

PRACTICE DIRECTION

No. 1 of 2020

MAINTAINING CERTAINTY OF HEARING/TRIAL DATES

A significant number of hearings and trial dates in all Court Divisions are being adjourned and lost due to the failure of counsel to comply with court directions and/or case management timetables set by Judges.

Practitioners are reminded that judicial case management powers of the court are predicated on the active management of cases by Judges, with the co-operation of counsel involved, to achieve the objective of dealing with cases justly and expeditiously. This objective is frustrated by the failure to comply with court directions and dates fixed for the management of a case, and undermines the concept of hearing/trial certainty, which is fundamental to achieving the abovementioned objective. When the judicial calendar is disrupted, backlogs are increased which in turn makes it more difficult to assure that litigants and other users of the court system have timely access to justice.

The following extract from the Judgment of the Caribbean Court of Justice in *Deane v Allamby* CCJ Appeal No. BBCV2016/004 BB Civil Appeal No. 2 of 2015 is instructive:

“[16] Systemic judicial delay is often due to non-adherence to reasonable procedural timeframes. Successive adjournments result in cases not being disposed of in a reasonable timeframe and is a problem that needs to be corrected. Courts ought to adhere to the principle of making trial dates certain and binding. Failure to do so has seriously adverse implications for the administration of justice and the public confidence in the court system.

[17] [Counsel] alluded to a culture of delaywhere it is expected that lower courts would adjourn matters to accommodate counsel who had booked more than one appointment at the same time, even when counsel had not made any application for an adjournment. If courts were bound by such obligation, which of course they are not, they would be totally at the mercy of counsel, and could not guarantee the disposal of their cases. Counsel must be obliged to attend court on time when their matters are scheduled for hearing and should be held to account for default of this obligation.”

The efficient administration of justice, and more particularly the expeditious management and disposal of cases, depend on strict adherence to the concept of establishing and maintaining the certainty of hearing/trial dates. Going forward, and having regard to the impact of the Covid 19 pandemic on court proceedings, judicial officers will adopt this approach and will only adjourn a hearing date or delist a fixed trial date in the event of an unexpected emergency affecting the Court,

one of the parties or their counsel, or for other meritorious reasons. For those cases which are governed by the Rules of the Supreme Court, counsel and litigants are reminded of Order 31A, rule 15(2) and (3) of the Rules of the Supreme Court 1978, which provide that:

“(2) No date set by a judge under these Rules for doing any act may be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1) [i.e., the dates for the case management timetable, including the date of trial].”

“(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the judge before that date.”

Counsel are further reminded of the augmented powers of the Court to impose sanctions pursuant to Order 31A rule 20(1), which includes the power to strike out a pleading or part of a pleading for failure to comply with directions or orders. Additionally, the Court has the power to make cost orders against parties whose conduct results in the loss of valuable judicial time and inconvenience to other parties.

With regard to criminal cases counsel is referred to Rule 7 of the Supreme Court (Criminal Case Management) Rules, 2012 and Rule 13 which provides that:

*“13. (1) The parties to a case may agree to vary a time limit fixed by a direction, provided that -
(a) the variation will not -
(i) affect the date of any hearing that has been fixed; or
(ii) significantly affect the progress of the case in any other way;
(b) the court has not prohibited variation by agreement; and
(c)”*

Counsel will therefore be expected to comply with hearing and trial directions in a timely and expeditious manner so as to achieve hearing/trial date certainty.

Brian M. Moree
Chief Justice

1 July, 2020.