



HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION

PRACTICE DIRECTIVE

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**OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA**

**AMENDED PRACTICE DIRECTIVE OF 9 JANUARY 2020 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.**

PREAMBLE

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 Courts 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, the 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

- 1.1 All judicial officers must strive to finalize all matters, including outstanding judgments, decisions or orders as expeditiously as possible¹. As a result, civil cases in the High Courts should be finalized within 1 (one) year from date of issue of summons² 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 charges³ 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 trial⁴.
- 1.3 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 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

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

- 1.4 Case flow management shall be directed at enhancing service delivery and access to quality justice through speedy finalization of all matters⁵, 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 opportunity⁶.
- 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 therewith, every civil, all motion and criminal cases in this Division shall be case managed with specific timeframes which are expressed in specific date terms 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.
- 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 **08h45** on any day before any judge

⁵ Paragraph 5.2.4 (i) of Norms and Standards

⁶ Paragraph 5.2.4 (iv) of Norms and Standards

available. Matters on the case management roll per day and per judge shall be limited to five.

- 2.2 Should there be a need for an interlocutory application, such as exceptions and so forth, timeframes 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 timeframes 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 interlocutory application referred to in paragraph 2.2 above shall be set with specific timeframes 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 matters. In cases other than damages claim matters, judicial case management judge may during the first case management hearing certify any such matter(s) trial ready in which event the date of trial shall be determined during the first judicial case management conference by completion certificate of trial readiness, that is, Form A3 to this Practice Directive.
- 2.7 In exceptional circumstances, damages claim matters may also be certified trial ready during the first judicial case management conference. Certification of trial readiness shall be endorsed by the case

management judge, otherwise certificate of trial readiness shall not be recognized.

- 2.8 Any action matter may be placed on the first case management roll by the parties upon delivery of an appearance to defend or upon pocking system initiated by the registrar office as contemplated in paragraph 28 of this directive.
- 2.9 Placing of the matter on the first case management roll as envisaged in paragraph 2.8 above, shall be by the parties or parties' legal representatives and shall be so done by completing Form A to this Practice Directive.
- 2.10 The timeframes to be filled in Form A shall be determined by the parties themselves or their legal representatives including the date of the second judicial case management conference.
- 2.11 The first judicial case management conference and the time frames set out in Form A are aimed at pre-empting any potential causes of delay in the commencement or conduct of the trial as contemplated in rule 37A (5)(b)(iv).
- 2.12 Any failure to comply with the timeframes set during any judicial case management process or conference, shall entitle the other party 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.
- 2.13 The purpose of judicial case management in this Directive 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 there is strict compliance with sub-rules (7),(8) (9) and (10) of rule 37A and the case management judge is satisfied that timeframes the parties 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 in earnest and diligently.

- 2.14 Meaningful pre-trial conference amongst the parties or their legal representatives and with a view to explore settlement, shall include discussions on the matters referred to in rule 37A (10), rule 37(6) and such matters shall be particularized in the form of “headings” for discussion and must clearly be set out in any pre-trial minutes amongst the parties for the purpose of trial readiness determination by the case management judge.
- 2.14.1 The tendency not to consider mediation seriously as contemplated in rule 41A, shall not be accepted. Therefore, during any judicial case management conference, the parties shall be engaged in order to establish whether rule 41A was seriously considered or was ignored.
- 2.14.2 Should it be found that the parties did not consider mediation as contemplated in rule 41A seriously, the judge seized with the matter during any judicial case management conference or during trial may decline to certify the matter trial ready or may issue directive in relation thereto, as he or she may deem necessary.
- 2.15 Should contingency deductions regarding loss of earning or loss of earning capacity 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.
- 2.16 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 may 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.

- 2.17 At the conclusion of any 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) of rule 37A, shall indicate in writing whether the trial proceedings should be conducted before another judge. In addition, when set of court papers are filed on or before the close of the roll a practice note shall be filed indicating the stance taken during the judicial case management regarding the case management judge concerned. Failure to give such an indication in the practice note, shall be assumed during allocation that no judge is disqualified from dealing with any such matter.
- 2.18 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.
- 2.19 During any 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 is unreasonably to frustrate the objectives of the judicial case management process and this sub-rule shall also apply during trial when a matter is removed from the roll, postponed or settled on the date of trial or less than seven clear court days before the date of trial.
- 2.20 Furthermore, judicial case management or trial 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.

- 2.21 Similarly, in terms of rule 37 (9)(a)(i)-(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 legal practitioner , **because such a party or such party's legal practitioner did not attend a pre-trial conference**; or failed to a material degree to promote the effective disposal of the litigation. In so doing the trial judge will also consider whether there has been compliance with the timeframes the parties set for themselves during the first and second case management proceedings and the provisions of rule 37A (12) and (16) shall equally apply at the hearing of any matter including motion or appeal proceedings
- 2.22 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.
- 2.23 Should any party in 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 or children of the marriage are 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.
- 2.24 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 as contemplated in section 4 (1) (a) of Act 24 of 1987.

- 2.25 Failure to attend judicial case management hearing or pre-trial conference amongst the parties, shall not detract the other party from having a matter case managed with timeframes being set for the parties including the defaulting party.
- 2.26 **When the matter is placed on the judicial case management roll as contemplated in paragraph 2.25 above, the provisions of sub-rules (7),(8) (9) and (10) shall still strictly be complied with to satisfy the judicial case management judge that the party who enrolled the matter for judicial case management conference is ready for trial.**
- 2.27 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.
- 2.28 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 except with the leave of the court.
- 2.29 Paragraphs 6 and 7 of Form A and any other similar paragraph or paragraphs will strictly be enforced by the Judge conducting any judicial case management proceedings to ensure that completion of Form A does not become a routine with no consequences.
- 2.30 Form A will be endorsed and signed at the top thereof by the judge conducting first case management conference to ensure that matters are not finally enrolled on the second judicial case management conference without the sanctioning of a judge and without having gone through the first case management process.

- 2.31 An issue that is not sufficiently catered for in Form A or for which there is no sufficient space to state such an issue, shall be stated on a separate paper or document which shall form part of the case management directive or order.
- 2.32 Unpreparedness during case management proceedings shall not be acceptable and shall be regarded as unprofessional conduct seeking to frustrate case management process.
- 2.33 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.
- 2.34 Only legal representatives with right of appearance in the high court will be entitled to appear during case management proceedings.
- 2.35 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 timelines by which a determination by the Health Professional Council or a final award by Workmen Compensation Commissioner, shall be made.
- 2.36 The plaintiff or plaintiff's legal representatives shall in terms of sub-rule (7) (d) (i) and (ii) of rule 37A ensure that not less than two court days before the date appointed for the first and second case management conferences, the court file is suitably secured, paginated and filed with the registrar together with all minutes of pre-trial conferences where applicable amongst the parties or their legal representatives.
- 2.37 All judicial case management proceedings **shall be conducted physically or in person as there are Forms to be completed and**

particulars of the parties have to be entered into the applicable roll register to ensure that compliance with the timeframes the parties or parties' legal representatives set for themselves in the Forms, are complied with and taken seriously.

2.38 Physical or in person appearance during judicial case management is also to ensure that the parties or their legal representatives are properly engaged and at the same ensure that matters are truly ready and deserving for trial.

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.** A trial week commences on a Monday to a Thursday as Appeal matters are dealt with on Fridays of each trial week.

3.2 At **08h45** on each Monday of a civil trial week there shall be a roll call conducted by a judge seized with the matters on his or her roll in three stages as indicated in paragraph 5 hereunder.

4. Close of the civil trial roll

4.1 The close of the roll , that is filing of set of court papers for matters certified as per Form A3 **shall be not later than 12h00 noon on a Wednesday allowing 7 clear court days before the Monday of the trial week.**

4.2 Due to this division not having sufficient judges there shall be no more than **50 matters enrolled during any trial week.**

4.3 **There shall be no piece meal filing of documents.** Instead, filing shall take place as follows:

4.3.1 The plaintiff or plaintiff's legal practitioners shall be allowed to start filing their sets of court papers properly paginated, indexed and bound together in terms of paragraph 29 of this Directive **only from five clear court days before the close of the roll.**

4.3.2 The registrar or registrar's clerk shall prepare a provisional civil trial roll at least seven clear court days before the close of the roll, extracted from the provisional civil trial register and shall thereafter start pulling the files at least six clear court days before the close of the roll and place them at a secured place to ensure that when sets of court papers are filed, they are immediately placed in the specific file so secured. This will also ensure that on the close of the roll all files are secured.

4.3.3 The directive in paragraphs 4.3.1 to 4.3.2 is due to insufficient storage or filing space but most importantly, it is also aimed at ensuring that court files and court papers are not misplaced resulting in files and court papers not being traceable on the close of the roll.

4.2.5 Any filing of court papers as contemplated in paragraphs 4.3.1 and 4.3.2 earlier than five clear court days before the close of the roll, will not be accepted for the reasons indicated in paragraph 4.2.4.

4.2.6 The directive will remain in place until the E-filing or case-line filing is implemented probably as a nation-wide project in all courts.

4.3 When a set of court papers are filed as indicated in 4.3.1 and 4.3.2 above, a "Practice Note" shall be filed by both the plaintiff and the defendant and placed on top of the bundle. In the **Practice Note** very briefly the following shall be set out:

4.3.1 the nature of the claim;

4.3.2 **issues for trial;**

4.3.3 particulars of the respective legal practitioners who will be conducting trial, including their telephone number(s), cell phone numbers and email addresses;

4.3.5 estimated duration of the trial;

4.4 In the event the parties or any of the parties proposes that trial proceedings be conducted physically, the parties or any of the parties shall in the Practice Note provide the reasons for proposing physical hearing and how such physical hearing may save costs or time or be in the interest of justice or convenient or any other reason justifying a physical hearing.

4.5 No further documents, court processes, index and pagination of documents shall be accepted by the Registrar after the Wednesday of the close of the roll as set out in 4.1 above.

5. **Management of civil trial roll call**

5.1 The judge to whom a trial matter is allocated on the close of the trial roll, shall conduct roll call on every Monday of a trial week which shall start **at 08h45**. The roll call may be conducted virtually before the Monday of the trial week in question as the judge to whom the matter is allocated, may direct. The trial judge to whom trial matters are allocated may after engaging the parties on the issues of concern remove any matter from the roll if he or she is not satisfied that the matter is actually ready for trial.

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 in respect of which the parties are ready for trial to start immediately. If more than one matter is ready for trial, the judge may proceed to determine the

duration of each matter. Any matter that runs beyond the estimated duration, runs the risk of *de novo hearing*.

5.2.2 Once the duration of each matter is determined, the judge concerned, may streamline his or her roll for the week in such a manner that all matters ready for trial are accommodated.

5.2.2 Upon streamlining the roll for the week, the judge will then immediately start with the first matter ready to proceed as per the stream-lined roll.

5.2.3 Paragraph 5.2.2 above, is meant to ensure that the parties who have gone through proper judicial case management process, pre-trial conferences amongst themselves and are ready and prepared 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 trial judge concerned, has concluded allocation of matters of his or her roll on the Monday of trial week or on any other day before the Monday in question, it shall not be reopened and any matter that was not called by the parties or parties' legal representatives during roll call shall be postponed with summary enquiry as to costs contemplated in paragraph 7.2 of Form A or as contemplated in any such similar form completed during case management proceedings.

5.2.3.1 Paragraph 5.2.3 is meant to discourage those parties who start negotiating in earnest on the date of trial when enormous unnecessary legal costs had already been incurred.

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**, to avoid a situation where the roll call is completed whilst the parties are not in attendance virtually or in person as the trial judge may have directed upon consideration of factors mentioned in paragraph 4.4 above.

5.2.5 **The second stage** of the roll call deals with settled matters in their entirety or partly on the date of trial. Such matters will be referred to the Judge President or the Deputy Judge President who would have allocated such matters to specific judges on the trial roll. The Judge President or Deputy Judge President shall deal with the inquiry concerning late settlement and the costs implication against whoever might have been responsible for the late settlement.

5.2.6 If the Judge President or Deputy Judge President is not available to deal with the inquiry regarding the late settlement, any judge available should deal with such inquiry instead of the trial judge, unless the trial judge concerned has completed his roll for the week.

5.2.7 Should there be no judge available to deal with the inquiry on the late the settlement, the inquiry will be scheduled for another day to take place as contemplated in paragraphs 15.3 and 15.4 and the proceedings shall be conducted virtually within 5 days from Monday of the trial week in question.

5.2.8 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 16.4 of this Practice Directive. The provisions of paragraphs 5.2.5 to 5.2.7 shall equally apply to an inquiry regarding postponements on the date of trial.

- 5.2.9 Should it become necessary during an inquiry on the issue of costs occasioned by late settlement or postponement to file explanatory affidavit, judgment on costs shall be reserved.
- 5.2.10 There shall be no stand down of matters during the roll call neither shall there be any stand down for a witness who is not present to give evidence.
- 5.2.11 Stand down of matters will only be allowed by the trial judge if matters allocated are more than one-day duration in which case, the trial court may allow stand down by streamlining matters allocated to it as it deems fit without giving more time than the estimated duration of the trial allocated and determined during the roll call.
- 5.2.12 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 by the registrar assisting the roll call judge.
- 5.2.13 Should any matter not be finalized within the time so allocated, the judge so seized with the matter may order the matter to start *de novo* or postpone the matter to a date during recess period.
- 5.2.14 Paragraph 5.2.13 above is meant to ensure that other matters stream-lined during the roll call do proceed, unless there are no other matters to be attended to during the week in question.
- 5.2.15 Before a part-heard matter is postponed as contemplated in paragraph 5.2.13, the Judge President or Deputy Judge President shall be consulted to ensure that there are other judges available to do judicial functions other than part-heard matters during recess.

Default judgments in unliquidated claims

5.3 As contemplated in rule 31 (2) (a) there shall be no default judgment in any claim which is not for a debt or liquidated demand like damages claim matters without hearing evidence and only after the court shall have heard evidence will the court consider whether to grant default judgment or not.

5.3.1 Hearing of evidence shall mean tendering of evidence viva voce on all relevant and unresolved factual basis of the case.

5.3.2 Failure to adduce evidence as provided in the rules may lead to dismissal of the action or to absolution from the instance.

Procuring evidence for trial through affidavits

5.4 As contemplated rule 38 (2), evidence during trial in unliquidated or damages claim cases shall be procured through witnesses who shall be examined viva voce.

5.5 Evidence procured by way of affidavits in the unliquidated claims or damages claims may only be so procured with the leave of the court and on such terms and conditions as the trial court may seem meet.

5.6 As contemplated in rule 39 (1), if the defendant does not appear when a trial is called, the plaintiff may prove his or her unliquidated claim or debt or may discharge the burden resting on him or her by way of viva voce evidence.

Separation of issues for trial

5.7 There shall be no automatic separation of triable issues by agreement between the parties. As contemplated in rule 33(4) the

court shall on application of any party make an order for separation unless it appears that the questions or issues in the case cannot conveniently be decided separately.

5.8 Rule 6 (1) provides that every application shall be brought on notice supported by an affidavit as to facts upon which the applicant relies for relief.

5.9 In other words, “*on application*” in rule 33(4) shall mean an application brought on notice as set out in rule 6 (1) of Uniform Rules of Court.

6. **Settlement after roll call**

It is hereby directed that should a matter be settled or intended to be postponed (late settlement or postponement) after the roll call, the trial judge, shall deal with the matter as contemplated in paragraphs 5.2.5 to 5.2.7 above.

7. **Enrollment and management of opposed matters**

7.1 No opposed matter shall be enrolled for hearing unless it has gone through judicial case management conference by completion of Form B after consulting with the registrar for the available date chosen and agreed upon between the parties and the parties or their legal representatives having entered their particulars in the opposed motion roll provisional register.

7.2 The parties or anyone of the parties may request the registrar to lay an opposed matter before a judge for judicial case management to be conducted through audiovisual link before a judge. The link shall be sent by the secretary of the judge seized with the case management roll **not later than 10h00 on a day preceding the date of the judicial case management conference.**

- 7.3 Any request to lay a matter for judicial case management before a judge and to be conducted virtually, shall be accompanied by full explanation on affidavit why paragraph 7.1 is not resorted to and the judge before whom the matter is laid may in his or her discretion grant the request for judicial case management or direct the process under paragraph 7.1 to be followed.
- 7.4 Every opposed motion matter shall be case managed upon delivery of notice to oppose or anytime thereafter and shall be so case managed by completion of Form B as contemplated in paragraph 7.1 above.
- 7.5 The date of hearing and timeframes for the filing of answering affidavit, replying affidavit and written heads of argument shall be set by the parties or parties' legal representatives as per Form B. If the judge doing allocation upon close of the roll is satisfied that the matter is ripe for hearing on the date chosen by the parties or their legal representatives, he or she shall confirm the date in question by allocating the matter to any of the judges on the opposed motion roll.
- 7.6 Opposed applications shall be enrolled to be heard at 10h00 on every Tuesday and Thursday of the motion weeks being 1st, 4th and 7th weeks of every Term.
- 7.7 The judge to whom opposed matters are allocated for hearing, may direct the parties to start at any time earlier than 10h00 or start at any specific time of the day as the judge to whom the matter is allocated may decide.
- 7.8 A number of opposed matters on the opposed motion roll shall not exceed 12 matters per day and the files shall evenly be shared amongst three or two judges on the opposed motion roll.
- 7.9 The heads of argument shall be served and filed as per the timeframes set by the parties or their legal representatives in Form B.

- 7.10 During or on the date of hearing of any opposed matter, the parties or their legal representatives 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 through the papers or repeat what is already articulated in the papers and written heads including what is articulated in the “Oral written argument” document.
- 7.11 There shall be no piece meal filing to avoid loss or misfiling of court papers and also due to shortage of sufficient storeroom space. Instead, filing of a complete set or sets of court papers shall only start to take place from five days before the close of the roll and by the close of the roll as contemplated in paragraph 7.16 hereunder. Filing of court papers
- 7.12 Hearings of opposed motion matters will be conducted through virtual hearings. 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 When filing set of court papers as contemplated in paragraphs 7.17 and 7.18 hereunder, the parties shall also file what is referred to as “**Oral written argument**” document of not more than five pages in which issues are succinctly dealt with as if it is actual oral argument during virtual hearing.
- 17.15 The parties will be at liberty to dispense with oral argument upon filing of a “oral written argument document” in order to save unnecessary costs of litigation and in some cases in the interest of justice and or for convenience.
- 7.16 Opposed motion matters shall be indexed and paginated from the applicant’s or respondent’s set of court papers and filed not later than

12h00 on a Wednesday preceding two weekends before the week of the hearing of any such to allow 7 clear court days before the Monday of the week during which such matters are enrolled.

- 7.17 Any matter which does not comply with any provision of the directive herein shall not be allocated on the close of the roll.
- 17.18 A judge to whom opposed matter is allocated may still decide whether or not a matter is ready for hearing.
- 7.19 The registrar clerk or assistant shall seven clear court days before the close of the roll secure all the files as per the provisional opposed roll register and place them together to ensure that all files are accounted for by the time the parties start filing their set of court papers.
- 7.20 The Registrars' office shall submit the files and the roll to the Judge President or the Deputy Judge President or a designated judge by **not later than 14h00 on the Wednesday of the close of the roll** for the purpose of allocation with the registrar, which allocation shall be **completed by not later than 16h00** on the said Wednesday of the close of the roll.
- 7.21 The allocated files with one consolidated roll reflecting the roll of each judge, shall be submitted to the respective judges' secretaries **by not later than 16h00 on the Wednesday of the close of the roll**. The judges' secretaries shall ensure that the files are given to their respective judges in time to ensure that the judges have at least two weekends to prepare.
- 7.22 Upon allocation of opposed matters to the Judges on the opposed motion roll, each Judge may direct the parties to file supplementary written heads of argument on any issue the judge may deem fit.

7.23 When a set of court papers are filed as indicated in 7.16 above, a “Practice Note” shall be filed by both the applicant and the respondent and placed on top of the bundle.

7.24 In the **Practice Note** the following shall be set out:

7.24.1 the nature of the application;

7.24.2 issues to be decided by the court.;

7.24.3 particulars of the respective legal practitioners who will be arguing the application, including their telephone number(s), cell phone numbers and email addresses,

7.24.4 pages in the court papers which do not have to be read when the court papers in total exceed 150 pages and

7.24.5 a summary of previous hearings if any and what transpired therein or since said hearing.

7.25 The provisions of paragraphs 14, 15 and 16 of this Practice Directive relating to settlement on the date of hearing, removal from the roll upon settlement in its entirety, postponement and removal from the roll on the date of hearing shall also apply to the opposed matters insofar as it is relevant and summary inquiry with regards to the issue of costs shall also apply to the opposed motion matters.

8. **Enrolment of unopposed motion matters**

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 **150** matters during term and not more than **100** matters during recess.

- 8.3 Any matter on the roll in excess of the number mentioned above, shall not be attended to.
- 8.4 The applicant shall ensure that a set of court 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 respectively of the motion week.**
- 8.5 When a set of court papers are filed as contemplated in paragraph 8.4 above, **a practice note and draft order in triplicate will be placed on top of the bundle of the indexed and paginated papers.**
- 8.6 In the **Practice Note**, the following shall clearly and briefly be set out:
- 8.6.1 the nature of the application;
 - 8.6.2 when and by what means service was undertaken;
 - 8.6.3 particulars of the respective legal practitioner who will be arguing the application, including their telephone number(s), cell phone numbers and email addresses;
 - 8.6.4 a summary of all previous hearings and what transpired during such hearings.
- 8.7 It is the responsibility of the parties or the parties' legal practitioner to make sure that when a matter is postponed in court to a specific date, before such postponement, the applicant or applicant's legal practitioner has in his or her handwriting enter the particulars of the parties in the unopposed provisional roll register and must provide the judge postponing the matter with the number under which such matter is enrolled on such provisional roll register.
- 8.8 Postponement of any matter enrolled 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.

- 8.9 Any matter that is not entered in the provisional roll register as contemplated in paragraph 8.7 above shall not form part of the roll at the close of the roll.
- 8.10 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** respectively preceding **the Monday and Friday** of motion week as indicated in 8.4 above.
- 8.11 Summary judgments and rule 43 applications whether opposed or not shall be enrolled on the unopposed motion roll provided such opposed applications on the roll shall not exceed five matters.
- 8.12 Rule 43 applications are meant to be disposed expeditiously court papers are not meant to be voluminous and shall accordingly nor exceed 200 pages. Any rule 43 application which is voluminous with more than 200 pages shall be removed from the unopposed motion roll to be enrolled on the opposed motion roll in terms of paragraph 7 above.
- 8.13 As contemplated rule 6 (5)(a) of the Uniform Rules of Court, every application other than one brought ex parte, shall be brought on notice of motion as near as may be in accordance with Form 2(a) of the First Schedule and true copies of the notice, and all annexures thereof, shall be served upon every party who is required to be given such a notice.
- 8.13 In the notice, the applicant shall *inter alia*, as contemplated in rule 6(5)(b) set forth a day, not less than ten days after service of the application on the respondent, on or before such respondent is required to notify the applicant, in writing, whether he intends to oppose such application, and shall further state that if no such notification is given, the application will be set down for hearing on a stated day, not less than 10 days after the

service on the respondent of the said notice, which date shall be arranged with the registrar by entering the particulars thereof in the provisional unopposed motion roll.

- 8.14 Failure to comply with a notice as set out in paragraphs 8.12 and 8.13 above, shall result in the application being struck from the roll for non-compliance with sub-rule (5) (a) and (b) of rule 6.

Disposal of unopposed matters

- 8.15 Unopposed matters shall be disposed of without oral or virtual hearing unless the judge to whom such matters are allocated determine otherwise and shall be dealt with as follows:

8.15.1 The Judge shall consider unopposed matters on papers and make an endorsement on the file indicating the order granted or reasons why an order could not be granted and or allowing the party to file supplementary affidavit if there is a need to address a particular aspect raised by the Judge concerned as per the endorsement, or

8.15.2 The judge so seized with the unopposed motion matter or matters may preferably dispose of such a matter or matters on papers. Written submissions may also be sought from the parties before the date of hearing, on or after the date of hearing.

8.15.3 Should there be a need to conduct a hearing and not to dispose of unopposed matter or matters on papers, the judge seized with any such unopposed matter or matters may direct for a virtual hearing to take place.

- 8.16 Should an unopposed matter become opposed, it shall be removed from the unopposed motion roll **only when an answering affidavit is served on the applicant and after the parties shall have completed Form B**

and whether or not the respondent had cooperated in the completion of Form.

- 8.17 In completing Form B, the particulars of the case shall at the same time be entered into the provisional roll register kept by the registrar or registrar clerk dealing with the opposed motion roll and the roll number as per the roll register shall be written at the top of Form B.

Enrolment of uncontested divorce matters

- 8.18 Uncontested divorce matters shall be enrolled on the unopposed motion roll.

8.18.1 In order to avoid virtual or physical appearance for the purpose of obtaining a decree of divorce, either the plaintiff or the defendant shall file an affidavit dealing with every piece of evidence and other matters regarding custody of the minor children, maintenance and so forth and any other information that would be necessary including factors relevant to the division of the estate.

8.18.2 Where a deed of settlement is relied upon, the other spouse shall also file a supporting or confirmatory affidavit confirming the settlement agreement and any other issue relevant to or averred to in the main affidavit so filed.

8.18.3 The judge seized with the divorce matter may direct for virtual hearing on any specific matter as it might be found necessary and relevant to do so for proper and efficient disposal of the matter.

Enrolment of applications for admissions as Legal practitioners

- 8.19 Applications for admission as legal practitioners shall be enrolled in the same manner as unopposed motions above and shall be laid before two

Judges who shall decide whether the hearing shall be conducted virtually or physically, on any Monday of every motion week and two sets of court bundles for Judges shall be handed over to the respective Registrars.

8.19.1 In the event that the hearing is conducted virtually:

8.19.1.1 the applicant for admission must contact the Senior Judge's secretary at least 2 days before the date of hearing of the admission to uplift the oath to be signed during the hearing of the application.

8.19.1.2. Upon admission, the applicant shall file the signed oath with the Senior Judges' secretary before uplifting the admission certificate.

8.19.2. Candidates for admission as a legal practitioner shall be appropriately dressed and shall not wear a robe as an attorney does not automatically enjoy right of appearance in Superior Courts. Candidates for admission as an advocate shall be robed wearing an advocate's gown, black dustcoat, white shirt and bib. Candidates for admission as notaries and or conveyancers who enjoy right of appearance as contemplated in Section 25(3) of the Legal Practice Act read with rule 20.6, shall be robed wearing attorney's gown, black dustcoat, white shirt and bib.

Enrolment of surrogate applications

8.20 Due to the nature of the applications, no surrogate application shall be placed on the roll for open court. All surrogate applications shall be brought to the attention of the Registrar who will then allocate the matter to be heard by a judge virtually through unshared link or in camera.

Enrolment of application to strike-off of a legal practitioner's name from the roll

8.21 All applications for suspension or striking off the roll of legal practitioners shall be laid before two judges.

8.21.1 The applications for suspension or striking off shall be enrolled on a Friday other than a Friday of the motion week and the date shall be arranged with the registrar.

8.21.2 Necessary court papers for two judges shall be filed with the registrar not later than 12h00 on a Friday preceding the Friday on which such an application is enrolled.

8.21.3 The requirement for filing of a practice note as set out in respect of opposed applications and in respect of unopposed application, shall similarly apply in respect of the applications under this paragraph.

9. Extension of rule-nisi

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

9.2 The directive in paragraph 9.1 above 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.

9.3 A return date in respect of a rule nisi shall be a date on the unopposed roll.

9.4 As soon the respondent shows his intention or serves his intention to oppose confirmation of the rule-nisi, on the return date, the matter shall be case managed by completion of Form B and the rule-nisi shall be extended until the matter on the opposed motion roll is finalized.

10. Urgent applications

- 10.1 Urgent applications shall be heard at **10h00 on every Tuesday of each of each week.**
- 10.2 Matters enrolled to be heard 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 at 10h00 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 or clerk of the Judge on the urgent roll, must be telephoned at the court's urgent cellular phone number at: **for Mbombela (main seat) 082 371 5548 and 082 371 7597 for Middelburg (local seat).**

10.3.5 The secretary or clerk of the Judge on the urgent roll must be notified by the applicant or applicant's attorneys 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 supported by cogent facts properly averred in the founding papers.

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/ordinary 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 be guided first, (a) by whether the enrolment is in accordance with the preceding sub-paragraphs, (b) second, and if the matter is properly enrolled proceed to deal with the issue of urgency and (c) lastly, if proper enrolment and urgency is proved, the court may then proceed to deal with the 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 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 on urgent basis 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 the founding papers.
- 10.11 The requirement for filing of a practice note as set out in paragraph 7.23 to 7.24 in respect of opposed applications and paragraphs 8.5 and 8.6

in respect of unopposed application, shall similarly apply in respect of urgent applications.

10.12 Every urgent application shall irrespective of number of pages be indexed and paginated, as contemplated in 29 herein below, at the time papers are issued and the index and pagination shall be updated before the hearing of the matter.

10.13 No urgent application shall exceed more than 150 pages in total. Where a party's documents exceed 150 pages, inclusive of answering, replying affidavits and annexures the parties or the applicant shall in addition to the content of the practice note set out in 10.11 above explicitly set out which pages are most relevant and to be read.

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 Paragraphs 8.4 and 10.2 of this directive shall not apply to POCA matters under sections 26 (1) and 38 (1), unless the National or relevant Deputy National Director of Public Prosecutions in her own accord elects to comply therewith.

11.4 However, should the National Director of Public Prosecutions elect to bring any such application ex parte, it shall be so instituted and enrolled in terms of rule 6(4)(a) of the Uniform Rules.

11.5 Such applications referred to in paragraph 11.4 above, will be considered by a judge available as soon as may reasonably and practically possible after having been issued and filed with the registrar and without the need for service as so envisaged, held and ordered in the case of **National Director of Public Prosecutions (ex parte application) (case no 669/2020 [2021] ZASCA 142 (7October 2021), see also para18).**

11.5.1 For the purpose of paragraph 11.3 above, the registrar shall upon the issuing and filing of such application brought ex parte as contemplated in rule 6(4)(a), lay the application before a judge available to give direction as to the date and time on which he or she will be available to hear the application (due to insufficient judges) and the registrar or judge's secretary concerned shall then accordingly place the matter on the roll for hearing as so arranged with the judge available and inform the applicant or applicant's accordingly.

11.3.2 Should the National Director of Public Prosecutions in bringing any application in terms of sections 26(1) and 38(1) of POCA elect not to bring such application ex parte, as contemplated in rule 6(4)(a), such an application shall then be enrolled on the unopposed motion roll as per paragraph 8 above in its entirety or on an urgent motion roll as per paragraph 10 in its entirety of this Practice Directive dated 9 January 2020.

- 11.4 The 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 will have regard to the provisions of section 39 and in doing so, may 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 order⁷;
- 11.6.2 The date by which the National Director shall publish a notice of the order in the Gazette⁸;
- 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 thereof⁹;

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.
- 11.6.5 In 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 timeframes 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 to be heard behind closed doors by the National Director and such application shall so be heard in camera 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 heard 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 chambers hearings of POCA matters.

11.12 POCA matters which are unopposed will also be disposed of as set out under the heading "Disposal of unopposed matters" set out in paragraph 8.15 above.

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 case 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 fingerprints 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 the accused will need the assistance of the 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 trials shall start at 09h00.
- 12.7 Stand-down 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.
- 12.8 In the light of the shortage of judges no new criminal matters shall be set down or enrolled for trial in this Division and or transferred from the Lower Court as contemplated in section 75 (2) of the Criminal Procedure Act no. 51 of 1977 (the Act), to the High Court unless-
- (a) the case is ready to proceed on trial on the date(s) on which it is so enrolled, and
 - (b) there is a judge available to proceed with the trial on the date(s) or from the date on which the matter is so enrolled, or
 - (c) an additional judge beyond the Division's establishment is appointed to proceed with trial on the date(s) on which any such new matter is enrolled in the High Court.
- 12.9 For the purpose of paragraph 12.8 above, judicial case management shall be conducted to determine:

- (a) whether the case is ready for trial,
- (b) if so, whether there is a judge available to proceed with the trial, and
- (c) the date(s) of the trial of which all parties shall confirm their availability.

12.10 The date for judicial case management shall be arranged with the Registrar of the High Court where the matter is to be tried. The judicial case management shall be conducted by the Judge President and or the Deputy Judge President respectively or by any judge available and so designated by the Judge President or the Deputy Judge President.

12.11 Once the matter is certified trial ready in a judicial case management (in which the availability of a judge to preside over the trial has been ascertained and the date or duration of the trial is determined), the Prosecuting Authority will then invoke the provisions of section 75(2) read with section 144 of the Act by transferring such a case from the Lower Court to the respective High Court for trial on the date(s) so determined.

12.12 The directive in paragraphs 12.8 to 12.11 above **shall come into effect from 19 January 2023** and shall be a transitional arrangement pending the ensuing discussions between the Division and the Department of Justice to find a lasting or permanent solution by either increasing the Division's establishment or by appointing additional Judges to deal with the collapsed criminal rolls and the backlog roll or to enable the Division to deal with the pending criminal matter(s) on its rolls and/or by reducing the enrolment of criminal matters on its rolls.

12.13 The transitional arrangement above will also ensure that cases are not parked on the High Court rolls and by so doing would make the judicial officers to be at odds with paragraph 5.2.5 (ii) (b) of the Norms and

Standards which obliges them to finalise criminal cases within 6 months after the accused had pleaded to the charge(s) in the High Court.

12.14 The transitional arrangement above will further enable judicial officers as they are obliged to do in terms of paragraph 5.2.5 (ii) (c), '*to take proactive stance to invoke **all relevant legislation** to avoid lengthy periods of incarceration of accused persons whilst awaiting trial*' and one such **relevant legislation** is section 342A of the Act.

12.15 For the purpose of what is stated in paragraph 12.14 above, judicial officers who are seized with criminal matters should ensure that the relevant legislative imperative in section 342A of the Act is invoked where there is a delay or there is a likelihood of undue delay in the finalization of criminal cases in the context of paragraph 5.2.5 (ii) (c) of the Norms and Standards.

13. **Appeal weeks during recess**

Full bench appeals (criminal and civil) will be enrolled every Wednesday during the recess period.

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 above.

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 legal practitioner may be ordered to pay costs on a party and party scale or 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 judge’s secretary or clerk.

15. Removal from the roll upon settlement

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 or abandoned by way of filing of a notice of withdrawal.

- 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 not be accepted by the Registrar and the 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 will require the settlement agreement or draft thereof to immediately be made 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 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 the matter on the settlement roll as hereunder explained. Once the application is enrolled, the defaulting party shall two days before the date of hearing file a letter confirming the settlement agreement and the terms thereof.

15.6.3 The party who has so enrolled the matter shall be entitled to costs of the application and appearance thereof. In the confirmatory letter referred to in paragraph 15.6.2 above, the defaulting party shall also tender the costs of the application to make the settlement agreement an order of the court.

15.6.4 Should the defaulting party refuse or fail to provide such a letter or to tender costs for the application, he or she 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 as contemplated in 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 as contemplated in paragraph 8.18 above.

Making of an order upon settlement in contingency fee agreement

- 15.8 As contemplated in section 4(1) of the Contingency Fees Act No. 66 of 1997, no offer of settlement made to any party who has entered into a contingency fees agreement, may be accepted or made an order of court unless after the legal practitioner shall have filed an affidavit with the court, if the matter is before court, stating:

- (a) the full terms of the agreement.
- (b) as estimate of the amount or other relief that may be obtained by taking the matter to trial;
- (c) an estimate of chances of success or failure at trial;
- (d) an outline of the legal practitioner's fees and if the matter is settled as compared to taking the matter to trial;
- (e) the reasons why settlement is recommended;
- (f) that the matter contemplated in paragraphs (a) to (e) was explained to the client, and the steps were taken to ensure that the client understands-the explanation; and
- (g) that the legal practitioner was informed by the client that he or she understands and accepts the terms of the settlement.

- 15.9 The affidavit referred to in subsection (1), must in terms of subsection (2) be accompanied by client's affidavit stating: (a) that he or she was notified in writing of the terms of the settlement; ((b) that the terms of the

settlement were explained to him or her; and (c) what his or her attitude to the settlement is.

15.10 In terms of subsection (3) 'any settlement made where a contingency fees agreement has been entered into, shall be made an order of court, if the matter was before court'. Therefore, no settlement made where a contingency fees agreement has been entered into, shall be valid and made an order of court, unless such a settlement is made an order of court as contemplated in subsection (3) after compliance with subsections (1) and (2) referred to in paragraphs 15 .8 and 15.9 above.

15.11 For the purpose of ensuring that the legislative framework in subsections (1)(2) and (3) is complied with, the following shall be used as an oversight and control mechanism:

15.11.1 All matters which are before court in respect of which an offer of settlement is made to any party who has entered into a contingency agreement, upon filing the affidavits as contemplated in subsections (1) and (2), the registrar shall secure the file which has to be properly indexed and paginated by the party filing and the registrar shall thereafter immediately submit same to any available judge in chambers or remotely for the purpose of making the settlement an order of court as contemplated in subsection (3) provided **a contingency fees agreement has been entered into.**

15.11.2 The Judge before whom a matter has been laid in chambers or remotely as contemplated in paragraph 15.11.1 above, may decide to deal with the matter in an open court should he or she deem it necessary to do so in order to satisfy himself or herself that the settlement entered into where a contingency fee agreement has been concluded is justified, or ought to have concluded is proper and above board.

15.11.3 When a bill of costs is submitted to the taxing master for taxation and the matter has been settled where a contingency fee agreement has been entered into, the party filing such bill of costs shall at the same time, file the affidavits referred to in subsections (1) and (2) and court order referred to in subsection (3), failing which the bill of costs shall be returned for failure to comply with this directive.

15.11.4 To ensure compliance with the Contingency Fee Act it is hereby directed as follows:

15.11.4.1 In damages claim for example, involving the Road Accident Fund and in medical negligence matters where a settlement has been reached in a matter pending in court and is suggested that no contingency fee agreement has been concluded, an affidavit shall be filed dealing with the following:(a) whether client is able to pay for the legal fees including disbursements and other costs related thereto, (b) what was the fee agreed upon or an estimate thereof and the hourly rate chargeable and the basis for such hourly rate, (c) when was the fee paid by client and how much was so paid by client; (d) if client paid the deposit to start with the litigation it must be stated in the affidavit when and how were the outstanding fees and or disbursements to be paid and how in the course of litigation as such fees and disbursements are earned and incurred in the course of the litigation (e) and if any of the fees or disbursements were to be paid out of the capital amount that might be awarded in the litigation and taxed costs, the basis for such a condition must be explained if the matter is not litigated on contingency basis.

15.11.4.2 If an allegation of “*no contingency fee agreement has been concluded*” is made in an affidavit to the taxing master when the bill of costs is submitted for taxation, the taxing master shall refer the file to the Judge President or Deputy Judge President to deal with the legality or otherwise of the fee agreement before taxation can take place. The Judge President or Deputy Judge President may allocate such a matter to a judge available to determine the legality or otherwise of the fee agreement. The judge dealing with such a matter, may refer the matter to an open court or ask for more information to be provided in writing.

16. Postponement *sine die* 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.

16.3 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 further be case managed by being referred to the case management official for a date on the first case management roll and then have the matter so postponed to a date obtained from the case management official, unless the presiding judge finds the matter to be ready for trial or hearing and that it can be postponed to a specific date for trial or hearing. In these circumstances, the parties or their legal representatives shall enter the particulars of such parties in the relevant provisional roll register so kept at the registrar office before it can be postponed in court.

- 16.4 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 Legal practitioner , because she/he or his/her Legal practitioner ;
- (i) did not attend a pre-trial conference; or
 - (ii) failed to a material degree to promote the effective disposal of the litigation.
- 16.5 What is stated in paragraph 16.4 above must be read with the provisions of sub-rules (12) and (16) of rule 37A as amended. A request for a postponement on the date of trial or hearing is discouraged. 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, adverse costs order, including payment out of own pocket as envisaged in paragraph 5 of Form A3 or paragraph 3.6 of Form B.
- 16.6 Should it not be possible to summarily make an order of costs occasioned by a late postponement or late settlement on the date of trial because of other matters on the trial roll that need to be attended to, the judge concerned may refer such a matter or matters to the Judge President or Deputy Judge President for a meaningful and effective enquiry on the issue of costs occasioned by the late postponement or settlement.
- 16.7 The tendency by 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 and such hearing to place 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. This directive is intended to avoid high wasted costs from being incurred.
- 16.10 When such an application for a postponement 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. That is, set out necessary facts for urgency and the need for a postponement.
- 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.

17. Criminal part heard matters

- 17.1 All part-heard matters shall be postponed to a specific date during recess or Term and the enrollment of criminal part heard matters during recess or Term, 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 or Term. A criminal part heard matter may be postponed during Term provided that the Judge concerned would still be on the criminal roll during that particular Term and on conditional that the part heard matter will not interfere with the main roll for that Term.
- 17.2 Part-heard criminal matters should therefore not be postponed for hearing during recess or Term unless a date is obtained by the Prosecutor concerned from the roll planner in consultation as indicated in 17.1 above. This will ensure that there are no shortages of judges and staff during recess or Term.
- 17.3 A part-heard matter may be postponed during Term provided the trial Judge has consulted and agreed with the Judge President and or Deputy Judge President who in turn may consult with the DPP roll planner before the matter is so postponed to a date during Term.
- 17.4 A part-heard criminal matter may be postponed during a Term, on the basis that new matter or matters placed for trial during that period, would be rescheduled

18. Early finalization 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 on the trial roll 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 judgment is not available, it shall be obtained by the applicant before the application for leave to appeal is laid before the judge seized with the application for leave to appeal. Where a judgment is delivered *ex tempore*, it shall be the responsibility of the party noting the application for leave to appeal to have the judgment transcribed and submitted to the registrar together with the application for leave to appeal.

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. 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 or earlier to ensure that the main roll is not affected. The judge so seized with the matter may have the hearing take place at any time convenient to the judge concerned.

19.3 Service of the application for leave to appeal on the opposing party must be clear from the application placed before court. Where the application for leave to appeal is filed late, it has to be accompanied by a substantive application for condonation before it is laid before the Judge concerned for hearing.

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, may be consulted for his view on the application 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 judicial 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.
- 21.1.1 Civil appeal matters shall be enrolled for hearing on each Friday of the civil trial week. The number of matters so enrolled shall not exceed six matters per roll and shall be laid before the judges on the civil roll.
- 21.1.2 Criminal appeal matters shall be enrolled for hearing on each Friday of the motion week. The number of matters so enrolled shall not exceed four matters per roll and shall be laid before the judges on the criminal 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 for hearing.
- 21.3 Within five days upon receipt of an appeal from the clerk of 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 The management of appeal matters shall be by completion of Form F by the parties or their legal representatives and Form F shall be completed only when the parties are sure and have verified that all set of court papers are complete and available including the record of the proceedings in the court a quo.

- 21.6 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 timeframes on the available space in Form F or on a separate sheet.
- 21.7 No acting judges shall sit alone in an appeal matter without a permanent judge judges being involved unless the Judge President or the Deputy Judge President has so directed.
- 21.8 The hearing of appeal matters **shall start at 10h00**, however the presiding judge may direct parties to start earlier than 10h00 or at any time so convenient for the panel members.
- 21.9 Full Court appeals (that is an appeal or appeals against judgment or order of a single judge and thus requiring three judges to sit in the appeal), shall also be case managed and enrolled by completion of Form F and shall be so enrolled on any Friday available during the trial week.
- 21.10 Full court appeal or appeals shall not be enrolled on the same day with the other appeal matters from the lower courts where two judges are required to sit in such an appeal or appeals.
- 21.11 Parties completing Form F shall also enter their particulars in an appeal roll register which is kept by the registrar staff, otherwise the appeal shall not be allocated on the close of the roll.
- 21.12 The close of the roll for appeal matters shall be **12h00 on a Wednesday preceding two weekends of the week during which the appeal or appeals are enrolled.**
- 21.13 In terms of section 19(a) of Superior Courts Act a division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law dispose of an appeal without the hearing of oral argument and for this purpose, judges seized with any appeal matter

or matters may dispose of oral argument and when this happens the parties shall duly be notified.

21.12 In certain circumstances, when oral argument is disposed of, the parties may be directed to file a document titled “written oral argument” not exceeding five pages in which material points in the appeal are argued as if it was in person or virtual oral argument.

21.13 In order to save legal costs and time, the judges who are seized with any appeal matter and oral argument is not dispensed with, may direct that the proceedings be conducted virtually in the interest of justice.

22. **Management of reserved judgments**

22.1 Any reserved judgment shall be delivered within a reasonable time of 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 and the Deputy 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 matter 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 registers are correctly updated as hereunder.
- 23.3 Such registers shall be updated as the parties or their legal representatives select dates of hearing of appeal and motion matters or trial of civil matters available and suitable to them by entering the particulars thereof in the updated roll register.
- 23.4 The entry in the roll register shall be made by one of the parties or by one of the parties legal representatives.
- 23.5 Every trial, opposed and appeal matter that is postponed shall further be case managed by completion of Forms A, A3, B and F or similar thereto and the provisional roll register kept by the registrar shall be updated accordingly.

24. Daily roll

- 24.1 There shall be a daily roll prepared by the Chief Registrar' office which daily roll shall be put on the notice board and emailed to Mpumalanga Provincial Council, Mpumalanga Society of Advocates, Mbombela and Middelburg Legal Practitioners' Associations **by not later than 16h00 every day for the following day.**
- 24.2 The daily roll shall also separately be sent to each judges' secretary and every judge by not later than 16h00 every day for the following day.

- 24.3 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 judge concerned must be indicated.
- 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 15h00 on each day of sitting.**
- 24.5 It shall also be the responsibility of the Chief Registrars 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 the completed Form H shall be submitted to the Office of the Judge President and Deputy Judge President by each Judge secretary 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 seized 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 or Deputy Judge President as the case may be, 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 receipt of 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 ten days upon filing of their requests, if any of such requests have been queried or finalized.
- 26.7 Requests for default judgments in terms of the rule 31(2) shall be enrolled on the trial roll where oral evidence can appropriately be considered the Court.

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 bills¹⁰.
- 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 favor costs have been awarded, shall provide the Taxing Master with an order for costs or a written and signed settlement agreement. 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.

¹⁰ Rule 70 (4)

- 27.6 Furthermore, any party in whose favor 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 favor an order for costs has been granted unless the taxing master is satisfied that due notice has been given; and the Taxing Master shall not be bound to allow any item upon which parties have settled and or where there is no objection. The taxing master will always be guided by the reasonableness of fees and or disbursements so charged.
- 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. As per the applicable rule, the directive herein is meant to curb unnecessary legal costs and to ensure that Legal practitioner s are the ones to be involved in the pre-trial conferences including judicial case management conferences.
- 27.9 The Taxing Master shall before he or she proceeds to consider any bill of cost items, check the order of costs made by the court or offer and acceptance properly reduced into writing and signed by the parties. In case of a doubt regarding an order for costs, he or she, must 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 any of the litigating parties was made, shall entitle the Taxing Master to halt the taxation process and report the matter to the Judge President and Deputy Judge President.

27.11 Should the Judge President 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 or 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 and Deputy Judge President 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 or Deputy Judge President as the case may be, after having made enquiries with the Taxing Master and or Chief Registrar concerned.

28. **Poking system**

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

28.2 In implementing the poking system the Registrar office shall at any given moment and frequently preferably during recess periods 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 may make directives with regards to timeframes expressed in dates for compliance therewith.

28.4 Any such timeframes 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 timelines will be set in such a manner that a date for the holding of judicial pre-trial conference 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 unless the party who instituted the proceedings no longer wishes to proceed with the matter, in which case the action or application shall be withdrawn.

29. **Filing, indexing and pagination.**

29.1 Any filing of a document shall be stamped by the Registrar and returned to the Legal practitioner to form part of the indexing and pagination on the close 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, the court papers are to be divided into bundles not exceeding 250 pages.

29.5 The index must be placed at the top of the first page of the court bundle to facilitate an easy and speedy directed reading of the papers. When bundles are used as contemplated in 29.4 above a consolidated index shall be placed on top of first page of the court bundle and in front of each bundle.

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

30. Evidence through audio-visual link in civil trial matters and hearing of other matters

30.1 In terms of section 51C (1) of the Criminal and Related Matters Amendment Act, 2021 published on 28 January 2022 under Government Gazette No.45822, and effective from 5 August 2022, the court may on its own accord, order that a witness, irrespective of whether the witness is in or outside the Republic, if the witness consents thereto, give evidence by means of audiovisual link. Therefore, rule 38A as amended must be read with section 51C(1).

30.2 Conducting proceedings through audio-visual link has since Covid-19 pandemic proved to be a successful and useful tool that is convenient, easy to use and has proved to reduce escalating legal costs dramatically.

30.2 In the light thereof, it is hereby directed as follows:

30.2.1 Civil trial proceedings will be conducted through audio-visual link. However, a judge seized with a particular civil trial matter may *mero motu* direct that the evidence of a witness or witnesses be given in person or physically.

30.2.2 In directing for evidence to be given in person or physically or virtually, the court will be guided by whether physical appearance in court or the usage of audiovisual link would: (a) prevent unreasonable delay; (b) save costs; (c) be convenient; (d) prevent the likelihood that any person might be prejudiced or harmed if he or she testifies or is present at such proceedings and, (e) whether it would be in the interest of justice; (f) whether facilities thereof are available or obtainable and (g) whether the audiovisual that is

used by the witness or at the court enables- (i) persons at the court room or anywhere the proceedings are conducted visually to see, hear and interact with the witness giving evidence to see, hear and interact with the persons at the court room or wherever the court might be sitting visually.

30.3 A witness who refuses to consent to giving evidence through audio-visual link, shall provide the reasons by way of an affidavit for such refusal and in so doing shall deal with all issues articulated in paragraph 30.2 above and the court shall thereafter give reasons for any order that it might make regarding any such refusal or objection that might be raised thereto by the parties or any of the parties or by the witness.

30.4 **The South African Law Reform Commission in its 23 June 21 Report Project 142** dealing with its investigation regarding legal fees at page 87 thereof, states that ‘*-an electronic platform should be introduced to enable litigants and their legal representatives to file documents at court **without the need for physical appearance or attendance at court-** E-filing may also be used or utilized to submit applications such as unopposed, non-contentious interlocutory applications and applications to compel discovery for consideration without the necessity of an appearance at court...*”

31. Sharing of audio-visual links

31.1 There are instances where other persons other than the parties to the proceedings may have an interest in a particular trial, motion or appeal matter enrolled for trial or hearing where the proceedings are conducted virtually. It is hereby recorded that proceedings conducted through audio-visual proceedings in trial, motion or appeal matters shall be construed as **public hearings** as contemplated in section 34 of the Constitution.

- 31.2 In the light of paragraph 31.1 above, the registrar office shall be approached to send the link to any person asking for the link in addition to what is directed in paragraph 3.3 below unless the judge seized with the matter otherwise decides or has so decided that the proceedings in question shall not be opened for the public.
- 31.3 In any matter where the proceedings are conducted virtually, the link for any such matter or matters shall be sent to the parties and shall at the same time be sent to the controlling legal body, the society of advocates and legal practitioners' associations within the division and any such link may be shared with any person who may have an interest in the proceedings.
- 31.4 The sharing of the link is to ensure that members of the public, the parties and other interested persons are able to access court proceedings without being unduly inconvenienced and without incurring unnecessary travelling, accommodation and or legal costs.

32. Audio-visual hearing guidelines

The audio-visual hearing shall take place as per the attached guidelines hereto marked "XX".

33. Filing of court papers after issuing of new court processes pending implementation of E-or case-line filing.

- 33.1 Piece-meal filing in person has shown to be expensive, causing court papers to be misplaced or misfiled and has compounded the challenges of shortage of staff and insufficient storage space.
- 33.2 For the reasons stated above, piece-meal filing of court documents at court in person or physically, has to be minimized. It is hereby therefore directed as follows:

- 33.2.1 When new court papers or processes are issued, the registrar office shall open a court file in the normal course and in the file copy of the summons or notice of motion shall be retained.
- 33.2.2 Should there be an appearance to defend or notice to oppose filed, the registrar shall keep a copy thereof in the file and thereafter there shall be no further filing in piece meal.
- 33.2.3 Subject to paragraphs 33.2.1 and 33.2.2 above, further filing shall only take place when a complete set of court papers prepared from the plaintiffs' or applicants' own set of court papers, are filed on or before the close of the roll for hearing.
- 33.2.4 Parties or parties' legal representatives must therefore exchange and serve pleadings amongst themselves in accordance with the timelines set out in the Rules of Court and only file with the registrar as contemplated in paragraph 33.2.3 above. That is, when the matter is on the roll for hearing and such filing of court papers to take place from at least five clear court days before close of the roll as contemplated in paragraph 34.1 hereunder.
- 33.2.5 Paragraphs above are meant to avoid loss of court papers or court files and unnecessary movements of in person filing at court.
- 33.2.6 Filing of set of court papers for matters that are on the roll for hearing shall start to take place at least 5 clear court days before the close of the roll and filing after 12h00 on the close of the roll shall not be accepted.
- 33.2.7 The Registrar office shall at least seven clear court days before the close of the roll pull out all the files recorded in the provisional register roll and secure them to ensure that when filling starts set of court papers as are filed are placed in the correct court files.

33.2.8 Above is to ensure that before matters are allocated to judges on the close of the roll, the files are properly secured and arranged to facilitate complete set of court papers being provided to the judges in time for preparation. For this purpose, the registrar office shall ensure that files are handed over to the judges on the close of the roll once such files are allocated.

34. Uplifting of court papers upon finalization of matters

34.1 Due to acute shortage of storage space in our courts, in particular at the local seat, it is hereby directed that upon finalization of a matter, that is, once judgment is handed down or an order is made disposing of a matter in its entirety, the *dominus litis* in the matter shall uplift the set of court papers so filed and only the court order, judgment, summons, notice of motion and appearance to defend or notice of opposition shall be retained in the file.

34.2 Paragraph 34.1 shall equally apply when a matter is postponed or removed from the roll.

34.3 The presiding judge's secretary shall ensure that the necessary and correct endorsement is always made on the file. This is to ensure that the movements of the proceedings regarding any matter before the court are tracked at any given time.

35. Effective date of the amendment and additions

35.1 The amendments and additions introduced herein shall take effect from **3 October 2022** being the start of the 4th Term of 2022. Such amendments and additions are not specified. Practitioners and parties litigating in this Division are therefore hereby urged to carefully read this directive in its entirety.

35.2 Reading and studying of the entire Practice Directive as amended is necessary to ensure that there is better understanding and application of this Practice Directive as amended. This will further ensure that matters are finalized expeditiously and effectively as contemplated in this Practice Directive as amended.

36.3 The Consolidated Covid-19 Directive **is hereby replaced effective from 3 October 2022** and all other matters including pending and already enrolled matters shall be dealt with in terms of this amended directive from the effective date hereof.

DATED 9 January 2020 at MBOMBELA, MPUMALANGA DIVISION and amended effect from **3 October 2022**



JUDGE PRESIDENT: M F LEGODI

MPUMALANGA DIVISION OF THE HIGH COURT

FORM A



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

CASE NO.

In the matter between

.....

Plaintiff

And

.....

Defendant

FIRST CASE MANAGEMENT CONFERENCE

Before the honorable judge: _____ Date: _____

1. **This matter is case managed by the judicial officer.**
2. The matter is enrolled for the second case management conference on _____ as matter number _____ of that roll.
 - 2.1. On the date in question the court will commence at 8h45 for case management.

2.2. It is hereby recorded that no trial date will be allocated unless the case management judge is satisfied that the matter is ready for trial and that all efforts have taken to settle the matter or shorten trial proceedings.

2.3. The defendant is hereby directed to seek to settle the merits by not later than, seen in the light of the fact that this is a dependant's claim or seen in the light of the fact that the plaintiff was a passenger in a single or two motor-vehicle collision.

2.3.1. Failure to settle merits by the said date, the defendant is hereby directed to file an affidavit by the said date explaining why merits cannot be settled.

3. The Plaintiff is hereby directed to file all reports by not later than _____, failing which Plaintiff's attorneys are directed to file an affidavit by said date explaining why the expert reports are not filed timeously.

4. The Defendant is hereby directed to file all its reports, including its investigation reports if so required by not later than _____, failing which the matter will proceed on the basis of the Plaintiff's reports.

5. Parties are hereby directed to file joint minutes by both experts by not later than _____ if there is a dispute setting out the nature of the dispute and agreement if any; necessary for the purpose of trial and hold a pre-trial conference amongst the parties by not later than _____ and thereafter file pre-trial minutes by not later than _____.

5.1. Irrespective of whether or not joint minutes have been filed or applicable, pre-trial conference shall be held as in paragraph 5. Above.

6. Should this matter be settled, parties are directed to file a settlement agreement together with notice of removal from the case management roll by not later than _____; which shall not be less than 7 clear court days before the date of the second judicial case management conference.

7. Furthermore, it is hereby recorded that this matter shall not be postponed or removed from the case management roll by agreement between the parties.

8. It is further recorded that there shall be no stand downs on the date of judicial case management conference.

9. Failure to comply with any of the case management directives herein, shall invite summary inquiry with regards to costs as contemplated in sub-rules (12) (h) and (16) of 37A read with Practice Note 2/2019 issued on 20 November 2019.

10. The case management conference whether first or second conference, shall be proceeded with irrespective of whether or not all parties are in attendance and the unavailability of the other party or such party's legal representative shall not prevent the case management judge from proceeding with case management of the matter.

11. _____

12. _____

13. _____

NB. Delete where not applicable.

Leal representatives of the parties:

For plaintiff

Cell:

Email Address:

For defendant:

Cell:

Email:

PLEASE NOTE:

- 1. Completion of the judicial case management form as provided above should not be used as a routine.**
- 2. There will be vigorous engagement of parties by the judge during pre-trial conference on both merits and quantum and therefore attendance of the case management conference is obligatory.**
- 3. Only legal representatives with right of appearance in the high court will be engaged and address the judge during pre-trial conference proceedings.**

FORM A1



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

Case no:

In the matter between

Plaintiff

And

Defendant

Before the Honorable Judge: _____ **Date:** _____

1. This matter is case been cased managed by the judicial officer.
2. The Health Profession Counsel of SA is hereby ordered in its absence to make a determination of serious nature of the injuries by not later than _____, seen in the light of the fact that the Plaintiff's attorney made representations to counsel on _____.
3. Should the Counsel be unable to make a determination by _____ it is hereby ordered to file an affidavit by _____, why it cannot make a determination ordered by this court.

4. This matter is postponed to _____ for trial on quantum and the plaintiff's attorneys are hereby directed to file the notice of postponement by not later than Friday_____.

5. Filing of all reports by both parties is hereby noted and the parties are hereby directed to file the joined minutes by not later than _____, and thereafter to hold a pre-trial conference between themselves by not later than _____.

6. In the event the matter is settled by the parties, are directed to file a notice of settlement agreement together with a notice of removal from the roll by _____.

By court _____

Date:

FORM A2



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

CASE NO.

In the matter between

.....

Plaintiff

And

.....

Defendant

WCC CASE MANAGEMENT DIRECTIVE

1. The above case is case managed in terms of FORM A to the Practice Directive and the second case management conference is enrolled for
2. The Plaintiff/Deceased was injured in the course and scope of his/her employment and a claim has been lodged against the Road Accident Fund.
3. For the purpose of finalising and quantifying the claim against the Road Accident Fund, a final award by the WCC (Workmen's Compensation Commissioner) is required;

4. The Plaintiff is hereby directed to lodge a claim with the Compensation Commissioner by not later than the

5. It is hereby recorded that the claim was lodged with the WCC on and the WCC is hereby directed to make a determination for final award by not later than, failing which to file an explanation with the Plaintiff's attorneys by the said date why determination is not made by the said date and when determination is expected to be made.

DATED AT ON THIS THE DAY OF202

PLAINTIFF'S ATTORNEY:

EMAIL ADDRESS:

CONTACT NO.

And

DEFENDANT'S ATTORNEYS:

EMAIL ADDRESS:

CONTACT NO.

FORM A3



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

CASE NO.

In the matter between

.....

Plaintiff

And

.....

Defendant

CERTIFICATE OF TRIAL READINESS

1. This matter is hereby certified trial ready during first/second judicial case management roll.
2. The case is hereby enrolled for trial during the trial week of as matter number of that roll.
3. It is hereby recorded that the case shall proceed on both merits and quantum, merits only or on quantum only (circle whichever is applicable).

4. Should this matter be settled; parties are directed to file a settlement agreement together with notice of removal by not later than _____; which shall not be less than 7 clear court days before the date of hearing. The notice of removal must comply with Form E to the Practice Directive.

5. It is hereby recorded that should this matter be settled on the date of trial, parties run the risk of punitive cost order and/or forfeiture of a day fee, against any person responsible for the late settlement of the matter and any such costs order may include payment out of pocket by whoever is responsible for the late settlement including claim handlers and or attorneys for the parties.

5.1 Furthermore, it is hereby recorded that this matter shall not be postponed or removed from the roll by agreement between the parties and every application for a postponement shall be on a substantive application delivered at least 7 court days before the date of trial.

5.2 It is hereby further recorded that should the matter be postponed on the date of trial, the party and or legal representative or any person responsible for the postponement runs the risk of punitive costs order, payment out of pocket including: claim handlers and or legal representatives and forfeiture of a day fee occasioned by the postponement.

PLAINTIFF'S ATTORNEY:

EMAIL ADDRESS:

OFFICE NO.

CELL NO.

DEFENDANT'S ATTORNEY:

EMAIL ADDRESS:

OFFICE NO.

CELL NO.

FORM B



**IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS**

IN THE MATTER BETWEEN:

APPLICANT

AND

RESPONDENT

MANAGEMENT ORDER OR DIRECTIVE OF OPPOSED MATTERS

1. This matter is case managed after notice to oppose was filled on

2. The date of hearing is hereby determined and agreed upon by the parties or parties' legal representatives as the ____ of _____ 20__ at 10h00.
3. The parties or parties' legal representatives hereby agree and determine on their own time frames as follows:
 - 3.1 That answering affidavit shall be delivered by not later than

 - 3.2 That the replying affidavit shall be delivered by not later than

3.3 That the applicant's heads of argument shall be delivered by not later than _____

3.4 That the respondent's heads of argument shall be delivered by not later than _____

3.5 That as contemplated in paragraph 10.8 of the Practice Directive, the court file shall be properly indexed, paginated and filed with the Registrar of this Court on Monday ___ day of _____ at 12h00 which shall be two weekends before the week during which the matter is enrolled for hearing.

3.6 That should this matter become settled, it shall be so settled by not later than _____ which shall be not later than seven clear court days before the date of hearing.

3.7 Upon settlement, notice of removal from the roll as per FORM B shall be filled by not later than the date of the settlement referred to in paragraph 3.6 above.

3.8 It is hereby recorded that settlement agreement or order therefore may only be made an order of court if it is shown that the other party failed to comply with the terms and conditions of the agreement and shall be dealt with as contemplated in paragraph 7 of the Practice Directive to which this Form is annexed.

4. It is hereby recorded that the parties or legal representatives in determining the time frames confirm that such timelines are reasonable and achievable.

5. It is further recorded that additional or supplementary affidavits shall only be filed and considered if sanctioned by the court.

6. Should this matter be settled or postponed on the date of hearing the parties and or legal representatives run the risk of punitive costs including payment out of own pocket order or forfeiture of any day /appearance fee, costs and or disbursements connected to or occasioned by the settlement or postponement on the date of hearing.

7. FURTHER RECORDINGS AND DIRECTIVES OR ORDER:

APPLICANT'S ATTORNEY:

EMAIL ADDRESS:

OFFICE NO.

CELL NO.

RESPONDENT'S ATTORNEY:

EMAIL ADDRESS:

OFFICE NO.

CELL NO.

FORM C



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

CASE NO.

In the matter between

.....

Applicant

And

.....

Respondent

**CASE MANAGEMENT ORDER IN POCA MATTERS IN TERMS OF RULE
37A(A)(b)**

1. This matter is case managed as follows:
2. Draft order marked "X" in terms of which a Rule Nisi is issued and returnable on is hereby made an order of court.
3. It is hereby ordered that the applicant (National Director) shall as contemplated in section 39 (1)(a) and (2) of POCA Act give a notice of the order to all persons known to the National Director or have an interest in the property which notice shall be

served by the Sheriff having jurisdiction thereto as soon as practicable but, by not later than

4. The applicant shall as soon as practicable, publish the notice of the interim order herein in the Gazette as contemplated in section 39(1)(b) and such publication shall be issued by not later than
5. Any person who has interest in the property subject to the preservation of property herein may as contemplated in section 39(3) enter an appearance giving 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 and such a notice as contemplated in subsection (3) shall be given within 14 days upon service of the order as contemplated in subsection (1)(a) and publication of notice of the order as contemplated in subsection (1)(b).
6. An appearance to defend or oppose under section 39 (3) shall in terms of subsection (5) thereof contain full particulars of the chosen address for the delivery of the documents concerning further proceedings under Chapter 6 of the POCA Act and shall be accompanied by an affidavit stating –
 - (a) Full particulars of the identity of the person entering the appearance;
 - (b) The nature and extent of his or her interest in the property concerned; and
 - (c) The basis of the defence upon which he or she intends to rely in opposing of a forfeiture order or applying for the exclusion of his or her interest from the operation thereof.
7. Once an appearance to defend or notice to oppose is delivered as envisaged in section 39 subsection (3), the Registrar of this court shall within five (5) days upon receipt thereof, place the matter on the case management roll at 08h45 on any court day before any Judge.

8. The preservation of property order shall in terms of section 40 expire within 90 days after the date on which notice of making of the order is published in the Gazette unless-
- (a) there is an application for forfeiture order pending before the High Court in respect of the property;
 - (b) there is unsatisfied forfeiture order in force in relation to the property subject to the preservation of property order;
 - (c) the order is rescinded before the expiry of that period.

For the Applicant

EMAIL ADDRESS:

OFFICE NO.

CELL NO.

For the Respondent/Defendant

EMAIL ADDRESS:

OFFICE NO.

CELL NO.

FORM D



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

Before the Honorable Justice: _____
Held on (Date): _____
at (Place): _____

CASE NUMBER: _____

In the matter between:

THE STATE

And

Accused 1

Accused 2

JUDICIAL CASE MANAGEMENT OF CRIMINAL MATTERS

PART A: THE RIGHTS OF THE ACCUSED

WHEREAS the Accused, present at these proceedings, is hereby informed:

1. THAT he/she has the following rights in terms of the provisions of Section 35 of the Constitution of the Republic of South Africa, 1996

- 1.1 to remain silent;
- 1.2 to be informed
 - 1.2.1 of the right to remain silent; and
 - 1.2.2 of the consequences of not remaining silent;
- 1.3 not to be compelled to make any confession or admission that could be used in evidence against that him/her;
- 1.4 THAT he/she is entitled to a fair trial, which includes the right-
 - 1.4.1 to be informed of the charge with sufficient detail to answer it;
 - 1.4.2 to have adequate time and facilities to prepare a defence;
 - 1.4.3 to a public trial before an ordinary court;
 - 1.4.4 to have their trial begin and conclude without unreasonable delay;
 - 1.4.5 to be present when being tried;
 - 1.4.6 to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - 1.4.7 to adduce and challenge evidence;
 - 1.4.8 not to be compelled to give self-incriminating evidence.
- 2 THAT it is the State's duty to bring the accused to trial.
3. THAT there is no obligation upon the Accused to assist the State in any manner whatsoever in proving the alleged offences against the Accused.
4. THAT the Accused's representative is not obliged to assist the State or to advance matters harmful to the Accused's case.
5. THAT it is in the interests of justice, the proper functioning of this court and in the public interest as well as that of the Accused that the matter be finalized without undue delay;
6. THAT the Accused's participation in these proceedings are entirely voluntary;

7. THAT no inference whatsoever shall be made from a refusal of the Accused to further participate in these proceedings;
8. THAT in terms of the law, in the case of more than one accused, nothing said, admitted or stated by any co-accused is admissible against another accused

The accused or legal representatives, acknowledge/s that the accused understands and appreciates the rights and responsibilities.

Accused 1: Yes No _____
 Accused 2: Yes No _____

That the Accused willingly and without any influence whatsoever agrees to further participate in these proceedings.

Accused 1: Yes No _____
 Accused 2: Yes No _____

PART B: LEGAL REPRESENTATION

(i) Appearing on behalf of the State:

Address for service and contact information
 (To be inclusive of a landline number, Cell phone number and email address)

Particulars of the Investigation Officer:

(ii) Appearing on behalf for the defence:

Accused 1 _____

Address of service and contact information

(To be inclusive of a landline number, Cell phone number and email address)

Private Defense:

Legal Aid Board:

If private Defence, is fees fully covered and/or are adequate arrangements made for fee: Yes No

Is the Defence ready to proceed? : Yes No

If not, furnish reasons for unreadiness:

Accused 2 _____

ADDRESS FOR SERVICE AND CONTACT INFORMATION

(To be inclusive of a landline number, Cell phone number and email address)

Private Defence:

Legal Aid Board:

If private defence, is fees fully covered and/or adequate arrangements made for fees:

Yes No

(If not, when will fees be covered and/or adequate arrangements made for fees)

Is the Defence ready to proceed? Yes No

If not, furnish reasons for unreadiness:

PART C:

INFORMATION TO BE FILLED IN AS PER FORM E1 READ WITH PARA 14 OF THE PRACTICE DIRECTIVE

- 1 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 the case management proceedings:
 - 1.1 Whether or not the accused is going to plead guilty.
 - 1.2 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.
 - 1.3 Number and particulars of witnesses which the State intends to call.
 - 1.4 Lists of witnesses whose evidence is intended to be challenged by the accused.
 - 1.5 Whether or not the admissibility of particular evidence is to be challenged during trial and thus necessitating the holding of trial within a trial and if so the grounds of the challenge.
 - 1.6 In the case of expert evidence like fingerprints evidence, DNA evidence, identification parade and so forth, whether the chain in collection of such evidence is in dispute.
 - 1.7 The number of witnesses the accused intends to call and if so, whether he or she will need the assistance of the State to secure the attendance of such witnesses during trial.

- 1.8 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.
- 1.9 The 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.
- 1.10 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.

FORM E



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

Case no:

In the matter between

Plaintiff / Applicant

And

Defendant / Respondent

NOTICE OF REMOVAL UPON SETTLEMENT

BE PLEASED TO TAKE NOTICE THAT above mentioned matter is hereby removed from the trial or opposed motion roll of _____ as it has since been settled in its entirety by not later than _____ being the date on which the matter was supposed to be settled in terms of paragraph 6 of the case management Form A.

PLAINTIFF

DEFENDANT

FORM F



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

CASE NO.

In the matter between

.....

Appellant

And

.....

Respondent

MANAGEMENT OF APPEAL MATTERS

1. This appeal matter was filed on and it is hereby case managed and enrolled for hearing on at 10h00.
2. It is hereby recorded that the judgment and record of the proceedings in the court a quo have been filed/ have not been filed.
3. The parties or their legal representatives hereby agree to and determine timeframes as follows:

- 3.1 The appellant to file judgment and complete record of the proceedings, properly indexed and paginated by not later than 13h00 on and thereafter file written heads of argument by and the respondent by not later than ----- OR:

- 3.2 That the judgment and record of the proceedings of the court a quo have been properly indexed, paginated, filed and the appellant shall file written heads of argument by not later than at 13h00 and the respondent by not later than At 13h00.

4. That the parties' legal representatives hereby record that they have been properly instructed and that there will be no need to have the case postponed on the date of hearing.

5. Request for postponement of any appeal case that has gone through case management and enrolled for hearing shall be substantiated.

6. Should there be a need for a postponement, an application for a postponement shall be delivered and enrolled for hearing on the unopposed motion roll or urgent roll provided urgency is justified in the founding papers not later than

7. Request for a postponement on the date of hearing is not allowed

8. During an application for a postponement an inquiry shall be conducted to determine who is responsible to pay costs occasioned by the postponement including forfeiture and or payment out of own pocket either on a party and party scale or on punitive scale.

FURTHER RECORDINGS AND/OR DIRECTIVES:

FOR THE APPELLANT:
INSTRUCTED BY:
CONTACT NO:

FOR THE RESPONDENT:
INSTRUCTED BY:
CONTACT NO:

FORM G



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

MANAGEMENT OF RESERVED JUDGMENTS 202_____
JUDGE: _____

CASE NUMBER/ PARTIES	DATE RESERVED	EST. DATE OF JUDGMENT	DATE FINALIZED
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			

FORM H



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

MANAGEMENT OF REVIEW AND PETITION MATTERS

DATE RECEIVED	NO	CASENO	NAME OF PARTIES	JUDGE	SECRETARY SIGNATURE	DATE COLLECTED	DATE RETURNED	SECRETARY SIGNATURE	OUTCOME

FORM I



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

MANAGEMENT OF REQUEST FOR DEFAULT JUDGMENT

DATE FILED	NO	CASE NO	NAME OF PARTIES	NAME REGISTRAR CLERK RECEIVING	NAME OF REGISTRAR/ TAXING MASTER	DATE COLLECTED	DATE FINALISED / ATTENDED TO	DATE COLLECTED BY ATTORNEY	ATTORNEY SIGNATURE	OUTCOME

FORM J



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

MANAGEMENT OF TAXATION MATTERS

DATE FILED	NO	CASENO	NAME OF PARTIES	NAME REGISTRAR CLERK RECEIVING	NAME OF REGISTRAR/ TAXING MASTER	DATE COLLECTED	DATE FINALISED / ATTENDED TO	DATE COLLECTED BY ATTORNEY	ATTORNEY SIGNATURE	OUTCOME

FORM JA



IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT) / MIDDELBURG LOCAL SEATS

IN THE MATTER BETWEEN:

APPLICANT/PLAINTIFF

AND

RESPONDENT/DEFENDANT

NOTICE OF TAXATION

BE PLEASED TO TAKE NOTICE that the attached bill of costs will be submitted to the Taxing Master for taxation on _____ at 09h30 or soon before the bill of costs may be considered.

BE PLEASED TO TAKE FURTHER NOTICE that the requirements for consideration of the bill of costs for taxation in terms of Rule 70 read with paragraph 27 of the Practice Directive to which this FORM JA is attached have been complied with.



VIRTUAL HEARINGS GUIDELINES

PLATFORM

1. Virtual hearings will be conducted on the Zoom or MS Team platform.

SCHEDULE OF HEARING AND LINK

2. Unless otherwise directed the secretary of the Judge allocated to a matter will be responsible to schedule the hearing and distribute it to legal practitioners before the hearing, but by no later than one day before the hearing date. In the event that the secretary of the Judge allocated to a matter is unable to do so the Applicant or Plaintiff will be required to attend to above.
3. In addition, links may be accessed per paragraph 31 of the practice directive to which this guideline is appended.

RECORD

4. The secretary of the Judge allocated to a matter shall be responsible to record the proceedings this need not include the video but must include the audio record of the proceedings.
5. In the event that the secretary of the Judge allocated to a matter is unable to do so the Applicant or Plaintiff will be required to attend to above.
6. In the event that the recording is done by the applicant and or plaintiff the recording should be made available to the registrar within two days of the hearing date.

ATTENDEES

7. All attendees are to join at least 10 minutes before the scheduled time for hearing.
8. Attendees and more specifically legal representatives are to ensure the reliability of their connection and equipment before the hearing. As in open court

sittings punctuality is expected of professional persons so too it will be expected during virtual hearings.

9. All attendees should keep their video off and sound muted on joining and for the duration of the hearing save for when they are addressing the court.
10. An attendee who causes disruption or frustrates the effective recording and proceeding of the virtual court proceedings will be requested to leave the hearing or will after warning be removed from the hearing.
11. As is customary there will always be at least two legal practitioners in the virtual court hearing at all times.

ROBING/DRESS

12. All legal practitioners must be appropriately robed.
13. Witnesses are to be suitably dressed as they would be in any other court sitting.

VISUAL AND AUDIO DURING MOTION PROCEEDINGS

14. During motion hearings, only the Judge and the legal practitioners briefed to appear will have their videos switched on.
15. Legal practitioners must ensure that their camera is level and that their screens are upright so that they do not appear to be looking up or down, or leaning back and away from the screen. Legal practitioners should position themselves so that the Judge will see at least their head and shoulders.

VISUAL AND AUDIO DURING TRIAL PROCEEDINGS

16. During trials ideally the whole room should be visible to the Judge and audio should at all times be on. Where this is not possible each legal team shall be in the same or separate rooms, as their witnesses utilising different devices without interference from one another
17. The court should be satisfied that the integrity of the hearing is not compromised by the format use and make any direction in order to achieve this and retain the integrity of the hearing.

UNEXPECTED INTERRUPTION

18. In the event of a loss of connection, an adjournment or recess, parties should switch off videos and mute microphones, or leave the hearing and use the same link to re-join the hearing.

GENERAL

19. Legal practitioners must ensure that their authorities and references are placed in a reasonably accessible place to the side of the screen and that they are able to refer to them without obstructing the view that the Court has of them.
20. In the event that counsel is viewing materials on a separate screen, position the screen so that it is not necessary to turn away from the camera. Legal practitioners should also place anything that they may need to pick up during the hearing, for example, a book, document or glass in such a position that they do not have to stand up, lean forward or reach in front of their faces in order to obtain the item in question.
21. The room from which Legal practitioners elect to appear must be private and closed. No other persons or animals should enter the room during the hearing. As far as possible external sources of noise should be excluded.
22. Where Legal practitioners will be using computers and have tablets or phones on which they receive emails, SMS messages or WhatsApp messages, they must ensure that the notification sounds on all of these devices are switched to silent, so that the hearing is not disturbed. Cell phones to be off and office phones to be disabled.
23. Legal practitioners should refrain from drinking or eating anything other than water. Preferably water should not be in a plastic bottles as this causes audio interference.