

## **PRACTICE DIRECTIVE IN TERMS OF RULE 37A (ACTIVE JUDICIAL CASE MANAGEMENT)**

### INTRODUCTION:

1. Rule 37A came into effect from 1 July 2019 and envisages active judicial case management (JCM) of all defended civil matters by all Judges. In this Division its application will commence with effect from the beginning of the Fourth Term on **Monday 7 October 2019** (the commencement date).

### THE APPROACH TO JCM:

2. At the outset the following matters will become subject to JCM in terms of Rule 37A in the KZN Division, namely:-
  - a. Such *ad hoc* trial matters as the JP (which includes his delegate, the DJP, the Senior duty Judge, or such other Judge as may be specially tasked thereto) may direct.
  - b. Such matters as practitioners may request to be considered for JCM;
    - i. In this regard written requests are to be submitted to the JP;
    - ii. either by consent of the parties, or upon notice to the opposing party; and
    - iii. should be concisely motivated indicating the desirability of JCM in relation to the particular matter.
  - c. All new matters in the categories specified below and which become defended after the commencement date will automatically and routinely to be subject to JCM (the routine matters). The initial categories of routine matters which will be subject to JCM are claims for damages against:-
    - i. the Road Accident Fund (the RAF);
    - ii. the SA Police Services; and
    - iii. the Provincial MEC for Health or his Department.
  - d. All allocations, or re-allocations where necessary of matters earlier allocated would, however, be subject to the discretion of the JP.

- d. All allocations, or re-allocations where necessary of matters earlier allocated would, however, be subject to the discretion of the JP.
3. The present Case Flow Hearings where matters are certified trial ready will correspondingly cease. Where practitioners contend that particular matters are trial ready and they wish to apply for trial dates, the following procedure will apply with effect from the commencement date:-
    - a. The applicant for a date for hearing will approach the Registrar requesting trial readiness certification, without which no matter will be enrolled for hearing.
    - b. The Registrar will consider the matter and if of the opinion that it is not trial ready, advise the applicant accordingly indicating the deficiencies.
    - c. If the Registrar is satisfied that a *prima facie* case for the certification of a matter exists, it will be referred to the JP for consideration for certification in his discretion.

#### ALLOCATION PROCEDURES:

4. All Judges within the Division will participate, broadly equally on an equitable basis, in the JCM process.
5. Allocations of matters for JCM and to particular Judges will be made by the JP with the assistance of the Registrar in each centre.
6. Once allocated, the parties will deal directly with the relevant Judge through the Judge's Registrar, in advancing the JCM process.
7. Judges will likely differ as to the procedures to be followed in the process of JCM. They may direct that their JCM meetings are held in open Court and require the attendance of the practitioners actually in charge of the matter on behalf of their respective clients. The time, venue and size of the roll will be controlled by the Judges concerned.
8. Alternatively Judges may find it convenient or prefer to deal with JCM matters, or some of them, informally in chambers, subject to a record of decisions and/or directions being kept on or in the court file.



9. In particular matters or circumstances a Judge may decide to deal with the matter as a whole, or only with particular aspects or issues during the course of the management of a matter, formally in open court where the proceedings are recorded and may later be transcribed if the need were to arise.
10. It may also be convenient, for instance in matters where the legal representatives of the parties are based far from the seat of the court, to conduct the JCM telephonically or by way of correspondence.
11. Ultimately the procedural course of case management to be followed should, in each instance, be determined by the Judge conducting the case management, subject to an accurate record of the JCM proceedings and decisions or directions being recorded and kept in the court file.

#### ADMINISTRATIVE SUPPORT BY THE REGISTRARS:

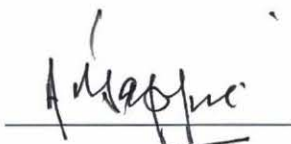
12. In order to manage the JCM system:-
  - a. The Registrar will separate all matters subject to JCM from the general filing system.
  - b. In the case of routine JCM matters this will occur SIXTY (60) DAYS after the filing of the appearance to defend.
  - c. These matters will then be allocated to the Judges for JCM.
  - d. The initial and early referral to JCM would allow Judges to immediately control the process – for example by ordering a separation of the issues in terms of Rule 33(4) with a view, *inter alia*, of saving costs and bringing matters to trial more speedily on defined issues.
13. The Registrar in each centre will keep custody of files subject to JCM in a separate dedicated filing system comprising of individual sections where the files case managed by each Judge are kept separately and can be made available to the Judge concerned upon request and with minimum delay.
14. Once a case has been certified for trial, its case management ceases, the file is removed from the dedicated JCM filing system and the file can then be dealt with by the Registrar in the ordinary manner.
15. The Registrar will keep a dedicated record of JCM files recording:

- a. Which are allocated, or re-allocated, to individual Judges for JCM;
  - b. When the matter is certified as trial ready; and
  - c. Where it is then transferred to.
16. During the process of JCM the Registrar will also;
- a. Keep abreast of JCM orders made or directions given by the relevant JCM Judge;
  - b. Note and diarise for attention dates upon which parties are to deliver documents, perform specified actions as directed by the JCM Judge, or act in terms of any applicable rules of court;
  - c. In the event of non-compliance by a party and as appropriate;
    - i. send a reminder or demand to the offending party, copying in the process the other parties in the matter; and/or
    - ii. advise the JCM Judge, who may then issue directions; and
    - iii. keep a record of such steps so taken in the court file.

RULE 37A(15) CONSENT:

17. This sub-rule disentitles the case management Judge from also being appointed as the trial Judge, unless the parties in writing consent thereto. The parties may, however, consent to the allocation of the trial to the JCM Judge, provided all the parties consent in writing thereto. Such consent need not be given during the JCM process and may be given at any time thereafter.

THUS DIRECTED at DURBAN this 17<sup>TH</sup> day of SEPTEMBER 2019.



A.N. JAPPIE

JUDGE PRESIDENT