

**PIJS MEETING HELD ON 26 FEBRUARY 2004 AT THE WESTVILLE  
HOTEL IN THE MERLOT ROOM AT 14:00 – 16:30**

**OPENING**

**ATTENDANCE:**

P van Rooyen	Magistrate Durban
E J Sibeko	Chief Prosecutor, Durban
J Botma	Magistrate, Pietermaritzburg
W Hahn	Regional Magistrate Durban
C van Rensburg	DCS
B A Ntanjana	Dep. Prov. Comm SAPS, PHQ, KZN
P J Brown	Ass. Comm.SAPS PHQ, KZN
Chris Martin	Natal Law Society (Attorneys)
Ross Stuart	DDPP
Gary Williams	DDPP, Durban
NC Gey van Pittius	DDPP, Durban
A Pestana	KZN DSS
B L Ndlangamandla	AD SAPS Ulundi
A N Jappie	Judge
V de Bruin	N/O: Court Service
M Sejosengwe	Department of Justice
Michelle Odayan	IJS Support Consultant
Sipkazi Poswa – Lerotholi	Society of Advocates – KZN
E D Mzolo	Judiciary: Durban
T C Mabaso	Judiciary: Durban
C S Ngcobo	Judiciary: Pietermaritzburg
Themba Mthethwa	Legal Aid Board
Glenda Caine	IPT

**1. OPENING REMARKS AND WELCOME**

Judge Jappie welcomed everybody and declared the meeting open.

**2. APOLOGIES**

S Batohi

C Zwane

F van der Merwe

D Ntakangase

B Naicker

F Abrahams

Mr Engelbrecht

N Hollis

**3. ACCEPTING OF MINUTES OF PREVIOUS MEETING**

The minutes were accepted as a true reflection of the previous meeting.

**4. ACCEPTING OF AGENDA**

The Agenda was accepted by all present.

**5. MATTERS ARISING FROM PREVIOUS MINUTES**

Major problems exist with Court Orderlies in the Lower Courts: -  
There has been a fatal attack on a Court Orderly in the Magistrate's Court Durban due to an insufficient number of Court Orderlies stationed at the Courts.

A commander at Durban Central is in charge of the orderlies at the Durban Magistrate's Court, and local supervision is exercised by a captain stationed at the Court. Absenteeism remains a problem. The Court Orderlies recently refused to function at the court and this led to disruption of the Durban Magistrate's Courts. A roster is kept, but this does not address the problem of the shortage of personnel. The problem has been discussed with personnel section who will replenish the personnel. The staff shortage and the lack of control have to be taken up with the Commissioner.

For the last 4-6 months a second Court Orderly has been requested for each and every court. Today again there has been only one court orderly in the Durban Magistrate' Courts. A meeting has to be convened with SAPS Durban Central to look into the matter.

The Judge asked who is in charge of orderlies? The Station Commander at Durban Central is in charge of the orderlies at Durban Magistrates' Court and local supervision is exercised by a captain stationed at the Court. The staff shortage and the lack of control have to be taken up with the Commissioner.

Mr Ntanjana to look into the matter and to request for additional Court Orderlies if need be. A document is to be compiled on the outcome of the investigation and circulated.

## **6. REPORT BY RON LAUE: DEPUTY CHIEF MAGISTRATE, DURBAN**

### **6.1 Pre-Trial Conferences in Criminal Trials:**

The idea of Pre-Trial Conferences did not originate in the Durban Magistrate Court.

Pre-Trial conferences is a potentially difficult area and the purpose for mentioning this topic at this meeting is to get people together to apply their minds in exploring workable issues in a particular situation.

One of the problems around Pre-Trial Conferences is that the accused has a right of silence. One can inform the accused that it is a preliminary hearing but one can not compel the accused to disclose information. State Witnesses and defence witnesses are available to put such information on record. However, witness's and accused's accounts of events often differ.

In Civil Matters one has the complainant's plea versus the plaintiff's claim.

All role players need to be alerted to be aware of potential problems. One should not be prescribing, but is to propose a structure that will not jeopardise anybody.

Legal Aid board need to, by way of the nature of a case and attitude of clients, etc, have a facility to slot a case into the system, or in and out of the system, in a more expeditious manner.

It is proposed that a draft of questions, indicating if all other avenues have been exhausted, be utilized. When the matter goes to trial, the questionnaire can be used as a back up or to indicate a preferent matter.

Pre-Trial Conferences should not be done outside of court, as it involves only the prosecutor and accused.

In Remand cases parties must be brought together, and assess if issues are to be limited. Look at time periods, resolve matters and endeavour to obtain a plea. Then one is on track with something.

## 6.2 Case Flow Management

Case Flow management is prevalent in the Criminal courts as well as in the Civil Courts.

Pre-Trial Conferences are to be held on a voluntary basis to speed matters up.

If these proposed Case Flow processes are outside the act, professionals are to look into these processes.

In Port Shepstone, meetings are already held before the trial date to streamline issues.

The Presiding Officer can not be present at these discussions, as this may result in him having to recuse himself from the hearing.

The reason for the proposal is to put out a feeler and see if there is a way of structuring to work on it and try it out.

The Judge President is at liberty to make rules – The possibility exists in Magistrates' Courts to ask litigants where they are going with a matter in complicated matters.

Pre -Trial Conferences are not done in trial courts. If a trial date is set down the Presiding Officer should also enquire as to what the issues are. If a Trial date is given, the judicial officer will know how much time to allocate for the matter. The Prosecutor/Defence should indicate how many witnesses will be called. At Reception/Distribution dates Witness statements are to be given to the Defence.

Investigating Officers should get involved in preliminary matters before set down for trial, to ensure that all issues have been complied with

and that matters are in fact ready for trial. Everybody is accountable. A checklist can be used to ensure that matter is ready for trial.

Magistrates are to take control of courts. They must go to court at 9:00 and enquire as to the reason for parties being late.

There is a cost involved for matters not going on when parties come to court and indicate that they had changed their minds and that they can not proceed with matters.

One has to change the mind sets so that people will see the benefits of the system. It will however take time to get there.

Circulars issued are binding and can be used to ensure uniformity in approach.

Drafted document will be e-mailed to everybody.

### **Report on Case Flow Management Survey Committee's Visit to KZN**

The Regional Court President and Chief Magistrate are to deal with judicial functions and see to the implementation of good practices from a specific office structure. A Committee is to be formed representing all provinces.

A Case Flow Management Survey Committee's visited the Durban Magistrate's court recently to observe the Case Flow Management system developed at that office.

Reports were that they were impressed with Case Flow Management at Durban Magistrate's Court. The Committee is not yet able to say with finality which office is ahead in Case Flow Management. After visits to other offices in the country they are to assess which office is

performing best. A formal report will be done after all other offices have been visited.

## 7. **REPORT BY THEMBA MTHETHWA – LEGAL AID BOARD**

It is proposed to establish dedicated Legal Aid Courts. A single court will then be handling all accused who require Legal Aid and certain courts will be known to be dedicated Legal Aid courts.

Delays caused by the completion of the Legal Aid needs assessment forms will not have such a negative impact on the non Legal Aid dedicated courts.

In Johannesburg this is already done and it is working efficiently. Two Legal Aid dedicated courts sit full time daily. Productivity in terms of management has increased. The Intention is to put up more such courts.

The suggestion withdrew negative comments from the meeting, as it will definitely cause difficult to have certain courts **only** dealing with legal aid clients.

There are 60-70 Legal Aid cases in Durban Magistrates Court daily. If these matters appear in Legal Aid dedicated courts, a Legal Aid attorney will always be available ensuring that matters go ahead.

This matter will also be discussed at the next Case Flow Management meeting to be held at Durban Magistrate's Court.

In the newly established distribution court in the Regional Division at the Magistrate's Court Durban, the Presiding Officer checks that an

attorney is available before matters are adjourned. The problem is thus solved as far as the Regional Court is concerned.

Mr Mthethwa must see how the matter is received at local level and report back to the forum.

## **8. REPORT BY ADVOCATE GARY WILLIAMS**

### **Report from the High Court Sub-Committee**

Difficulty was experienced to establish the High Court Sub-Committee as the High Courts sit in turn at Durban or Pietermaritzburg respectively. Anything the committee deals with will affect both Durban and Pietermaritzburg.

The meeting decided as follows:

- § **SAPS** -it was not necessary to appoint somebody from every centre [Durban as well as Pietermaritzburg] on the High Court Sub- Committee;
- § **DCS**- it was not necessary to appoint somebody from every centre [Durban as well as Pietermaritzburg] on the High Court Sub- Committee, and all decisions will be forwarded to the Provisional Commissioner; and
- § **Legal Aid** -a representative from each of Durban as well as Pietermaritzburg Centra will be required.

The first meeting of the High Court Sub-Committee will be held on 01.04.2004. Ms Matthews and Mr Williams to send out e-mail to all concerned.

The Judge President requested for the PIJS meeting to be held every 3 months during recess of the High Courts instead of every month as difficulty was experienced to attend the meeting. The original



intention of the meeting was not to be a talk-shop, but to have real matters to discuss.

It is requested that sufficient copies of the Case Flow Management Document is forwarded to the Judges.

The Sub-Committee of the High Court will also update the High Court with the latest developments with regard to the establishment of the Sub-Committee and decisions taken by the Committee.

It is further suggested that a meeting with Judge Kriegler is convened to update the High Courts with the latest Case Flow Management trends.

**9. REPORT BY MR SIBEKO – CHIEF PROSECUTOR**

Case Flow Management has now rolled out in the whole province. The Case Flow management document had been circulated to all Prosecutors and Magistrates. At other offices Case Flow Management is not yet driven – the process is only potentially available. There is a request made by the Chief Prosecutor for a structure similar to that at the Durban Magistrate's Court to be rolled out in all districts in the Province of KwaZulu-Natal.

The matter was discussed with the Regional Court President. Processes are still tested at Durban Court and will roll out at the end of April 2004.

In the KwaZulu Natal IJS court centres role players do not sit around a table and discuss what Case Flow Management statistics can be rolled out by the system, or observe as committee the standardization and interpreting of statistics generated by the IJS.

Shamila Batohi from the Prosecutorial side is attempting to get the Prosecutors to use the IJS statistics. There is a plea to Magistrates to get more engaged in monthly management meetings. This matter is to be talked through with the Chief Magistrates in the Province. IJS statistics can be very useful to pin point problem areas.

Circular 49 of 2003 urged all Magistrates to implement Case Flow Management with immediate effect. Feedback from Cluster Heads is positive, but the problem may lie in the approach.

Mr Ngcobo has issued similar instructions to the Pietermaritzburg cluster.

Steady progress is been made at the Durban Magistrate's Court in Case Flow Management:

<b>§ Admissions of Guilt:</b>	December 2003:	145 cases
	January 2004:	183 cases
	February 2004:	217 cases
<b>§ Plea bargaining:</b>	January 2004:	3 cases

Plea bargaining is not done in the High Courts.

#### **10. REPORT BY MR CS NGCOBO: CHIEF MAGISTRATE PIETERMARITZBURG**

##### **Proposed road side courts:**

A letter was received from the Department of Transport concerning the Roadside Courts.

The 4 initially established Roadside Courts proved to be a success. The Department of Transport will cover the costs of further courts.

Roadside Courts create problems with overtime because no provision has been made for reimbursement. Overtime should be paid by the

Traffic Department. Everybody is bending over backwards to please the traffic officers. We can not compel Magistrates to man these courts.

There is also the question of jurisdiction: the Magistrate must have jurisdiction where the Roadside Court is situated. This issue should be addressed by the Department of Justice.

If the Roadside Courts are not operational, offenders will be arrested and detained for 48 hours or longer. The Constitutionality of the Roadside Court, if presided over by a Magistrate, can not be questioned.

Where the payment of overtime is concerned, Magistrates are in the employ of the Traffic Department. There should be an arrangement between the Department of Justice and the Department of Transport about the remuneration of the Magistrates. Payments are effected by means of Department of Justice "cheques"

It appears that the meeting is generally In favour of Roadside Courts but Magistrates can not be compelled to preside in these courts.

The Department of Justice and the Magistrates' Commission will have to decide on this issue.

## **11. GENERAL**

There was a complaint received concerning the method applied in notifying members of the SAPS to attend court as witnesses. It appears that the communicated to such witnesses are done verbally. A problem recently occurred in the Durban Civil Court, where the witness only received his subpoena on the day before trial, whilst he was on rest days. SAPS members work shifts – if they are on rest days, the commander is supposed to inform the member that he is required at court.

The system is to be looked into and revised to bring up the level of court attendance.

It is suggested that the subpoena is to be served on the member as well as on his immediate supervisor so that the supervisor will also be accountable.

During discussions it appeared that it is indeed common practice to serve the subpoenas on the commanders. If the member is on rest days, the commander will receive the subpoena. It should be impressed on the subpoena that the commander will also be accountable, should the witness not attend court. Difficulties to attend should be brought to attention of the party issuing the subpoena. It is the duty to serve the subpoena to the component/sub component where the party is stationed. Prosecutors, the Law Society and the SAPS to be notified by means of weekly/monthly circulars. The Law Society and the Prosecutors are to be tasked with this issue.

The problem lies particularly with civil cases. The issue around which party is to bare the costs still requires urgent attention.

The next meeting is to be held on 20 May 2004 at 2:00pm. The venue will be Protea Hotel, Inchanga

**JUDGE AN JAPPIE**  
**CHAIR PERSON**

**PA VAN ROOYEN**  
**SECRETARY**