

## **CHAPTER 6 CIVIL TRIALS**

- 6.1 Allocation of civil trials
- 6.2 Bundles of documents
- 6.3 Case management
- 6.4 Closure of the trial roll
- 6.5 Expert witness
- 6.6 General
- 6.7 Hearing duration
- 6.8 Pagination, indexing, binding and general preparation of papers
- 6.9 Part-heard trials
- 6.10 Practice notes for trials
- 6.11 Preferential trial date
- 6.12 Pre-trial conference
- 6.13 Roll call
- 6.14 Settlement agreements and draft orders

## 6.1 ALLOCATION OF CIVIL TRIALS

1. A trial will normally be allocated by the Deputy Judge President for hearing by a specific judge at roll call. Roll call is held at 09h30 in Court GC.
2. An allocation of a trial for hearing by a specific judge may be made prior to roll call in which event counsel and/or the litigants' legal representatives will be informed of the allocation before roll call.
3. In the allocation of trials due regard will be had to any justifiable claim for precedence in allocation.
4. As a general rule precedence in allocation will be given to trials in which a proper pre-trial minute was timeously filed with the registrar.
5. Only trials that are ready for immediate commencement and continuous running to their conclusion will be allocated for hearing.
6. If it appears at roll call in a trial where the parties have opposing expert witnesses that there is no joint expert minute, the trial will not be allocated until there has been proper compliance with this practice. This may result in the removal of the trial from the roll and the parties having to apply for a new trial date.
7. If, after allocation of a trial for hearing, it appears to the trial judge that there is no joint expert minute, the presiding judge to whom the trial has been allocated, will not commence or continue with the hearing of the trial but will require proper compliance with the practice. The presiding judge will determine the further hearing of the trial.

## 6.2 BUNDLES OF DOCUMENTS

1. Where a party or the parties to a trial intend utilising documents in their conduct of the trial such documents must be collated, numbered consecutively and suitably bound.
2. Each bundle must be indexed. The index must briefly describe each document in the bundle as a separate item.
3. The parties should preferably agree upon a joint bundle of documents. Where the parties are unable to agree upon a joint bundle, the parties must agree which party's bundle shall be the dominant bundle. The subservient bundle or bundles must not contain documents contained in the dominant bundle or bundles.
4. The documents should not be bound in volumes of more than 120 pages.
5. The bundle of documents must be bound in a manner that does not hinder the turning of pages and which enables it to remain open without being held open.
6. The parties must agree prior to the commencement of the trial upon the evidential status of the documents contained in the bundle. This agreement must be contained in a pre-trial minute. The agreement must also cover the issue as to which document will be part of the record before the court, to deal with the eventuality of an appeal.
7. If unnecessary documents are included in the bundle the court may on the application of any party to the trial, or mero motu, make a punitive cost order in respect thereof.

## 6.3 CASE MANAGEMENT

1. Any party to a trial who is of the opinion that by reason of its complexity, long duration or any other reason, the trial requires case management, shall deliver a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out -
  - 1.1 the names of the parties to the trial and the case number;
  - 1.2 the nature of the dispute;
  - 1.3 an estimate of the probable duration of the trial;
  - 1.4 the reason why that party is of the opinion that the trial requires case management.

Proof that a copy of this letter has been forwarded to the other party or parties in the trial must be provided.

2. Any party who is in receipt of such a letter and who wishes to make representations in respect thereof may do so by forthwith delivering a letter to the registrar marked for the attention of the Deputy Judge President. A copy of the letter must be delivered to all other parties to the trial and proof thereof must be provided.
3. The registrar will advise the parties of the outcome of the request.
4. In the event of the request for case management being granted, the Deputy Judge President shall appoint a judge to undertake the case management of the trial.
5. On the appointment of the judge as aforesaid:
  - 5.1 all interlocutory applications relating to the trial, will, as far as possible, be heard by that judge.
  - 5.2 any party to the trial, on notice to all other parties to the trial, may apply to the judge for directions as to the conduct of the trial. The judge may furnish such directions or direct that an interlocutory application be brought.
  - 5.3 The appointed judge may direct that one or more pre-trial conference be held before him or in his absence.

## **6.4 CLOSURE OF THE TRIAL ROLL**

1. The trial roll closes at 13h00 on the day preceding the allocated trial date whereafter access to the court file will not be permitted.
2. The prohibition of access to the court file continues for the duration of the trial, save with the leave of the trial judge.
3. Notwithstanding the foregoing, attention is drawn to the requirement in respect of pagination, indexing and binding of papers which must occur not less than five days prior to the date allocated for the hearing of the trial.

## 6.5 EXPERT WITNESSES

1. The time periods provided in Rule 36 (9) of the Uniform Rules of Court are often inadequate. This can result in trials not being ripe for hearing on their allocated trial date.
2. To preclude this from happening, it is suggested, that in appropriate matters, the parties to a trial, by agreement, lengthen the aforementioned time periods as well as the time period referred to in paragraph 5 infra. Such an agreement should provide that notice of intention to call an expert witness be given not less than thirty (30) court days before the allocated trial date and the summary of the expert's opinion be delivered not less than twenty (20) court days before the allocated trial date.
3. Where one or more parties to a trial wish to enter into such an agreement, but is or are unable to conclude such an agreement, an application may be brought in terms of Rule 27 (1) of the Uniform Rules of Court for the extension of the relevant time periods.
4. It should be noted that such an agreement, and consequently such an application, is generally conducive to the efficient conduct of a trial. Failure to conclude such an agreement without good cause, and opposition to such an application without good cause, may attract a punitive cost order either on the application by the party or the parties seeking the relief, or mero motu by the judge hearing the application.
5. In all trials in which the parties have opposing expert witnesses, such opposing expert witnesses must meet and reduce their agreements and disagreements to writing in joint expert minutes, signed by them. This minute must be filed in the court file not less than five days prior to the date allocated for the hearing of the trial.
6. If it appears at roll call in a trial where the parties have opposing expert witnesses that there is no joint expert minute, the trial will not be allocated until there has been proper compliance with this practice. This may result in the removal of the trial from the roll and the parties having to apply for a new trial date.
7. If, after allocation of a trial for hearing, it appears to the trial judge that there is no joint expert minute, the presiding judge to whom the trial has been allocated, may in his/her discretion not commence or continue with the hearing of the trial and may either require proper compliance with the practice or postpone the trial. The presiding judge will determine the further hearing of the trial, if not postponed.

## **6.6 GENERAL**

1. Counsel must ensure that they are available for the entire duration of the trial. The failure to do so will result in counsel's conduct being referred to the relevant society or association of which counsel is a member for disciplinary action.
2. A postponement of a trial will normally not be granted because counsel is not available for the trial or for the entire duration of the trial.
3. Any matter which may affect the continuous running of the trial to its conclusion must be disclosed at roll call and to the judge to whom the trial is allocated before the commencement of the trial.

## 6.7 HEARING DURATION

1. A trial is designated "of long duration" if it is anticipated that it will last more than five (5) days.
2. If any party to a trial is of the view that a trial will last longer than five days, that party shall deliver at least two weeks before the trial date a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out -
  - 2.1 the names of the parties to the trial and the case number;
  - 2.2 the nature of the dispute;
  - 2.3 an estimate of the probable duration of the trial;
  - 2.4 that a pre-trial conference in terms of Rule 37 has been held and a copy of relevant minute must be annexed to the letter.
3. If any party to a trial is of the view that a trial will last longer than ten days that party shall act as set out in paragraph 2 above, but shall do so at least four weeks before the trial date.
- 4.1 If any party or the parties to a trial are of the view that a trial will last longer than fifteen (15) days, after following the procedure for the allocation of the trial date, as set out in Transvaal Rule 7, the party or parties shall deliver a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out -
  - 4.1.1 the names of the parties to the trial and the case number;
  - 4.1.2 the nature of the dispute;
  - 4.1.3 an estimate of the probable duration of the trial;
  - 4.1.4 that a pre-trial conference in terms of rule 37 has been held and a copy of the relevant minute must be annexed to the letter.
- 4.2 The Deputy Judge President shall inform the parties in writing of the date allocated for the trial upon receipt of the letter that complies with 4.1 above. A trial date for a matter anticipated to last longer than fifteen (15) days will only be allocated by the Deputy Judge President in writing.
- 4.3 After being informed of the trial date, all the parties to the trial must comply with Transvaal Rule 7 (5).
5. If the letter referred to in paragraphs 2, 3 and 4 above is not directed by all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.
6. Any party who is in receipt of a letter referred to in paragraphs 2, 3 and 4 above and who wishes to make representations in respect thereof, may do so by forthwith delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of this letter must be delivered to all other parties to the trial and proof thereof must be provided.

## 6.8 PAGINATION, INDEXING, BINDING AND GENERAL PREPARATION OF PAPERS

1. The plaintiff shall, not less than ten days prior to the date allocated for the hearing of the trial -
    - 1.1 collate, number consecutively and suitably bind all the pleadings relating to the trial as a separate bundle and ensure that they are in the court file;
    - 1.2 collate, number consecutively and suitably bind all the notices relating to the trial as a separate bundle and ensure that they are in the court file;
    - 1.3 collate, number consecutively and suitably bind all pleadings which were amended after delivery thereof;
    - 1.4 collate, number consecutively and suitably bind the pre-trial minute and all documents relating thereto;
    - 1.5 prepare and attach an index to the pleadings bundle, the notices bundle and the pre-amendment pleadings bundle and the pre-trial bundle respectively. The index must briefly describe each pleading, notice or document as a separate item.
  2. In binding the pleadings, notices and documents, care must be taken to ensure that the method of binding does not hinder the turning of pages and the bundle should remain open without being held open.
  3. The pleadings, notices and documents should not be bound in volumes of more than 120 pages.
  4. The pleadings bundle must only contain the original pleadings (as amended, if applicable).
  5. If a document or documents attached to the pleadings, or contained in the bundles as referred to in para 1, is or are
    - 5.1 in manuscript, or
    - 5.2 not readily legible
- the plaintiff shall ensure that legible typed copies of the document or documents are provided.

## 6.9 PART-HEARD TRIALS

1. As a general rule, part-heard trials should be avoided. Accordingly no trial should be commenced with where any issue or consideration exists to the knowledge of counsel that would interfere with the completion of the trial.
2. A judge hearing a trial will be most reluctant to postpone a trial which will result in a part-heard trial.
3. Where a trial is part-heard, a date for the continuation thereof must be applied for by delivering a letter to the registrar marked for the attention of the Deputy Judge President. This letter must set out -
  - 3.1 the names of the parties to the action and the case number;
  - 3.2 the name of the judge before whom the trial became part-heard;
  - 3.3 the date when the trial became part-heard;
  - 3.4 an estimate of the probable duration for the completion of the trial;
  - 3.5 whether a copy of the record of the part-heard portion of the trial is available.
4. If the letter referred to in the previous paragraph is not a joint letter from all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.
5. A party who is in receipt of a letter referred to in paragraph 4 above, and who wishes to make representations in respect thereof, may do so forthwith by delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of the letter must be delivered to all other parties to the trial and proof thereof must be provided.
6. The Deputy Judge President shall inform the parties in writing of the date allocated for the completion of the trial.
7. After being informed of the trial date, all the parties to the trial must comply with Transvaal Rule 7 (5).

## 6.10 PRACTICE NOTE FOR TRIALS

1. The counsel for each party to a trial shall send a practice note by facsimile transmission in respect of the trial enrolled for hearing.
2. The practice note shall be transmitted to telephone number 011 332 8257 and shall be transmitted not earlier than 15h30 on the day preceding the day on which the trial is enrolled for hearing and not later than 08h30 on the day on which the trial is enrolled for hearing.
3. The practice note shall set out -
  - 3.1 the names of the parties to the trial, the case number and its number on the roll;
  - 3.2 the name of each party's counsel, whom they represent and their cellular and landline numbers;
  - 3.3 the nature of the dispute;
  - 3.4 the relief sought at the trial by the party on whose behalf the counsel completing the practice note appears;
  - 3.5 an estimate of the probable duration of the trial;
  - 3.6 the date on which the pre-trial conference was held;
  - 3.7 the date on which the pre-trial conference minute was registered on the registrar's computer system;
  - 3.8 whether any precedence is sought for the hearing of the trial, and if so, the motivation therefore;
  - 3.9 any issue or consideration that would interfere with the immediate commencement and continuous running of the trial to its conclusion;
  - 3.10 if the trial is one of long duration with an estimated duration of longer than five days but less than sixteen days, a copy of the letter referred to in paragraphs 2, 3 and 4 of the sub-chapter entitled "Hearing Duration" must be referred to and attached to the practice note of the party who delivered the letter.

## 6.11 PREFERENTIAL TRIAL DATE

1. A request for a preferential trial date must be made only after following the procedure for the allocation of a trial date as set out in Transvaal Rule 7.
2. A request for a preferential trial date is made by delivering a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out -
  - 2.1 the names of the parties to the trial and the case number;
  - 2.2 the nature of the dispute;
  - 2.3 an estimate of the probable duration of the trial;
  - 2.4 the motivation for the allocation of a preferential date.
3. If the aforementioned letter is not directed by all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.
4. Any party who is in receipt of a letter referred to in paragraph 2 above, and who wishes to make representations in respect thereof, may do so forthwith by delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of the letter must be delivered to the other party or parties to the trial and proof thereof must be provided.
5. The Deputy Judge President shall inform the parties in writing of the outcome of the request and of the date allocated for the trial in the event of the request being acceded to.
6. After being informed of a trial date, all the parties to the trial must comply with Transvaal Rule 7(5). The letter from the Deputy Judge President allocating the trial date must be attached to Notice of Set-down delivered in terms of Rule 7(5).

## 6.12 PRE-TRIAL CONFERENCE

1. A pre-trial conference as contemplated in Rule 37 must be held in every matter which is to proceed to trial.
2. In order to ensure that it is effective, a pre-trial conference must ideally be held after discovery and after the parties have exchanged documents as contemplated in Rule 35. In the event of discovery being made after the holding of a pre-trial conference, a further pre-trial conference must be held after such discovery and exchange of discovered documents.
- 3.1 If it appears at the roll call -
  - 3.1.1 that the parties have seriously endeavoured to narrow the issues and explore settlement;
  - 3.1.2 that there are no outstanding requests for admissions or particularity and no outstanding requests for documents;
  - 3.1.3 that, where applicable, the experts have met and produced a joint minute;
  - 3.1.4 that the trial is ready to commence immediately and run continuously to a conclusion, then the matter will be ripe for allocation, provided a judge is available.
- 3.2 Parties have a continuous obligation to seek to narrow issues and to comply with the substantive requirements of Rule 37, notwithstanding the fact that strict compliance with the Rule may no longer be possible because a pre-trial conference has not been held six (6) weeks before trial.
- 3.3 If it appears at the roll call that one party has prevented substantial compliance with Rule 37 despite genuine and timeous efforts by the other party to achieve substantial compliance therewith, the court may allocate the matter if it appears the matter can run continuously to a conclusion within five (5) days despite the said non-compliance.
- 3.4 If it appears the matter cannot run continuously to a conclusion within five (5) days due to the prevention of substantial compliance with Rule 37, the matter may be placed under case management in the hands of a designated Judge as contemplated in Rule 6.3 and may on application be granted a preferential trial date when a new trial date is sought.
- 3.5 The court may deal with the issues of costs arising out of any postponement at the roll call rather than reserving the costs.
4. If, after allocation of a trial for hearing, it appears to the judge presiding that there has not been proper compliance with Rule 37, the presiding judge to whom the trial has been allocated, may, instead of commencing or continuing with the hearing of the trial, order proper compliance with Rule 37. The presiding judge will then determine the further hearing of the trial.

5. Where a party wishes to request that a judge presides over the pre-trial conference in terms of Rule 37(8), that party shall do so by delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of this letter must be delivered to all other parties to the trial and proof thereof must appear from the letter directed to the Deputy Judge President. Any party who is in receipt of such a letter and who wishes to make representations in respect thereof, may do so by forthwith delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of this letter must be delivered to all other parties to the trial, and proof thereof must appear from the letter directed to the Deputy Judge President.
6. Where a party wishes to request that the registrar should intervene by fixing the time, date and place for the conference in terms of Rule 37(3)(b) that party shall do so by delivering a letter to the registrar. A copy of this letter must be directed to all other parties to the trial and the procedure contemplated in paragraph 5 above shall apply *mutatis mutandis*.
7. The request for intervention by the registrar as contemplated in Rule 37 (3) (b), or the Deputy Judge President, as contemplated in Rule 37 (8), must be made timeously and preferably before the time prescribed for the holding of the conference has expired.
8. At roll call priority may be given to cases in which minutes of acceptable quality (proper pre-trial minutes) were timeously filed with the registrar.
9. Where there are competing minutes of acceptable quality, priority may be given to the matter or matters in the order in which (a) the minutes were filed, (b) the pre-trial conferences were held, and (c) the matters appear on the trial roll.
10. Joint Minute of Experts:
  - a. Where there are overlapping experts, the experts shall meet and produce joint minutes indicating their endeavour to settle, and failing settlement, narrowly defining their differences;
  - b. In such a case the legal representatives shall, before commencement of trial, hold a pre-trial conference to achieve the objectives of Rule 37 with regard to the issue or issues arising between the overlapping experts.

## 6.13 ROLL CALL

1. A roll call will be held at 09h30 on each day during the court term of all trials enrolled for hearing on that day. If necessary further roll calls will be held at 11h30 and 14h00.
2. Unless advised prior to the commencement of roll call that a trial has been allocated to a specific judge, the parties' legal representatives must attend roll call and continue so attending until the trial has been allocated or otherwise disposed of.
3. If a trial cannot be allocated for hearing on the day for which it is enrolled for hearing, the parties' legal representatives must attend roll call on the next and subsequent days until the trial is allocated for hearing.
4. Unless the parties' legal representatives state the contrary, it will be assumed that -
  - 4.1 the parties' legal representatives are not aware of any reason why the trial, if allocated, cannot commence and run continuously to its conclusion;
  - 4.2 the pleadings have been properly paginated and indexed;
  - 4.3 a bundle of documents (where necessary) properly paginated and indexed has been prepared;
  - 4.4 where separate bundles of documents have been prepared by the parties, there is no duplication of documents in the various bundles;
  - 4.5 all issues relating to the pre-trial conference have been completed.
5. If any of the assumptions referred to in paragraph 4 above are proved to be incorrect, the trial will not be allocated. If the trial has already been allocated and any of the aforementioned assumptions are proved to be incorrect, the trial will not be commenced but will be referred back to the judge who conducted the roll call.
6. Unless indicated to the contrary on the daily roll, roll call at 09h30 will be held in court GC. Counsel will be advised by the presiding judge where the subsequent roll calls, if necessary, will be held.

## 6.14 SETTLEMENT AGREEMENTS AND DRAFT ORDERS

1. Where the parties to a civil trial have entered into a settlement agreement, a judge will only make such settlement agreement an order of court if -
  - 1.1 counsel representing all the parties to the trial are present in court and confirm the signature of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court,  

or
  - 1.2 proof to the satisfaction of the presiding judge is provided as to the identity of the person who signed the settlement agreement and that the parties thereto want the settlement made an order of court.
  
2. Where the parties to a civil trial have settled the trial on the terms set out in a draft order, a judge will only make such draft order an order of court if -
  - 2.1 counsel representing all the parties to the trial are present in court and confirm that the draft order correctly reflects the terms agreed upon,  

or
  - 2.2 proof to the satisfaction of the presiding judge is provided that the draft order correctly reflects the terms agreed upon.