OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

PRACTICE DIRECTIVE FOR MPUMALANGA DIVISION OF THE HIGH COURT ISSUED IN TERMS OF SECTION 8(3) OF THE SUPERIOR COURTS ACT 10 OF 2013 READ WITH RULE 37A (1) AND (2) OF UNIFORM RULES OF COURT AS AMENDED

PREABLE

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.

AND WHEREAS in terms of rule 37A (1) (a) and (b) as amended, a judicial management shall apply at any stage after a notice of intention to defend is filed to such categories of defended cases as the Judge President of any Division may determine in a Practice Note or Directive; and to any other proceedings in which judicial case management is determined by the Judge President, of own accord, or upon the request of a party, to be appropriate;

a Practice Directive for Mpumalanga Division of the High Court replacing the previous provisional Practice Directive;

IS HEREBY issued with immediate effect as follows:

1. JUDICIAL CASE MANAGEMENT IN GENERAL

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.

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

[1] Paragraph 5.2.5 of Norms and Standards

[2] Paragraph 5.2.5 (i) (a) of Norms and Standards

[3] Paragraph 5.2.5 (ii) (b) of the Norms and Standards

to avoid lengthy periods of incarceration of accused persons whilst awaiting trial[4].

3. Every judicial officer shall amongst others, ensure that there are no unnecessary postponements and that any postponement or stand down of any matter, is justified.

1.4 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 matters, unopposed or opposed applications, and or criminal cases, etc.

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

1.6 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, every civil, all motion and criminal cases in this Division shall be case managed with specific time-frames which are expressed in specific dates for compliance and not in days

1.7 For proper case management and effective disposal of cases, it shall be the responsibility of legal practitioners to ensure that when the roll closes, the file and every document that has to be read and considered by the court is indexed and paginated for proper adjudication of the matter and no further documents shall be accepted and stamped by the Registrar after the roll shall have closed.

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[4] Paragraph 5.2.5 (ii) (c) of Norms and Standards

[5] Paragraph 5.2.4 (i) of Norms and Standards

[6] Paragraph 5.2.4 (iv) of Norms and Standards

1.8 The court shall not accept papers unless they are original or unless the filing of copies thereof is justified and legible.

2. MANAGEMENT OF ACTION MATTERS

2.1 Upon delivery of an appearance to defend, the registrar of the court shall within five days or upon request by any party place the matter on the first judicial case management roll at **8h45** on any day before any judge available.

2.2 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 main action is speedily ready to be adjudicated upon.

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

2.4 The time-frames to be determined and agreed upon as envisaged in 2.2 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, 36 or 37 whenever is applicable in a particular case or becomes necessary.

2.5 Date of hearing on the unopposed or opposed motion roll of any such interlocutory applications referred to in paragraph 2.2 above

shall be set with specific time-frames to ensure speedy readiness for hearing.

2.6 There shall be first and second judicial case management conferences in each action proceedings, particularly with regard to damages claim. In cases other than damages claim, judicial case management judge may during first case management hearing certify any such matters trial ready in which event the date of trial shall be determined during the first and or second judicial case management conference by completion of Form A3 to this Practice Directive.

2.7 Dates for placement of matters on the first judicial case management roll shall be determined by the Registrar to be enrolled for **08h45** on daily basis if need be. The number of matters on the first judicial case management shall not exceed five per each available judge.

2.8 During the first case management conference the parties or parties' legal representatives shall complete Form A to this Practice Directive and the time-frames to be filled therein shall be determined by the parties themselves or their legal representatives including the date of the second case management conference.

2.9 Should any party fail to comply with the time-frames set during any case management process or conference the other party shall be entitled to invoke the provisions of Rule 30A as amended and compel the defaulting party by way of an application to court should such defaulting party fail to heed to the notice as contemplated in sub-rule (1) of rule 30A.

2.10 The purpose of second case management conference is to induce the parties and or their legal representatives into trial readiness or settlement. For this purpose, no matter will be certified trial ready unless case management judge is satisfied that time-frames the parties and or their legal representatives set for themselves during the first case management conference have been complied with and that meaningful pre-trial conference amongst the parties was conducted.

2.11 Meaningful pre-trial conference amongst the parties or their legal representatives and with a view to explore settlement, shall include discussion on the matters referred to in rule 37A (10) and such a discussion must clearly be set out in the pre-trial minutes.

2.12 Should contingency deductions become an issue during the pre-trial conference amongst the parties, it must appear in the minutes thereof what each party has proposed to be appropriate contingency deductions and what amount of damages was proposed.

2.13 As contemplated in sub-rule (11) of rule 37A and without limiting the scope of judicial engagement at a case management conference, the case management judge shall inter alia during any judicial case management conference, explore settlement on all or more of the issues, including, if appropriate, enquiring whether the parties have considered voluntary mediation.

2.14 At the conclusion of the second judicial case management proceedings the parties or their legal representatives guided by the extent of the engagement in terms of sub-rule (10) and also

taking into account the provisions of sub-rule (15), the parties or their legal representatives shall indicate in writing whether the trial proceedings should be conducted before another judge.

2.15 As contemplated in sub-rule (5) (b) (i) and (ii) of rule 37A, a case management judge shall not certify a matter trial ready unless the judge is satisfied inter alia, that the case is ready for trial, in particular, that all issues that are amenable to being resolved without trial, have been dealt with and that the remaining issues that are to go to trial have been adequately defined.

2.16 During the second case management conference, the case management judge may in terms of rule 37A (12) make an order as to costs, including an order *de bonis propriis* against the parties' legal representatives or any other person whose conduct has

conduced unreasonably to frustrate the objectives of the judicial case management process.

2.17 Furthermore, judicial case management judge may in terms of rule 37A (16) at a case management conference make an adverse costs order against any party for failure to adhere to the principles and requirements of rule 37A.

2.18 Similarly, in terms of rule 37 (9) (a) (i) and (ii) the court shall at the hearing of the matter consider whether or not it is appropriate to make a special order as to costs against a party or such party's attorney, because such a party or such party's attorney did not attend a pre-trial conference; or failed to a material degree to promote the effective disposal of the litigation.

2.19 As contemplated in terms of rule 37 (9) (b), except in respect of an attendance in terms of sub-rule (8) (a) of rule 37 (that is, except when sanctioned by the case management or pre-trial conference judge), no advocate's fee shall be allowed by the Taxing Master on a party and party basis in respect of a pre- trial conference or judicial case management conference held more than 10 days prior to the hearing.

2.20 Should any party to divorce proceedings wish a Family Advocate to institute an enquiry to enable such a party to furnish to the court 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 request the Family Advocate as so contemplated in subsection (1) (a) of section 4 of Act No. 24 of 1987.

2.21 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 Act 24 of 1987.

2.22 Failure to attend case flow management hearing shall not detract the other party from having a matter case managed with time-frames being set for the parties including the defaulting party.

2.23 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 South African National

Legal Practice Council (the Council) or a Provincial Council and in an appropriate case, why an order for costs should not be made.

2.24 Updated second case management roll register of all matters already on the second case management roll, shall only be made available to the parties or parties' legal representatives at **08h00** on the morning of the first judicial case management sitting to avoid pre-booking of dates on the second case management roll.

2.25 On every day of such first case management sitting or conference, the parties or their legal representatives whose matters are on the first case management roll shall report to the office of the registrar or registrar clerk at **08h00** for the purpose of choosing the dates on the second case management roll and complete Form A before **08h45**.

2.26 Updated second judicial case management roll register shall be used for this purpose:

2.26.1 to ensure that the roll on a particular day of the second judicial case management conference does not exceed 25 matters and;

2.26.2 to enable the parties or their legal representatives choose the date suitable on the second case management conference and to set the time frames for themselves.

2.27 Once a matter is placed on any case management roll it shall not be removed from that roll by any party or by agreement between the parties.

2.28 Paragraphs 6 and 7 of Form A and any other similar paragraph or paragraphs shall strictly be enforced by the Judge conducting any judicial case management proceedings or by a judge calling the roll to ensure that completion of Form A does not become a routine with no consequences.

2.29 Form A shall be endorsed and signed at the top thereof by the judge conducting first case management conference to ensure that matters enrolled on the second judicial case management conference without the sanctioning of a judge and without having gone through case management process, are avoided.

2.30 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 on a separate paper or document which shall form part of the case management directive or order.

2.31 Unpreparedness during case management proceedings shall not be acceptable and shall be regarded as unprofessional conduct seeking to frustrate case management process.

2.32 During both first and second case management conferences, the parties or their legal representatives will be engaged to ensure that readiness for trial and expeditious finalization of cases are realized and also to ensure that Form A is not used as routine.

2.33 Only legal representatives with right of appearance in the high court will be entitled to appear during case management proceedings.

2.34 Should there be a need in any particular trial matter, especially in damages claims, to wait for a determination by the Health Professional Council or final award by the Commissioner for Workmen Compensation, Form A1 and or Form A2 of this Practice Directive shall be completed with time-lines by which a determination by the Health Professional Council or a final award by Workmen Compensation Commissioner, shall be made.

2.35 The plaintiff shall in terms of sub-rule (7) (d) (i) and (ii) ensure that no less two days before the date appointed for the first and second case management conferences the court file has been suitably ordered, secured, paginated and filed with the registrar together with all minutes of pre-trial conferences where applicable amongst the parties or their legal representatives.

3. CIVIL TRIAL WEEKS

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

3.2 At **08h45** on each Monday of a civil trial week there shall be a roll call conducted in three stages as indicated in paragraph 5 hereunder and the roll call shall be conducted by the Judge President, Deputy Judge President and or a Judge designated by the Judge President or Deputy Judge President.

4. CLOSE OF THE TRIAL ROLL

4.1 No more than 50 matters shall be enrolled during any trial week.

4.2 The plaintiff or plaintiff's legal representatives shall not later than 12h00 on a Monday preceding Monday of a trial week, ensure that the court file for trial is suitably indexed, paginated and filed with the Registrar.

4.3 No further documents, court processes, index and pagination documents

shall be accepted by the Registrar after a Monday preceding a Monday of the trial week.

5. MANAGEMENT OF TRIAL ROLL CALL

5.1 The Judge President and Deputy Judge President or a Senior Judge designated thereto shall conduct at both main and local seats trial roll call on every Monday of a trial week which shall start exactly **at 08h45**.

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

5.2.1 The first stage shall relate to those matters which are ready for trial and shall be allocated to the Judges on the trial roll to start with trial immediately upon allocation.

5.2.2 Should the Judge conducting the roll call proceedings allocate any matter to himself or herself, he or she shall upon completion of allocation for trial, immediately start with trial to ensure that parties who have gone through judicial case management process, pre-trial conferences amongst themselves and are ready for trial and to lead evidence are not held back or delayed by settlements and

or requests for postponement coupled with summary enquiry for costs on the date of trial.

5.2.3 Once the Judge conducting the roll call proceedings has concluded allocation, it shall not be reopened and any matter that was not called by the parties or parties' legal representatives during allocation stage, shall be postponed with summary enquiry as to costs contemplated in paragraph 7.2 of Form A or any such similar form completed during case management proceedings.

5.2.4 It is therefore important for parties or parties' legal representatives to remain in attendance during roll call proceedings which starts at **08h45.**

5.2.5 If the judge calling the roll has allocated a matter or matters to himself, upon finalization thereof whether on the same day or any other day, he or she shall then proceed to the second stage of the roll call.

5.2.6 The second stage of the roll call deals with settlement of a matter in its entirety on the date of trial. The roll call judge before removing a matter from the trial roll because it has been settled in its entirety on date of trial, shall conduct an inquiry on the issue of costs occasioned by the late settlement on the date of trial as contemplated in paragraphs 15.4 and 15.5 of this Practice Directive.

5.2.7 The last stage of the roll call deals with the requests for postponement on the date of trial or hearing contrary to paragraph 5.1 of Form A3 and paragraph 17.4 of this

Practice Directive. An inquiry on the issue of costs occasioned by the postponement shall be conducted.

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

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

5.2.10 Stand downs will only be allowed by the trial court if time for a matter or matters allocated, 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 allocated and determined by the roll call judge.

5.2.11 The roll call judge may allocate other matters or assign other functions to a judge on the trial roll on the assumption that by a particular day or time, hearing of matters before the judge concerned would have been finalized based on the duration allocated for those matters.

5.2.12 For the purpose of paragraphs 5.2 10 and 5.2.11 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 or the registrar assisting the roll call judge.

5.2.13 Should any matter not be finalized within the time so allocated, parties will be sent back to the roll call judge for explanation and for more time to be allocated if so justified.

6. SETTLEMENT BETWEEN ROLL CALL COURT AND TRIAL COURT

6.1 There is a tendency by the parties and or their legal representatives to settle matters outside or between the roll call court and trial court immediately after allocation with a view to avoid an enquiry on the issue of costs occasioned by late settlement or postponement.

6.2 It is hereby therefore directed that should a matter be settled or intended to be postponed after allocation, the trial court to which the matter is allocated, 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.

6.3 For the purpose of paragraph 6.2 above, if the roll call judge is not available, it shall be the responsibility of the trial court to conduct an enquiry as to costs occasioned by or related to settlement or postponement on the date of trial.

7. ENROLMENT AND MANAGEMENT OF OPPOSED MATTERS

7.1 No opposed matter shall be enrolled for hearing unless it has gone through judicial case management process and the date of hearing was determined during judicial case management conference.

7.2 Every opposed motion matter shall be case managed upon delivery of notice to oppose or anytime thereafter and Form B shall be completed by the parties or their legal representatives during judicial case management conference.

7.3 Any party shall be entitled to approach the Registrar to place the matter on the case management roll upon delivery of notice to oppose or at any stage of litigation.

7.4 The Registrar shall within five days upon the filing of notice to oppose or any time thereafter, enroll such a matter on the case management roll at **8h45** on any court day before any Judge available and the file or files shall be properly indexed and paginated by the applicant at least two clear court days before the date of the judicial case management conference.

7.5 Number of matters to be placed on any opposed judicial case management roll on any court day before any available judge shall not exceed 5**.** Case management conference of opposed matters shall not be on the same date with case management of trial or appeal matters and vice versa unless the total number does not exceed 5.

7.6 During the case management conference, 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 or parties' legal representatives.

7.7 Opposed applications shall be enrolled to be heard by not later than 10h00 on every Tuesday and Thursday of the motion weeks being 1st, 4th and 7th weeks of every Term. The dates thereof

shall be determined during the judicial case management conference by completion of Form B to this Practice.

7.8 The judge to whom opposed matters are allocated for hearing may direct the parties to start at any time earlier than 10h00.

7.9 A number of opposed matters on the roll shall not exceed eight matters per day to be shared between two judges on the opposed motion roll.

7.10 The heads of argument shall be served and filed as per the time-frames set by the parties or their legal representatives in Form B.

7.11 During the hearing of opposed matters, the parties shall assume that the presiding judge has read the papers and written heads of argument and that there is no need to take the presiding judge though the papers or repeat what is already articulated in the papers and written heads.

7.12 Oral argument shall be confined to what is relevant to the issues and the duration of oral argument shall not exceed 45 minutes including 10 minutes of uninterrupted oral presentation.

7.13 In exceptional cases, the presiding judge may allow more than 45 minutes of oral argument.

7.14 The date and time by which the papers must be indexed, paginated and filed with the registrar shall not be later than Monday at 12h00 preceding two weekends before the Monday of the motion week.

7.15 The Registrars' 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 and shall be accompanied by a roll in relation thereto by not later than 12h00 on a Tuesday preceding two weekends before the Monday of the motion week.

7.16 The opposed files shall be submitted to the Judge President and or Deputy Judge President or a judge designated thereto 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 7.15 above.

7.17 Allocation shall be done in chambers by the Judge President or by the Deputy Judge President or by a Judge designated thereto and the files shall be submitted by the secretary of the Judge President, the Deputy Judge President or of the designated Judge 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 7.16 above.

7.18 Upon allocation of opposed matters to the Judges on the opposed motion roll, each Judge concerned may direct the parties to file practice note before the date of hearing.

7.19 The particulars of the party, attorney or counsel who will be arguing the application, including their telephone number(s), cell phone numbers and email addresses shall be provided on Form B and on the written heads of argument.

7.20 The provisions of paragraphs 15, 16 and 17 of this Practice Directive relating to settlement on the date of hearing, removal

from the roll upon settlement in entirety, postponement and other removals from the roll shall apply to the opposed matters insofar as is relevant and summary enquiry with regards to the issue of costs shall also apply to the opposed motion matters.

8. UNOPPOSED MOTIONS

8.1 Unopposed applications shall be heard at 10h00 on Mondays and Fridays of the 1st, 4th and 7th weeks of every Term.

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

8.3 Any matter on the roll in excess of the number mentioned herein, shall not be attended to, unless the Judge concerned has read the papers and is ready to hear the application.

8.4 The applicant shall ensure that papers are ready, i.e. indexed, paginated and bound together and filed with the Registrar's clerk by not later than 12h00 on a Monday and Friday preceding the hearing on the following Monday and Friday of the motion week.

8.5 The Registrar's clerk 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 8.4 above.

8.6 Should an unopposed application become opposed, it shall not be removed from the unopposed motion roll. Instead, it shall be case managed on the date in question and enrolled on the opposed motion roll by completion of **Form B.**

8.7 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 against a party or party's legal representative who did not take necessary and adequate steps for the matter to be finalized.

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

9. EXTENTION OF RULE NISI

9.1 No rule nisi shall be extended for more than twice unless there are

good and compelling reasons persuading the court to extend the rule nisi for more than twice.

9.2 This is intended to avoid the reading of same papers several times by various judges at a huge cost to litigants and unnecessary delay to the finalization of the matter.

10. URGENT APPLICATIONS

10.1 Urgent applications shall be heard at 10h00 on every Tuesday of each week.

10.2 Matters to be enrolled for hearing on the Tuesday at 10h00 must be filed with the Registrar by not later than 12h00 on Thursday of the preceding week to enable the Registrar to prepare and submit in time the file(s) to the judge on the urgent roll.

10.3 Only in exceptional circumstances will an urgent application be enrolled to be heard on a day and time other than 10h00 on a Tuesday.

10.4 Depending on the degree of urgency, such urgent applications as contemplated in paragraph 10.3 above, shall be enrolled by the applicant as follows:

10.4.1 If the urgent application cannot be enrolled to 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 as set out in paragraphs 10.1 and 10.2 above.

10.3.2 If the urgent application cannot be brought at10h00 on any day during the week, it may be brought at 14h00 on any other day of the week. The applicant in the founding affidavit must set out facts to justify bringing the application at a time other than 10:00 on any day during the week.

10.3.3 If the application cannot be enrolled to be heard at 14h00 on any day during the week, it might be enrolled to be heard at any time during the week. The applicant in the founding affidavit must set out facts to justify bringing of the application at a time other than 14h00 on any day during the week.

10.3.4 If a party brings an urgent application on any day and or time outside the ordinary court hours and or over the weekend, the secretary / clerk of the Judge on the urgent

roll, must be telephoned at the court's urgent cellular phone number **0817377649.**

10.3.5 The secretary or clerk of the Judge on the urgent roll must be notified that an urgent application is intended to be enrolled at a particular date and time outside ordinary court hours as per the notice of motion.

10.3.6 The reasons for bringing the application outside ordinary court hours must clearly be averred in the founding papers.

10.3.7 The enrolment of urgent applications outside court hours or on any day other than a normal court day will only be done in exceptional circumstances based on extreme urgency.

10.3.8 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 and or during normal court hours.

10.4 The enrollment shall be guided by when urgency arose and the nature of urgency and at the hearing of the matter the court shall first consider whether the enrolment is accordance with the preceding sub-paragraphs before it deals with urgency and or merits of the application.

10.5 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 reasonable time to enable the affected party to prepare, file opposing papers and attend court.

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

10.7 All *ex parte* applications must be enrolled on the unopposed motion roll and unless urgency is averred and satisfied in the papers, it may be enrolled on the urgent roll.

10.8 *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 by bringing forward the date of hearing or return date of the rule nisi.

10.9 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 urgency was not self-created.

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

10.11 Every urgent application shall be indexed and paginated at a time papers are issued and the index and pagination shall be updated up to the hearing of the matter.

11. CASE MANAGEMENT OF POCA MATTERS

11.1 As provided in sub-rule (2) (a) (b) and (c) of rule 37A case management through judicial intervention shall be used in the interests of justice to alleviate congested rolls and to address the problems which cause delays in the finalization of cases; the nature and extent of which shall be complemented by the relevant directives or practices of the Division in which the proceedings are pending and shall be construed and applied to in accordance with the principle that, notwithstanding the provisions in rule 37A providing for judicial case management, the primary responsibility remains with the parties and their legal representatives to prepare properly, comply with all rules of court, and act professionally in expediting the matter towards-adjudication.

11.2 For the purpose as set out in sub-rule (2) and in terms of sub-rule (1) (b) of rule 37A, it is hereby directed that applications brought under Prevention of Organized Crime Act No 121 of 1998 shall also be subject to judicial case management process by completion of **Form C** to this Practice Directive.

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

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

11.5 In granting an application brought *ex parte (in other words, without giving a notice to the affected parties or those having an interest)* under 38 of POCA, the court shall issue a *rule nisi by completion of Form C to this Practice Directive seen in the context of the case of* 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 paras [25] and (26).

11.6 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 judicial case management or intervention, make an order or directive with regard to the following:

11.6.1 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[7];

11.6.2 The date by which the National Director shall publish a notice of the order in the Gazette[8];

11.6.3 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[9];

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[7] Section 39(1)(a) of POCA

[8] Section 39(1)(b)

[9] Section 39(b) read with section 39(4)(a) and or section 39(4)(b)

11.6.4 It is hereby noted that a preservation order shall expire as contemplated in section 40.

11.6.5In the event an appearance to defend or notice of opposition

is filed, the date on which the matter is enrolled, shall be used to case manage the matter as an opposed matter and the provisions of paragraph 7 of this Practice Directive shall apply thereto.

11.6.6 During judicial case management conference 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.

11.7 As contemplated in section 74 (1) (a) of POCA and subject to the provisions of the section, the hearings of the court contemplated in this Act, except for ex parte applications, shall be open to the public.

11.8 An application for proceedings to be held behind closed doors may in terms of section 74 (1) (c) be brought behind closed doors by the National Director and such application for in camera hearing, shall be heard behind closed doors at the end of the roll.

11.9 If the court in any proceedings before it, is satisfied that – it would be in the interest of justice; or there is likelihood of harm to any

person as a result of the proceedings being open to the public, it may in terms section 74 (1) (b) (ii) direct that such proceedings be held behind closed doors.

11.10 Should an application for in camera hearing be granted, the main application for preservation or restraint order shall also be heard at the end of the roll, except if the National Director decides not to pursue in camera hearing.

11.11 All applications under POCA including those heard in camera shall be heard in court and on record. In other words, there shall be no in chamber hearings of POCA matters.

12. MANAGEMENT OF CRIMINAL MATTERS

12.1 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.

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

12.3 In completing Form D, information as per Form D1 shall be provided.

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

parties thereto record no objection during case management proceedings.

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

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

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

12.5.3 Number and particulars of witnesses which the state intends to call and nature of their evidence.

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

12.5.5 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.

12.5.6 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.

12.5.7 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 witnesses during trial.

12.5.8 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 of the case to be considered during case management proceedings.

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

12.5.10 Continuation of a matter until finalization should be a priority. This may be considered during case management proceedings.

12.6 Court hours must be observed at all times and all criminal matters must start at 09h00.

12.7 Stand-downs or adjournments of criminal matters during trial should be avoided. For this purpose, it is important for both the state and defence to properly prepare in advance to avoid unnecessary stand-downs and adjournments during trial.

13. APPEAL WEEKS DURING RECESS

13.1 There shall be appeal matters enrolled on Mondays and Fridays

of every week during recess to address back-log of appeal cases.

13.2 Should there be no back-logs of appeal matters, the Mondays and Fridays during recess shall be used to enroll unopposed applications.

14. SETTLEMENT ON THE DATE OF TRIAL OR HEARING

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

14.2 Any settlement on the date of trial or hearing is tantamount to failure to a material degree to promote the effective disposal of the litigation as contemplated in rule 37 (9) (a) (i) (ii).

14.3 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 14.1.

14.4 Any matter that is settled on the date of trial in its entirety, shall be removed from the trial roll with recording or endorsement on the file: "Matter removed from the roll since it has been settled in its entirety on the date of trial".

14.5 The recording of removal from the roll as contemplated in 14.4 above shall be preceded by summary inquiry and an order for costs as contemplated in paragraphs 4 and 5 of Form A3 or paragraph 3.6 of Form B or any other similar Form and any defaulting party or attorney may be ordered to pay costs on a punitive scale and or out of own pocket, including forfeiture of appearance or day fee, all of which shall be guided by the nature of the default and explanation provided for settlement on the date of trial.

14.6 Should it not be possible to make immediate decision on the issue of costs during summary inquiry or should it become necessary for an explanatory affidavit on the issue of costs to be filed, judgment on the issue of costs occasioned by settlement on the date of trial shall be reserved.

14.7 An inquiry contemplated in 14.5 above, shall be conducted without making the settlement or draft thereof an order of court and the matter shall be removed from the trial roll with ancillary cost orders occasioned by the late settlement which must be endorsed on the file by the presiding judge or by such judge's secretary or clerk.

15. REMOVAL FROM THE ROLL UPON SETTLEMENT IN TIME

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

15.2 Upon settlement of a matter in its entirety, except on the date of trial and settlement reached after the date of settlement indicated in paragraph 6 of Form A, paragraph 4 of Form A3 or paragraph 3.6 of Form B, notice of removal as per Form E to this Practice Directive shall be delivered, meaning served and filed.

15.3 Once a matter is settled in its entirety before the date indicated in paragraph 6 of Form A, paragraph 4 of Form A3 or as indicated in paragraph 3.6 of Form B, the settlement agreement thereof shall immediately be filed with the Registrar accompanied by notice of removal from the trial or motion roll as per Form E filed at least 7 clear court days before the date of trial or hearing of the matter and the

Registrar shall record on the court file: "*Removed from the trial or motion roll as it has been settled in its entirety in time".*

15.4 Paragraph 15.3 above is intended to avoid unnecessary cost of litigation occasioned by late settlement, to ensure that other deserving matters for trial or hearing are enrolled in the place of those settled in time and removed from the trial or motion roll and to ensure that other judges on the trial or motion roll are re-assigned to do other judicial functions.

15.5 No notice of removal filed after the date indicated in paragraph 6 of Form A, paragraph 4 of Form A3 or paragraph 3.6 of Form B, shall be accepted by the Registrar and parties or their legal representatives shall be required to appear on the scheduled date to explain why the matter could not have been settled in time in terms of paragraphs 3.6 of Form B, paragraph 6 of Form A or paragraph 4 of Form A3.

15.6 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 roll unnecessarily. To curb this, it is hereby directed as follows:

15.6.1 Settlement agreements shall be enrolled to be made an order of court by way of an application for judgment or order 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 as contemplated in rule 41 (4) of the Uniform Rules of Court.

15.6.2 If it becomes necessary to immediately make a settlement agreement or draft thereof an order of court, a

party seeking such an order or judgment, shall file an affidavit setting out the reasons why it is necessary to do so and place it on the settlement roll on any court day at **08h45** upon two days' notice and only one party or such party's attorney shall appear provided a letter of confirmation from the other party or such party's attorney is submitted to court.

15.6.3 When a matter is enrolled on the settlement roll upon failure to carry out the terms of the settlement agreement between the parties, only the innocent party or his or her legal representative, shall appear and be entitled to costs of the application and appearance provided a consent letter from the other party confirming the settlement agreement or draft thereof is provided and that the defaulting party tenders costs of the application and appearance for judgment based on the settlement agreement.

15.6.4 Should the other party refuse to provide such a letter or to

tender costs for the application, the defaulting party or his or her legal representative shall be obliged to attend court on the date of application for judgment in terms of sub-rule (4) of rule 41 and shall run the risk of forfeiture of appearance fee and or special costs order relating to the application in question including payment out of own pocket.

15.6.5 An application for settlement agreement or draft thereof to be made an order of court or to grant judgment upon failure to carry out the terms and conditions of the settlement, shall be delivered and be enrolled on the

settlement roll to be heard **at 8h45** on any court day upon 5 days' notice in terms of sub-rule (4) of rule 41.

15.7 Divorce matters once settled, shall be placed on the unopposed motion roll for finalization by any of the parties.

16. POSTPONEMENT AND REMOVAL OF MATTERS FROM THE ROLL

16.1 There shall be no postponement *sine die* whether it being on the case management, trial, motion and or appeal roll.

16.2 There shall be no removal of any matter from any roll unless it has been settled in its entirety.

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

16.3 As contemplated in rule 37 (9) (a), 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 she/he or his/her attorney;

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

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

16.4 A request for a postponement on the date of trial or hearing is not allowed. When a postponement is granted on a date of trial or 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 own pocket as envisaged in paragraph 5 of Form A3 or paragraph 3.6 of Form B.

16.5 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.

16.6 The purpose of paragraphs 16.4 and 16.5 above is to ensure that another judge is not burdened with determination of an order for reserved costs but most importantly, the purpose is to ensure that failure by the parties or their legal representatives to '*a material degree promote the effective disposal of the litigation*'.

16.7 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.

16.8 For the purpose of dealing with this potential abuse and unprofessional conduct, a judge granting a postponement may in appropriate cases, particularly with repeat defaulters, refer the conduct of such defaulting legal practitioners to the National Legal Practice Council or Provincial Council.

16.9 Any request for a postponement shall be on a substantive application to be enrolled for hearing on the unopposed motion roll at least 7 clear court days before the trial or hearing date or may be enrolled on the urgent roll provided the circumstances justifying such enrollment on the urgent roll are spelled out in the founding papers.

16.10 When such an application is enrolled on the urgent roll, the date and time of hearing thereof shall be determined by the party making the application and not by the Registrar.

16.11 Should the trial or hearing date be between the date on which urgency for a postponement arose and Monday or Friday of the motion week, the application for a postponement, may be enrolled on the urgent roll provided enrollment thereof and requirements for urgency as contemplated in paragraph 10 of this Practice Directive, are met.

16.12 Where there is an application that is enrolled on the unopposed motion roll as an interlocutory application and the main action or application is not enrolled already, for example, an application to compel, and the other party complies before the hearing of the interlocutory application, the matter shall not be removed from that roll. Instead, the date of enrollment for the interlocutory application shall be used to case manage the main application or action unless it has already been case managed.

16.13 If a matter that is on the unopposed motion roll becomes opposed, the matter shall not be removed from the unopposed motion roll or postponed, instead, the date on the unopposed roll shall be used to case manage the matter.

17. CRIMINAL PART-HEARD MATTERS

17.1 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 with the Secretary of the Judge President and or Deputy Judge President or a Judge designated thereto by the Judge President and or the Deputy Judge President. This will avoid congestion during recess.

17.2 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 17.1 above.

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

17.4 Should a part-heard criminal matter be postponed during a term, there shall be no other new matter placed for trial during that period.

18. EARLY FINALISATION OF ALLOCATED MATTERS

18.1 Once a matter that is allocated for trial or hearing is finalized earlier than the allocated duration, a judge who is dealing with

allocation for any such a matter including motion and appeal matters, shall immediately be notified.

18.2 The Judge dealing with allocation may allocate other matters and the Judge President or Deputy Judge President or a Judge designated thereby, may assign other judicial functions to the Judge whose matter or matters have been finalized earlier than the allocated time.

19. MANAGEMENT OF APPLICATIONS FOR LEAVE TO APPEAL

19.1 A party filing an application for leave to appeal must simultaneously file the judgment in the matter, if available. If judgment is not available, it shall be obtained by the applicant before application for leave to appeal could be enrolled for hearing.

19.2 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.

19.3 The secretary in consultation with the judge concerned shall as soon as possible schedule the application for leave to appeal on any court day at 09h00 to ensure that the main roll is not affected.

19.4 If the Judge who dealt with the matter is not readily available or is no longer acting, the application for leave to appeal may be heard by another Judge designated by the Judge President and or Deputy Judge President in which case, the judge who dealt with the matter and where possible, shall be consulted before the hearing of the application for leave to appeal.

19.5 Should leave to appeal be granted to the full court of this Division, the judge granting such leave shall at the same time case manage the appeal and for this purpose, the parties or their legal representatives shall complete **Form F** to this Practice Directive.

20. MANAGEMENT OF CRIMINAL PETITIONS

20.1 Every petition matter for leave to appeal from the district or regional court shall be considered in chambers by two judges.

20.2 The Registrar shall within 5 days upon receipt of copies in duplicate of any petition matter, prepare the file and allocate same to two available Judges.

20.3 The judges considering the petition shall expeditiously attend to it and dispose of such a petition within 10 days from date of allocation by the Registrar.

20.4 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 as an appeal matter and allocate an appeal case number.

20.5 Upon allocation of the appeal case number the appeal/registrar clerk concerned shall within 5 days place the matter on the case management roll.

21. ENROLMENT AND MANAGEMENT OF CIVIL AND CRIMINAL APPEALS

21.1 Every appeal matter shall be case managed and enrolled for hearing as contemplated in paragraph 21.2. hereunder and appeal matters shall be enrolled for hearing on each Friday of civil trial week. The number of matters so enrolled shall not exceed six matters per roll.

21.2 In managing appeal cases, the parties or their legal representatives shall complete **Form F** of 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.

21.3 Within five days upon receipt of an appeal from the clerk of the lower court, or after granting of a petition by two judges of petition from the lower court, the Registrar's clerk shall enroll the matter for case management.

21.4 Should the Registrar fail to enroll an appeal matter for case management within 5 days upon filing of an appeal or granting of petition by two judges, any party thereto shall be entitled to approach the Registrar to have the matter placed on the case management roll.

21.5 On the date on which case management proceedings are to be conducted, parties or their legal representatives shall report not later than 08h00 to the Registrar or Registrar clerk dealing with the appeal roll to choose the date on which they would want their matter or matters to be enrolled.

21.6 Once a date of hearing is chosen, Form F shall be completed and parties or their legal representatives shall accordingly set the time frames for themselves as provided in Form F.

21.7 In addition to what is provided for in Form F, the parties may for the purpose of ensuring readiness of the appeal on the date of hearing, set any other time-frames on the available space in Form F or on a separate sheet.

21.8 No acting judges shall sit alone in an appeal matter without a permanent Judge unless the Judge President or the Deputy Judge President has so directed.

21.9 The hearing of appeal matters shall start at 10h00, however the presiding Judge may direct parties to start earlier than 10h00.

21.10 Full Court appeals shall also be enrolled during the case management proceedings and shall also be enrolled for hearing at 10h00 on any Friday of civil trial week.

21.11 In dealing with backlogs relating to appeal matters, the Judge President and or the Deputy Judge President or a Senior Judge designated thereto may in the course of case management proceedings enroll an appeal matter on Monday and or Friday during any recess period.

22. MANAGEMENT OF RESERVED JUDGMENTS

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

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

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

22.4 On or before 1st day of each month updated Form G, shall be submitted to the Office of the Judge President for record keeping and management of reserved judgments.

22.5 Where no judgment was reserved for a particular month, Form G with a nil- return shall be completed.

23. UPDATED ROLL REGISTER

23.1 There shall be separate updated roll register for civil, motion and appeal matters that are already enrolled for trial or hearing after having gone through case management process.

23.2 It shall be the responsibility of the Registrar to keep, control and ensure that the roll register is correctly updated as hereunder.

23.3 Such a register shall be updated as the parties or their legal representatives select dates of trial or hearing available and suitable to them by entering the particulars thereof in the updated roll register.

23.4 Every matter that is postponed shall further be case managed by completion of Forms A, A3, B and F or similar thereto and the roll shall be updated accordingly.

24. DAILY ROLL

24.1 There shall be a daily roll prepared by the Registrar' office which shall be put on the notice board and emailed to Mpumalanga Provincial Council, Mpumalanga Society of

Advocates, attorneys and to each Judge and Judges' secretary by not later than 16h00 each day for the following day.

24.2 On 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 when the matter will be heard and the name of the presiding judicial officer concerned must be indicated.

24.3 Because of the many matters involved on the trial roll call, case management roll, and unopposed roll, only particulars of the presiding officer shall be indicated on the daily roll.

24.4 For the purpose of updating the daily roll each judges' secretary shall furnish the registrar's office with the status of each matter on the roll by not later than 15h30 on each day of sitting.

24.5 It shall also be the responsibility of the registrar to insist on the information for the purpose of ensuring that a daily roll is updated and accurate.

25. MANAGEMENT OF CRIMINAL REVIEW MATTERS

25.1 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 or areas published in Government Notice No.42420 dated 26 April 2019.

25. 2 The Registrar shall within 2 days upon receipt of any review matter from the district or regional court allocate such a review matter to be considered in chambers by a single judge.

25.3 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 matter is allocated.

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

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

25.6 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.

25.7 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 that may be raised by the judge dealing with the matter.

25.8 Should the judge concerned or any judge upon receipt of comments by the magistrate still not be satisfied that the proceedings or part thereof were in accordance with justice, the Director of Public Prosecutions shall be asked to comment. For this purpose, transcribed record of the proceedings, queries raised with the magistrate and comments thereto shall be provided.

25.9 A judge who had previously dealt with the matter and referred it to either the Magistrate or to the DPP for comment, is not necessarily ceased with the matter and such a matter may be reallocated to any other available judge.

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

26. MANAGEMENT OF REQUESTS FOR DEFAULT JUDGMENTS

26.1 The request 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 request.

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

26.3 In providing the information contemplated in 26.2 above, **Form I** to this Practice Directive shall be completed.

26.4 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.

26.5 Queries raised by the Registrar regarding the requests for default judgment filed, must be attended to by the party or party's legal representative at least within **five** days upon the query having been raised.

26.6 It shall be the responsibility of the parties or their legal representatives to check with the Registrar at least five days upon filing of their requests, if any of such requests have been queried or finalized.

27. MANAGEMENT OF TAXATION MATTERS

27.1 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.

27.2 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 same has received due notice as to the time and place of such taxation and as contemplated in Rule 70 (3B).

27.3 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[10].

27.4 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.

27.5 A party in whose favour costs have been awarded, shall provide the Taxing Master with an order for costs. The Taxing Master shall not proceed with taxation without a court file and an order for costs except in matters which have been settled amongst the parties and the court was not involved.

27.6 Furthermore, any 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 and the date of taxation in the notice of taxation as per Form **JA** shall be filled in by the Registrar.

27.7 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 has been granted; and the Taxing Master shall not be bound to allow any item upon which parties have agreed to settle and or where there is no objection.

27.8 As indicated in paragraph 2.19 of this Practice Directive, no advocate's fee shall be allowed by the Taxing Master in respect of attendance of a pre-trial conference or judicial case management conference held more than 10 days before the date of a matter enrolled for hearing.

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[10] Rule 70 (4)

27.9 The Taxing Master shall before he or she proceeds to consider bill of cost items, check the order of costs made by the court and in case of doubt, verify by listening to the recordings.

27.10 Any item on the bill of costs in respect of which there was a forfeiture against any of the legal practitioners and or no order as to costs against litigating parties was made, shall entitle the Taxing Master to halt the taxation process and report the matter to the Judge President and or Deputy Judge President.

27.11 Should the Judge President and or Deputy Judge President be satisfied that an item has been included in the bill of costs contrary to an order for costs, the matter shall immediately be reported to the Police and the Provincial Legal Practice Council for investigation.

27.12 The Taxing Master shall by completion of a **Form J** on or before 1st day of each month provide the Judge President or Deputy Judge President or a designated Judge with a list of taxation matters received for that month and those finalized for the same month.

27.13 Any party whose taxation is unduly delayed may report the delay to the Office of the Judge President after having made enquiries with the Taxing Master and or Chief Registrar.

28. <u>POKING SYSTEM</u>

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

28.2 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.

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

28.4 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.

28.5 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 provided appearance to defend or notice to oppose is filed.

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

28.7 During case management proceedings initiated through poking system some of such matters are either settled or withdrawn and the Registrars are therefore directed to ensure that poking system is conducted regularly.

29. FILING, INDEXING AND PAGINATION

29.1 Any filing of a document shall be stamped by the Registrar and returned to the attorney to form part of the indexing and pagination on the closing of the roll.

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

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

29.4 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 to divide the court papers in bundles of 100 pages each.

29.5 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.

29.6 Written heads of argument must not be bound together with the court papers and should therefore be kept separately and properly marked.

30. EFFECTIVE DATE

30.1 This Practice Directive replaces the Practice Directive issued on 24 July 2019 and shall operate with immediate effect. It shall apply also to all pending matters case managed under the previous Practice Directive.

DATED ON THE 9 JANUARY 2020 AT MBOMBELA, MPUMALANGA DIVISION.



JUDGE PRESIDENT: M F LEGODI

MPUMALANGA DIVISION OF THE HIGH COURT