

MONTSERRAT
STATUTORY RULES AND ORDERS

S.R.O. 17 OF 2023

**MAGISTRATE'S COURT (ELECTRONIC LITIGATION FILING
AND SERVICE PROCEDURE) RULES 2023**

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**THE MAGISTRATE'S COURT (ELECTRONIC LITIGATION FILING AND
SERVICE PROCEDURE) RULES 2023 MADE BY THE GOVERNOR ACTING ON
THE ADVICE OF CABINET UNDER SECTION 152 OF THE MAGISTRATE'S
COURT ACT, (CAP. 2.02).**

1. Citation

These Rules may be cited as the Magistrate's Court (Electronic Litigation Filing and Service Procedure) Rules, 2023.

2. Interpretation

In these Rules—

“**Court**” means the Magistrate's Court situated in Montserrat;

“**Court's Registry**” includes the registries at the Court;

“**Court's website**” means the website of the Eastern Caribbean Supreme Court;

“**Electronic Litigation Portal**” means the web-based application which has been developed and implemented to offer stakeholders in the judicial system of the Eastern Caribbean a single point of access for electronic litigation filing, management of documents and case files within the Court's Registry;

“**electronic mail**” means the transmission of messages via an electronic device or an internet communication network;

“**electronic means**” means a form of electronic communication of the contents of a document and includes the use of an online application, e-mail, online shared drives, CD ROMs, USB Drives, or Facsimile;

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“party” includes both the party to the matter and any legal practitioner on record for that party unless any rule specifies or it is clear from the context that it relates to the party or to the legal practitioner only; and

“payment facility” includes the means provided for the payment and acceptance of filing fees for documents filed on the Electronic Litigation Portal including cash through a cashier at the court office, an escrow account, credit card payment facility or other payment facility.

3. Application of Rules

- (1) These Rules apply to—
 - (a) magisterial civil proceedings; and
 - (b) magisterial criminal proceedings.
- (2) These Rules apply to proceedings when made available on the Electronic Litigation Portal and notice is provided by the Chief Registrar as directed by the Chief Justice.
- (3) These Rules apply, without exception, to new proceedings filed on or after the date of the notice provided under subrule (2) and must be used to file a document to commence proceedings before the Court through the Electronic Litigation Portal.
- (4) In the case of existing cases, these Rules apply, without exception, if the case is made available in the Electronic Litigation Portal and electronic or other notification is given to the parties by the Court’s Registry.

4. Operation of Electronic Litigation Portal

- (1) The Electronic Litigation Portal makes provision for the electronic litigation filing and service of court documents through the use of electronic means of communication.
- (2) A document must be submitted through the Electronic Litigation Portal to enable electronic litigation filing to the Court’s Registry.
- (3) The Electronic Litigation Portal enables a party to file a document online—
 - (a) to commence proceedings; or
 - (b) in the case of ongoing proceedings,at a time during or outside normal Court office hours of business including weekends and public holidays.

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(4) The Electronic Litigation Portal must contain a payment facility.

5. Registration

- (1) A legal practitioner shall register on the Electronic Litigation Portal to access it.
- (2) A valid electronic mail address must be provided at the time of registering under subrule (1).
- (3) On approval of registration by the Court's Registry, a legal practitioner shall create an account comprising a username and password to be used when accessing the Electronic Litigation Portal.
- (4) Subject to this rule, a legal practitioner shall comply with the procedure, the process for registration and instructions provided on the Court's website.

6. Payment of Electronic Litigation Filing fees

The fees for the filing of a document in the Court may be paid by electronic means using the payment facility available on the Electronic Litigation Portal.

7. Electronic submission of document

For electronic litigation filing of a document using the Electronic Litigation Portal, a legal practitioner shall—

- (a) access the Electronic Litigation Portal by—
 - (i) visiting the Court's website and clicking on the link to the Electronic Litigation Portal; and
 - (ii) logging into the account created under rule 5(3);
- (b) enter information for new proceedings or information on existing proceedings;
- (c) upload for electronic filing the document associated with the proceedings;
- (d) pay the fees using the payment facility available on the Electronic Litigation Portal under rule 4(4); and
- (e) submit the document.

8. Format of document

- (1) A document that is submitted for electronic litigation filing must be—

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- (a)* prepared electronically using a suitable text editor; and
 - (b)* converted into Portable Document Format or PDF before uploading by—
 - (i)* using an Adobe Acrobat software;
 - (ii)* using other compatible portable document format converter software; or
 - (iii)* scanning hard copies of the document.
- (2)** Where a document is not a text document, it must be scanned and saved as a legible Portable Document Format document.
- (3)** A document submitted for electronic litigation filing must not—
 - (a)* exceed 100MB;
 - (b)* be encrypted; and
 - (c)* be password protected.
- (4)** There are no limits on the number of documents which can be submitted in the process of electronic litigation filing.
- (5)** An electronic image of an exhibit must be uploaded and submitted as one file, together with an index of the exhibit where necessary and the corresponding principal document.

9. Electronic signature

- (1)** A document which is submitted for electronic litigation filing is not required to bear the electronic image of the handwritten or physical signature of the party that is filing.
- (2)** A party may insert a signature on a document for electronic litigation filing through the Electronic Litigation Portal.
- (3)** Where a party files a document using the Electronic Litigation Portal, scanned original documents that are signed with a handwritten or physical signature must be made available for inspection, if required, by another party to the proceedings or by order of the Court.

10. Filing within and outside hours of business

- (1)** The hours of business for electronic litigation filing are from 8:00 a.m. – 4:00 p.m. on Monday to Friday, excluding weekends and public holidays.
- (2)** A document to which the Court's stamp and the date of filing information has been applied by the Electronic Litigation Portal is

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deemed to be filed on the filed date and time applied to the document by the Electronic Litigation Portal, except where a notice from the Court's Registry specifies otherwise.

- (3) A document submitted through the Electronic Litigation Portal for filing outside the hours of business for electronic litigation filing or on a weekend, or public holiday is deemed to have an effective filing date as being the date when the Court's Registry is next open.
- (4) A period during which the service is not available through the facility hosting the Electronic Litigation Portal is excluded from the computation of time.

11. Fees

The fees payable in respect of a document for electronic litigation filing are—

- (a) the fees set out in Schedule 1 of the Magistrate's Court Act; and
- (b) the fee specified in Schedule 1.

12. Processing by the Court's Registry

- (1) The Court's Registry, through the Electronic Litigation Portal, shall accept a document submitted for electronic litigation filing.
- (2) Where a document has been submitted using the Electronic Litigation Portal—
 - (a) an automated notification is generated in the notifications section of the Electronic Litigation Portal and must be available to the party once the party is registered and has logged into the system; and
 - (b) the notification under paragraph (a) must be sent by electronic mail to the electronic mail address of the party filing and other parties to the proceedings who are registered on the Electronic Litigation Portal.
- (3) A filed document must be stamped and dated and by electronic means linked to the associated case by the Electronic Litigation Portal.
- (4) The Court's stamp and date of filing information must be applied to an electronically filed document by the Electronic Litigation Portal, validating the authenticity of the document as being filed in the Court's Registry.

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- (5) On payment of the fees using the payment facility provided by the Electronic Litigation Portal, a stamp denoting payment must be applied to the document and the electronic litigation filing fees paid under rule 11 must be printed on the document.

13. Service of document by electronic means

- (1) For a document that is required to be served—
- (a) service may be effected personally; or
 - (b) unless a statutory provision or rule of the Court provides otherwise, service may be effected by the Court Registry via the electronic mail address of the party to be served if the address is known by the filing party.
- (2) The authorisation code generated by the Electronic Litigation Portal must be provided to the other parties in the matter, at the time of service of the document commencing proceedings, to allow them to seek legal representation or to represent themselves in the matter.
- (3) Where the authorisation code generated by the Electronic Litigation Portal is not served on a party in accordance with subrule (2), service is deemed not to have been effected.
- (4) Subrule (3) does not apply where the party is able to show proof of personal service of the document along with the authorisation code.
- (5) A party that receives a document served by electronic means and is unable to view or download the document shall immediately notify the serving party and the Court Registry shall take reasonable steps to ensure that the document can be viewed and downloaded.
- (6) Where the Court Registry is notified in accordance with subrule (5), the Court Registry shall make a copy of the document available to the party.

14. Proof of service by electronic means

- (1) An electronic confirmation of delivery serves as proof of service of a document which has been served by electronic means, but if a dispute arises as to whether service occurred, it shall be resolved by a Magistrate.
- (2) An electronic confirmation of delivery under subrule (1) includes—

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- (a) electronic mail delivery or read receipt;
- (b) confirmation from an electronic internet service provider that the document was delivered to the recipient party's account by that service provider;
- (c) confirmation that the notification or an imbedded hyperlink in the notifications section of the Electronic Litigation Portal was delivered;
- (d) acknowledgment of receipt by the recipient party, counsel or paralegal; or
- (e) other means sufficient to satisfy the Court that the document came to the notice of the recipient party.

15. Service by electronic means by or on the Court

- (1) The Court's Registry may, by electronic means, serve a notice, order, judgment, or other document issued by the Court on a party to proceedings by delivering the document to the electronic mail address of that party.
- (2) A party may serve a document by electronic means on the Court by filing the document through the Electronic Litigation Portal.

16. Use of Electronic Litigation Portal by pro se litigant

- (1) A pro se litigant or self-represented litigant must use the service bureau arrangements at the Court's Registry to obtain assistance with filing his or her documents.
- (2) A document filed against a party or person who at the time of filing appears as self-represented within the Electronic Litigation Portal must be served manually by the filing party unless the self-represented party or person consents in writing to service on him or her by electronic means through the use of an electronic mail or other electronic address furnished for the purpose by that party or person.
- (3) A document required to be served by the Court on a party or person who is self-represented must be served manually unless a party furnishes to the Court's Registry an electronic mail or other electronic address through which he or she may be served.
- (4) A self-represented party or person may serve a document on the Court electronically.

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17. Migration of Matters Manually Filed Prior to Implementation of Electronic Litigation Portal

- (1) To give effect to the migration of a matter, the legal practitioner wishing to effect the migration may request orally in court or, by letter addressed to the Magistrate's Court, that the matter be placed on the Electronic Litigation Portal and issued a new case number.
- (2) For the purpose of subrule (1), a letter of request shall be treated as an application.
- (3) Any written request for migration of a matter must be served on all other parties to the case.
- (4) Where a request for migration is consented to by the parties or is made jointly by the parties, the request must be dealt with on the papers by the Magistrate.
- (5) Where a request is opposed, the hearing of the request may be placed before the Magistrate in open court and the Magistrate shall make such order as he or she deems fit.
- (6) If the request for migration of a matter is granted—
 - (a) an order shall be made as far as practicable in the terms of Form 1 in Schedule 2;
 - (b) the legal practitioners or the parties shall agree a bundle of all previous manually filed documents and upload the bundle onto the Electronic Litigation Portal as an "Additional Volume", which shall not attract any further filing fees for the documents already filed.
- (7) If the request for migration of a matter is granted, each legal practitioner or an unrepresented party must continue any new filings in respect of that claim or appeal on the Electronic Litigation Portal.
- (8) Any document submitted for filing on the Electronic Litigation Portal must reference both case numbers, that is, the new case number assigned by the Electronic Litigation Portal and the old case number which identified the case in the manual filing (e.g. 'MNIMCV2023/0018 formerly MNIMCV2018/0032').
- (9) After the case is created electronically on the Electronic Litigation Portal, where the legal practitioner or party who made the filing is not the plaintiff or his or her legal practitioner—
 - (a) the filing party must note and record the authorisation codes for all the parties and withdraw the representation, as the

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Electronic Litigation Portal will record the filing party as the plaintiff's legal practitioner; and

(b) having withdrawn representation for the plaintiff, the filing party must then perform the "Represent Case" function using the authorisation code for his or her client.

(10) The legal practitioner making the request specified in subrule (1) must then send the relevant authorisation code to each of the other parties in the matter so that each legal practitioner can perform the "Represent Case" function in order to be properly recorded in the case in respect of the client which he or she represents.

(11) The Magistrate may, on his or her own motion, order the migration of a case onto the Electronic Litigation Portal upon giving the parties an opportunity to be heard.

18. Practice Direction and Practice Guide

(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 a Practice Direction or a Practice Guide conflicts with these Rules, these Rules prevail.

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SCHEDULE 1

(Rule 11)

USER FEES FOR ELECTRONIC LITIGATION FILING

DESCRIPTION	FEE
Facilitation	\$2.00 per filing

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SCHEDULE 2

(Rule 17(6))

Form: 1

IN THE MAGISTRATE'S COURT

Montserrat

[Case Number]

BETWEEN:

ABCD

Plaintiff

and

DEFJ

Defendant

BEFORE: [Name of Magistrate]

APPEARANCES:

DATED: The day of 202_

ORDER

UPON READING the letter of request by the [plaintiff/defendant] to migrate the matter to the Electronic Litigation Portal;

AND UPON this matter being determined without a hearing/on the papers (OR **AND UPON** hearing the parties);

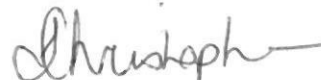
IT IS HEREBY ORDERED:

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1. That the case filed at the Magistrate's Court in Montserrat bearing the Case No. MNIMCV2007/0123 be migrated unto and filed on the Electronic Litigation Portal and issued a new case number thereby.
2. That all subsequent documents to be filed in this case be filed at the Magistrate's Court via the Electronic Litigation Portal.
3. The parties are to agree all previously filed (paper) documents and upload the same as an "Additional Volume" on the Electronic Litigation Portal.
4. Where the parties do not agree all previously filed (paper) documents to be uploaded on the Electronic Litigation Portal then each party must proceed to file their previously filed (paper) documents and upload the same as an "Additional Volume" on the Electronic Litigation Portal.
5. The Court Office of the Magistrate's Court shall verify and reconcile the above mentioned "Additional Volume" with the Court's record.

Made by the Governor acting on the advice of Cabinet this 7th day of June, 2023.


CLERK OF CABINET

Published by exhibition by the Clerk of Cabinet at the Office of the Legislature,
Farara Plaza, Brades, Montserrat, MSR1110, this 7 day of June, 2023.


CLERK OF CABINET