days** before the expiration of the 30 days.
14. An order for extension shall not exceed 14 days [**Order 58 Rule 7 (2) C.I. 133**]. The judge shall state in the order, the commencement and end dates.
15. When the matter has been placed before the Mediator and it has become necessary for the appointment of an expert, [**Order 58 Rule 5(11) C.I. 133**], the Mediator shall first seek the agreement of the parties and if given the consent, the order of appointment shall be referred to the Judge to make.
16. Upon the conclusion of mediation, the parties shall enter into a settlement agreement to be called the Mediation Settlement Agreement. This shall be on **Form No. 4**. The Mediator shall fill in the details of Form No. 4 and read it over to the parties [Order 58 Rule 8 C.I. 133].
17. The Mediation Settlement Agreement found in **Form No. 4**, shall be signed in four copies by the parties and their Counsel or accredited representatives and the Mediator.
18. The Mediator shall within 3 days of conclusion of the mediation forward **Form No. 4** to the Registrar of the Court. The Registrar shall in turn stamp on Form No. 4, the time and date of receipt and provide each party with a copy of the filed Mediation Settlement Agreement, within 7 days of receipt of same from the Mediator.

19. Upon receipt of **Form No. 4**, the Registrar shall place same before the Judge. All the terms of settlement therein shall be adopted and entered by the Court [Judge] after notice to parties to appear before the Judge for said adoption has been given by the Registrar.

h. ENFORCEABILITY

20. The Judge shall ensure that the terms of settlement are enforceable as a judgement or order of court. Where the terms are not enforceable as a judgement or order of court, the Judge shall direct the Registrar to summon the parties for the purpose of settling any outstanding matters regarding enforceability.

i. FAILURE OF SETTLEMENT

21. In the situation where the settlement process has failed, the Mediator shall make a Ruling certifying Failure of Settlement on **Form No. 3** and place same before the Registrar. The Registrar shall stamp the date and time of receipt and shall place **Form No. 3** before the Judge.

22. The Judge shall record the failure of settlement, and proceed in accordance with Orders 32, 33, 34, of the rules of court. Same procedure as would occur when at Pre-trial Review Conference, the parties opt not to settle their dispute via ADR, will be followed.

j. INTERPRETATION

In this direction, unless the context otherwise requires;

- a. **'Agreement'**: a promise or commitment given by one party to another party.
- b. **'Arbitrator'/Mediator**: a neutral third party officially chosen to oversee and settle a dispute outside the court.
- c. **'Court'** means the High Court or the Circuit Court.
- d. **'Judge'**: includes Magistrate.
- e. **'Lawyer'**: means a person whose name has been entered in the Roll of Lawyers to practice in Ghana and does not include a lawyer for the time suspended from practice.
- f. **'Mediation'**: the intervention of a neutral third person helping the parties to a dispute find solution.
- g. **'Parties'**: refers to applicant/respondent, plaintiff/defendant or petitioner/respondent as the case may be.

k. Date for Entry into force

This Practice Direction comes into force on the ...day of....2024.

**GERTRUDE ARABA ESAABA SACKY TORKORNOO
CHIEF JUSTICE OF THE REPUBLIC OF GHANA**

FORM NO.1

IN THE HIGH/CIRCUIT COURT OF JUSTICE

IN THE MATTER OF

PLAINTIFF

AND

DEFENDANT

Suit No.....

PART A

AGREEMENT TO PRE-TRIAL SETTLEMENT

We the undersigned and parties to this suit, do thisday of20..... agree to a pre-trial settlement of our Dispute. We further agree to have our dispute settled via Mediation.

Plaintiff.....

Witness.....

Defendant

Witness

PART B

NOITICE OF APPOINTMENT OF MEDIATOR AND REFERRAL TO MEDIATION

TO:

THE PLAINTIFF AND DEFENDANT

TAKE NOTICE THAT:

3. The above cause scheduled for mandatory mediation.

4. You are required to state in order of priority your preference of two Mediators from the list below

A.....

B.....

C.....

5. You are required to further a Summary of Issues in prescribed Form 2 within three (3) days of the date on this Referral to the Mediator.

Date at Day of20

.....

JUDGE

TO: ADMINISTRATOR/REGISTRAR

Copied to the parties (and counsel if represented)

FORM NO.2

IN THE HIGH/CIRCUIT COURT OF JUSTICE

IN THE MATTER OF

PLAINTIFF

AND

DEFENDANT

Suit No.....

SUMARY OF ISSUES

(To be provided to the Mediator by the Parties before the mediation session)

1. Issues in dispute

The Plaintiff (or Defendant) state that the above issues are in dispute and remain to be resolved.

2. Address of service

Name, physical and postal address, email and telephone number of parties.

Date..... Party's

Signature

FORM NO. 3

IN THE HIGH/ CIRCUIT COURT OF JUSTICE

IN THE MATTER OF

PLAINTIFF

AND

DEFENDANT

Suit No.....

Certificate of Non Settlement

(To be signed by the Mediator at the close of a failed mediation)

This is to certify that the Mediation Session has closed with non-settlement of the dispute.

Date

Mediator

To the Administrator/ Registrar

FORM NO. 4

IN THE HIGH/CIRCUIT COURT OF JUSTICE

IN THE MATTER OF

PLAINTIFF

AND

DEFENDANT

Suit No.....

SETTLEMENT AGREEMENT

We, the undersigned parties to this action have settled our dispute/differences as

Follows:

- 1.
- 2.

Dated

.....

Plaintiff

.....

Defendant

.....

Plaintiff's Lawyer

.....

Defendant's Lawyer

.....

Mediator