

## **IMPORTANT CIRCULAR**

### **CASE MANAGEMENT OF CIVIL TRIAL CASES IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA (JOHANNESBURG)**

1. Practitioners may be aware of the comprehensive case management introduced as a pilot project in this division following a Draft Practice Directive issued by the Chief Justice early in 2012. A copy of the Directive in question is enclosed for your information.
2. The Draft Practice Directive envisages matters being allocated to judges after close of pleadings and the judges will then take control of the litigation and assist the parties to get the matter ripe for trial expeditiously.
3. The decision to introduce this comprehensive case management came from the Office of the Chief Justice.
4. Following consultation with the practitioners and judges in the Pretoria and Johannesburg, the leadership of the judiciary in Gauteng High Courts found that, because of high volumes, it is not practical to allocate every civil trial case to a judge for case management after close of pleadings.
5. The Gauteng High Courts, however, embraced the concept and objectives of case management, but decided to modify same in order to accommodate the high volumes and peculiarities of these two courts.
6. Central to the objectives of the system is to achieve trial date certainty. An allocated trial date must be the date on which the matter will actually be heard and disposed of barring exceptional and unexpected occurrences. It is intended to move away from the practice in terms of which matters that are not ready for trial appear on the trial roll and readiness for trial is established only on the "trial date". The attainment of trial date certainty will make it possible for the judicial leadership in due course to provide a judge for every matter on the trial roll.
7. Trial dates will accordingly be allocated once a matter has been certified ready for trial by a judge during case management.

8. Every civil trial will thus, with immediate effect, go through a judge on case management. Rule 37(8) is, in the interim, being used to bring all civil trials into case management. It is anticipated by the Office of the Chief Justice that in due course the High Court Rules will be amended to provide for case management as an integral part of the civil trial management.
9. The judicial case management of civil trial currently being undertaken through Rule 37(8) is a pilot project. The project runs directly under the Judicial Case Flow Management Committee which operates under the Office of the Chief Justice.
10. Practitioners and members of the judiciary have an opportunity to comment on the pilot project and on how same may be improved. Practitioners have been invited to comment through, inter alia, the Johannesburg Attorneys Association. The Johannesburg Attorneys Association has specifically set up a sub-committee to tackle this issue comprising of Nakka De Klerk [[nakka@couzyns.co.za](mailto:nakka@couzyns.co.za)], Katherine Gascoigne [[katherine@gascoigne.co.za](mailto:katherine@gascoigne.co.za)], Wendel Bloem [[wendel@mhalaw.co.za](mailto:wendel@mhalaw.co.za)] and Jacques Tarica [[jtatica@global.co.za](mailto:jtatica@global.co.za)]. Practitioners can email their comments to any of the aforementioned committee members.
11. The Johannesburg Attorneys Association and the Johannesburg Bar Council will meet regularly (once a month) with the Deputy Judge President to communicate the problems raised by their members and make suggestions on improving case management.
12. Eventually the pilot project will report through the Deputy Judge President to the Judicial Case Flow Management Committee on how the Rules can be amended to introduce and regulate case management in the High Courts.

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DRAFT PRACTICE DIRECTIVE

CASE MANAGEMENT, ALLOCATION OF CASES AND CASE MANAGEMENT CONFERENCES

1. On the commencement of this practice directive, the Registrar shall manage the flow of all cases upon the filing of an action or an application in the Registrar's office until the close of pleadings as provided in this practice directive.
  2. The Registrar and his designated staff shall ensure strict compliance with the time limits laid down in the Uniform Rules of the High Court (the Rules) in respect of all notices, pleadings and the like as set out in the Schedule annexed hereto.
  3. The Registrar shall notify in writing a party who fails to comply with the time limits provided for in the Rules and as set out in the accompanying schedule hereto of such non-compliance. Upon such notice by the Registrar a party shall be afforded an opportunity to remedy the default within a period of 5 days of receipt thereof failing which the Registrar shall refer the matter to the Judge-President or a Judge designated by the Judge-President.
  4. The Judge-President or the designated Judge may take such steps as may be deemed necessary to enforce compliance with the Rules.
  5. After the close of pleadings the Judge-President or The Deputy Judge-President or the senior Judge designated for this purpose by the Judge-President, as the case may be, shall, notwithstanding the provisions of Rule 37(1)(a), allocate the case to a Judge designated to manage the flow of the case.
- 6(1) The Judge shall on notice to the parties schedule an initial case management conference with the parties and their legal representatives, except that the Judge may in his or her discretion dispense with the need for attendance by the parties or any one of them. The conference shall be held at a time set by order of the Judge and shall allow for sufficient time for compliance with subparagraph(2) below.
- (2) At least 21 days before the initial case management conference, the parties shall confer about the nature and basis of their claims and defences, the possibilities for a prompt settlement or resolution of the case, and each of the issues to be addressed at the initial case management conference as set forth in subparagraph (3) below. The parties shall prepare a joint case management report concerning their discussion and shall submit the report to the Judge at least 14 days before the initial case management conference. The plaintiff or applicant, as the case may be, shall initiate contact with the defendant or respondent and shall prepare a first draft of the report. The case management report shall set forth the parties' proposals with respect to the matters identified in subparagraph(3) below. If the parties agree on proposals with respect to some or all of the issues, they shall prepare a joint proposal with respect to those issues. If the parties do not agree on proposals with respect to some or all of the issues, they shall prepare separate proposals with respect to those issues.
- (3) The following issues shall be addressed at the initial case management conference-

- (a) the need for joinder of other parties and the dates for such joinder;
- (b) the need for amendments to pleadings or the filing of further particulars, and the dates for the filing of such amendments or further particulars;
- (c) the need for interlocutory motions and the dates for such motions;
- (d) the admission of facts and other evidence by consent of the parties;
- (e) the control and scheduling of discovery, including but not limited to inspection and production of documents under Rule 35; admissions; inspection, examination and expert testimony under Rule 36 ;and examination of witnesses;
- (f) curtailing the issues in dispute between expert witnesses by their participation in pre-trial conferences or in any other manner;
- (g) the hearing and determinations of objections on points of law;
- (h) any matter that might be raised as a special case for adjudication on a point of law under Rule 33(1);
- (i) the giving of orders or directions for the hearing of any separate issue of law or fact under Rule 33(4);
- (j) the dates for further case management conferences, if necessary, and for the final pre-trial conference;
- (k) the possibilities of settlement negotiations or possible mediation of the dispute;
- (l) such other matters as may facilitate the just and speedy disposal of the case, which may include the setting of trial dates.

7. The initial case management conference shall, save in exceptional circumstances, be completed in a single conference and shall not be adjourned.

8. Immediately after completion of the initial case management conference, but not longer than 14 days after completion thereof, the Judge shall issue a case management order in accordance with Form 1 annexed hereto. The case management order shall address the issues set forth in Paragraph 6(3) above that are relevant to the case and shall establish a schedule for all relevant events. The case management order shall govern the subsequent conduct of the proceedings and shall be modified by the Judge only upon good cause shown.

9. The Judge may from time to time schedule, or the parties may from time to time request, additional case management conferences. Such additional conferences shall be held to facilitate the continuing judicial control of the case and may address any of the issues set forth in Paragraph 6(3) above or any other issues relevant to the management or resolution of the case.

10. Prior to the trial in any case, the Judge shall hold a final pre-trial conference. The conference shall be held at a time determined by the Judge and shall be attended by the parties and their legal representatives involved in the case. The final pre-trial conference shall address the issues set forth in Paragraph 6(3) above, the parties' proposed final pre-trial order and any other issues relating to a fair and efficient trial.

11. At least 14 days prior to the final pre-trial conference, the parties shall submit to the Judge a joint proposed final pre-trial order. The plaintiff or applicant, as the case may be, shall initiate contact with the defendant or respondent and shall prepare a first draft of the proposed final pre-trial order which shall identify the following-

(a) all issues of fact to be resolved at the trial;

(b) all issues of law to be resolved at the trial ;

(c) all relevant common cause facts;

(d) all witnesses who may be called to testify during the trial, identified by the party that intends to call the witness, with a brief summary of the substance of each witness' anticipated testimony;

(e) all exhibits to be introduced into evidence during the trial, identified by the party that intends to introduce the exhibit;

(f) all objections to identified witnesses and exhibits;

(g) the anticipated length of the trial;

(h) the trial date;

(i) any proposals for expediting the trial;

(j) prospects for settlement of the case and whether the parties have participated in mediation or other settlement efforts

12. Immediately after completion of the final pre-trial conference, but not longer than 14 days after completion of the conference, the Judge shall issue a final pre-trial order in accordance with Form 2 annexed hereto, which the Registrar shall deliver to the parties forthwith. The final pre-trial order shall be based on the parties' proposed final pre-trial order, as modified by the Judge, shall specify the issues set forth in Paragraph 10 above and shall set a firm date for the trial.

13. Issues, evidence and objections not specified in the final pre-trial order shall not be available to parties at the trial. Once issued by the Judge, the final pre-trial order shall be amended only to prevent manifest injustice.

14. The final pre-trial conference shall, save in exceptional circumstances, be completed in a single conference and shall not be adjourned.

15. If a party or his or her legal representative fails without lawful cause to attend an initial case management conference, additional case management conference or final pre-trial conference, fails to participate in the preparation of a case management report or proposed final pre-trial order, fails to adhere to the terms of a case management order or final pre-trial order, or fails to participate in the case management or final pre-trial processes in good faith, the Judge may issue such orders as are just, including but not limited to the following-

(a) an order refusing to allow the defaulting party to advance or oppose designated claims or defences, or prohibiting that party from introducing designated issues in evidence;

(b) an order striking out pleadings or parts thereof;

(c) an order dismissing a claim or entering final judgment;

(d) an order requiring the defaulting party or his or her legal representative to pay the other party's costs caused by the default.

16. In the case of opposed applications, where the issues are simple and no evidence is to be led, the Judge may dispense with any case management conference and may set a trial date, giving such other directions for the conduct of the hearing as he or she may deem fit.

17. This practice directive shall, as far as possible, be implemented in consonance with the provisions of Rule 37. Where necessary, directions shall be obtained from the Judge to whom a matter is allocated in order to resolve difficulties in this respect.

18. This practice directive shall come into operation on \_\_\_\_\_ .