OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

PRACTICE DIRECTIVE FOR MPUMALANGA DIVISION OF THE HIGH COURT ISSUED BY THE CHIEF JUSTICE OF SOUTH AFRICA IN TERMS OF SECTION 8(3) OF THE SUPERIOR COURTS ACT 10 OF 2013

WHEREAS the CHIEF JUSTICE of the REPUBLIC of SOUTH AFRICA is in terms of section 8(3) of the Superior Courts Act 10 of 2013 (the Act) entitled to issue written directives to judicial officers in respect of norms and standards for the performance of judicial functions;

AND WHEREAS in terms of section 8(4)(b) of the Act, the management of judicial functions of each court is the responsibility of the Head of Court;

AND WHEREAS in terms of section 8 (5) any protocol or directive in terms of section 5 (3) shall only be issued by the Chief Justice if it enjoys the majority support of Heads of those on which it would be applicable and published in the Gazette;

AND WHEREAS judicial functions in terms of section 8(2) and (4)(b) include inter alia:

(e) management of procedures to be adhered to in respect of-

(i) Case flow management;

(ii) Finalization of any matter before a judicial officer, including any outstanding judgment or decision;

AND WHEREAS pursuant to subsection (3) read with subsection (5) of section 8, heads of superior courts and magistrates courts in South Africa met in Cape Town on 13 and 14 February 2014 respectively and supported norms and standards which were published on 28 February

2018 in Government Gazette No. 37390, a provisional Practice Directive for Mpumalanga Division of the High Court is hereby issued with immediate effect as follows:

1 FINALISATION OF ALL MATTERS BEFORE JUDICIAL OFFICERS

1.1 All judicial officers must strive to finalize all matters, including outstanding judgments, decisions or orders as expeditiously as possible[1]. As a result, civil cases in the High Courts should be finalized within 1 (one) year from date of issue of summons[2] or from date of issue of motion proceedings.

1.2 With regards to criminal cases, judicial officers shall strive to finalize such matters within 6 months after the accused has pleaded to the charges[3] in the high court and judicial officers are enjoined to take proactive stance to invoke all relevant legislation to avoid lengthy periods of incarceration of accused persons whilst awaiting trial[4].

1.3 Every judicial officer shall amongst others, ensure that there are no unnecessary postponements and that any postponement or stand down have to be justified.

2. JUDICIAL CASE FLOW MANAGEMENT IN GENERAL

2.1 Case flow management shall be directed at enhancing service delivery and access to quality justice through speedy finalization of all matters[5], whether it being civil, unopposed or opposed application, and or criminal cases, etc.

2.2 Judicial officers should take control of the management of cases at the earliest possible opportunity[6].

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[1] Paragraph 5.2.5 of Norms and Standards
[2] Paragraph 5.2.5 (1) (a) of Norms and Standards
[3] Paragraph 5.2.5 of the Norms and Standards
[4] Paragraph 5.2.4 (i) of Norms and Standards
[5] Paragraph 5.2.4 (v) of Norms and Standard
[6] Paragraph 5.2.4 (iv) of norms and standard

2.3 To ensure that there is adherence to paragraph 5.2.4 of the norms and standards to which all judicial officers are obliged to comply with, civil, all motion and criminal cases in this Division shall be case managed as indicated hereunder.

3. MANAGEMENT OF ACTION MATTERS

3.1 Upon delivery of an appearance to defend, the registrar of the court shall within five days place the matter on the judicial case management roll at 8h45 on any day before any judicial officer available who shall be provided with an updated provisional civil and motion rolls referred to in paragraph 26.1 hereunder.

3.2 Should there be a need for an interlocutory application, such as exceptions and so forth, time-frames without compromising the Rules of Court shall be set for completion of such applications to ensure that the matter is speedily ready for trial.

3.3 Date of hearing on the unopposed or opposed motion roll of any such interlocutory application referred to in paragraph 3.2 above, shall be set with time-frames to ensure readiness for hearing.

3.4 Directives and or orders made during case management proceedings with regard to time-frames and date of hearing shall be determined and agreed upon by the parties and or their legal representatives and it shall be assumed that the time frames set by them are realistic and achievable.

3.5 Parties and or their legal representatives may agree to abridge the time frames in the Rules as contemplated in Rule 27(1) for the sole purpose of expediting the pace of litigation in a particular matter.

3.6 The time-frames to be determined and agreed upon as envisaged in 3.5 above, shall include, but not be limited to the filing of a plea, discovery and any other

information or documents as contemplated in Rules 35 and or 36 whenever applicable in a particular matter.

3.7 Should any party fail to comply with the time-frames set out during case management proceedings, the other party shall be entitled to invoke the provisions of Rule 30A as amended and compel the defaulting party to comply therewith.

3.8 Should any party to divorce proceedings wish a Family Advocate to institute an enquiry to enable him to furnish to the court at trial a report and recommendations on any matter concerning the welfare of each minor or dependent child of the marriage concerned, such a party to divorce proceedings shall so request the Family Advocate as contemplated in subsection (1) (a) of section 4 of Act No. 24 of 1987.

3.9 Referral of divorce summons to the Family Advocate by a party to divorce proceedings for "*endorsement*" shall be construed as a request for the report contemplated in section 4 (1) (a) of the Act

3.10 Failure to attend case flow management hearings shall not detract the other party from having a matter being case managed.

3.11 Failure to attend case management proceedings by parties' legal representatives, amounts to unprofessional conduct and shall result in an order or directive being issued for the filing of an affidavit explaining why failure to attend case management hearing should not be reported to the Professional Council and in an appropriate case why an order for costs should not be made.

4. HOLDING OF PRE-TRIAL CONFERENCES AND OR CASE MANAGEMENT PROCEEDINGS

4.1 The Head of each court shall ensure that judicial officers conduct pre-trial conferences as early and as regularly as may be required to achieve the expeditious finalization of cases[7].

4.2 For the purpose of achieving the imperative in paragraph 5.2.4(vi) of the norms and standards, all matters enrolled on the civil trial roll shall be preceded by judicial case management in Terms of Rule 37A and or pre-trial conference in terms of Rule 37(8)(a) which empowers a judge, if he or she deems it advisable, at any time at the request of a party or *mero motu*, call upon the attorneys or advocates for the parties to hold or to continue with conference or case management proceedings before a judge and may direct a party to be available personally at such conference or case management proceedings.

4.3 Once a matter is placed on the case management roll it shall not be removed from the roll by agreement between the parties.

5. ENROLMENT AND ALLOCATION OF TRIAL DATES

5.1 No matter may be enrolled for hearing unless it is certified trial ready by a judicial officer[8].

5.2 For the purpose of trial readiness, especially with damages claims, a Form termed "CASE MANAGEMENT DIRECTVE/ORDER" annexed to this Practice Directive as Form A shall be completed by the parties or their legal representatives wherein a date of trial and time-frames are determined by the legal representatives, accepting that they know better the status and or readiness of their matters.

5.3 Paragraphs 6 and 7 of Form A shall strictly be enforced to ensure that completion of Form A does not become a routine with no consequences.

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[7] Paragraph 5.2.4(vi) of Norms and Standards
[8] Paragraph 5.2.4(vii) of Norms and Standards

5.4 At any pre-trial conference or case management proceedings, the Registrar of the court shall ensure that a judge conducting the pre-trial conference or case management proceedings is provided with "Provisional Trial Roll" indicating the available dates for enrolment.

5.5 The 'Provisional Trial Roll' referred to in paragraph 5.4 above shall be updated by the Registrar on a daily basis and shall also be made available to legal practitioners on request.

5.6 Form A shall be endorsed or signed by the judge concerned to ensure that matters allocated for trial without the sanctioning of a judge and without having gone through pre-trial conference and or case management, are avoided.

5.7 An issue that is not sufficiently catered for in Form A or for which there is no sufficient space to state such an issue, it shall be stated in a separate paper or document which shall form part of the pre-trial directive or case management directive or order.

5.8 During case management or pre-trial proceedings the parties or their legal representatives will be engaged to ensure that readiness for trial and expeditious finalization of cases are realized.

5.9 Unpreparedness during case management or pre-trial conference proceedings shall be regarded as unprofessional conduct seeking to frustrate case management.

5.10 The court file for case management shall be indexed and paginated before the scheduled date.

5.11 Only legal representatives with right of appearance in the high court will be entitled to appear during case management or pre-trial proceedings.

6. POSTPONEMENNT AND REMOVAL OF MATTERS FROM THE ROLL

6.1 There shall be no postponement *sine die* or removal from the roll of any matter, whether it being on the case management, trial, motion and or appeal roll.

6.2 Every case that is on any roll in the Division, shall be kept live and active on the roll until is finalized in its entirety and if it has to be postponed, it shall be postponed to a specific date and further be case managed.

6.3 At the hearing of a matter, the court shall consider whether or not it is appropriate to make a special order as to costs against a party or his attorney, because he or his attorney;

(i) did not attend a pre-trial conference; or

(ii) failed to a material degree to promote the effective disposal of the litigation[9].

6.4 Where a postponement is granted during a hearing of any matter, whether it being civil, motion or appeal matter, the judge granting the postponement shall summarily inquire as to who is responsible for the postponement and who has 'failed to a material degree to promote the effective disposal of the litigation' and where appropriate, grant punitive costs order, including payment out of pocket as envisaged in paragraphs 7 and 7.1 of Form A annexed to this Practice Directive.

6.5 Should it not be possible to summarily make an order of costs occasioned by a postponement, the judge concerned shall reserve judgment on costs and where necessary order, for the filing of affidavits. In other words, '*costs in the cause or costs reserved'* ought to be avoided.

[9] Rule 37(9) (a) of the Uniform Rules

6.6 What is stated in 6.4 and 6.5 will ensure that another judge is not burdened with determination of an order for reserved costs but most importantly it will ensure that failure by the parties or their legal representatives to '*a material degree promote the effective disposal of the litigation*', is averted.

6.7 The tendency by the legal practitioners to agree to forfeit any entitlement to charge their clients with any day/appearance fee, costs and or disbursements occasioned by the postponement or late settlement as displayed in this Division, amounts to an abuse and unprofessional conduct.

6.8 For the purpose of dealing with this potential abuse and unprofessional conduct, a judicial officer granting a postponement may in appropriate cases, particularly with repeat defaulters, refer the conduct of such defaulting legal practitioners to a Professional Council or Body.

6.9 Any request for a postponement shall be on a substantial application to be enrolled on the unopposed motion roll at least 7 court days before the trial date or may be enrolled on the urgent roll provided the circumstances to justify such enrollment on the urgent roll as per paragraph 19 hereunder, are set out.

7. REMOVAL FROM THE ROLL UPON SETTLEMENT

7.1 Removal from the roll of any matter whether civil, motion or appeal shall only be allowed if it has been settled in its entirety or withdrawn to the extent that the matter can be regarded as finalized in its entirety.

7.2 Upon settlement of a matter in its entirety notice of removal as per Form B annexed to this Practice Directive shall be delivered, meaning served and filed.

7.2 Once a matter is settled in its entirety, the settlement agreement or draft order thereof shall immediately be filed with the Registrar accompanied by notice of

removal from the trial or motion roll filed with the registrar at least 7 clear court days before the date of trial or hearing of the matter.

7.3 No notice of removal filed after the date indicated in paragraph 6 of Form A or paragraph 3.6 of Form C, shall be accepted by the Registrar.

7.4 It is not in each and every matter which is settled except divorce matters, that there will be a need to make the settlement agreement or draft thereof an order of court unless the motivation is to escalate legal costs or to clock the court's rolls unnecessarily. To curb this, it is hereby directed as follows:

7.4.1 Settlement agreement shall be enrolled to be made an order of court only when it is accompanied by well-grounded motivation showing that the other party has failed to comply with the terms and conditions of the settlement agreement.

7.4.2 If it becomes necessary to immediately make a settlement agreement or draft thereof an order of court, a party seeking such an order shall file an affidavit stating why it is necessary to immediately make the settlement agreement or draft thereof an order of court.

7.4.3 When a matter is enrolled on the settlement roll only one party or legal representative shall appear and be entitled to costs of appearance provided a consent letter from the other party confirming the settlement agreement or draft thereof and tendering costs for appearance, is provided to the court.

7.4.4 Should the other party refuse to provide such a letter, he or his legal representative shall be obliged to attend court on the settlement date and shall run the risk of forfeiture of appearance fee and or special costs order.

7.4.5 All settlement agreements or draft orders to be made an order of court, shall be delivered and enrolled on the settlement roll at 8h45 on any court day upon 24 hours' notice.

7.5 Divorce matters once settled, shall be removed from the trial roll and placed on the unopposed motion roll.

8. NO SETTLEMENT ON THE DATE OF HEARING

8.1 There shall be no settlement on the date of trial or hearing

8.2 Any settlement on the date of trial or hearing is tantamount to failure to a material degree promote the effective disposal of the litigation[10].

8.3 Many matters against the Road Accident Fund are settled on the date of trial and at a huge legal expense to the public purse and thus the need for directive in paragraphs 7, 8.1 and 8.2 above read with paragraph 6 of Form A.

8.4 Any matter that is settled on the date of trial shall invoke an inquiry as contemplated in paragraphs 6 and 7 of Form A and any defaulting party or attorney may be ordered to pay costs on a punitive scale and or out of pocket, including forfeiture of appearance or day fee.

8.5 Any judicial officer making a settlement agreement and/or draft order an order of court on a date of trial or hearing, shall conduct an inquiry or make an order for filing of affidavits and reserve judgment on the issue of costs occasioned by the late settlement.

9. MANAGEMENT OF THE ROLL CALL

[10] See footnote 9 above

9.1 The Judge President or a senior judge designated by the Judge President and or Deputy Judge President shall conduct trial roll call on every Monday of a trial week which shall start exactly at 08h45.

9.2 The procedure during the trial roll call shall be in three stages:

9.2.1 First, those matters which are ready for trial shall be allocated to the available Judge or Judges to start with the leading of evidence immediately upon allocation.

9.2.2 Should the Judge conducting the roll call allocate any matter to himself or herself, he or she shall upon completion of allocation, immediately start with trial to ensure that parties who have gone through case management, pre-trial conference and are ready for trial and to lead evidence, are not held back by settlement orders and requests for postponement on the date of trial.

9.2.3 Once the Judge conducting the roll call has concluded allocation, it shall not be reopened.

9.2.4 If the judge calling the roll has allocated a matter or matters to himself, upon finalization thereof, he or she shall proceed to the second stage of the roll call.

9.2.5 In the second stage of the roll call, the judge shall deal with settlement agreements or draft orders thereof. An inquiry on the costs occasioned by late settlement contrary to paragraph 6 of Form A, shall be conducted in line with paragraph 8.5 above.

9.2.6 The last stage of the roll call shall deal with the requests for postponement on the date of trial or hearing contrary to paragraph 7.1 of Form A and an

inquiry as contemplated in paragraph 6.4 of this Practice Directive shall be conducted.

9.2.7 Should it become necessary during an inquiry on the issue of costs occasioned by the postponement to file explanatory affidavit, judgment on costs shall be reserved.

9.2.8 There shall be no stand down during roll call neither shall there be a stand down once a matter is allocated for a witness who is not at court.

9.2.9 Stand down will only be allowed by the trial court if time for all matters allocated to a particular trial court, is more than a day in which case the trial court may stand down and streamline matters allocated to it as it deems fit without giving more time than the estimated duration of the trial determined by the roll call judge.

9.2.10 The roll caller will be entitled to allocate other matters or assign other functions to a judicial officer on the assumption that by a particular day or time, the roll of a particular judicial officer would have been finalized.

9.2.11 For the purpose of paragraphs 9.2 9 and 9.2.10 above, during roll call an estimated duration of each matter shall be determined and endorsed at the top of the outside cover of the court file by the judge conducting the roll call.

9.2.12 Should a matter not be finalized within the time so allocated, parties will be sent back to the roll caller for explanation and for more time to be allocated if so justified.

10. CASE MANGEMENT OF OPPOSED MOTION MATTERS

10.1 Every opposed motion matter shall be case managed upon delivery of notice to oppose and Form C annexed to this Practice Directive shall be completed by the parties or their legal representatives during case management proceedings.

10.2 Any party shall be entitled to approach the Registrar to have a matter be placed on the case management roll upon delivery of notice to oppose.

10.3 The Registrar shall within five days upon the filing of notice to oppose, enroll such a matter on the case management roll at 8h45 on any court day before any Judge available provided the file or files and the roll thereof shall be given to the judge concerned at least one clear court day before the date in question.

10.4 During the case management hearing, the date of hearing and time-frames for the filing of answering affidavit, replying affidavit and written heads of argument shall be determined and set by the parties' legal representatives.

10.5 What is stated in paragraphs 6 to 8 above shall *mutandis mutandis* apply to motion proceedings.

10.6 The Registrar office shall provide the secretary of the Judge President and or that of the Deputy Judge President or a judge designated thereto with all opposed files enrolled for hearing in terms of paragraph 19 hereunder and shall be accompanied by a roll in relation thereto by not later than 12h00 on a Tuesday preceding two weekends before the motion week.

10.7 In other words, the files must be submitted by the Registrar office eight clear court days before the Monday of the motion week to enable the Judge President and or Deputy Judge President or a judge designated thereto to allocate the files to judges on the opposed motion roll well in time for meaningful preparation.

10.8 In managing and enrolling a matter on the opposed motion roll, the date and time by which the papers shall be indexed, paginated and filed with the registrar, shall

not be later than Monday at 12h00 preceding the Tuesday referred to in paragraph10.6 above. For example, if the Tuesday referred to in 10.6 is 19th August, the Monday preceding the Tuesday shall be 18th August.

10.9 The opposed files shall be submitted by the secretary referred to in paragraph 10.6 to the Judge President or a judge designated by the Judge President for allocation to the Judges on the opposed motion roll by not later than 12h00 on a Wednesday preceded by a Tuesday referred to in paragraph 10.8 above.

10.10 Allocation shall be done in chambers by the Judge President or by a Judge designated thereto and the files shall be submitted by the secretary of the Judge President to the secretaries of the judges on the opposed motion roll not later than 12h00 on a Thursday preceded by the Wednesday referred to in paragraph 10.9 above.

10.11 The secretary of the Judge President or that of a judge designated to do allocation, shall prepare a roll which shall be submitted to the judges on the opposed motion roll together with the allocated files indicating the particulars of the parties, judges. time and specific courts in which those matters will be heard.

10.12 Copy of the roll referred to in paragraph 10.11 above shall be put on the notice board not later than 12h00 on a Thursday referred to in paragraph 10.10 above for the parties and legal representatives to know in which courts their matters will be heard.

11. CASE MANAGEMENT OF POCA MATTERS

11.1 Applications brought under Prevention of Organized Crime Act No 121 of 1998 shall also be subject to case management.

11.2 Such applications shall be initiated by enrollment thereof on the unopposed roll or urgent roll provided urgency is justified.

11.3 The high court may after hearing a preservation application brought ex parte grant the application if satisfied that a case for the order has been made.

11.4 In granting an application brought ex parte, the court shall issue a *rule nisi* as contemplated in NDPP v Mohamed and others 2003 (4) SA 1 (CC) at paras 32 and 51; see also National Director of Public Prosecutions (Ex parte application) [2018] (2) SACR 176 (SCA) (31 May 2018) at para [25] and para (26).

11.5 The court considering the application under section 38 of POCA shall have regard to the provisions of section 39 and in doing so, shall as part of case management, make an order or directive with regard to the following:

11.5.1 The date by which the National Director shall give notice of the order to all persons known to the National Director to have an interest in the property which is subject to the order[11];

11.5.2 The date by which the National Director shall publish a notice of the order in the Gazette[12];

11.5.3 The date by which any person who has an interest in the property which is subject to the preservation of property order may enter an appearance or give notice of his or her intention to oppose the making of a forfeiture order or to apply for an order excluding his or her interest in the property concerned from operation thereof[13];

11.5.4 The date by which a preservation order shall expire as contemplated in section 40.

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[11] Section 39(1)(a) of POCA
[12] Section 39(1)(b)
[13] Section 39(B) read with section 39(4)(a) and or section 39(4)(b)

11.5.5 In the event an appearance to defend or notice of opposition is filed, the date by which the matter is enrolled on the case management roll shall be set and be dealt with as contemplated in paragraph 10 above.

11.5.6 During case management, the judge conducting the case management proceedings may direct time-frames with regard to forfeiture applications as contemplated in section 48(1), should the National Director wish to apply for an order that any of the property which is subject to the preservation of property order be forfeited to the state.

11.6 Should there be a need to hear the application under section 38 in camera, the reasons for the matter to be heard in camera shall be stated in the founding papers for consideration by the court.

12. POCA MATTERS ENROLLED ON THE URGENT ROLL

12. 1 Ex parte applications in terms of s 38 are by their nature urgent. The purpose of the preservation order is to protect the property from being disposed of or removed or dissipated. See National Director of Public Prosecutions (Ex parte application) [2018] ZASCA 86; 2018 (2) SACR 176 (SCA) (31 May 2018) at para [32].

12.2 It is hereby directed that all POCA matters brought on an urgent basis and enrolled on the urgent roll shall be subject to paragraphs 20.1 to 20.3.5 and 20.3.8 of this Practice Directive.

13. MANAGEMENT OF CIVIL AND CRIMINAL APPEAL MATTERS

13.1 Every appeal matter against the decision of the lower court shall be case managed and enrolled for hearing as contemplated in paragraph 21 hereunder.

13.2 In managing appeal matters, the parties or their legal representatives will complete Form D annexed to this Practice Directive in terms of which the parties or their legal representatives determine the date of hearing and time frames to ensure readiness thereof.

13.3 Within five days upon receipt of an appeal from the clerk of the court in the lower court, the Registrar shall enroll the matter for case management.

13.4 Should the Registrar fail to enroll an appeal matter on the case management roll within 5 days upon filing of the appeal, any party thereto shall be entitled to approach the Registrar to have the matter be placed on the case management roll and to be dealt with as contemplated in paragraph 13.2 above.

13.5 Allocation of appeal matters to Judges, whether criminal or civil shall be determined by the Judge President and or Deputy Judge President or Senior Judge designated by the Judge President and or Deputy Judge President.

13.6 The Registrar shall ensure that when appeal files are submitted to a judge conducting appeal case management proceedings, *updated appeal roll is also provided* to enable the parties or their legal representatives to determine the date of hearing and the time lines including filing of record of proceedings, judgment if still outstanding and or written heads of argument.

13.7 No more than six appeal matters may be enrolled on one day and number of matters to be enrolled will be guided by the volume of the papers and or complexity of a particular matter.

13.8 No acting judges shall sit alone in appeal matters without a permanent Judge unless the Judge President has so directed.

14. MANAGEMENT OF CRIMINAL MATTERS

14.1 No criminal matter shall be allocated to a Judge for trial unless such a case has gone through judicial case management hearing before a Judge designated by the Judge President or Deputy Judge President.

14.2 In managing criminal matters Form E annexed to this Practice Directive shall be completed by the accused or his legal representative and the prosecutor on behalf of the state.

14.3 In completing Form E, information as per Form E1 contemplated in paragraph 14.3.1 to 14.3.10 shall be provided.

14.2 The Judge conducting case management proceedings in a criminal matter shall not preside over the cases in which he or she conducted such proceedings;

14.3 Without flouting the rights of an accused person to a fair trial and without dictating to a Judge conducting the case management proceedings, the followings shall be established in the course of case management proceedings:

14.3.1 Whether or not the accused is going to plead guilty.

14.3.2 In case of a plea of not guilty, accused's defence and other issues to be placed in dispute during trial and placing on record that the accused is not obliged to indicate his defence.

14.3.3 Number and particulars of witnesses which the state intends to call.

14.3.4 Lists of witnesses whose evidence is intended to be challenged by the accused.

14.3.5 Whether or not the admissibility of particular evidence is to be challenged during trial and thus necessitating the holding of a trial within a trial and if so the grounds of the challenge.

14.3.6 In the case of expert evidence like finger prints evidence, DNA evidence, identification parade and so forth, whether the chain in collection of such evidence is in dispute.

14.3.7 The number of witnesses the accused intends to call and if so, whether he or she will need the assistance of state to secure the attendance of such witness during trial.

14.3.8 The estimated duration of trial must be recorded and if it appears that the time allocated would not be enough for a particular case, rescheduling to be considered.

14.3.9 Number of part-heard matters lasting for long periods of time should be of a great concern and therefore part-heard matters should be avoided where possible.

14.3.10 Continuation of a matter until finalization should be a priority where it is possible and where there are other judges to deal with other matters for a short duration, this must be considered during case management proceedings.

14.4 Court hours must be observed at all times and all criminal matters must start at 09h00 unless for good reasons it is not possible to do so.

14.5 Stand-downs or adjournments of criminal matters at any given time during trial should be avoided and if required must be justified. For this purpose, it is important for both the state and defense to properly prepare in advance to avoid unnecessary stand-downs and or adjournments.

15. CIVIL TRIAL WEEKS

15.1 Civil trial matters shall be enrolled for hearing on each Monday during the 2nd, 3rd, 5th, 6th, 8th and 9th weeks of each Term.

15.2 **At 08h45** on each Monday of a civil trial week there shall be a roll call conducted in stages as indicated in paragraph 9 above and the roll call shall be conducted by the Judge President, Deputy Judge President and or a Judge designated by the Judge President.

16. PART-HEARD MATTERS

16.1 All part-heard matters shall be postponed to a specific date during recess and the enrollment of criminal part heard matters during recess, shall be arranged with the DPP roll planner in consultation of the Secretary of the Judge President and or Deputy Judge President or a Judge designated thereto by the Judge President. This will avoid congestion during recess

16.2 Judges should therefore not postpone part-heard matters for hearing during recess unless a date is obtained by the Prosecutor concerned from the roll planner in consultation as indicated in 16.1 above.

16.3 If the duration required to finalize a part heard matter is more than five (5) court days, the trial with the permission of the Judge President who in turn shall consult with the DPP roll planner may be postponed to a specific period during term.

16.4 Should a part heard matter be postponed during a term, in particular, criminal matters, there shall be no other new matter placed for trial during that period.

17. UNOPPOSED MOTION WEEKS

17.1 Unopposed applications shall be shared and heard by two judges on Mondays and Fridays of the 1st, 4th and 7th weeks of every Term.

17.2 The number of matters to be heard on each Monday and Friday shall, unless the Judge President otherwise directs, be limited to 100 matters to be divided between two judges on the unopposed motion roll.

17.3 Any matter on the roll in excess of the number mentioned herein, shall be postponed to a specific available date unless the Judge concerned has read the papers and is ready to hear the application.

17.4 The applicant shall ensure that papers are ready, i.e. indexed, paginated and bound together, and that the file is submitted to the Registrar's office at the main seat or local seat not later than 12h00 on a Monday and Friday preceding the hearing on Monday and Friday of the following week.

17.5 The Registrar shall prepare the files and hand them over to the respective Judges by not later than 16h00 on a Monday and Friday preceding the week of hearing as indicated in 17.4 above.

17.6 Should a Term consist of more than 9 weeks, any 10th and or 11th week shall be used to enroll unopposed applications and dealt with as in paragraphs 17.1 to 17.5 above. Such weeks shall also be used to enroll appeal matters as indicated in paragraph 22 hereunder.

17.7 Should an unopposed application become opposed, it shall be case managed and enrolled on the opposed motion roll as contemplated in paragraph 19 hereunder.

17.8 Postponement of any matter enrolled under this paragraph will have to be justified and the court that considers the request for a postponement may order forfeiture of a day/ appearance fee, costs and or disbursements connected to or occasioned

by the postponement at the instance of a legal practitioner who did not take necessary and adequate steps for the matter to be finalized.

17.7 Applications for summary judgment whether opposed or not shall be enrolled on the opposed motion provided that such applications on the roll shall not exceed five.

18. EXTENSION OF RULE NISI

18.1 No rule nisi shall be extended for more than three times unless there are good and compelling reasons persuading the court to extend the rule nisi for more than three times.

19. OPPOSED MOTION WEEKS

19.1 Opposed applications shall be enrolled and heard on every Tuesday to Thursday of the 1st, 4th and 7th weeks of every Term in both the main and local seats. The enrolment of opposed applications and the number of applications to be enrolled shall be managed and determined by the case management Judge.

19.2 A number of opposed matters on the roll per day, shall not exist eight matters to be shared between two judges or 12 matters to be shared amongst three judges.

19.2 Opposed applications shall be enrolled and dealt with in accordance with paragraph 10 read with paragraph 6 of this Practice Directive.

19.3 The heads of argument shall be served and filed, together with a practice note setting out in brief the nature of the application and the estimated duration of the hearing.

19.4 The particulars of the party, attorney or counsel who will be arguing the application must be furnished, including their telephone number(s) and email addresses.

19.5 No opposed matter shall be enrolled for hearing unless it has gone through case management proceedings in terms of paragraph 10 above.

20. URGENT APPLICATIONS

20.1 Urgent applications will be heard at 10h00 on Tuesdays of each week.

20.2 Matters to be enrolled for hearing on Tuesdays at 10h00 in terms of 20.1 above, must be filed with the Registrar on the preceding Wednesday not later than 12h00 to enable the Registrar to prepare the files and prepare the roll for the following Tuesday.

20.3 Only in exceptional circumstances will an urgent application be enrolled to be heard on a day and time other 10h00 on a Tuesday. Depending on the degree of urgency, such matters will be enrolled as follows:

20.3.1 If the urgent application cannot be heard on a Tuesday at 10h00, it may be enrolled on any other day of the week at 10h00. The applicant in the founding affidavit must set out facts that justify bringing of the application on a date and time other than 10h00 on a Tuesday.

20.3.2 If the urgent application cannot be brought at 10h00 on any day during the week, it may be brought on any other day and at any time. The applicant in the founding affidavit must set out facts to justify bringing an application at a time other than 10:00 during the week.

20.3.3 If a party brings an urgent application on any day or time outside, the ordinary court hours, the secretary / clerk of the Judge on the urgent roll must be telephoned at the court's cellular phone number **0817377649** specifying in the notice of motion the time and date on which the application is intended to be brought outside ordinary court hours and the reasons thereof must be clearly averred in the founding papers.

20.3.4 The enrolment of urgent applications outside court hours or on any day other than a normal court day will only be done under exceptional circumstances based on extreme urgency. In that event, the applicant shall, in the founding affidavit, concisely and clearly set out facts explaining why the applicant cannot wait to be heard during the following court day or during normal court hours.

20.3.5 Urgent applicants will not be readily entertained outside court hours and normal court days. They will only be enrolled and heard under exceptional circumstances.

20.3.6 No application brought on urgent basis will be enrolled and heard unless the affected party or parties have been given sufficient notice of the place, date and time of the hearing of the application. This includes time to prepare, file opposing papers and attend court.

20.3.7 *Ex parte* applications; i.e. applications enrolled without notice being given to the affected party or parties; will not be enrolled and heard except where notice is not required or the other party will not adversely be affected.

20.3.8 All *ex parte* applications must be enrolled on the unopposed motion roll and unless urgency is averred and satisfied in the papers, otherwise it will be struck off from the roll due to lack of urgency.

20.3.9 *Ex parte* applications will only be enrolled and heard in exceptional circumstances, which must be clearly and concisely set out in the founding affidavit. Any person affected by the order obtained *ex parte*, may approach the court on 72 hours' notice to have the matter be reconsidered.

20.3.10 In each and every matter that is brought on urgent basis, the reasons for urgency must be clearly and concisely set out in the founding affidavit and it must be clear that the urgency was not self-created.

20.3.11 Any application brought on urgent basis will be struck from the roll if urgency is not evident or established in the papers.

21. ENROLMENT OF APPEALS

21.1 No appeal matter shall be enrolled unless it has gone through case management before a Judge in terms of paragraph 13 of this Practice Directive.

21.2 All appeals, criminal and civil shall be enrolled and heard at 09h00 on any Friday as determined by the Judge during case management proceedings.

21.3 The Registrar must ensure that not many unopposed matters are enrolled on a Friday of the 1st, 4th and 7th weeks of Term in accordance with paragraph 16.1 above unless there are enough judges to deal with both appeals and unopposed matters on the same Friday or unless there are no appeal matters enrolled.

21.4 The number and size of appeals to be enrolled shall be determined during case management proceedings referred to in paragraph 13 above and no more than six appeal matters may be enrolled on a particular day.

21.5 Full Court appeals shall also be enrolled during the case management proceedings and shall also be enrolled for hearing at 09h00 on any Friday determined by the Judge during case management proceedings.

21.6 In dealing with backlogs relating to appeal matters, the Judge President and or a Judge designated by the Judge President may in the course of case management proceedings enroll an appeal matter on any other day or days during the term and or during recess.

22. MANAGEMENT OF APPLICATIONS FOR LEAVE TO APPEAL

22.1 Applications for leave to appeal shall be filed with the Registrar of the Court at the main or local seat in accordance with the jurisdictional area from which the matter originates

22.2 A party filing an application for leave to appeal must simultaneously file the judgment in the matter, if available.

22.3 As soon as the application for leave to appeal is filed, the Registrar shall forward same to the secretary of the judge who dealt with the matter.

22.4 The secretary/clerk in consultation with the judge concerned shall immediately schedule the application for the hearing of leave to appeal on any court day at 09h00 to ensure that the main roll is not affected.

22.5 If the Judge who dealt with the matter is not available for a long duration of time, the application for leave to appeal may be heard by another Judge designated by the Judge President in which case the judge who dealt with matter and where possible shall be consulted before the hearing of the application for leave to appeal.

22.6 Should leave to appeal be granted, the matter shall immediately be case managed and dealt with in accordance with the directives set out in paragraphs 24.5 and 24.6 hereunder

23. MANAGEMENT OF CRIMINAL REVIEW MATTERS

23.1 All criminal review matters emanating from the district or regional courts shall be filed with the Registrar at the main or local seat in accordance with the jurisdictional boundaries published in Government Notice No.42420 dated 26 April 2019.

23. 2 The Registrar shall within 2 days upon receipt of any review matter from the district or regional court allocate evenly such a review matter to be considered in chambers by a single judge.

23.4 To avoid possible injustice to the accused persons, review matters shall be dealt with expeditiously and disposed of within 7 days by a Judge to whom such matters are allocated.

23.5 In managing criminal review matters, **Form F** attached to this Practice Directive shall be kept and completed by the Secretary of each Judge to whom review matter or matters have been allocated.

23.6 Copy of completed Form F shall be submitted to the Office of the Judge President on or before 1st of each month and if no review matter was allocated to any Judge during a particular month, Form F should still be completed by indicating a NIL-return.

23.7 If the judge concerned is satisfied that the proceedings were in accordance with justice, endorsement to this effect shall be made on the form so provided by the Registrar.

23.8 If the judge concerned is of the view that the proceedings may not have been in accordance with justice and the conviction and or sentence may not stand, the Magistrate shall be requested to comment on the concerns raised by the judge.

23.9 Should the judge concerned or any judge upon comments by the Magistrate still not be satisfied that the proceedings or part thereof were in accordance with justice, the Deputy Director of Public Prosecutions shall be asked to comment by providing the record, queries raised with the Magistrate and comments thereto.

23.10 Should the judge ultimately come to the conclusion that the conviction and or sentence ought to be set aside and or substituted, judgement shall be prepared to be co-signed by another judge who may so agree.

24. MANAGEMENT OF CRIMINAL PETITIONS

24.1 Every petition matter from the district or regional court shall be considered in chambers by two judges.

24.2 The Registrar shall upon receipt of any petition matter prepare the file and evenly allocate same to two Judges available within 5 days from date of receipt thereof.

24.3 The judges considering the petitions shall expeditiously attend to and dispose of such matters within 14 days from date of allocation by the Registrar.

24.4 Should a petition be granted, the secretary of the senior judge who granted the petition shall take the files to the appeal clerk or registrar who shall register the file and allocate appeal number.

24.5 Upon allocation of the appeal number the appeal/registrar clerk concerned shall within 5 days place the matter on the case management roll and the provisions of paragraphs 12 above shall mutatis mutandis apply.

24.6 In managing petition matters, the procedure or process set out 23.5 and 23.6 shall be followed and a form similar to Form F shall be kept and completed by the secretary of the senior judge who dealt with the petition.

25. SETTLEMENT BETWEEN ROLL CALL COURT AND TRIAL COURT

25.1 Due to a tendency by the parties and or their legal representatives to settle matters outside the roll call court immediately after allocation with a view to avoid an inquiry on the issue of costs occasioned by late settlement or postponement, it is hereby directed that should a matter be settled or intended to be postponed after allocation, the trial court shall refer the parties back to roll call judge to deal with costs occasioned by late settlement and or postponement on the date of trial and if the roll call judge is not available, it shall be the responsibility of the trial court to conduct an inquiry as contemplated in

26. PROVISIONAL ROLL

26.1 There shall be a provisional roll for civil, motion and appeal matters that are already on the roll.

26.2 The provisional roll shall be updated daily by Registrar's office.

26.3 It shall be the responsibility of each Judge's secretary to provide the Registrar's office with a list of matters in respect of which dates of hearing were allocated during case management proceedings or when matters which are on the roll are postponed to specific dates.

26.4 A judge sitting in court for any matter shall be provided with an updated roll relevant to the proceedings in question to ensure that if a matter is postponed in court or case managed, a date is determined there and then.

26.5 Every matter that is postponed shall further be case managed by completion of Forms A or C or similar thereto and an inquiry with regards to costs occasioned by the postponement as envisaged in paragraphs 7.1 of Forms A and C respectively shall be conducted.

26.6 Judicial officers are hereby urged to conduct inquiries referred to in 26.5 above to ensure that consistency and compliance by the parties or their legal representatives is achieved.

27. EARLY FINALISATION OF ALLOCATED MATTER

27.1 Once a matter that is allocated for trial or hearing is finalized earlier than the allocated duration, a judge who has done allocation for any such a matter including motion matters shall immediately be notified.

27.2 The Judge who has done allocation may allocate other matters and the Judge President or a judge designated by the Judge President may assign other functions to the Judge whose matter or matters have been finalized earlier than the allocated duration.

28. MANAGEMENT OF REQUESTS FOR DEFAULT JUDGMENT

28.1 The requests for default judgment to be considered by the Registrar shall be attended to by the Registrar within 14 days from date of filing of such requests.

28.2 The Registrar shall by not later than the 1st of each month provide the Judge President or a Judge designated by the Judge President with a list of requests for default judgment received for every month and the outstanding requests for default judgment.

28.3 In providing the information contemplated in 28.2 above, **Form G** annexed to this Practice Directive shall be completed.

28.4 Any party whose request for default judgment is unduly delayed may report such a delay to the office of the Judge President upon having requested or reminded the Registrar to attend to the request for default judgment.

29. MANAGEMENT OF TAXATION MATTERS

29.1 Every bill of costs, submitted or filed with the Registrar, shall be enrolled for taxation within 21 days from the date on which bill of costs was filed with the Registrar.

29.2 The Taxing Master shall not proceed with taxation and consider the bill of costs unless he or she is satisfied that the party liable to pay the same has received due notice as to time and place of such taxation and as contemplated in Rule 70 (3B) as amended.

29.3 Such a notice shall not be necessary:

(a) If the party against whom costs have been awarded has not appeared at the hearing either in person or through his legal representative.

(b) If the person liable to pay costs has consented in writing to taxation in his absence; and

(c) For the taxation of writ and post writ bills[14].

29.4 Should a notice of objection or opposition to the bill of costs be filed, the specific item objected to and the grounds of objection shall be set out.

29.5 A party in whose favour costs have been awarded shall upon compliance with Rule 70 (3B), prepare a notice of taxation to which a bill of costs is attached as

[14] Rule 70 (4)

per **Form H** attached to this Practice Directive and the date of taxation in Form H shall be filled in by the Registrar.

29.6 No bill of costs will be taxed and finalized by the Taxing Master in the absence of a party in whose favour an order for costs is made and the Taxing Master shall not be bound to allow any item upon which the parties have agreed or upon which there is no objection.

29.7 The Taxing Master shall on or before 1st of each month provide the Judge President or a Judge designated by the Judge President with a list of taxation matters received for that month and those finalized for the same month.

29.8 In providing information as contemplated in 29.5 above a form similar to Form G referred to in 28.3 above shall be completed.

29.9 Any party whose taxation is unduly delayed may report the delay to the Office of the Judge President.

30. POKING SYSTEM

30.1 There shall be a poking system which shall be conducted by the Registrar.

30.2 In implementing the poking system the Registrar shall at any given moment and frequently pull out the files which have been dormant for more than six months and place them on the case management roll before any available Judge.

30.3 During the case management hearing the Judge concerned shall make directives with regards to time-frames expressed in dates for compliance therewith.

30.4 Any such time-frames will be informed and guided by what the Rules of Court permit and parties can agree to abridge any time frames in terms of Rule 27 of the Rules of Court.

30.5 The time-lines will be set in such a manner that a date for the holding of judicial pre-trial conference or judicial case management is determined and followed through as contemplated in paragraphs 3 to 12 of this Practice Directive wherever applicable provided appearance to defend or notice is filed.

30.6 If in any matter so poked, no notice of appearance to defend or notice to oppose is filed, a date for application for default judgment or order shall be set.

30.7 In this Division experience has shown that during case management proceedings when matters are enrolled under poking system, some of such matters are either settled or withdrawn. The Registrars are therefore directed to ensure that poking system is conducted regularly.

31. INDEXING AND PAGINATION

31.1 Every matter that is placed on the roll including urgent matters, irrespective of number of pages, shall be indexed and paginated.

31.2 The index and pagination should be continuous from the first page up to the last page without dividing the pagination with repeated page numbers.

31.3 The indexed and paginated documents shall be bound together in such a way that it will make the paging and reading easy and for this reason, it will not be necessary divide the court papers in bundles of 100 pages each.

31.4 With bulky indexed and paginated documents, it will be preferable to use arch-liver file or files which can be returned upon finalization of the matter or at the request of the Registrar.

31.5 The index and pagination document must be placed at the top of the first page of the papers to facilitate an easy and speedy directed reading of the papers.

31.6 Written heads of argument must not bound together with the court papers.

32. MANAGEMENT OF RESERVED JUDGMENTS

32.1 Any reserved judgment shall be delivered within a reasonable time and not later than 3 months from the date on which it was reserved.

32.2 A judgment that is outstanding for more than 6 months may result in the publication thereof by the Office of the Chief Justice.

32.3 The secretary of each Judge shall every time when a judgment is reserved and or handed down, complete **Form J** attached to this Practice Directive.

32.4 On or before 1st of each month, updated Form J must be submitted to the Office of the Judge President for record keeping and management of reserved judgments.

32.5 Where no judgment was reserved for a particular month, Form J with a Nil- return shall be completed.

33. DAILY ROLL

33.1 There shall be a daily roll prepared by the Registrar' office which shall be put on the notice board and emailed to Mpumalanga Attorneys Associations, Mpumalanga Society of Advocates, each judge and to each judges' secretary by not later than 7h45 of each day.

33.2 In the daily roll, the names of the parties, category of each matter grouped together, for example, whether is a civil or criminal trial, appeal and so

forth, the specific court and time where the matter will be heard and the name of the presiding judicial officer concerned must be indicated.

33.3 With regard to the roll call, case management and unopposed rolls, only particulars of the presiding officer, the parties, the court and time shall be indicated on the daily roll.

33.4 For the purpose of updating the daily roll each judge' secretary shall furnish the registrar office with the status of each matter on the roll and it is also the responsibility of the registrar office to insist on the information for the purpose of ensuring that a daily roll is updated and accurate.

34. EFFECTIVE DATE

34.1 This Provisional Practice Directive replaces Practice Directive issued on 1 September 2017 under Government Gazette No.41090 and shall operate with immediate effect pending consideration and approval by the Chief Justice as contemplated in subsection (3) of section 8 of the Act.

Dated on 24 July 2019 at Mbombela Mpumalanga



MF LEGODI JUDGE PRESIDENT
MPUMALANGA DIVISION OF THE HIGH COURT