DIRECTIVE FOR 2015 FIRST TERM

GAUTENG LOCAL DIVISION

ALLOCATION OF TRIAL DATES, CERTIFICATION OF MATTERS INVOLVING EXPERT EVIDENCE AS TRIAL READY, AND SWIFT REMEDIES FOR DELAYS IN LITIGATION: 2015

1. Henceforth, only trial matters involving expert evidence shall be subject to judicial case-flow management and require certification before being allowed to proceed to trial on the set down date, in accordance with the procedures set out herein.

2. With effect from 5 January 2015, at the time a summons is issued, the plaintiff's attorney shall declare to the registrar which of two classifications must be recorded; ie:
   2.1. 'Trial requiring expert evidence' – in respect of which the registrar shall add an "X" to the case number.
   2.2. 'Other matter'

2A. Matters *which were initially classified under 2.2, but in which*, after the issuing of summons, it becomes apparent that expert evidence will be involved, must be referred to the registrar *for reclassification from 2.2. to 2.1*.

3. With effect from 17 December 2014, parties may apply for and be allocated trial dates as provided for in Transvaal Rule 7; ie upon close of pleadings.

4. Attorneys and counsel, and all unrepresented litigants are required to expedite pre-trial preparation by making full use of the rules of court. To promote that outcome:

4.1. A motion court (The Trials interlocutory Court) dedicated to interlocutory matters in trial matters will sit every Tuesday except during the period of dies non between 15 December and 15 January.

4.2. This court will, in particular, deal with all instances of non-compliance, in trial matters, with the rules and the practice manual, and practitioners are encouraged especially to use Rule 30A.

4.3. Among the matters which this court will deal with will be the failure to deliver timeously any practice note or heads due in the trial matters, a failure to sign a rule 37 minute promptly, a failure to comply timeously with any undertaking given in a rule 37 conference, or the failure to secure an expert timeously for a meeting of experts. The list is not closed.

4.4. In a proper case, penal costs may be awarded where recalcitrance or obfuscation is apparent and is the cause of inappropriately delaying the progress of any matter.

4.5. Matters shall be set down on notice filed before noon on the Thursday before the Tuesday sitting.

4.6. Draft orders in duplicate bearing the name of counsel and attorney shall be presented to the court and the registrar shall prepare orders on the same day as they are granted which shall be available for collection from 9h00 the next day.

5. At the time a trial date is applied for, the plaintiff shall file a practice note that the parties are in agreement that the merits of the claim and the quantum of damages be separated or not be separated, and the registrar shall staple that practice note to the inside left cover of the file. The allocation of a date shall be notified to the attorney by fax.

6. If the parties agree to a separation, the merits leg will not be case managed. If there is no agreement to separate, the judge convening the certification conference shall deal with the issue as set out in paragraph 11.3

7. The plaintiff shall, at any time that the matter is believed to be trial ready, but not later than the Monday, five weeks before the week in which the trial is set down, file an application in the prescribed format set out in paragraph 8 for a judicial pre-trial conference to certify trial readiness (the certification conference); if no application is timeously made the trial shall not be allowed to proceed on the set down date.

8. An application for a certification conference shall be made by the plaintiff (at room 004) in the following prescribed format which will enable the designated judge to read quickly and digest the subject matter in order to be optimally prepared to engage with the legal representatives. The peremptory requirements are as follows and the documents shall be placed in this order, on top of the documents in the file, together with an indexed filing note:

8.1. A legible, indexed and paginated set of pleadings together with a spreadsheet of pleadings in which the admitted and disputed allegations are set out.

8.2. A copy of the Rule 37 conference, in compliance with Rule 37(7), paginated, signed on behalf of all parties and registered (at Room 128); the minute shall not be prolix, repeat the pleadings, be obscure, evasive, be replete with vacuous answers to requests, or manifest ritualistic compliance with the rule. Non-compliance may imperil the certification of the matter.

8.3. A statement by the plaintiff's attorney containing:

8.3.1. Confirmation that discovery is complete for all parties, and if not, why not and when will discovery be complete; if any party is dissatisfied with any aspect of the discovery, that issue must be described and explained.

8.3.2. A succinct summary of common cause facts about which no further evidence shall be allowed at the trial.

8.3.3. A statement of the questions of law and of fact that the trial court must decide.

8.3.4. If the parties have not already agreed to separate merits and quantum, whether they have now agreed to do so, and if not, a motivation why it is appropriate not to do so.

8.3.5. A list of witnesses who may be called testify, and broadly what issue each witness will address.

8.4. In regard to expert evidence, copies that are legible, paginated, and bound must be presented; if any reports are not to hand, an explanation must be furnished and a timetable given when they shall be available.

8.5. Furthermore:

8.5.1. Expert reports must be drafted in a format designed for lucidity, brevity, and convenient cross-referencing and, to this end, must be in numbered paragraphs, and when referring to other expert reports refer to the numbered paragraphs therein.

8.5.2. Joint minutes must identify exactly what is agreed and what is not agreed, with reasons stated why disagreement cannot be achieved, especially as to whether the disagreement relates to a fact clinically observed or an interpretation of facts.

8.5.3. The attorney responsible for the procurement of the reports shall be responsible for compliance in this regard; failure to adhere hereto may imperil certification.

9. At the time that the application is made for the certification conference, the registrar shall at once allocate the matter to a designated judge on a fixed date and time on Wednesday or Thursday or Friday, from 9h30, in the fourth week before the week of the set down date, and the plaintiff shall notify every other party thereof within 1 day of the allocation

and file proof of such notification. (A tabular schedule recording the necessary information shall be maintained by the registrar in a prescribed form.)

10. The judge who presides at the conference shall be furnished by the registrar with the trial files on the Friday before the week in which the certification conferences are to be convened.

11. In the certification conference the judge shall engage the parties' representatives in a manner foreshadowed by the prescriptions of the application for certification and, without limiting the scope of the engagement:

    11.1. shall, initially explore a settlement, and if that is not attainable,

    11.2. shall deal with the grant or refusal of any amendments sought, and,

    11.3. shall identify the exact issues to go to trial, and order a separation in terms of Rule 33(4) if appropriate, and

    11.4. shall endeavour to promote agreement on limiting the number of witnesses that are necessary to be called, and, thereafter:

    11.5. may certify the matter trial ready, or

    11.6. may, subject to paragraph 11.7, refuse certification, in which event the set down date is forfeited; provided that if the matter becomes settled by the date set down for trial, an order by consent may be sought at the roll call, or

11.7. may, if in certain respects compliance in terms of the Rules is not yet due, eg filing of expert reports, as regulated in Rule 36, and it is for that reason the matter is not fully ready, the judge shall put the parties on such terms as are appropriate to achieve trial readiness in time for the matter to commence on the set down date, and

11.8. may, whenever necessary, direct an issue to be addressed in the Interlocutory Court at its next sitting, or

11.9. may make such other order appropriate to expedite the progress of preparation.

12. At the conclusion of a certification conference, the judge shall summarise the decisions made and the judge may, if deemed necessary, direct the plaintiff to file a minute within five days, which shall be settled by the judge, and stapled to the inside left cover of the file.

13. On the Monday, before noon, of the week before the week during which trial is set down the plaintiff shall file with the DJP a practice note stating:

13.1. any information about a settlement or prospective settlement,

13.2. the status quo about the trial's readiness to proceed,

13.3. **estimated duration**,

13.4. the names and email addresses of all counsel and attorneys involved.

13.5. An updated version of the statement referred to in paragraph 8.3 above.

13A. A copy of the document/s referred to in para 12 above shall be attached to the practice note.

14. In appropriate cases, the DJP may allocate a trial judge before the roll call, in which case attendance at the roll call shall be excused, and all further communication shall be with the designated trial judge, who may convene a further pre-trial conference, if deemed appropriate.

15. Nothing provided for in this directive shall inhibit litigants from applying in terms of Rule 37(8) for judicial case management at any time after issue of summons, whereupon the DJP shall designate a judge to conduct such process which judge shall exercise such powers as provided for herein, mutatis mutandis.

16. Practitioners are expected to comply fully with this directive and any relaxation shall require proper motivation. In such cases where the plaintiff is recalcitrant, the defendant may on its initiative take any step that the plaintiff has failed to take.

17. The DJP shall convene a monitoring committee comprising himself, one advocate and one attorney, whose function will be to receive comments of any kind from the legal professions about the system and, insofar appropriate, to adapt the system to achieve the following objectives:

    17.1. The avoidance of delays, waste of time and of costs.

    17.2. The avoidance of postponements of trials,

    17.3. The promotion of early settlement of trials.

    17.4. The efficient and competent preparation of trials.

17.5. The reduction of the duration of trials.

Transitional arrangements

18. This procedure prescribed in this directive shall apply to trials set down from Monday 9 March 2015. Trials set down between 26 January and 6 March 2015, if not already certified trial ready, will not require certification in terms of this directive, but the practice note to the DJP stipulated in paragraph 12 must nevertheless be furnished, the first of which practice notes must be filed on Monday 19 January 2015.

19. The first applications for certification conferences shall be received by the Registrar from Monday 19 January 2015, between 9h00 – 12h45 (Note: Certification applications must NOT be filed before this date)

20. The First certification conferences will be convened from 11 February 2015, and shall be convened on Wednesdays, Thursdays and Fridays, from 9h00 onwards, at times stipulated in the notice given to the plaintiff by the registrar at the time of application.

21. The first sitting of the interlocutory court shall be 27 February 2015, and the first notice may be filed from Monday 19 January 2015. (Note: notices must NOT be filed before this date)

22. Trial matters which have already been enrolled on the old case Management system for judicial pre-trial conferences in the first two weeks of the first term, 2015, ie between 26 January and 6 February 2015, shall remain enrolled. Furthermore:

22.1. The matters which are certified ready at those pre-trial conferences shall be entitled to a preferential trial date allocation from 4 June onwards.

22.2. Matters which fail to be certified shall nevertheless, be entitled to apply for a trial date; and in such cases:

22.2.1. A preferential date may be allocated insofar as that can be accommodated, from June 4 onwards, but such matters shall rank after the matters which have been certified ready.

22.2.2. All such matters which fail to be certified shall be subject to the new certification process set out above, and an application for certification must be made by not later than the Monday five weeks before the trial date allocated, as set above in paragraph 7.

23. In any other matter, not enrolled for a judicial pre-trial conference between 26 February and 6 March 2015, which has previously failed to be certified ready and has been postponed to date after 4 March 2015:

23.1.1. the plaintiff may apply for a trial date,

23.1.2. a preferential trial date shall be allocated, but shall rank after matters referred to in paragraph 22.1.

23.1.3. the matter shall be subject to the new certification procedure set out herein.

24. In any other matter,

24.1. which has not enrolled for a judicial pre-trial conference between 26 February and 6 March 2015, or,

24.2. which has previously failed to be certified ready and has not been postponed to date after 4 March 2015,

24.3. a trial gate may be applied for which shall be allocated on a preferential basis, but shall rank after matters mentioned in paragraph 22.1

25. When applications for trial dates as described in paragraph 22, 23 and 24, are made, the plaintiff attorney must draw the file to demonstrate to the registrar that the matter has been subjected to the old case management process and is eligible for a preferential date.

Deputy Judge President
10 December 2014