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The following Notification is, by command of His Excellency the Governor-General, published for general information.

CLAUDINE HEAVEN, JP (MRS.)
Governor-General's Secretary and
Clerk to the Privy Council.

JUDICIAL NOTICE

PRACTICE DIRECTION No. 22 OF 2021

*Procedural Guidelines for the Probate and Family Divisions Supreme Court
of Judicature of Jamaica*

The Chief Justice, after consultation with the Judges and Masters of the Supreme Court has deemed it necessary to streamline the adjudication of Estate and Family matters by establishing procedures that will provide for efficient operations of the Probate and Family Divisions of the Supreme Court.

The overall objective is to ensure effective caseload management, eliminate backlog which supports the Judiciary's mission to provide sound, timely judgments and efficient court services.

1. *General*

This Practice Direction (PD) applies specifically to the implementation of procedures to be adopted with respect to the adjudication of matters filed in the Probate and Family Divisions of the Supreme Court and shall come into effect immediately. (Practice Directions Nos. 8 of 2020, 12 of 2020, 4 of 2021 and 5 of 2021 apply.)

2. *Definitions*

"Court users" mean Attorneys-at-Law and self-represented litigants;

“Hearing” includes all appearances before the court whether with or without notice to other parties and whether for directions or for substantial relief;

“Family Matters” include matters involving guardianship, paternity, custody, access and maintenance of children, and spousal maintenance (including common-law spouses). It also includes matters under the Status of Children Act, Property (Rights of Spouses) Act, Mental Health Act, the Matrimonial Causes Act, the Children Guardianship and Custody Act and Part 76 of the Civil Procedure Rules (CPR).

“Probate and Estate Matters” include applications and claims/proceedings under Part 68 of the CPR. It also includes matters involving the construction of any testamentary instruments (Wills, Codicils etc.) as well as matters arising under any statute or enactment touching and concerning the administration of a deceased person’s estate.

3. *The Operation of the Probate and Family Divisions*

- 3.1 The Chief Justice may assign two or more Judges of the Supreme Court and such number of Master(s) in Chambers to determine and hear matters in the Probate and Family Divisions of the Supreme Court.
- 3.2 The Judges assigned to the Divisions will have conduct of trial matters and may also hear interlocutory applications and matters specifically designated to be heard by a Master so far as their schedule allows.
- 3.3 The Masters in Chambers assigned to the Divisions will have conduct of certain types of interlocutory applications, case management conferences, pre-trial reviews and any other applications as prescribed by The Judicature (Rules of Court) (Master in Chambers) Rules, 2021.
- 3.4 In instances where any of the Judge(s) or Master(s) assigned to the Divisions are not available, such matters may be assigned to any other Judge or Master of the Supreme Court.
- 3.5 As far as is possible the Judge assigned at the beginning of a matter will have conduct of the matter until same is completed. A Judge may re-schedule a matter before another Judge in such circumstances where the said Judge has recused him/herself or as provided for under the Civil Procedure Rules or any other enactment in force.

4. *Commencement of Probate and Family Matters*

- 4.1 Matters filed in the Registries will be assigned the designations as follows:
 - 4.1.1 Estate Matters will continue using the designation *SU (year) ES XXXXX*
 - 4.1.2 Family Matters filed in the Family Division shall continue to use the designation “*SU(year) MT XXXXX*” until December 31, 2021. Effective January 2, 2022, Family Matters will begin using the designation “*SU (year), FD XXXXX*”
- 4.2 With respect to Estate Matters, the originating documents and all subsequent documents must be headed “*IN THE ESTATE OF (Name(s) of Deceased), Deceased (Testate or Intestate)*”.
- 4.3 Where the claim or application is a Family Matter, the originating document and all subsequent documents must be headed “*IN THE MATTER OF (insert relevant Act or Rule under which claim or application is brought)*”.

5. *Transfer of Matters to or from the Probate and Family Divisions*

- 5.1 Where a Judge is satisfied that a particular matter ought not to have been filed in the Probate or Family Divisions, the Judge may make an order transferring the matter to the proper division of the Supreme Court.
- 5.2 Where any matter has been commenced in another division of the Supreme Court after the commencement of this Practice Direction, where appropriate, an application may be made for that matter to be heard in the Probate or Family Division.
- 5.3 The application mentioned at 5.2 must be made in writing and served on the respondent and will be heard on paper.
- 5.4 The application to transfer shall be listed before a Judge or Master of the Probate and Family Division. Practice Direction No. 4 of 2021 is applicable.
- 5.5 Applications under 5.2 above must be made before Case Management.
- 5.6 The application must specifically state in bold at the top of the page that it is a matter to be heard on paper.
- 5.7 Where an order is made to transfer a matter to either the Probate or Family Divisions, the original claim number assigned to that matter will be retired but kept on the case file records as a point of historical reference. The matter will be assigned a new claim number in accordance with the designation under Part 4 above.

6. *Case Management Procedures*

- 6.1 Upon the filing of a Claim or Application, the Registry will fix a date for a first hearing and will notify the party initiating the action of the said date via electronic communication.
- 6.2 The Judge or Master at the first hearing date will make orders in preparation for the trial. If there are pending applications, dates will be set for the hearing of these applications.
- 6.3 Where any existing matter has not been pursued for more than ninety days the Registrar is to refer same to a Judge who may make such order or give such directions relating to the proceedings as may be just.

- 6.4 Adjournments of trials and interlocutory hearings and the vacating of trial dates will be granted only in exceptional circumstances or as prescribed under this Practice Direction.
- 6.5 Where an application is made under 6.4, the Court will exercise all relevant case management powers, including the power to strike out or refuse such an application where no good reason is provided.

7. *Case Management*

- 7.1 All matters filed in the Probate and Family Divisions will be actively managed in accordance with the principles prescribed by Parts 25 and 26 of the CPR.
- 7.2 All existing claims in which no trial date has yet been set will be scheduled for a Case Management Conference for no more than 30 minutes.
- 7.3 All Case Management orders will have dates for compliance no more than 90 days from the date such orders were made, except where the Court deems a longer period necessary.
- 7.4 Where a Pre-trial review is to be scheduled, same will be scheduled no later than 90 days after the Case Management Conference or First Hearing as is applicable, except where the Court deems a longer period necessary.
- 7.5 The Pre-trial review will be scheduled for no more than 15 minutes and will have as the main purpose the reviewing of each party's Listing Questionnaire and to ensure that all case management conference orders have been complied with.

8. *Settlement and Discontinuance of Matters*

- 8.1 Where any matter has been settled or discontinued, this must be communicated promptly by filing the appropriate documentation at the registry of the Division in which the matter was commenced.
- 8.2 In the case of a settlement, the parties may file A Notice of Settlement (see Appendix 1) along with the Draft Order giving effect to same. Upon the filing of the said Notice and the Draft Order, both will be referred to a Judge for approval and signature without a hearing.
- 8.3 A hearing under Part 8.2 above will only be scheduled at a time convenient to all parties to the matter where:
 - i. the Judge does not approve of the draft order(s) and wishes to hear further from a party or parties; and
 - ii. where the settlement in question involves the welfare of a child or children.

9. *Scheduling of Matters and Management of Probate and Family List*

- 9.1 In assigning hearing and trial dates, priority will be given to those matters in which all the required documentations have been filed.
- 9.2 Effective January 7, 2022 there shall be a separate List in which both Estate and Family Matters are entered and published.
- 9.3 The scheduling of matters along with the generation and preparation of the Estate and Family list will be overseen by personnel in the Probate and Family Divisions under the supervision of the Registrar and in consultation with the assigned Judges or as otherwise directed by the Chief Justice.

10. *Transitional Provisions*

- 10.1 Existing claims and applications concerning any matter described above which were filed in the High Court Division (HCV) before the coming into force of this Practice Direction and which have been assigned dates for hearing in the future may be brought forward and be heard by a Judge or Master assigned to the respective Division.
- 10.2 Any existing Claim or Application which has not been assigned a date for hearing or trial in the Probate and Family Divisions, may continue to be heard by another Judge or Master of the Supreme Court.
- 10.3 Where it is determined that an existing Claim or Application will be brought forward to be heard by a Judge or Master of the Probate or Family Divisions, the registry will notify the parties of such a decision.
- 10.4 In the event that parties cannot avail themselves of the earlier date at 10.3 above, the matter will be heard on the original date or as permitted by the calendar of the Divisions.
- 10.5 Where an existing Claim or Application is to be heard by a Judge or Master of the Probate or Family Divisions, such claim will continue to use the claim number initially assigned to it.
- 10.6 Attorneys-at-law and litigants in person are reminded that all documents must have a current email address and current telephone number to facilitate communication with the Registry of the Supreme Court.

APPENDIX I

Notice of Settlement of Claims

Suit No. :

Notice is hereby given that ALL claims against all parties in this action have been resolved. This Notice is being filed with the consent of all parties.

The annexed *Proposed Draft Order* is being presented for approval and signature.

DATED THE DAY OF , 2021

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ATTORNEY FOR CLAIMANT(S) / APPLICANT (S)

.....
ATTORNEY FOR DEFENDANT(S)/RESPONDENT(S)

TO: REGISTRAR
PROBATE / FAMILY DIVISION
SUPREME COURT OF JUDICATURE OF JAMAICA

FILED BY

Dated this 29th day of November, 2021.

BRYAN SYKES, OJ, CD
Chief Justice of Jamaica.