

PRACTICE DIRECTION (EFFECTIVE CASE COMPLETION PLANNING STRATEGIES), 2019

A DIRECTION to provide guidelines for effective case planning in civil and criminal cases and to provide for related matters.

Being guided by the statutory requirement that the law of evidence must be applied so as to achieve the most just, **expeditious** and least costly administration of the law¹

Being guided by the statutory requirement that the Rules of Court must be interpreted and applied in order **to achieve speedy and effective justice, avoid delays** and unnecessary expense, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined²,

I direct that, until statutory provisions are made, civil and criminal proceedings in all trial Courts shall be planned and managed as follows:

1. Effective case completion planning starts at the Directions stage or when the case is set down for trial and accordingly, before Directions are taken or a case is set down for trial, the Judge must carefully read the pleadings / facts of the case to distil the real facts in issue, and read the law applicable to the facts in issue.
2. The Judge shall cause a Case Completion Plan (CCP) to be prepared at the Case Management Conference (CMC) stage, for every³ civil or criminal⁴ case before adjourning for trial, by deciding on the following:
 - a) *Number of Witnesses*: the Judge must prune out all irrelevant or repetitive witness statements (unless where corroboration is required by law⁵), and in so doing, require the affected Party to show cause why such irrelevant or repetitive witness statements should not be excluded. Where the affected Party fails to show cause, the irrelevant or repetitive witness statement(s) shall be excluded for want of relevance or materiality⁶, and recorded as having been so excluded.

¹ Evidence Act, 1975 (N.R.C.D. 323); Section 178 sub-section 4

² High Court (Civil Procedure) Rules, 2004 (C.I. 47), Order 1, Rule 1 (2)

³ In listing cases for the preparation of CCP, priority shall be given, having regard to article 19 (2) (c) of the Constitution and section 169 (2) of Act 30, to cases in which a person is in custody in respect of the case

⁴ In criminal cases, the Case Management Conference is held at the first instance in respect of the witnesses for the Prosecution, and if the Court calls upon the Accused to open his / her case after the close of the Prosecution's case, a second Case Management Conference is held in respect of the witnesses for the Defence

⁵ Section 7 (3) of the Evidence Act, 1975 (NRCD 323); sections 107 (2) and 183 (9) of the Criminal Offences Act, 1960 (Act 29) in respect of the offences of Procuration and Prohibition and importation or publication of newspaper, sedition respectively, the proof of which requires corroboration

⁶ Section 51 (2) of the Evidence Act, 1975 (NRCD 323)

The Judge must then ascertain from all⁷ Parties the number of witnesses who they will call to testify in their case at the trial (not being witnesses whose witness statements have been excluded), to arrive at the total number of witnesses who will testify at the trial.

- b) *Estimated Length of Cross-Examination:* The Judge must ascertain from the Parties / Counsel how long they estimate their cross-examination⁸ to be, given the nature of the evidence contained in the witness statements. This will give the Court a fair idea about the number of hours it will take for each witness to be discharged.
 - c) *Witness List:* Based on the estimated length of cross-examination of each witness, the Judge must inquire from Parties / Counsel the number of witnesses they can cross-examine in a day e.g. one a day, two a day, three a day, etc. The witnesses will then be listed in the order in which they will give evidence at the trial (Witness List), making sure that witnesses who will give evidence on the same day are listed next to each other. The Judge must explain to Parties / Counsel that the witnesses will testify at the trial in the order in which they appear in the Witness List.
 - d) *Number of Days Trial will take:* The Judge must compute with the Parties / Counsel the total number of days it will take for all the witnesses in the Witness List to give evidence, taking note of the number of witnesses who will give evidence in a day.
 - e) *Trial Period:* Having regard to the number of days the trial will take, the Judge must ascertain from the Parties / Counsel the period they will be available for the case to be dealt with on **day-to-day basis**.
3. Parties / Counsel shall complete and execute a Case Completion Plan (CCP) Form attached to this Direction as Appendix 1. Parties / Counsel shall be entitled to copies of the executed CCP Form.
 4. Upon the due execution of the CCP Form, the Court Clerk must immediately record the trial dates and times in the Court diary, together with the respective estimated times for cross-examination to ensure that the Court diary is not overburdened having regard to the needs of other cases. Parties / Counsel must also block the Trial Period in their respective diaries.

⁷ In criminal cases, this will be in respect of the witnesses for the Prosecution at the first CMC, and when the Accused is called upon to open his / her Defence, the witnesses for the Defence at the second CMC

5. CCP must be prepared and executed for all Part-Heard cases existing before the coming into force of this Direction so that the remaining evidence to be given in those cases can be given expeditiously in the terms of paragraph 2(e) of this Direction. In this regard, the Court and Parties / Counsel must be prepared to make some sacrifices in the light of expected time constraints, as the Trial Periods for existing Part-Heard cases should generally be fixed within three (3) months of the coming into force of this Direction. The hearing of existing Part-Heard cases shall, subject to paragraph 2 of this Direction, take precedence over the hearing of fresh cases.
6. The CCP shall be strictly complied with, and accordingly, delays and unnecessary adjournments shall not be entertained at the trial⁹.
7. Counsel / Parties shall duly comply with the timelines set in the CCP. Where Counsel breaches the timelines set in the CCP without any just cause, the Court shall record that fact and shall cause notification of same to be given to the General Legal Council (or the Attorney-General in the case of a State Attorney) for the appropriate action to be taken. Similarly, where a Police Prosecutor or Investigator breaches the timelines set in the CCP without any just cause, the Court shall record that fact and shall cause notification of same to be given to the Inspector General of Police for the appropriate action to be taken.
8. Where for any reason Counsel cannot attend the trial on any day within the Trial Period, arrangements should be made for another colleague Lawyer to attend the trial on their behalf. In the absence of Counsel or any arrangements for alternative representation, the Parties concerned shall be required to conduct their own cross-examination.
9. Where any day within the Trial Period is lost due to circumstances such as Statutory Public Holiday¹⁰, unavailability of Judge owing to workshops, seminars, etc., the day shall be redeemed as quickly as possible¹¹, and in any case, it shall be within seven (7) working days immediately following the last¹² day of the Trial Period.
10. Where any witness fails to attend Court to testify and no other witness testifies in his or her absence in the terms of paragraph 13 of this Direction, such that the day is lost by reason of the absence, and the Court is satisfied that the absence of the witness is for a genuine reason, then subject to the consideration of cost, the lost day shall be redeemed within seven (7) working days immediately following the last day of the Trial Period.

⁹ See High Court (Civil Procedures) Rules, 2004. (CI 47) Order 37 Rule 2

¹⁰ See sections 1 and 4 of the Public Holidays Act, 2001 (Act 601) and Martin Kpebu v Attorney-General (Writ No. J1/22/2016) delivered on December 18, 2019.

¹¹ In *Asamoah v Maifo* [2011] 2 SCGLR 832, it was held that if for some reason the Court is unable to sit on a particular day, the cases which ought to have been called are automatically adjourned to the next sitting day.

¹² In a criminal trial, the last day is the day the last witness for the Prosecution is expected to give evidence; and when the Accused is called upon to open his or her Defence, the day when the last witness for the Defence is expected to give evidence.

Where for any other reason, a witness is permitted by the Court to give evidence outside the CCP, the day that witness will give evidence shall be fixed within seven (7) working days immediately following the last day of the Trial Period.

Again, the Court and Parties / Counsel must be prepared to make some sacrifices in the light of expected time constraints.

11. Where any witness fails to attend Court to testify on two (2) occasions, the trial shall proceed without the evidence of that witness, unless for a good cause the Court orders otherwise.
12. Where any witness fails to attend Court to testify for the first time and the Court is satisfied that the absence is without good cause, the trial shall proceed without the evidence of that witness¹³.
13. Where, for any reason, a Party intends to apply to the Court to call a witness out of turn or swap a witness with another, adequate notice of such intention shall be given so as to give the Court and other Parties enough time to read the witness statement of the witness who is to be called out of turn or to swap with another.
14. As a general principle, witnesses shall complete their testimonies on the day they testify, without the need to adjourn to continue their evidence, except the Court orders otherwise in very exceptional and deserving circumstances.
15. Applications in pending cases must be dealt with swiftly, to free up the Court's time for trial. Accordingly,
 - i) All such applications shall be moved in simple terms, that is, *in terms of the motion paper and the supporting affidavit as well as any exhibit(s) or annexure(s) filed*. The Respondent shall equally respond in simple terms, that is, *to rely on the affidavit in opposition as well as any exhibit(s) or annexure(s) filed*.
 - ii) Oral legal submissions in the hearing of an application in a pending case shall not be entertained: instead, the Court shall, in such circumstance, grant leave to all Parties to file their written legal submissions within two (2) weeks from the date of the hearing of the application and adjourn the application for Ruling within one (1) week after the expiration of the two-week deadline.
 - iii) The Judge must check the law on every application in a pending case so that the frivolous, non-contentious or 'quite straightforward' ones can be ruled on without the need to adjourn for ruling.

¹³ Order 36 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) provides for orders the Court can make upon non-attendance of a Party at the trial. It also sets out the procedure for setting aside such orders.

16. The Registrar or the filing Clerk must always consult the Court diary before fixing a hearing date¹⁴ for an application in a pending case, for it to coincide with the date to which the substantive case has been adjourned by the Court. This will prevent the incidence of conflicting dates to Parties / Counsel.
17. The Judge must read through the dockets for the day before sitting. This allows for better appreciation of the issues in the cases. It also helps to ascertain the number of trials the Court will conduct for the day and to know beforehand cases in which no action will be taken by reason, *inter alia*, of absence of proof of service where same is required.
18. Effective case management starts even before the Court sits. Accordingly, the Judge must effectively supervise the Court Staff and ensure that Court Clerks, Interpreters and even Ushers do not mingle with the litigants especially when the Court is in session. This will safeguard the integrity of the trial and the Court as a whole.
19. A Judge must avoid passing unsavory comments about a Party or a witness, as such conduct may be the subject matter of a complaint petition on grounds of prejudice or bias.
20. A Judge must not engage in exchanges with Lawyers no matter how far he or she is pushed, as this creates unnecessary tension and waste of the Court's time. He / she should remain calm and cool, after all, the Bench always has the final say and speaks through the orders it makes.
21. Even though it is customary for a Judge to ask a witness a question or two to clarify a point during trial, too many questions from the Bench should be discouraged to safeguard the integrity of the trial and enhance the quality of justice delivery. A Judge who asks too many questions in the course of the trial may be accused of entering into the arena of conflict.
22. A Judge must be punctual and stick to his / her time. Over time, Lawyers and Parties will be accustomed to the time and will be punctual for trial.
23. The Judge must give timelines for the filing of Addresses (preferably within one month of receipt of proceedings) and inform the Parties / Counsel that Judgment will be given without the Address of any Party / Counsel who fails to file within the given time limit.

APPLICATION

This Direction shall apply to both civil and criminal proceedings.

¹⁴ In *Asamoah v Marfo* [2011] 2 SCGLR 832, the Supreme Court held that the Registrar or the Court Clerk has no authority to adjourn a motion.

INTERPRETATION

In this Direction,

- a) "Judge" includes a Magistrate.
- b) "Party" refers to the Plaintiff / Defendant or Prosecution / Accused or Petitioner / Respondent, as the case may be.

This Practice Direction comes into force on **19th December, 2019.**

Sgd.

Sophia A. B. Akuffo
Chief Justice of the Republic of Ghana

APPENDIX 1: CASE COMPLETION PLAN (CCP)

Case Title: _____

Case No: _____

Date: _____

NAME OF WITNESS (listed in order of giving testimony)	ESTIMATED TIME FOR CROSS- EXAMINATION (in hours)	DATE OF TESTIMONY	TIME OF TESTIMONY

SIGNATURE (OR MARK) AND NAMES OF PARTIES / COUNSEL