

EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES

PRACTICE DIRECTION 44

No. 8 of 2011

ORAL EXAMINATION IN AID OF ENFORCEMENT

This Practice Direction is made pursuant to Rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and supplements Part 44 of the Rules.

1. Introduction

1.1 This Practice Direction clarifies the position as stated in Part 44 with regard to the oral examination of judgment debtors.

2. Application for Order for Oral Examination

2.1 An application by a judgment creditor must be made by filing an application using Form [29].

2.2 The application notice must –

- (1) state the name and address of the judgment debtor;
- (2) identify the judgment or order which the judgment creditor is seeking to enforce;
- (3) If the application is to enforce a judgment or order for the payment of money, state the amount presently owed by the judgment debtor under the judgment or order;
- (4) if the judgment debtor is a company or other corporation, state

–

- (a) the name and address of the officer of that body whom the judgment creditor wishes to be ordered to attend court; and
 - (b) his position in the company;
- (5) if the judgment creditor wishes the questioning to be conducted before a judge or master instead of the Registrar, state this and give his reasons;
- (6) if the judgment creditor wishes the judgment debtor (or other person to be questioned) to be ordered to produce specific documents at court, identify those documents; and
- (7) if the application is to enforce a judgment or order which is not for the payment of money, identify the matters about which the judgment creditor wishes the judgment debtor (or officer of the judgment debtor) to be questioned.

3. Conduct of Oral Examination

3.1 The examiner as defined in Rule 44.4 of the Civil Procedure Rules 2000 shall ask a standard series of questions, as set out in the forms in Appendices A and B to this Practice Direction. The form in Appendix A shall be used if the person being questioned is the judgment debtor, and the form in Appendix B shall be used if the person is an officer of a company or other corporation.

4. Persons Authorised to Conduct Oral Examinations

4.1 For the purposes of Rule 44.4 of the Civil Procedure Rules 2000, the persons authorized to conduct oral examinations are a judge, master, Registrar or any other officer of the court authorized by the Chief Justice.

5. Effective Date

5.1 This Practice Direction will come into effect on the 1st October 2011 and will be applicable to all civil proceedings whenever commenced.

Dated this 7th day of September 2011.



Hugh A. Rawlins

Chief Justice

Record of examination

(Individual)

In the High Court

Claim No.

Judgment Creditor:

Judgment Debtor:

1

Personal

Full Name

Your age?

Present Address

National Insurance no.

Are you Married? Single?
 Separated? Divorced?
 Living with partner?

Phone numbers:
Home
Mobile

Work
Other

Do you intend moving to another address? Yes
If Yes, what will your new address be and when are you moving?

Date

No

Do you have any dependent children? Yes If Yes, what are their names and ages? Name Age

No

Do you have other dependents living with you, eg. elderly relatives? Yes If Yes, what are their Names and ages and to what extent are they dependent?

No

2 Employment Status

Are you Employed? Go to section 3 below Self employed? Go to section 4 page 3 Unemployed? Go to section 5 page 5 Retired? Go to section 6 page 5

3 Employment Details

What is your occupation?

Where is your place of work if different?

What is your gross pay ie. Before tax, national insurance deductions?

What is the name and address of your employer and your employee number?
employee number

What is your average take home pay including overtime and commission?

How often are you paid? Weekly Monthly Other

On which day are you paid?

Is your pay paid In cash By cheque Direct to bank or other financial institutions

If direct to bank or other financial institution account what is the name and address of the branch and account number?

Account number

Do you have any jobs other than your main job? Yes If Yes, ask for all the above details in relation to all other jobs and set out information below.

No

4

Self Employed

How long have you been self employed?

What work do you do?

What is the name of your business?

Do you have business premises? eg. shop, yard, lockup

Yes If Yes, what is the address?

No

What is your annual turnover?

What amount of profit did the business make over the last year?

How much do you draw from the business?

What were your total drawings in last 12 months?

Are you a

Sole trader?

Partner?

If partner,

(a) How many partners are there?

(b) What is your share of the partnership?

Do you complete Income Tax Returns?

Yes

No

Do you have accounts?

Yes

No

Do you employ an accountant?

Yes If Yes, what is the accountant's name and address?

No

If you don't have an accountant are accounts audited by a third party?

Yes

If Yes, give name and address and say when audit takes place

No

Will you allow the creditor to approach your accountant or auditor or Inland Revenue to verify the information you have given in this section?

Yes

No

Are you working on any contracts at the moment?

Yes

If Yes, give details below

No

Name and address of customer	Nature of work	Contract price	Amount outstanding	Date payment expected

Is any money still due to you for work already done?

Yes

If Yes, give details below

No

Name and address of customer	Nature of work	Contract price	Amount outstanding	Date payment expected

If money (see above) is overdue what steps are you taking to recover it?

Do you have contracts for work in the future? Yes If Yes, give details below

No

Name and address of customer	Nature of work	Expected price

5 Unemployed

How long have you been unemployed?

What is your trade/training/profession?

What steps are you taking to obtain employment?

Do you have any outstanding job interviews? Yes If Yes, when?

No

6 Retired

When did you retire?

By whom are your pension(s) paid, how much is paid and when? (include both state and private pensions)

Pension from	Amount	Frequency of payment

7 Other Income

Is there anyone else in your household who is employed? (Do not include tenants/lodgers. See section 8 on page 6)

Yes

If Yes, how much do they contribute to the running of the home?

No

\$	per
----	-----

Do you receive income from any other source?

Yes

If Yes, from where and how much?

No

8 Residence

Is your home

Your own property?
Go to 8a below

Rented furnished from a private
landlord?
Go to 8b page 7

Rented unfurnished from a
private landlord?
Go to 8b page 7

Other

(eg. CDC apartment) Go to 8b
page 7

8a Your own property

Are you the sole owner?

Yes

No

If No, name joint owner(s)

Do you own the

Freehold?

When did you buy the property?

Leasehold?

Is your home a

House?

Apartment?

How many of the following rooms does it have?

Living rooms?

Kitchens?

Bedrooms?

Bath/shower rooms?

How much Property Tax do you pay per year?

\$

What was the purchase price of property?

\$

What is its value now?

\$

Is your home mortgaged?

Yes

If Yes, what is the name and

address of your mortgage lender?

No

How much are your mortgage payments per month?

\$

How long is the mortgage for? years

When did you take out the mortgage?

How much is currently owed under the mortgage?

Do you let any part of your home? Yes No

If Yes, give names of the tenants/ lodgers and details of rent received

Do you have any loans secured on your home? (eg. further mortgage) Yes No

If Yes, give the same details as for the first mortgage

8b Rented Property

Do you rent On your own? Jointly?

How long have you lived at the property? months years

What is the name and address of your landlord?

Do you share parts of your home with someone unconnected with you? Yes No

How much rent do you pay? \$ per

None

Do you sub-let any part of your home? Yes No
If Yes, give names of tenants/lodgers and details of rent received.

9 Savings, Investments and other Assets

Do you own any property other than your home? Yes No
If Yes, give the address and value and details of any mortgages and lettings

Do you have any bank, credit union or other accounts? Yes No

If Yes, give details below

Name & Address of Bank/Credit Union	Account No.	Type of Account	Balance	Sole or joint A/c	Name(s) of joint account holder(s)

Do you have any shares, investments insurance policies or stocks/bonds? Yes No

If Yes, give details below

Are you making contributions to a pension scheme? Yes

If Yes, give details

No

Do you have any of the following items and how long have you had them?

	Age (years)	Is it owned by you, on hire purchase credit sale or rented?	If not owned by you, give:		
			Name of Creditor	Amount still owed	Payments
Microwave					
Hi-fi/surround sound					
Television (No. _____)					
Video					
Camcorder					
Computer					
Dishwasher					
Camera					
Dining Room Suite					
DVD Player					
Mobile Telephone					
Musical Instruments					
Other Items...					

Do you own a motor vehicle? Yes If Yes, give age, make, model value and registration number. State whether it is owned by you, or subject to a hire purchase/rental agreement.

No

Do you have any assets not previously mentioned? Yes If Yes, give details

No

Assets	Value

Does anyone owe you money, which is not a business debt for work you have done? Yes If Yes, who owes you money and how much do they owe?

No

	Value

10 Other Debts or regular payments and court orders

Expenses per month

Do not include payment made by other members of your household out of their own income or priority debts listed opposite

Mortgage	\$	per
Rent	\$	per
Property Tax	\$	per
Gas	\$	per
Electricity	\$	per
Water charges	\$	per
Housekeeping, food, school meals	\$	per
Travelling expenses	\$	per

Priority Debts

This section is for arrears only. DO NOT include regular expenses listed left

	Total arrears outstanding
Rental arrears	\$
Mortgage arrears	\$
Water charge arrears	\$
Fuel arrears: Gas	\$
Electricity	\$
Other	\$

Children's clothing	\$	per	
Maintenance/child support payments	\$	per	Maintenance arrears
Student loan repayments	\$	per	Income tax
Hire Purchase repayments	\$	per	National Insurance
Cable TV subscriptions	\$	per	
Telephone	\$	per	Others (give details below)
Mobile phone	\$	per	
Other expenses (not court order, priority debts or credit debts listed left)	\$	per	
	\$	per	
	\$	per	
	\$	per	
	\$	per	
Total Expenses	\$	per	Total Priority Debts

Have any court orders been made against you? Yes If Yes, give details below

No

Name of court and case number	Date of Judgment or order	Amount of Judgment or order	Instalments payable per month	Name of creditor	Total still owed	Are payments up to date? (yes/no)	If no, how much in arrears?
TOTALS							

Do you owe money on credit cards or any other loans (not mortgage or business)? Yes If Yes, give details below

No

Name of Creditor	Total amount owing	Instalments payable per month	Are payments up to date? (yes/no)	If no, how much in arrears?
TOTALS				

Have any bankruptcy proceedings been issued against you?

Yes

If Yes, what is the court name and case no.

No

Is the petition

Still pending?

Order made but discharged?

Order has been made but not discharged?

Other outcome? (give details below)

Has an Individual Voluntary Arrangement been made?

Yes

If Yes, give the date

No

If No, is there a current proposal for one?

Yes

No

11

Offer of Payment

Can you make an offer of payment?

Yes

No

If No, please explain why

What is your offer of payment?

Pay in full by day of

Instalments of \$ per to start on

Method of payment Standing order Manager's Cheque

Cash Direct debit

I certify that this is a correct record of the answers I gave to the questions in this document.

Signed _____ Judgment Debtor

Print name _____

Date _____

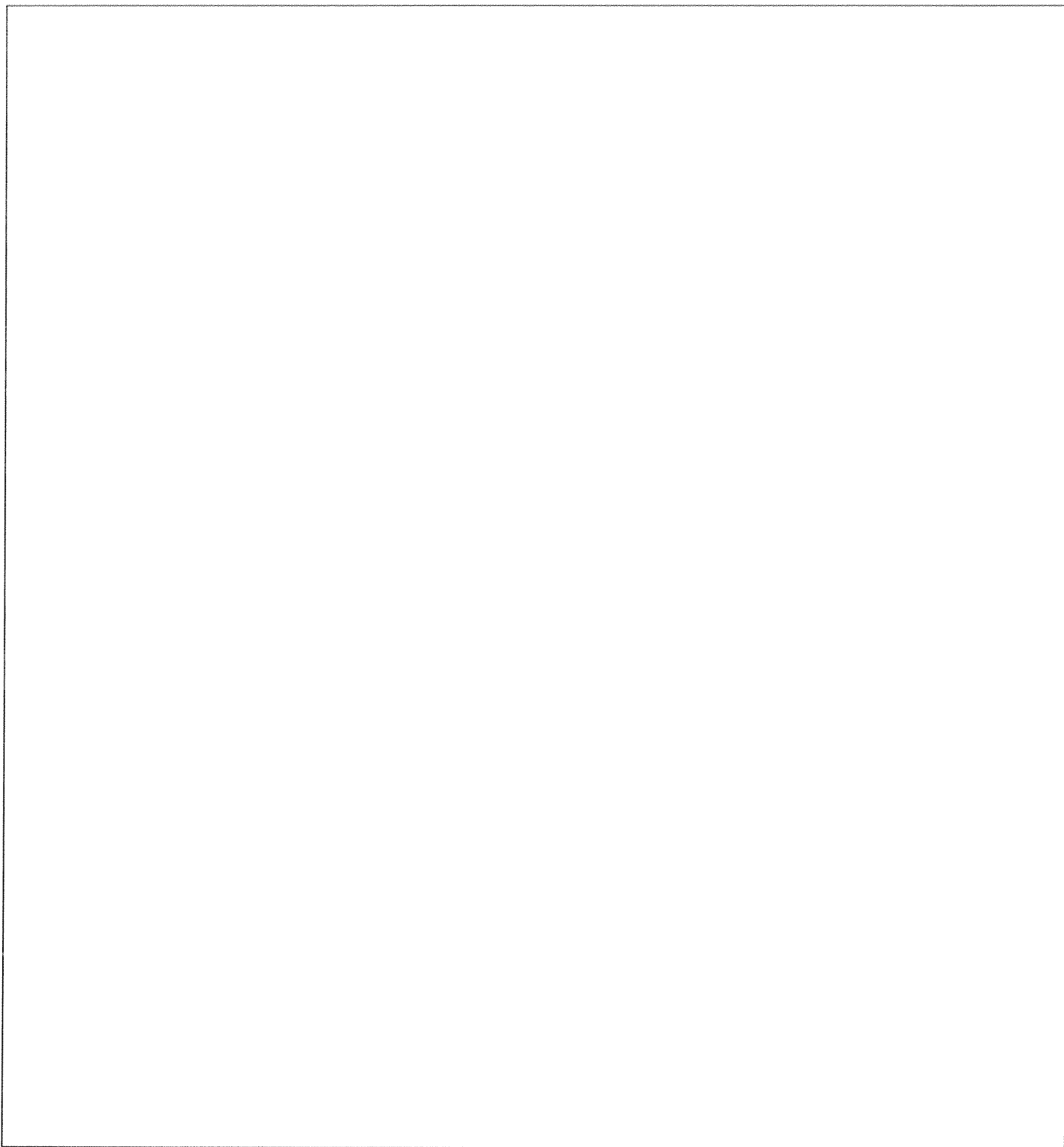
The judgment debtor refused to sign this record of evidence.

Signed _____ Court Officer

Print name _____

Date _____

The judgment debtor produced the following documents:



APPENDIX B

Record of examination

(officer of company or corporation)

In the High Court

Claim No.

Judgment Creditor:

Judgment Debtor:

1 Personal

Full Name

Present Address

Phone numbers:

Home

Mobile

Work

Other

Your position in the company

2 Company Information

Name of company

Company registration no.

Business address

Telephone no.(s)

Is the company the sole occupier?

Yes

No

Registered office

Telephone no.(s)

Name and address of
other company

Name and address of
company solicitors

Name and address of
company accountants

Where are the
company records held?

3

Current operational status

What is the nature of business

--

Is the company still trading?

Yes

No

If No, when did the company cease trading?

How were assets disposed of?

--

Have you any current contracts

Yes

No

If Yes, what are they and what is their total value?

	Value

Have you any future contracts?

Yes No

If Yes, what are they and what is their total value?

	Value

4 Current financial status

Does the company hold any cash?

Yes No

If Yes, say how much and where held e.g. named bank or other?

Does the company have any overdraft facilities?

Yes No

If Yes, please provide details of overdraft facility

What is the name and address of the branch, account number and type?

type of account

account number

How much of the overdraft facility have you used?

All Part

If Part, say how much

Have you approached the bank to increase the limit? Yes No

If No, why not?

If Yes, what was the response?

Is your overdraft secured? Yes No

If Yes, how? Fixed charge
 Fixed and floating charge
 Floating charge
 Personal guarantee

What assets are affected by the charge?

What is the current turnover of the company?

5 Assets

What assets, excluding property, are owned outright by your company? – description, value and in the case of vehicles, registration numbers

What assets are subject to the hire purchase?

--	--	--	--

Value

--	--	--	--

Last payment date

--	--	--	--

What assets are subject to lease purchase?

--	--	--	--

value

--	--	--	--

Last payment date

--	--	--	--

What assets are on lease?

--	--	--	--

Are there any debts due to your company?

Yes

No

If Yes, give details

Name and address of debtor	Invoice no.	Total amount owing?	Are amounts owed disputed? Yes/No

Does your company own livestock? Yes No

Does your company have/own

Investments Yes No

Shares Yes No

Has the company sold any assets within the last 12 months? Yes No

If Yes, on what date?

--	--	--	--

Description of asset sold

--	--	--	--

Buyer's name and address

--	--	--	--

--	--	--	--

Purchase price

--	--	--	--

6 Property

Does your company own any property? Yes No

If Yes, please give address(es) and value

--	--	--

Value

--	--	--

Are the premises mortgaged? Yes No Yes No Yes No

If Yes, give details of lender's name and address

--	--	--

Amount borrowed

--	--	--

• Amount outstanding			
• Date borrowed			
Purchase price			
Current value of property			
Details of any subsequent charges			

Does your company rent any premises from a landlord? Yes No If Yes, how much is paid for Rent?

Is the rent in arrears? Yes No

If Yes, how much?

What action is being taken to recover the debt?

7 Liabilities

Please list all Creditors

--	--	--

Amounts owed

--	--	--

What actions are the creditors taking to recover the debts?

--	--	--

Are the amounts disputed by the company?

Yes No Yes No Yes No

Are any of the debts secured?

Yes No If Yes, how? Fixed charge

Does the company have court order(s) against it?

Yes No

Fixed and floating charge

Floating charge

Personal guarantee

If Yes, please provide details of date of judgment

--	--	--

Name of court

--	--	--

Case number

--	--	--

Name of creditor

--	--	--

Total amount owing

--	--	--

Amount now due

--	--	--

Rate of payments being made

--	--	--

Are the payments in arrears?

Yes No Yes No Yes No

* If Yes, by how much?

--	--	--

* Is the company able to pay its debts as they fall due?

Yes No

8 Other information

Are there any associated or subsidiary companies?

Yes No

If Yes, please provide names

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Place of business

--	--	--

Other trading addresses

--	--	--

What accounting records are kept?

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Have annual returns been submitted to Registry of Companies & Intellectual Property?

Yes No

Do you or any other director/personnel hold a Yes No If Yes, what is the current status? Overdrawn by

Have any assets been transferred to you or any other director/personnel personally Yes No In credit by

If Yes, please give description

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value

--	--	--

Other Information

Have you or any other member of the company received benefits other than by way of salary? Yes No

If Yes, please give details

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Additional Information

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9 Offer of payment

Can the company make payment in full now?

Yes

No

If No, why?

When can the company make payment in full?

Have you any other proposal for payment?

10 Other Debts or regular payments and court orders

I certify that this is a correct record of the answers I gave to the questions in this document.

Signed _____ Judgment Debtor

Print name _____

Date _____

The judgment debtor refused to sign this record of evidence.

Signed _____ Court Officer

Print name _____

Date _____

11 Documents Produced

The judgment debtor produced the following documents:

