

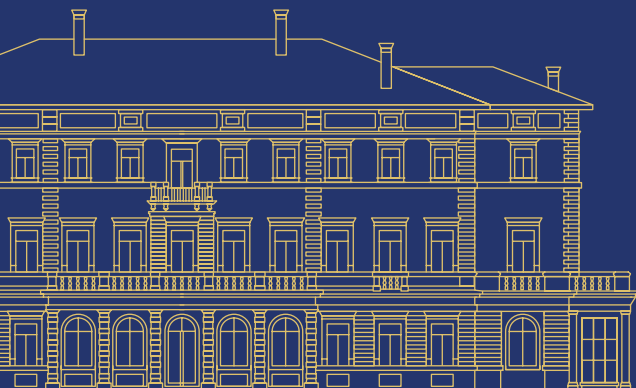


**CASE MANAGEMENT
PRACTICAL GUIDELINES
FOR JUDGES**



ADVANCING THE RULE OF LAW

The CEELI Institute is a Czech public-benefit (not-for-profit) organization based in Prague, dedicated to the development, training and convening of an international network of legal and judicial professionals committed to advancing the rule of law. Through innovative training programs and other activities, the Institute works with judges, lawyers, and civil society actors to build laws-based societies. The CEELI Institute prides itself on the diversity and quality of the programs it has developed, the peer-to-peer exchanges it fosters, the innovative nature of its programming, and its legacy of contributing to the advancement of the rule of law. Our efforts are focused on creating independent, transparent, and effective judiciaries, strengthening democratic institutions, fostering efforts to combat corruption, bridging difficult conflicts, promoting human rights, and supporting lawyers and civil society actors striving for public accountability and impartial justice. The CEELI Institute is based at the Villa Grébovka in Prague, a historic nineteenth-century building now renovated into a residence and conference center.





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TABLE OF CONTENTS

Aknowledgments	7
Foreword	9
Summary	10
Glossary	11
Chapter 1: Principles of Case Management	13
Basic Principles of Case management	14
Cooperation	14
Leadership	15
Localized Case Management	16
Information Management	16
Monitoring	17
Chapter 2: Preparation	19
General Preparatory Steps	19
During Sitting / In Court	20
Chapter 3: Managing Cases	21
Courtroom Management Techniques	21
Using Pre-Trial Motions Practice	22
Continuous Trials	23
Chapter 4: Time Management	25
Prioritizing	26
Scheduling Orders	26
Pre-trial conferences	26
Timeframe for Filing and Reply on Processes	27
Adjournments	27
Setting Rules for Consequences of Non-Compliance	27
Chapter 5: Managing the Decision	29
Pre-Decision Making/ Close of Trial/Pre-Judgment	29
Structure and Content of the Decision	29
Delivering the Decision	30
Media and Publicity	30

Chapter 6: Cooperation with Others	31
Staff	31
Lawyers	31
Annex I: Examples of Forms and Practice Directions	33
A. Case Completion Plan	33
B. Practice Directions of the High Court of the Federal Capital Territory (FCT) 2017: Arraignment and Case Management Forms	35
Annex II: Resources	51
Articles, books and guidance	51
Cases	52

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FOREWORD

The CEELI Institute initiated the African Judicial Network in 2021, modelled on a similar initiative the Institute has been facilitating in Central and Eastern Europe since 2012. At the time of writing, the African Judicial Network includes judges from 11 Anglophone African countries: Botswana, The Gambia, Ghana, Kenya, Malawi, Namibia, Nigeria, South Africa, Tanzania, Uganda, and Zambia.

The network is primarily composed of non-high court judges and focuses on expertise that can be used by individual judges in individual courtroom. It is meant to be an active network created by judges, for judges, with its substantive direction driven chiefly by the judges in the network's Core Group.

Case management is one of the most crucial factors affecting efficient and timely delivery of justice. Proper case management requires significant investment in funds, personnel, and equipment, as well as the development of political will, all of which are too complex to be tackled by a single project or initiative. However, there is a range of measures that individual judges in individual courtrooms can take to significantly improve the management of their cases and reduce case backlogs. It is with those measures in mind that these guidelines have been drafted, using expertise from a number of network countries as brought forward by members of the Core Group, as well as from international partners.

This document thus aims to be relevant to individual judges, as well as to those responsible for developing policies and guidance for judicial practice, including members of judicial councils, court presidents, officials from judicial associations, and any other members of the judiciary who are responsible for regulating judges' work practices. It considers basic principles of effective judicial case management before examining preparation and court management, including timing and prioritization, managing decisions, and cooperation with others. It includes, in the annexes, examples from various courts of tools and best practices on case management. While drafting this document, the CEELI Institute and the network judges referenced a wide range of materials and sources of information, including policies and recommendations by several international organizations.

These guidelines are made available, free of charge, to any interested judges and judiciaries in the region and beyond, in the hope they will find them a useful and practical tool.

SUMMARY

For most judges, the introduction of management in the court system, which requires the judge to work actively with litigating parties and their lawyers with a view to bringing each case to trial and conclusion in a just, speedy, and cost-effective manner, was a major trigger for the change in attitude and greater involvement of judges in the administration of the justice system.

The judiciary today has to be more business-like and professional than ever before. This is as much about ‘process’ as it is about ‘merit’. The integrity of the process by which justice is done is as important as the actual dispensing of justice in any particular case, hence it is said that *“Justice should not only be done but should manifestly and undoubtedly be seen to be done”*.¹

Any justice system exists primarily to provide orders that are just. To have the necessary moral authority, it must protect the rights of parties, including the right to a fair trial, and it must resolve matters effectively.

In managing the court, judges have responsibilities in three crucial areas:

- managing the trial,
- managing the court and the court system, and
- managing the external environment.

Judges have responsibility not only for case flow management, but also for all aspects of court operations. Court operations may run smoothly if there is the effective use of modern technology to improve efficiency, the improvement of in-service training programs for judicial staff, and planning. Improved communication between the judiciary and other stakeholders, and improved relationships with lawyers.

A well-managed court system recognizes the need to coordinate and align responses to criminal justice issues in keeping with the demands of present-day developments and circumstances. Significant changes in enforcement policy affect demands on the justice system and the justice system is a complex web of practices requiring input from many stakeholders. Case management consequently comprises a multitude of factors, the consideration and application of which will depend on dynamics and circumstances existing at any one time.

¹ Lord Chief Justice Hewart, *Rex v Sussex Justices*, 9 November 1923.

GLOSSARY

Continuous trial – once a trial has started, it will continue each day until terminated.

Hearing – a legal proceeding where an issue of law or fact is tried and evidence is presented to help determine the issue; or formal examination of a cause, civil or criminal, before a judge, according to the laws of a particular jurisdiction.

Mandatory settlement conference – a court-ordered appearance, before trial, encouraging parties to settle their matter in whole or part.

Pre-trial motion – an application made to the court requesting that it make a decision on a certain issue before the start of the trial.

Scheduling order – an order adopted by the judge that sets out all deadlines for certain measures to be undertaken before trial.

CHAPTER 1: PRINCIPLES OF CASE MANAGEMENT

The resolution of disputes has been at the heart of judicial function. Judges have not always had the primary responsibility of the management of cases. In fact, management is said to be “*anathema to the business of judging*”.² For most judges, the introduction of management in the court system, which requires the judge to work actively with litigating parties and their lawyers with a view to bringing each case to trial and conclusion in a just, speedy and cost effective manner, was a major trigger for the change in attitude and greater involvement of judges in the administration of the justice system.

The judiciary today has to be more business-like and professional than ever before. This is as much about ‘process’ as it is about ‘merit’. The integrity of the process by which justice is done is as important as the actual dispensing of justice in any particular case, hence it is said that “*Justice should not only be done but should manifestly and undoubtedly be seen to be done*”.³

Court management is a general term which encompasses **many facets** of the administration of justice. Ultimately court management may be defined as:

- the application of processes and procedures in a legal forum that address the needs of our communities through timely and expedient case disposition;
- a forum for fairness and equality in an environment founded on integrity; and
- access to our courts for everyone.

Only when we are successful in fulfilling these goals and objectives will the public’s trust and confidence in our courts rise.

The judge plays an **active role** in the processes. A judge who is actively engaged is able to quickly identify the issues and most cases simplify them.

Any justice system exists primarily to provide orders that are just. To have the necessary moral authority, it must **protect the rights of parties**, including the right to a fair trial, and it must resolve matters effectively.

A well-managed court system recognizes the need to **coordinate and align responses** to civil, criminal, administrative, and other issues in keeping with the demands of present-day developments and circumstances. Significant policy changes affect demands on the justice system and the justice system is a complex web of practices requiring input from many

² Richard Susskind, “Management and Judges,” in M. Saville and R. Susskind (eds.), *Essays in Honor of Sir Brian Neill: The Quintessential Judge* (London: LexisNexis UK, 2003), p. 53.

³ Lord Chief Justice Hewart, *Rex v Sussex Justices*, 9 November 1923.

stakeholders. Case management consequently comprises a **multitude of factors**, the consideration and application of which will depend on dynamics and circumstances existing at any one time.

Accordingly, courts must provide **effective leadership** in developing and maintaining a responsive and efficient court system that anticipates and meets the needs of the justice system in a timely and cost-effective manner. However, effectiveness is not mere efficiency or cost cutting. It is ensuring that every step of the process contributes to a just result.

Although case management is led by the judiciary, it is a **shared responsibility**. Consequently, all elements are **interdependent** within the context of the justice system, relying on individual participants to adopt an integrated approach. The justice system is accountable to the public which it serves. Courts can and should implement initiatives and reforms in a **collaborative fashion**, without risking judicial independence, by seeking stakeholder input and commitment.

Basic Principles of Case management

With these complexities in mind, the following basic elements and considerations are of utmost importance towards ensuring the overall effectiveness of court case management.

Cooperation

Effective case management requires **cooperation**. Participants in the justice system are generally autonomous within their sphere as each has their own power and responsibility but each depends on others. The combination of **autonomy and interdependence** means they must cooperate appropriately to be effective.

Consequently, decisions affecting the process should be made with consideration for the impact they have on the rest of the system.

- ▶ Efficiency, effectiveness, and access to justice are **interconnected**.
- ▶ A successful case management system should **respect the interests of the various participants**, including the parties, accused, witnesses and victims.
- ▶ The proper disposition of a case requires management of a **complex line of supply and demand consisting of various actors and information**. All stakeholders, even those who may be considered to be minor or peripheral participants to a case, can significantly impact on court operation.
 - For example, the failure to bring a prisoner to court for a scheduled appearance can easily defeat an organized case management system.

- The failure to advise authorities that a prisoner is no longer needed for court can result in unnecessary movement of prisoners.
- ▶ Once various sectors of the justice system have forged **cooperative relationships** and a genuine regard for the roles of each participant, a procedure to effectively manage cases in accordance with appropriate principles becomes a common goal.
- ▶ Fundamental to cooperation is development of **realistic expectations and obligations** that respond to the needs of all justice systems and enable accurate prediction of events and requirements, taking into account resource requirements and performance standards.
- ▶ State authorities should put in place a **system of communication, cooperation, and coordination** (The Three C's) amongst the stakeholders in the justice system while providing the necessary support and resources.

Leadership

Leadership among autonomous participants requires the application of influence and moral authority.

- ▶ The court should provide leadership in effective case management.
 - The judge is the **impartial apex** of the adversarial system's triangle, deciding each case without regard to external considerations.
 - You, as a judge, have the **independence and authority** to lead the other participants. In short, your impartiality gives you a unique opportunity to lead effective case management.
 - Judicial leadership is not just about managing the cases, but also **ensuring the parties are prepared for an effective hearing**.
 - Judges thus can oversee cases to ensure they are managed in accordance **with commonly accepted norms while retaining flexibility** to respond to the unique needs of individual cases.
- ▶ Judicial leadership does not absolve the other participants of their responsibility to contribute to an effective justice system. Leadership does not work in isolation **but requires cooperation, respect and the frank exchange of ideas and concerns**.
- ▶ **Consistent enforcement** of rules, forms, and expectations for pre-appearance preparation is key to each sector managing cases efficiently.

Localized Case Management

- ▶ All case management should be localized. Legislation can enable and support case management, but the local bench and bar should ensure effective management of cases through their commitment to good practice.
- ▶ Local control can respond to local pressures, issues, and personalities. Implemented cooperatively, it brings various sectors together, and increases communication, understanding, and mutual respect.
- ▶ For local control to be effective, it is vital to strengthen local capacity to share best practices and to provide the data and analysis needed to assess the effectiveness of local practice and apparent best practices.
- ▶ Each court must adopt an approach that is acceptable to local participants. Joint working groups on issues of local importance improve communications, build relationships across sectors, and foster a sense of ownership and responsibility.

Information Management

- ▶ Technology
 - Where practicable or available, using technology in courts helps you, as the judge, and staff to **perform your key functions and serve court users** more efficiently and effectively.
 - **Information** with regards to the process should be made available to the parties.

Effective case management demands **case management data and information** in order to allow judges to identify problems and plan effectively.

Knowledge, in the form of statistics or management information, is a crucial component in understanding the situation and where to develop and focus initiatives.

- ▶ Meaningful comparisons over time and location require **standard definitions** and protocols. Something as basic as what is “*one case*” can mean different things to different participants within jurisdictions and nationally, and can produce very different data as a result.
- ▶ Case processing time data is important for many case management decisions, especially in relation to policy development and establishment of local resource targets.

- ▶ Utilizing data made available through information technology can assist each sector in the justice system to actively **manage their own process issues**, and jointly develop strategies to address issues that involve one or more of them. This can, in turn, ensure the justice system makes effective use of its time and resources.
- ▶ An **integrated management information system** connects the various sectors in the justice system and provides process information which can be used for management purposes.

These systems may also provide ready access to information about, e.g., movement of prisoners, case status, correctional histories, and other information necessary to the efficient management and analysis of court systems.

- ▶ Overall, the goal of case management should be geared towards ensuring that each court appearance is **effective and timely**, and that duplication and waste of effort is avoided.
- ▶ Thus, **expectations and standards should be clear and reasonable** so that each participant in the justice system is able to rely on the other to meet its commitments. Care should be taken to ensure that expectations clearly fall within a justice system sector's role and articulate a healthy relationship between various participants in the justice system.

Monitoring

The ability to **monitor case progress** is essential for an effective case management system.

- ▶ To effectively manage cases, courts should **monitor and measure** performance.
- ▶ Courts should **publish this data** to ensure transparency and accountability. This boosts public trust and confidence.
- ▶ The monitoring process should encompass **individual reporting** on court aggregates and exceptions, utilizing information to identify problems, resolve impasses, anticipate, address future problems, and ensure sufficient follow-up.

CHAPTER 2: PREPARATION

A judge must be prepared for a case at every stage of the proceedings. Court management should begin at the time of filing and should be ongoing. Being prepared means having an excellent knowledge of the subject matter and knowing the case better than the parties. Being prepared saves judicial time and strengthens the faith of the parties and the public in the judicial system.

General Preparatory Steps

The duty of a judge is to preside over cases and determine same by applying the law in a fair, impartial, and unbiased manner.

- ▶ Ideally, a **single judge** should be assigned to each case and should stay with the case through its disposition.
- ▶ The court should adopt a **uniform procedure** or have practice directions and be consistent in their application and enforcement, especially as it relates to similar cases.

As a judge, you should consider the following:

- ▶ Identify and read the **applicable law and relevant case law**.
- ▶ **Identify the main issue(s)** which has led the parties to court. This can guide you on the relevant issues and evidence that would enable you to competently determine the case.
- ▶ Where there is a motion/ application, **read both the affidavit in support and in opposition** with all attachments and exhibits.
- ▶ Have an **idea as to what your decision might be**, based on the law and facts.
- ▶ **Set deadlines** (in accordance with your rules of procedure) for the performance of acts or the filing of processes.
- ▶ Where proceedings have to be interpreted to a party/parties, before you sit, find out from the Registry if arrangements have been made for an **appropriate interpreter**. If there are other courts close by, consider if arrangements can be made for one of the interpreters from the other courts to provide the necessary interpretation.

- ▶ The particular **needs of parties and witnesses** including applications for subpoenas, defences such as autrefois acquit, autrefois convict (in criminal trials), statutes of limitation defences, should be raised.

During Sitting / In Court

- ▶ Keep abreast of the **business of the day** for each docket you would be handling on any specific day.
- ▶ **Give yourself ample time**, either the previous day after sitting, or early morning before sitting, to read your docket and case thoroughly.
- ▶ **Make small notes** and carry them along to court.
- ▶ Where there has been short/ inadequate service of a process, you **may have to adjourn/ grant a continuance** unless the affected party waives their right to the full time of service. If they elect to do this, record it before you proceed.
- ▶ Once you are abreast with the depositions or contents of the affidavit, you may **ask the lawyers to address you on a particular point(s)** and set the time for them to do so.
- ▶ To save judicial time, you may also tell them you have **read through the processes** and find out if there is anything else on which they would like to address you (e.g., relevant case law, whether the parties are attempting to settle the matter and want the court to give them time, etc.). Where there is no such, then politely ask them to move/ respond briefly to the motion.
- ▶ The court could **consider early consideration of issues** so that hearings focus on what can only be resolved in court and lawyers arriving in court arrive prepared to optimize each appearance.

CHAPTER 3: MANAGING CASES

The prime focus of “managing a case” is to produce an acceptable result in the shortest time possible at the least expense and with minimum stress on the parties involved. Managing a case demands proactivity in processing a legal matter: it comprises various techniques and seeks to avoid a process which requires or relies upon reaction, i.e., to be proactive, not reactive.

In a nutshell, in court management you, as the judge, must take control and monitor course of proceedings, filing of documents, litigation, searches, hearings, both interlocutory and the main case, execution of court orders and decrees, and take overall assessment of the circumstances of the case.

Courtroom Management Techniques

These must be deployed for seamless and smooth court proceedings.

- ▶ **Manage the court.** Be firm. Manage the schedule.
- ▶ Participants in the court process should prepare and conduct each case properly **in accordance with the relevant laws, rules, and practice directions**. You should **emphasize the role of lawyers** in developing the case expeditiously. Responsibilities of all legal actors should be discussed.
- ▶ **Rules should be clear:** for example, with respect to punctuality to court, timing of questioning, presentation of statements, and how to question witnesses etc.
- ▶ Lawyers who do not follow the rules should be subject to **applicable sanctions**.
- ▶ You should **communicate what is a permissible** and non-permissible delay.
- ▶ Always keep a **professional, neat, and tidy appearance**.
- ▶ You should stress the **need for decorum and civility** in court. Lawyers must be reminded that they are officers of the court. Court settings should be formal and serious to inspire truth, respect, public confidence in the legal system, and in the accuracy of the results.
- ▶ **Communicate clearly and in simple language.** Remember that legalese and technical words may not be understood by all participants. Speak audibly but do not shout.

- ▶ However, you should also walk a fine balance between **formality and informality** in your court. Ensure the parties can express themselves and have equal opportunities to explain relevant facts. Be polite and firm with all lawyers and listen to them or their clients. Treat them in a dignified manner.
- ▶ **Maintain your composure** and keep the court focused on the relevant business of the day. Deploy the power of sanction to control outbursts. You should not descend into the arena of conflict. You must work to assure the highest standard of conduct and integrity for yourself and the administrative staff.
- ▶ Administrative staff should be **adequately supervised and monitored** to ensure that there are no lapses in the administrative aspects of the case.
- ▶ Court sittings must be **public**. The media should be permitted, provided the rules allow, and you can impose conditions to avoid disruptions.
- ▶ A court user should leave the court and say *“I was heard; I was treated with respect”; “I understand the decision”*.

Using Pre-Trial Motions Practice

This practice helps guide a case to early disposition whether through dismissal, settlement, or trial. This is an important step in **narrowing or dismissing** a civil or criminal case where parties seek a ruling on a legal question or sufficiency of facts. Where this practice is used, it is essential for the judge to manage the process through limitations on:

- The length of the brief;
- Numbers of brief that can be filed;
- Deadline for when motions should be filed; and
- Date the motion will be argued.

In managing a case, you should establish early and ongoing control of the pre-trial process by:

- ▶ Encouraging lawyers to get in **contact with the court** as soon as possible. There must be a proper utilization of the Court Administrator and administrative staff whose responsibility is to establish this contact.
- ▶ Ensuring that cases are **screened early** to identify those that can be resolved immediately.
- ▶ Encourage the parties, from the start and throughout the proceedings, to consider the possibility of **amicable settlement or alternative dispute resolution**.

- ▶ When the pretrial motions practice is deployed, you should **resolve the motion quickly** and deliver the ruling promptly to ensure deadlines are respected.
- ▶ At the **conclusion** of the Pre-trial Case Management hearing or conference, the case is set for trial.

In some jurisdictions, a date for **Mandatory Settlement Conference** is set in every civil case. Where Mandatory Settlement Conference is applicable:

- ▶ The date for settlement conference is set when the case is ready for trial.
- ▶ The settlement conference is mandatory and not voluntary.
- ▶ The decision maker is required to attend the conference.
- ▶ A different judge than the trial judge handles the conference.
- ▶ The judge gives their view of the merits of the case.
- ▶ The judge meets separately with each side and helps encourage the parties to agree on terms.
- ▶ The settlement made is placed on the record and is final.
- ▶ When a settlement cannot be reached, the parties prepare for trial.

Continuous Trials

- ▶ **Continuous Trial Concept** must be followed to ensure timely results and avoid time wasting. Aside from this being international best practice, it eliminates memory lapse where legal actors (judge, lawyers, witnesses) forget evidence over time, and it builds respect for the judiciary.

CHAPTER 4: TIME MANAGEMENT

Time Management concerns **prioritizing** tasks by their importance and includes organizing, aligning, productivity, setting objectives, goals, and saving and accomplishing activities on your checklist.

Time management ensures the attention necessary to secure a **just and expeditious** determination of each claim or case. It is important that each court sets its own time standards and case management procedures.

Different individuals may adopt **different effective time management methods**, and identifying and adapting the most effective method for yourself is the key to creating an efficient case management system.

For efficient time management, you may consider the following:

- ▶ Be **punctual** to court and ensure that there is not only consistency but uniformity in your judicial comportment and judge craft.
- ▶ The **timely provision of information** and resources to participants contributes effectively to the process.
- ▶ A **clear schedule** should be determined for each step in the case, with deadlines for lawyers, administrative staff, and yourself. A **reminder of the time estimate** should be given at the start of trial or hearing.
- ▶ You should **obtain commitment of lawyers** on how much time they require for each step. Time estimates and schedule of witnesses for the hearing should be confirmed. Lawyers must know that it is **their responsibility** to make sure their witnesses are present and on time as scheduled.
- ▶ **Do not allow submissions to drag.** Submissions must be relevant and not overly verbose. Treat all lawyers equally.
- ▶ You must **maintain the agreed trial dates** set at the pretrial conference.
- ▶ **Keep parties informed.** If there is a delay as to the set time for hearing of the case inform those waiting about the estimate time.
- ▶ You should also consider a **short break for yourself.**

Prioritizing

Prioritize the cases by their importance:

- ▶ **Choose a task** you need to do in a particular case.
- ▶ **Categorize tasks**, for example, 'Important and Urgent', 'Important but Not Urgent', 'Urgent but not Important' and 'Neither Urgent Nor Important'. These will enable you to identify those tasks that can be delegated to other staff.

Scheduling Orders

Where appropriate, you should issue a Scheduling Order. This order sets out all scheduling deadlines and it is tailored to the court's timeframes and the parties' need for preparation of the case.

- ▶ The Registrar of the Court or any other administrative staff specifically designated must ensure **timeous dissemination** of the scheduling order to the parties.
- ▶ You should **communicate standard(s) for changes** in the hearing dates to the parties. Dates in the scheduling order should only be changed by you if there is a good, cogent, and compelling reason to do so.
- ▶ There must be **strict adherence** to the dates and deadlines established.

Pre-trial conferences

- ▶ Schedule a Pretrial Case Management hearing or conference at the **earliest possible time** after you have been assigned a new case file.
- ▶ The court through pre-trial conference should **identify the possible issues for trial**.
- ▶ **Identify** the parties and state the tones and rules of court.
- ▶ Pre-trial conferences must be held in public and:
 - Decisions must be pronounced in public;
 - Decisions and discussions must be recorded and transcribed; and
 - In a criminal case, the defendant must be present.

Timeframe for Filing and Reply on Processes

- ▶ A **clear time frame** should be issued for filing of processes with proof of evidence and service on the other party, *i.e.*, motions, affidavits.
- ▶ A **deadline** should be given by which the other party should reply with proof of evidence (*i.e.*, counter affidavits and counter claims, statement of defense, etc.).
- ▶ The court and parties should identify **the number and possible witnesses**, including expert witnesses, relevant to the case.
- ▶ The **time for evidence** taking and examination in-chief, cross-examination and re-examination should be determined in advance.

Adjournments

A **degree of judicial control and / or tolerance for adjournments** is a key variable in effective case management. There are many reasons why a lawyer may want an adjournment and judges have the means to signal their displeasure at some of them even while granting the adjournment. Lawyers should be put to the test by the court so that, even if an adjournment may be necessary, lawyers will have the benefit of the court's views to guide future case preparation.

- ▶ You should ensure that any grant of an adjournment **does not adversely subvert the cause of justice** even if the parties have agreed on the need for an adjournment.
- ▶ **Grant adjournments and continuances sparingly** and only when it is reasonable. For common law jurisdictions, the accepted principle of law is that motions and applications are dealt with by the court at its discretion. That means that provided all parties have notice of the appearance in court and the business of the day, the court may elect to rely on the affidavit evidence as filed to deliver a ruling without necessarily hearing the parties or their lawyers.

Setting Rules for Consequences of Non-Compliance

- ▶ The court should set specific rules for the sanctions for those who disobey the rules of court, for example, a delay in filing or failure to serve processes on the other party, lateness, absencing oneself from court without reasonable explanation, and non-disclosure.

CHAPTER 5: MANAGING THE DECISION

A decision could be a/an:

- Judgment (Final);
- Judgment in Default;
- Part Judgment (for partial claim or relief); or
- Appeal.

Pre-Decision Making/ Close of Trial/Pre-Judgment

- ▶ The **entire record of proceedings** should be ready as the Defendant/Respondent closes their case. With non-automated courts, it is possible that the record of proceedings may be incomplete, especially if the judge did not ensure that each day's hearing was recorded before the next hearing.

Submission of written addresses or oral addresses or arguments:

- ▶ If the record of proceedings is readily available, a **date for lawyers to submit** their oral addresses should be scheduled.
- ▶ Ensure **strict adherence by lawyers** in delivering oral addresses.
- ▶ Written addresses should be **submitted at the registry** after the close of trial, within the timeframe required and depending on the volume of evidence. Parties should be encouraged to utilize electronic submissions such as emails if internet access is available.
- ▶ While the trial is ongoing, take **notes and make references** as this will assist in the decision making.

Structure and Content of the Decision

- ▶ **Assess the time** available for drafting of the decision/judgment to ensure compliance with relevant timelines while ensuring that the quality of the judgement is not compromised.
- ▶ Decisions must be **timely, clear, thorough, understandable, and well-reasoned**.
- ▶ You should **write a judgment for the public** to understand, and not just the lawyers. A reader should understand and accept the well-organized logic of the decision. The opinion must be organized in a manner in which an ordinary reader might understand the rationale, in order to engender public trust and inspire public confidence in the court system.

The decision should be **structured** as follows, subject to rules and procedures relevant to your jurisdiction:

- Courts designation and composition;
- Date and place of judgment;
- Names of parties and, where applicable, their lawyers;
- Reliefs/claims sought;
- The legal and factual grounds for the judgment (that is, the reasons for the decision);
- The orders of the court;
- Signature of the judge(s); and
- Signature of the court clerk if required.

Delivering the Decision

- ▶ If possible, **deliver your ruling on the bench** right after hearing the lawyers, to avoid developing a backlog.
- ▶ **Schedule the time for delivery** of judgement. **Give priority to scheduling the delivery** of decisions in criminal cases particularly where individuals are in custody. It is not possible to predict the number of attendees who will be present at the reading of a judgement. Be deliberate about scheduling the reading of a judgment and deliver it on time.
- ▶ **Do not adjourn** the delivery of the judgment or decision. If there should be an adjournment for a justified reason, consider a very short adjournment.
- ▶ **Stay within the schedule** of completion of the case. Ensure lawyers are aware of the consequences of late submissions.
- ▶ **Edit the judgement** before the day of the delivery. If further editing is required after the reading, let parties know when it will be published.

Media and Publicity

- ▶ Publicity should be arranged **in advance**.
- ▶ Depending on the case and the permissibility of media/press interaction, if appropriate, you should be **prepared to make comments** for public consumption through a press judge or spokesperson.
- ▶ The decision should be **available on the same day** of the delivery and made accessible/available to the lawyers.

CHAPTER 6: COOPERATION WITH OTHERS

The **ultimate responsibility** for the progress of the proceedings lies with you as the judge. You can only achieve this with the **cooperation** of your support staff and the Registry and the lawyers to the case.

Staff

- ▶ Your court staff play an essential role in the efficient management of cases in your court. From time to time, try to **educate them** on their roles and **take feedback as to how you can assist them** in effectively playing their roles in court.
- ▶ For your court to function efficiently, **engage staff on their role** and the effect on the general administration of justice.
 - For example, a bailiff who does not serve a process, or delays in serving it, would lead to the court adjourning the case for lack of service; and
 - I.T. staff who do not set up on time for a video hearing may cause delays in other cases for the day.
- ▶ The **staff at the Registry are responsible** for the service of processes, filing, handling exhibits, I.T. etc. If they do their work properly, unnecessary delays and inefficiency are eliminated.

Lawyers

Lawyers representing their clients in court play a critical role in ensuring efficiency in the justice system. Consequently, every judge needs the **cooperation of lawyers** in order to efficiently run their court and see to the effective, timely and complete adjudication of cases.

- ▶ Where there is a need to adjourn a case, do not impose a date that is only convenient to the court. **Find out from the lawyers** what time would be convenient for a hearing or any other proceedings. **Strike a balance** between what is expedient to both the court and to the lawyers.
- ▶ **Communicate clearly** to lawyers that, having agreed on the date and time, with or without their presence, save for extenuating circumstances which they bring to the court's notice on time, you would proceed in their absence.
- ▶ You should encourage the parties to **communicate with one another**. This facilitates cooperation.

-
- ▶ **Create a medium of communication** between the court and lawyers. Your registry can make a telephone number or email address available to all court users. The Registry can thus alert lawyers via calls or text messages and emails of your availability.
 - ▶ Lawyers **can communicate with the Registry** their own availability and for this to be brought to your attention.
 - ▶ Create a **courtroom atmosphere** which encourages respect, civility and cooperation between the bench and bar.
 - ▶ **Earn the respect of lawyers and court users** by being fair, firm and impartial in your decisions. Delivering your judgments and rulings on time and generally abiding by the code of ethics for judges would also lead to such respect from the bar.
 - ▶ **Professional development programs** for the Bench and Bar can be put in place to equip each player with the necessary knowledge, an understanding of the rules, and to ensure that lawyers are kept up to date on substantive issues affecting decision-making at each stage of a case.

B. PRACTICE DIRECTIONS OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY (FCT) 2017: ARRAIGNMENT AND CASE MANAGEMENT FORMS

This form is pursuant to the **Practice Directions of the High Court of the FCT 2017**. They are made further to Section 490 (b) Administration of Criminal Justice Act 2015. All parties in any of the cases, to which the Practice Directions apply, shall complete this form. The Form shall as far as is practicable be completed before the accused has been arraigned. In compliance with the Practice Directions, immediately after arraignment, an Arraignment and Case Management Hearing shall be conducted using this Form. The prosecutor shall complete the form and forward to the Defence prior to the arraignment. The prosecutor, defence counsel, the defendant in person if not represented and the Judge or Magistrate shall sign the form and each of the parties shall be given a copy. An identical copy is to be kept on the court file.

Applicability:

This form shall be completed in all criminal cases or in any case as may otherwise be ordered by the Honourable Chief Judge.

Preparation for Trial

- ▶ This form:
 - collects information about the case that the court will need to arrange for trial pursuant to the objectives of the Practice Directions.
 - records the court's decisions

- ▶ After the court gives directions for trial if:
 - information about the case changes,
 - or
 - you think another direction is needed**you must tell the court at once**

- ▶ If the defendant pleads not guilty:
 - the prosecutor shall complete Parts 1 and 3
 - the defendant just complete Parts 2 and 3.
 - the court will record directions in Parts 3 and 4.

the prosecutor must start filling in the form earlier and shall serve a completed copy with the proof of evidence.

Attach extra sheets if required. The electronic version of the form will expand.

There is a list of case preparation time limits on page 26.

Part 1: to be completed by the prosecutor

Defendants(s)	
---------------	--

<input type="checkbox"/> On Bail <input type="checkbox"/> In custody?	Where?
--------------------------------------------------------------------------	--------

Offence(s)	
------------	--

Case reference	Date of first hearing
----------------	-----------------------

1. Prosecution contact details

Prosecuting authority	Prosecutor with conduct	Office Phone:
	Email address of office and prosecutor	Prosecutor's Phone:

2. Case management information

2.1 a. Is the investigation complete? Yes No

b. Does the prosecution hereby give an undertaking that all witnesses and evidence to be relied on will be available when required?

Yes No

c. Has the prosecutor served upon the defendant(s) or legal representative(s), copies of all statements, evidence, documentary exhibits and other material it intends to rely on (the proof of evidence)?

Yes No

If no, give brief details why:

.....

2.2 Does the prosecutor intend to serve more evidence on the defendant and on the court?

Yes No

If yes, give brief details:

.....

2.3 The prosecution will rely on: a. defendant's statement in interview

b. expert, hearsay, forensic or technical evidence

c. CCTV or any other electronically recorded evidence

Tick/delete as appropriate

What equipment or device (tape/DVD player, flipchart, table etc) will be needed in the trial courtroom?

.....

.....

3. Application for directions

3.1 Does the prosecutor want the court to give any directions?
or specify time limits? Yes No

If yes, give details:

.....

3.2 Does the prosecutor want the court to make any specific other direction or orders?

Yes No

If yes, give details:

.....

Part 2: to be completed defendant or defendant's legal representative

4. Defendant's contact details

Defendant	Phone
	Mobile
Address	
Email	

5. Defendant's representative(s)* (if applicable).

Enter names and details of all counsel in the firm instructed to represent the defendant(s). Please continue on another sheet if required.

Solicitor/Counsel	Phone
	Ref
Address	
Email	

*Where there are multiple counsel and/or solicitors representing a defendant, they are all taken as to have requisite professional experience and knowledge of the issues before the court and be sufficiently competent and prepared to diligently conduct the case when called upon to do so.

Representation is: legal Aid, or

Defendant's representative to complete Applied for, or

Privately funded

6. Preliminary objections and interlocutory application

Does the defendant intend to:

- a. Raise preliminary objections challenging the jurisdiction of the court to hear the case? Yes No
- b. File any interlocutory application Yes No

Specify:

.....

7. Partial or different guilty plea

Does the defendant intend to:

- a. If more than one offence is alleged, does the defendant want to plead guilty to any of them? Yes No N/A

If yes, which offence(s)?

.....

- b. Does the defendant propose an alternative way of disposing of or settling the case? Yes No N/A

If yes, what is proposed?

.....

c. Does the defendant want to plead guilty, but not on the facts alleged?

Yes No

If yes, attach a written basis of plea.

d. Does the defendant want to plead guilty, but to a different offence?

Yes No

If yes, what offence?

8. Case management information
Counsel shall consider and comply with RPC Rules:
15, 30, 32 and 37(3)

8.1 Which of the following (if applicable) is AGREED?
Tick/delete as appropriate

a. The defendant was arrested lawfully

Yes No N/A

b. Fingerprints or DNA evidence

Yes No N/A

If not agreed, explain what is in dispute:

c. Identification and /or continuity of other scientific evidence

Yes No N/A

If not agreed, explain what is in dispute:

- d. Exhibits and samples were collected and delivered as stated
(i.e continuity of custody is agreed)

Yes No N/A

If not agreed, explain what is in dispute

- e. Is the defendant's statement(s) in interview as written or recorded as agreed?

Yes No N/A

If not agreed, explain what is in dispute and why:

- 8.2 Other facts or issues and/or other aspects of the prosecution case
which are **AGREED must be in written form:**

Give details:

- 8.3 Have you set out or attached a written admission of all agreed facts?

Yes No N/A

If no, explain why:

- 8.4 What are the **DISPUTED** issues of fact or law for trial Practice Directions order 5

- 8.5 Has the defendant specified in writing the defence to be raised at trial?

Yes No

9. Application for directions

- 9.1 Does the defendant require the court to give any directions or specify time limits?

Yes No

If yes, give details:

9.2 Does the defendant want the court to make any other directions or Order?

Yes No

If yes, give details:

.....

Part 3: to be completed first by prosecutor, then the defendant (or representative) and then court

10. Prosecution witnesses – [NAMES AND IDENTITY OF WITNESSES SHALL NOT BE DISCLOSED WHERE SPECIAL MEASURES APPLY OR WITNESS PROTECTION MEASURES ARE APPLIED FOR]

10.1

Prosecutor to complete			Defendant to complete		
Names of witness	Tick if Under 18	Attendance proposed	Can the evidence be agreed and read to court	If no, what disputed issue in the case makes it necessary for the witness to give evidence in person?	Attendance justice
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>
10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>

10.2 Prosecutor to complete

Does the prosecutor require special measures or witness protection for a witness?

Yes No

If yes, give details:

.....

Does the witness need an interpreter?

Yes No

If yes, what language:

.....

11. Defence witnesses

Defendant to complete

Is the defendant likely to give evidence?

Yes No

How many other defence witnesses are likely to give evidence in person?

Does the defendant require Special Measures to assist a defence witness?

Yes No

If yes, give details:

.....

Will the defendant or any defence witness require an interpreter?

Yes No

If yes, in what language?:

.....

Signatures

Signed For prosecution

Date

Signed [Defendant] [Defendant's counsel]

Date

Part 4: Court's Directions for trial

12. Directions for trial

- 12.1** The prosecution must serve copies of the evidence and other material it intends to rely on
- 12.2** The prosecution must serve any further evidence or material identified by:
- 12.3** The court expects those prosecution witnesses to give evidence in person whose names it has ticked in paragraph 10.1.
- 12.4** The court expects the evidence of other prosecution witnesses listed in paragraph 10.1 to be read.
- 12.5** Witness [summons] [subpoena] granted for the following witness (es): insert name(s)

Interpreter in language	For: Prosecution witness(es)	Arranged by: specify court, prosecution or defence
	Defendant	
	Defence witness (es)	

12.6 Special measures of: tick as appropriate for witness insert name(s)

- Screening witness from defendant
- Evidence by live link
- Evidence in private
- Video recorded interview as evidence in chief

12.7 Other arrangements for defendant or witnesses (specify)

12.8 Standard case preparation time limits as follows:

12.9 Other directions:

12.10 Arrangements for hearing

Trial date:	
Time:	
Court:	
Time estimate:	days, hours

Standard case preparation time limits
**The court can vary any of these time limits. Time limits marked *
 are not prescribed by Practice Directions.**

Duties of the prosecution to serve evidence – (Practice Direction, Order 5)

- a. The prosecutor:
 - I. shall serve copies of proof of evidence and documentary exhibits upon the defence no later than **5 working days** before the arraignment hearing

Duties of the defence in case management (Practice Directions, Order 5)

- b. The defendant or the legal representative on his behalf shall immediately after arraignment/after his plea (s) has been taken:
 - I. Specify in writing those aspects of the prosecution case which are agreed, and
 - II. Specify in writing those aspects of the prosecution case which is in dispute, and
 - III. Specify in writing which of the prosecution witnesses are required for cross examination and why

Provided that a defendant or his legal representative may elect to specify in writing, the defence being raised.

Preliminary objections (Practice Direction, Order 3)

- c. The defendant or his legal representative must serve any application for preliminary objection challenging the jurisdiction of the court to hear a case before it 5 days before the date is fixed for arraignment*

- d. The prosecutor must serve any representations in response on or before the date fixed for arraignment.

Timelines for application and Rulings (Practice Directions, Order 3)

- e. Where there is a preliminary objection of any nature challenging the jurisdiction of the court to hear a case before it, the court shall take it after a plea has been entered and shall reserve ruling till final judgement
- f. All notices whether by electronic mail and/or other electronic means should be given at least forty eight (48) hours before the scheduled court date.

Witness protection or special measures to assist a witness to give evidence*

- g. Any application for special measures must be served within 14 days of fixing the trial date*
- h. Any representations in response must be served within 14 days after that*

Hearing/Trial (Practice Directions, Order 7)

- i. Subject to sections 135 and 266 of ACJA, parties must ensure all witnesses are present in court until evidence is heard.
- j. Not more than two adjournments shall be granted to any party to an action covered by the provisions of this Practice Directions. No application for an adjournment shall be entertained on a day fixed for hearing.
- k. Not more than two (2) adjournments shall be granted to a party who seeks to exchange counsel during the lifespan of a case.

Court Directions (Practice Directions, Order 5 para 6)

- l. At a case management hearing and/or when fixing a trial date, the directions below apply.
 - I. The judge shall fix the date and time estimate for the trial with or without an agreed time estimate from the parties.
 - II. The judge by himself or at the instigation of any of the parties may fix an interim date to ensure that the parties are complying with court ordered directions.

- III. The judge shall require the parties to specify and the parties shall specify what points of admissibility or other issues are to be taken at trial.
- IV. Where a party raises an objection(s) on point of admissibility or other issues(s), the objection must be in writing and must set out a summary of the argument relied upon (“skeleton argument”). The judge will consider any objection before the trial starts.
- V. A party must give reasons why such points of objection cannot be resolved by the trial judge before the start of the trial.

The judge may make any directions(s) to:

- 1. Eliminate unnecessary delay and expense for the parties in the prosecution and/or trial of the case,
- 2. Ensure that at trials the parties focus on matters which are genuinely in issue,
- 3. Ensure the hearings are not stalled by unpreparedness of the court or any of the parties,
- 4. Ensure that the case is fully ready for trial before hearing dates are agreed,
- 5. Minimize undue adjournments and delays.

Proceedings of the court (Practice Directions, Order 14)

- m. Judges shall ensure that counsel conduct the business of the court with proper professional decorum and stringently avoid any act which is either an abuse of the justice system or is aimed at truncating the course of justice
- n. The court must take all reasonable practical steps and must endeavor to conduct all of its proceedings regularly and punctually and discourage adjournments made on trivial grounds by counsel

Point of law (Practice Directions, Order 3(1) (f))

- o. Any skeleton argument must be served at least **14 days before the trial***
- p. Any skeleton argument in reply must be served within **7 days after that***

Trial readiness (Practice Directions, Order 5 paragraph 6)

- q. The parties must certify readiness for trial at least **14 days before the trial**, confirming which witnesses will give evidence in person and the trial estimate*

ANNEX II: RESOURCES

Articles, books and guidance

P.O Affen, JCA, 'The Principles of fair hearing and the Powers of Arrests and Sanctions by Law Enforcement Agencies in Nigeria' (2009) 2 *NJPL* 258-273

P.O Affen JCA, 'An appraisal of Case Management Provisions of The Practice Direction on the Implementation of the Administration of Criminal Justice Act 2015 in the Courts of The Federal Capital Territory'.

Omolola T. Akindele. Chief Magistrate/Chief District Judge, Federal Capital Territory Judiciary, Abuja Nigeria 'The Applicability of Case Management Hearing as a tool for speedy trial of Criminal Cases'.

Omolola T. Akindele: 'Speedy Trial Mechanisms under the Administration of Criminal Justice Act 2015'.

American Law Institute(ALI)/ UNIDROIT, principle 23M Transnational Rules in Civil Procedure ((Reporters Study) 2020. Rule 31.2

Department of Justice of Canada. *Guiding Principles for Effective Case Management*.

CEELI, *Case Management. Tips for Judges*, 2022

Lady Justice Hallet, 'How the Judiciary is changing', In Judicial Appointments Commission (ed), *Judicial Appointments: Balancing Independence, Accountability and Legitimacy* (2010), p.94.

Andrea Moravčíková, Supreme Court of the Slovak Republic, 'Case Management Slovakia Insight'

S Shereet & S Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary*, 2nd ed. (Cambridge University Press, 2013)

R. Susskind 'Management and Judges', in M. Saville and R. Susskind (eds) *Essays in Honour of Sir Brian Neill. The Quintessential judge* (London: Lexis Nexis UK, 2003)

Judge John R. Tunheim, 'Effective Case Management Strategies'.

Chief Judge John R. Tunheim, District of Minnesota (U.S.A), 'Role of the Judge in Case Management'.

Cases

Okupe v FBIR (1974) 4 SC 93 at 117 Per Coker.

R v Sussex Justices, ex parte McCarthy (1924) 1 KB 256





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