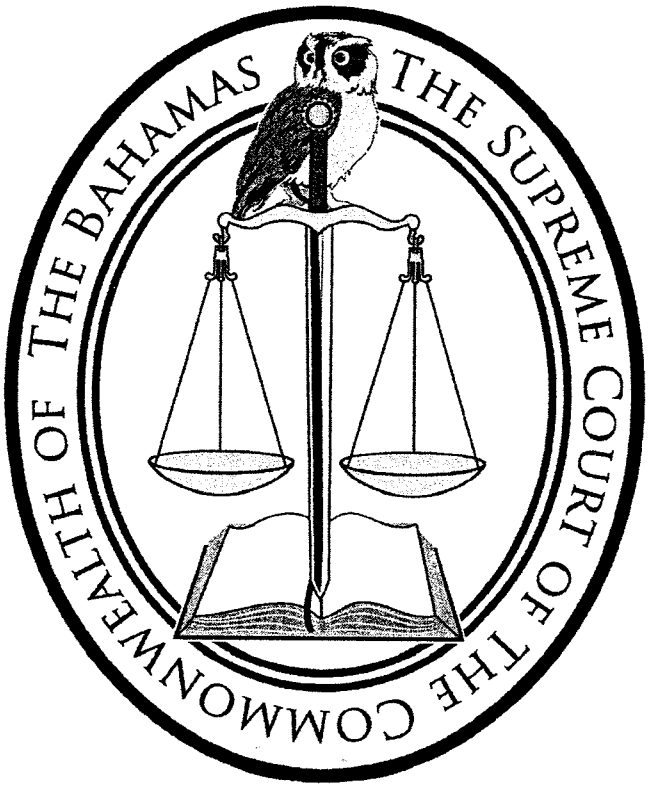

PRACTICE DIRECTIONS
1974 TO 2005

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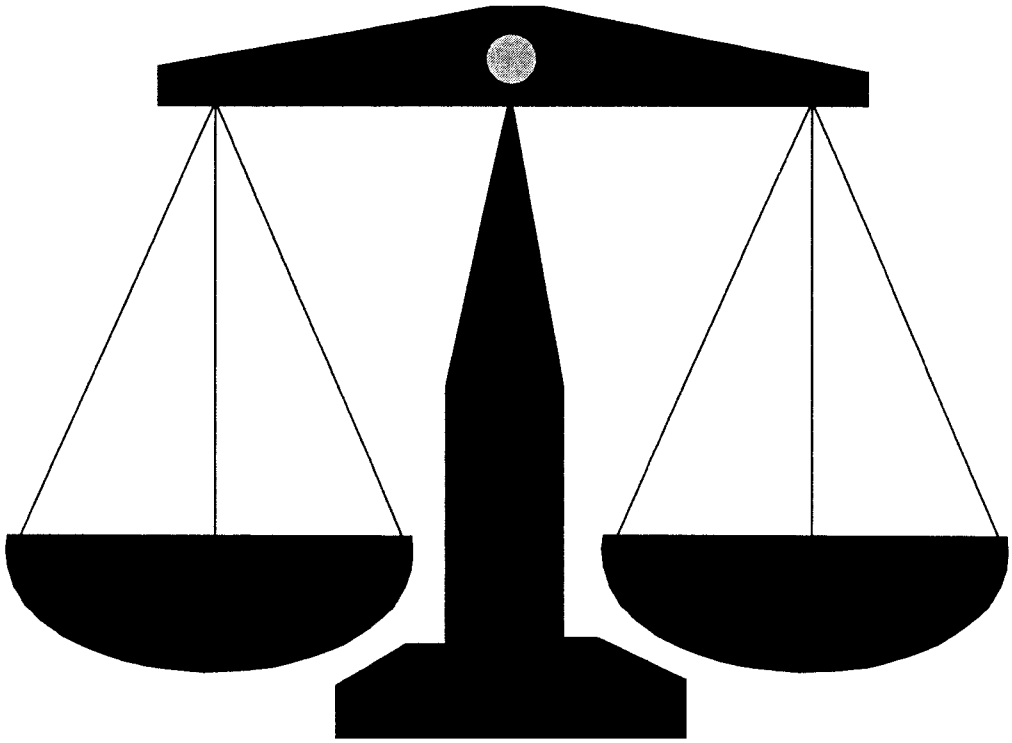

PRACTICE DIRECTION

No. 2 of 2005

In July of 1994, the Chief Justice, noting that it had become apparent to Justices of the Supreme Court that there was, in many instances, need for guidance in the form of a Practice Direction, signifying the acceptable forms of address for use by counsel and attorneys in relation to judges in court, out of court and in orders of court, issued a practice direction (unnumbered) on forms of address.

In September of 2003, I found it necessary to re-issue Practice Direction No. 3 of 1992 on addressing correspondence to the court and the Practice Note providing specimen forms for orders of court. Notwithstanding this recent re-issue, it is obvious that some counsel and attorneys (not limited to those admitted to practice since 2003) need to be reminded of those instructions.

For the information of counsel and attorneys and, indeed, for the convenience of all persons who have dealings with the courts, I have consolidated, with revisions, all of these Practice Directions into a comprehensive guide on forms of address for use in relation to judges and other judicial officers in court, in chambers, out of court and in orders of court.

Part A
Formal Forms of Addressing Members of the Judiciary

The Chief Justice

envelope / heading of letter: *	The Honourable Sir James Smith, Chief Justice, Supreme Court, etc ...
letter begins: *	My Lord ***or*** Dear Chief Justice

* **NOTE:** In relation to matters before the Court, this is subject to the direction contained in Part B.

verbal address in court or chambers:	My Lord ***or*** Your Lordship
verbal address out of court and informally:	Chief Justice ***or*** Sir James ***or*** Sir
(for members of the Bar):	Judge
description in conversation or correspondence:	the Chief Justice

Justices of the Supreme Court

envelope / heading of letter: *	The Honourable Mr Justice Jones ***or*** The Honourable Mrs Justice Smith (***or***, *if the judge so prefers*, The Honourable Madam Justice Smith), Supreme Court, etc ...
letter begins: *	My Lord ***or*** My Lady ***or*** Dear Justice Jones ***or*** Dear Sir ***or*** Dear Madam

* **NOTE:** In relation to matters before the Court, this is subject to the direction contained in Part B.

verbal address in court or chambers:	My Lord ***or*** My Lady ***or*** Your Lordship ***or*** Your Ladyship
verbal address out of court and informally:	Sir ***or*** Ma'am (pronounced to rhyme with "Pam" not "palm") ***or*** Justice Jones
(for members of the Bar):	Judge
description in conversation or correspondence:	Mr ***or*** Mrs (***or*** Madam) Justice Jones ***or*** Justice Jones

NOTES: (1) When the honorific title of "Senior Justice" has been conferred on a Justice of the Supreme Court the variations are:

envelope:	The Honourable Joseph Browne, Senior Justice, Supreme Court, etc . . .
letter:	Dear Senior Justice Browne ***or*** (as with other judges)

description in conversation or correspondence: Senior Justice Brown

(2) The forename of a judge is not ordinarily used in formal references. However, if two judges have the same surname, the forename of the junior judge (determined by date of appointment) is always used. Hence:

Mr Justice Isaacs ***but***
Mr Justice Stephen Isaacs.

(3) When a person has been appointed to act as a judge, he or she should be identified as:

Mr Justice Jones (Ag), ***not***
Mr Acting Justice Jones.

(3) Retired Justices. As it is only recently that, in The Bahamas, there have been persons who would have retired from the post of Justice of the higher courts, a practice of how they should be addressed is only now evolving. It can be safely asserted that, upon retirement, a judge is no longer entitled to use the prefix "the Honourable" before his name. However, it would not be incorrect to address a letter to:

"Mr Justice Smith (Ret.)"

and to address him or refer to him as

"Justice Smith".

This courtesy would, however, be confined to a justice who retired under the provisions of the Constitution and not to one who resigned prematurely.

Registrars

While registrars do not attract any peculiar styles of address or reference and correspondence directed to them are addressed to them by name and office, when they preside at hearings in chambers, it is acceptable to address them as Mr (***or*** Madam) Registrar.

Magistrates

envelope / heading of letter:	Mrs. Susan Smith, Stipendiary & Circuit Magistrate, (***or*** Chief Magistrate ***or*** Deputy Chief Magistrate, as appropriate) Magistrate's Court No. 0, etc ...
letter begins:	Your Worship ***or*** Dear Mrs Smith

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

(*here insert action number*
names of parties may be omitted)

Waiver under paragraph 7 of Practice Direction No. 1 of 2005

After consultation with M Justice _____, the documents and materials included in this ring binder are accepted, subject to the following conditions:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____

Manager, _____ Division

(for) Registrar

(*date*)

PRACTICE DIRECTION
NO. 1 OF 1998

THE "LONG VACATION"

The attention of members of the Legal Profession is drawn to section 55 of the Supreme Court Act, Chapter 53 of the Revised Edition of the Statute Laws, 2000 as well as Rule 82 of the Rules of the Supreme Court, Chapter 53 of the Revised Edition of the Subsidiary Legislation, 2000 ("the 1978 Rules") and Rules 40 to 43, inclusive, of the Rules of the Supreme Court, Chapter 35 of the Revised Edition of the Subsidiary Legislation, 1965 ("the 1961 Rules").

2. By section 55 of Ch 53:

> (1) Subject to rules of court, such number of judges of the Court as may be requisite, having regard to the business to be disposed of shall, so far as is reasonably practicable sit –
>
> (a) continuously in Nassau; and
>
> (b) elsewhere in The Bahamas, at such times and in such places as the Chief Justice may direct, for the trial of civil actions.
>
> (2) The court shall sit for the purpose of hearing appeals in civil causes and matters at such times and in such places as the Chief Justice may direct.

3. The 1978 Rules are silent on the issue of the long vacation and rules 1 and 3 of order 82 read:

> Where no other provision is made by the Supreme Court Act or these Rules the present procedure and practice shall remain in force . . .

Subject to the provisions of rule 1 all existing Rules of the Supreme Court are hereby revoked.

4. At the coming into force of the 1978 Rules, the "existing Rules of the Supreme Court" governing the long vacation were Rules 40 to 43 of the 1961 Rules which read:

> **40 There shall be an annual vacation of the Supreme Court commencing on the first day of August and ending on the thirtieth day of September.**

41 During the vacation civil causes and matters, other than those to be tried by a jury and set down for hearing at the July Sessions, shall not be heard provided, however, that the Supreme Court may sit during the vacation either for the further hearing of part heard cases or for hearing of any cause or matter of an urgent nature.

42 Applications for the hearing during vacation of a cause or matter on the ground of urgency shall be made to a Judge in Chambers by motion supported by an affidavit setting out the facts if the case and the grounds of urgency. Notice of such motion shall be given to the opposite party.

43 During the vacation, Chamber business will be conducted as usual.

5. It will be noticed that the foregoing provisions only deal with civil trials and do not affect the criminal side of the Court which sits, and has always sat, year-round for the hearing of criminal cases. They also do not affect chamber applications.

Issued 16 June 1998, by
Joan A Sawyer
Chief Justice

Revised and re-issued
13 September 2004

Burton P C Hall
Chief Justice

PRACTICE DIRECTION
NO. 1 of 1977
(as revised)

RIGHT OF PUBLIC TO INSPECT DOCUMENTS FILED IN THE REGISTRY

"I have been requested by the Editor of a well-known newspaper to clarify the right to inspect and obtain copies of documents which have been filed at the Registry of the Supreme Court. Before responding to this request, it seemed desirable to consult my colleagues on the Bench, the Registrar and a Senior Attorney... So far as I am aware, this Direction conforms entirely to the position in England."

Knowles C J
23 May 1977

By section 15 of the Supreme Court Act, Ch 53 ("the Act):

15. The jurisdiction vested in the Court shall so far as regards procedure and practice, be exercised –

(a) in the manner provided by this Act or by rules of court;

(b) where no such provision has been made, in accordance with former practice as near as may be; or

(c) where there is no former practice, in such manner as seems to the Court just and practicable in the circumstances.

The original version of this practice direction had its provenance in the concern recited in its opening paragraphs, quoted above. Notwithstanding the subsequent adoption of new Rules in 1978, the repeal and replacement of the Supreme Court Act in 1996 and the revision of the English provisions on which that practice direction relied (being incorporated by reference in accordance with the then extant Rule 2 of the Bahamian Rules of the Supreme Court of 1961) that direction continues, *mutatis mutandis,* to govern local practice by virtue of paragraphs (b) and (c) of section 15 of the Act.

This practice direction deals only with documents in proceedings other than criminal proceedings and they fall conveniently under three heads.

1. Proceedings in Divisions of the Supreme Court other than the Family and Probate Divisions.

By Order 60 Rule 3 (1) of the Supreme Court:

(1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Registry, namely-

(a) the copy of any writ of summons or other originating process,

(b) any judgment or order given or made in court or the copy of any such judgment or order, and

(c) with the leave of the Court, which may be granted on an application made *ex parte,* any other document.

(2) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Central Office in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement.

The commentary on the equivalent English rule from which our rule is derived, note 63/41/1 of *The Supreme Court Practice 1997,* states:

> "This rule defines the nature and extent of the right to search for, inspect and take a copy of documents filed in the [Registry]... It makes an important distinction between the right of search and inspection enjoyed by a party to a cause or matter which is unrestricted in respect of all documents, including affidavits filed in that cause or matter with a view to its commencement, and the right of search and inspection enjoyed by a member of the public, which is restricted to the documents particularly specified in paras. (1) and (2). The effect of this restriction is to exclude the right of the public to search for and inspect the following documents, namely (i) affidavits; (ii) depositions taken before an examiner, and (iii) judgments and orders given or made in Chambers. The principle on which these documents are excluded from the public right of inspection would appear to be that they are all interlocutory in character and may or may not be used or affect the justice of the case when the cause or matter comes to be heard in open court. Nevertheless, even in respect of such documents, the leave of the Court may be obtained for search and inspection by a person not a party on an application made *ex parte*... but it conceived that very cogent reasons would be required before such leave is granted..."

1. Proceedings in the Family Division.

As it would appear that The Bahamas has no rule which is directly in point, I direct that the right of inspection of documents shall be governed, with necessary adaptations, by Rule 130 of the English Matrimonial Causes Rules 1973, which reads as follows:

(1) A party to any matrimonial proceedings or his solicitor or the Queens Proctor may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the court office in those proceedings.

(2) ....[No] document filed or lodged in the [Registry], other than a decree or order made in open court, shall be open to inspection by any person without the leave of the Registrar, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

2. Proceedings in the Probate Division

The directions relating to the Family Division shall, with the necessary modifications, apply.

The attention of the public is drawn to the statement of the law made by Sir Donald Nicholls V C in ***Dobson v Hastings*** [1992] 2 All E R 94 as summarised in the headnote of that case which, so far as is relevant, reads:

> "It was a contempt of court or, as it was better described, an interference with the administration of justice either to inspect documents on a court file without leave if it was known that leave was required or to gain access to a court file by deception of court officials or subterfuge since the court file was not a publicly available register but a file maintained by the court for the proper conduct of proceedings to which, apart from the writ or other originating process and judgments and court orders, the public had a restricted right of access, and then generally only with the leave of the court, until documents filed in court were used in open court."

Issued 23 May 1977, by
Leonard J Knowles
Chief Justice
Revised and re-issued

15 April 2004

Burton P C Hall
Chief Justice

PRACTICE DIRECTION
NO. 3 of 1992

ADDRESSING CORRESPONDENCE TO THE SUPREME COURT

It is hereby notified for general information that, with immediate effect, the following practice will be insisted on:

> Whenever it becomes necessary to address any correspondence to the Supreme Court with reference to any proceedings before it, the correspondence must be addressed to the Registrar of the Supreme Court, the words:
>
> ***"Attention: Clerk to the Hon. Mr/Mrs/Miss Justice...(name of Judge)"***
>
> being written on the envelope in cases where the matter has actually been assigned to a named judge.

Correspondence must not be addressed to the judge personally.

issued 19 March 1992, by
J C Gonsalves-Sabola
Chief Justice
revised and re- issued
4 September 2003

Burton P C Hall
Chief Justice

PRACTICE NOTE

AUDIENCE IN COURT
PRECEDENCE BY SENIORITY

Where many cases are docketed for hearing on the same day before a court, the general rule is that precedence of counsel is determined according to seniority at the bar.

2. However, a senior may insist on his/her right of precedence over a junior only if he/she is present in court at the commencement of the particular sitting of the court.

3. Though the general rule above will normally be followed, the inherent power of a court to direct the order in which matters before it are heard may, in any case, be exercised for any reason appearing to the court to be sufficient.

4. This Practice Note is effective immediately.

issued 23 January 1992, by
J C Gonsalves-Sabola
Chief Justice
Revised and re-issued 4 September 2003

Burton P C Hall
Chief Justice

SPECIMEN FORMS

(1) DECLARATIONS UNDER SECTION 73 OF THE MATRIMONIAL CAUSES ACT, CHAPTER 125:

Section 73(1) (a):

THE COURT DECLARES that it is satisfied that for the purpose of section 73 of the Matrimonial Causes Act, Chapter 125, there are no children of the family to whom the section applies

Section 72(1) (b) (i):

THE COURT DECLARES that it is satisfied that the only children who are or may be children of the marriage to whom section 73 of the Matrimonial Causes Act, Chapter 125, applies are...(***state names of children)*** and that arrangements for the welfare of the said children have been made and are satisfactory (***or*** are the best that can be devised in the circumstances)

Section 73 (1) (b) (ii):

THE COURT DECLARES that it is satisfied that the only children who are or may be children of the marriage to whom section 73 of the Matrimonial Causes Act, Chapter 125, applies are... **(*state names of children)*** and that it is impracticable for the party (***or*** parties) appearing before the Court to make satisfactory arrangements for the welfare of the said children.

(2) IN THE HEADING OF AN ORDER OF COURT, THE CORRECT WAY OF REFERRING TO THE JUDGE IS:

BEFORE the Honourable Mr (*or* Mrs, *or* Madam) Justice Shelby Dunn

or, where appropriate,

BEFORE the Honourable Ricardo Emmanuel, Senior Justice

or

BEFORE the Honourable Sir Leonard James, Chief Justice

~~~

issued 1992, by
J C Gonsalves-Sabola, Chief Justice
revised and re-issued 4 September 2003

Burton P C Hall
Chief Justice
4th September, 2003
~~~

PRACTICE DIRECTION
NO. 2 of 2003

Call Days

This Practice Direction, which should be read with Practice Direction No. 2 of 1997, amends that earlier direction by varying the call day in September from the first Friday to the last Friday.

Accordingly, with immediate effect, call days will be:

April, the first Friday, unless that day is Good Friday, in which case it will be the second Friday
June, the second Friday
September, the last Friday
October, the last Friday
December, the second Friday.

Burton P C Hall
Chief Justice

1 September 2003

PRACTICE NOTE
NO. 1 OF 2002

As a consequence of the need to reorder the classification of matters filed in the Registry to facilitate the process of electronic recording and storage of files, the Supreme Court (Divisions of Court) Order, 2002 has been made and will come into force on 1 January 2003.

Counsel and Attorneys should note that the practice of classifying matters according to "Sides" of the Supreme Court is abolished with the coming into force of this Order.

The Registrar will assign numbers serially for the year in each of the seven divisions, to be identified by the three letter codes for the respective divisions and the type of matter within that division. Hence, for example, adoptions will be identified as: **2003/FAM/adn/37**; bail applications will be identified as: **2003/CRI/bal/29**.

While parties would be expected to indicate the appropriate division on the face of their documents, the Registrar has dedicated personnel to assist parties in so identifying the proper division as part of the process of receiving documents for filing and assigning a number to them.

Burton P C Hall
Chief Justice

23 December 2002

PRACTICE DIRECTION
NO. 1 OF 2003

REVISED ORDER OF CEREMONY FOR CALLS TO THE BAR

1. The Bar Council shall notify the Office of the Chief Justice 14 days in advance of the days prescribed in Practice Direction No. 2 of 1997 of the names of such applicants as it has approved under section 12(2) of the Legal Profession Act 1992.

2. On the prescribed days, the ceremony shall begin at 2:30 in the afternoon and shall ordinarily be held in the main courtroom of the Supreme Court.

3. Seating in the jury box and the area immediately in front of it shall be reserved for petitioners and any sitting or retired Justice of Appeal or Justice of the Supreme Court who is in attendance at the ceremony.

4. Seating on the platform west of the well of the court shall be reserved for the invitees of the petitioners. The limited seating capacity in this area will be allocated among petitioners on a basis of equality. There is no objection to petitioners agreeing among themselves that any seat not required by any of them may be allocated as additional seating to any other of them. Seven days before the ceremony, the Office of the Chief Justice will notify each petitioner of the number of seats available and, two days before the ceremony, each petitioner will advise the Office of the Chief Justice of how many seats allocated to him (or her) will be taken up. The Office of the Chief Justice will label each seat "Guest of Mr/Mrs. .".

5. Any other person attending the ceremony, including counsel and attorneys in robes who cannot be accommodated within the well of the court, will, along with any other member of the public, be seated in the gallery.

6. The order of ceremony shall be:

    (1) After the Chief Justice takes the bench, the Registrar reads the names of the petitioners.

    (2) Counsel and attorneys, in order of seniority, present the petition of each applicant, limiting any remarks in support of the motion to a maximum of two minutes.

    (3) The Chief Justice accedes to the several petitions and invites each petitioner to take the Oath and sign the roll. The Chief Justice formally calls the petitioners to the Bar and welcomes them.

    (4) One member of the Bar Association, selected by the Bar Council, welcomes the new counsel and attorneys. This speech should not exceed three minutes

(5) One of the newly enrolled counsel and attorneys, having been previously selected by them from their number, replies. This reply should not exceed three minutes.

(6) The court rises.

(7) Photographers, who shall take such fixed position as the Registrar directs them, are permitted to take still photographs of the proceedings. Videography or sound recording is prohibited. The Chief Justice retires at the rising of the court and will be available for three photographs after the ceremony:

(1) all counsel and attorneys (and Judges) present;

(2) newly enrolled counsel and attorneys with their presenters as a group;

(3) newly enrolled counsel and attorneys as a group.

The Chief Justice will not be available for individual photographs.

Burton P C Hall
Chief Justice

7th March 2003

PRACTICE DIRECTION
NO.1 OF 2001

FIXING DATES FOR HEARINGS

****

It has been drawn to our attention that the intention of Practice Direction No.1 of 2000 is being frustrated in some cases by some counsel and attorneys simply refusing to agree or even to reply to letters from other counsel and attorneys seeking to ascertain mutually convenient dates for the hearing of civil case/matters.

Counsel and attorneys are reminded that Rule XVI of The Bahamas Bar Code of Conduct Volume II of the 1987 Edition of the Subsidiary Legislation of The Bahamas [now Rule XIV of the Legal Profession Act, ch 64, 2000 Revised Statute Laws) which is headed "Responsibility to Lawyers Individually" is applicable to every person who has been called to The Bahamas Bar. Paragraphs 3 and 5 of the commentary to that rule read:

> **"3. The attorney should accede to reasonable requests concerning trial dates, adjournments, waiver or procedural formalities and similar matters which do not prejudice the rights of his client. Where the attorney knows that another attorney has been consulted in a matter he should not proceed by default in such matters without enquiry and warning...**
>
> **5. The attorney should answer with all reasonable professional letters and communications from other attorneys which require an answer and he should be punctual in fulfilling all comments...."** (*emphasis added*)

In those cases where counsel who has been courteously requested to agree a date for the hearing of a matter which is fit for such hearing, does not reply to other counsel within a reasonable time, then the Justice into whose list the matter falls will fix a date which will then be notified to counsel in accordance with Practice Direction No.1 of 2000.

Dame Joan A. Sawyer, DBE
Chief Justice

18th January, 2001

PRACTICE DIRECTION
NO.3 OF 2000
(As amended)

CIVIL APPEALS FROM MAGISTRATES' COURTS

Section 50 of the Magistrates Act (Ch. 42) [now section 55 of ch 54, 2000 Revised Statute Laws] provides that –

> **"50. A magistrate upon giving any decision which is appealable, shall inform the party to whom the decision is adverse that he has a right to appeal therefrom, and what steps must be taken by a party wishing to appeal, and a note shall be made at the time by the magistrate that such information has been given by him to such party as aforesaid; and every such note shall be conclusive as to the provisions of this section having been complied with."**

The second paragraph of section 51 [now section 56] of the Magistrates Act and the proviso thereto read –

> **"...The appellant, within seven days after the day on which the magistrate has given his decision, shall serve a notice in writing, signed by the appellant or his counsel or attorney on the other party and on the magistrate of his intention to appeal and of the general grounds of his appeal**
>
> **Provided that any person aggrieved by the decision of a magistrate may, upon notice to the other party, apply to the court to which an appeal from such decision lies, for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the court upon the hearing of such application may extend the time prescribed by this section as it deems fit."**

It has been the experience of judges hearing civil magisterial appeals, that sometimes the records from the trial courts do not always contain any note of the magistrate having informed the party to whom the decision was adverse, in accordance with section 50 [now 55) set out above, in some cases, even when the appellant was not represented by counsel in the trial court.

Section 52 [now section 57] of the Magistrates Act reads:

> **"The appellant shall within three days after the day on which he served notice of his intention to appeal, enter into a recognisance before a magistrate, with or without sureties, conditioned to prosecute the appeal to judgment and to abide judgment thereon of the court, and to pay such costs**

as may be awarded by it, or, if the magistrate thinks it expedient, he may instead of entering into recognisance give such other security by deposit of money with the magistrate or otherwise as the magistrate deems sufficient."

In addition, there are sometimes unexplained delays in the records of the cases being forwarded to the Registrar. Section 53 [now section 58] of the Magistrates Act requires that **"... the magistrate shall without delay transmit to the Registrar of the Supreme Court a copy of the order or judgment and all papers relating to the appeal..."**

Magistrates are hereby reminded of the duty to inform persons adversely affected by their decisions in civil cases, of their right of appeal, the court to which an appeal lies, the time within which the appeal by notice of motion must be filed, the requirement for the magistrate and the opposite party to be notified of the intention to appeal (so that the record may be prepared), the need for the appellant to appear before a magistrate within three (3) days after serving the notice of intention to appeal on the magistrate and the opposite party and the fact that the magistrate may require the appellant to either enter into a recognizance to prosecute the appeal to judgment or to make a deposit of money with the magistrate's court for the same purpose.

It is hoped that compliance by magistrates with the very words of the statute will help to shorten the time taken to hear and determine such appeals.

Dame Joan A. Sawyer, DBE
Chief Justice

18th October, 2000

PRACTICE DIRECTION
NO.2 OF 2000

CRIMINAL APPEALS FROM MAGISTRATES' COURTS

****

It has been the experience of judges hearing appeals from Magisterial Courts, that in some cases, the appellants claim that they were not informed of their right of appeal nor the process by which they may appeal.

Where the record shows that sections 228, 230(2) and 233 [now sections 232, 235(2) and 237] of the Criminal Procedure Code Act (CPC) [ch 91, 2000 Revised Statute Laws] have not been followed, then that failure may result in an appeal being allowed, especially where the appellant was not represented by an attorney in the trial court.

At present, section 228 [232] of the CPC reads:

> **"228 [232]. When any person is convicted by a magistrate's court, the magistrate shall inform him, at the time when the sentence is passed, of his right of appeal and the steps which must be taken by a party wishing to appeal and a note shall be made at the time by the magistrate that such information has been given by him to such person and such note shall be conclusive as to the provisions for this section having been complied with."**

And section 230(2) [235(2)] of the CPC reads:

> **"... (2) An appellant, within 7 days after the day upon which the decision was given from which the appeal is made, shall serve a notice in writing, signed by the appellant or his counsel, on the other party and on the magistrate's court of his intention to appeal and of the general grounds of his appeal:**
>
> **Provided that any person aggrieved by the decision of a magistrate's court may upon notice to the other party apply to the court to which an appeal from such decision lies, for leave to extend the time within which such notice of appeal prescribed by this subsection may be served, and the court upon the hearing of such application may extend such time as it deems fit."**

Magistrates are reminded that once a magistrate receives a notice of intention to appeal (whether oral or written), then within 3 days thereafter, the appellant should appear in that court when the magistrate may require him or her to enter into a bond to prosecute the appeal to judgment and to abide the judgment thereon and to pay such costs as may be awarded by the appellate court; OR the magistrate may, if he or she thinks it expedient, require the appellant to deposit a sum of money with the magistrate's court, instead of a bond.

It should be noted that neither the Attorney General, Commissioner of Police or any department of government or public officer acting in an official capacity, is required to enter into a bond or deposit money.

The magistrate's court is then required to **"transmit without delay to the Registrar a copy of the conviction, order or judgment and all papers relating to the appeal..."**

Magistrates should therefore ensure that once a person is convicted before them of an offence in respect of which there is a right of appeal, that they inform that person of that right, the court to which the appeal lies, the time within which the appeal by notice of motion must be filed, the requirement for the magistrate and the opposite party to be notified of the intention to appeal and the general grounds of the appeal, the need for the appellant to appear before the magistrate within three (3) days after serving the notice of intention to appeal and the fact that the magistrate may require the appellant to execute a bond to prosecute the appeal or a deposit of money in lieu of a bond.

It is hoped that compliance by magistrates with the very words of the CPC may help to expedite the hearing of such appeals.

Dame Joan A. Sawyer, DBE
Chief Justice

18th October, 2000

PRACTICE DIRECTION
NO.1 OF 2000
(As amended)

LISTING OF CIVIL MATTERS IN THE SUPREME COURT

****

The following directions are issued in order to make the process of the listing of civil matters for hearing in this jurisdiction as transparent as it ought to be as well as to deal with legitimate complaints of legal practitioners and members of the general public regarding the present method of listing civil cases for interlocutory hearing as well as trial:

Inter Partes Applications & Appeals to a Judge in Chambers:

In order to ensure the timely hearing of civil cases that are to be heard in chambers, all inter partes applications and appeals to a judge in chambers will initially be entered by the Listing Officer in a general list for hearing before a judge on the civil side on Thursdays.

Cases for which fixed dates have already been given retain those dates unless earlier dates acceptable to both parties can be given. Any outstanding applications and appeals (estimated to last more than 30 minutes) not already entered in a special fixtures list should be entered in it at once. *Clerks to counsel and attorneys must take particular care to ensure that such outstanding applications and appeals do not remain in suspense.*

Whenever it appears or is agreed that any application or appeal is likely to last more than 30 minutes, it will immediately and automatically be transferred to either (1) the Chambers Appeals List; or (2) for all cases other than appeals, to the Special Fixtures List.

Cases in the Special Fixtures List will usually be heard on a date fixed after application to fix has been made by the parties. The application to fix a date and time must be accompanied by an estimate of the length of the hearing signed by applicant's counsel and attorney who is to appear on the application.

Cases in the Chambers Appeals List will be listed in a Daily Cause List. This will be prepared by 2 p.m. of the preceding day by the Listing Officer. These may be listed on any day of the week but particularly on Fridays, when there is often a need for short cases. They may be listed as floaters when, because no experts or other witnesses are involved, they seem particularly well suited as such. Fixed dates will only be given in exceptional circumstances.

In order to ensure that a complete set of papers in proper order is available for perusal by a judge before hearing such applications and appeals, the parties MUST, in advance of the hearing, lodge at the Registry of the Supreme Court, a bundle properly paged in order of date and indexed, containing copies of the following documents: (i) the notice of appeal or, as the case may be, the application; (ii) the pleadings (if any); (iii) copies of all affidavits (together with exhibits thereto) on which any party intends to rely; and (iv) any relevant order made in the action. The bundle should be agreed. The originals of all affidavits on which the parties intend to rely should bespoken or produced at the hearing and all exhibits thereto should be available.

Where date for the hearing has been fixed (which will normally be the case for special fixtures) the bundle must be lodged not later than five (5) clear days before the fixed date.

For appeals and other cases where there is no fixed date for hearing, the bundle must be lodged not less than 48 hours after the parties have been notified that the case is fixed for hearing.

Except with the leave of the judge seised of the particular matter, no document may be adduced in evidence or relied on unless a copy of it has been lodged and original bespoken as stated above.

The skeleton argument should be lodged at the same time as the bundle.

With effect from the 1st day of January, AD 2001, the Listing Officer, upon receiving an application from a counsel and attorney or a firm of counsel and attorneys, to fix a date for hearing of an interlocutory application, will place the case number, together with the names of the parties, the type of application and date of request on a list.

By 3.00 p.m. on Thursday of each week, the list will be circulated to all of the Justices assigned to the Civil Side of the Court by hand and or/e-mail. Each Justice so assigned, will take responsibility for an equal portion of the listed interlocutory applications the following Monday (hereinafter referred to as "Chambers Day") to be heard in chambers or open court, as each Justice may determine.

After the List has been divided between the Justices assigned to the Civil Side, the Listing Officer will publish, via e-mail and/or telefax the List as divided indicating clearly which matters will be heard by which Justice. In addition, a copy of the portion of the List assigned to a particular Justice will be affixed to the outer door of the relevant Justice's Court/Chambers as well as on the bulletin board in the front lobby of the Main Supreme Court Building.

On Chambers Day, each Justice assigned to the Civil Side of the Court may summarily dispose of matters in his or her list, or may assign dates and time for the hearing of listed matters; or may strike out matters under Order 3 rule 5, or grant or dismiss any such application.

Ex Parte Applications

In order to expedite the hearing of ex parte chamber applications, the following procedure is introduced and will be strictly followed:

1. The standard procedure, suitable for all ex parte applications, will be –

(1) The applicant, or his counsel and attorney, must lodge with the Listing Officer, by 3:00 p.m. on the day before the application is to be made, papers which should include (a) the writ or other originating process; (b) the affidavit in support; and (c) a draft minute of the order sought.

(2) In those cases where the 3:00 p.m. deadline mentioned in subparagraph (1) above cannot be met and where the urgency is too great to permit a 24-hour delay, such applications should be dealt with in one of the following ways:-

(a) The applicant's counsel and attorney shall attend on the Listing Officer at 9.50 a.m. and lodge with him/her the papers listed in subparagraph (1) as well as a certificate signed by counsel and attorney that the application is of extreme urgency. The application will then be heard by one of the Justices on the civil side at 10:00a.m.; or

(b) The applicant's counsel and attorney shall lodge the papers with the Listing Office by 12:30 p.m. (such papers to include those specified in sub-paragraph 2(1) and attend on the Listing Officer at 2:00 p.m. The application will be heard at 2:30 p.m.

(c) In the exceptional case where the application is of such urgency as to preclude any of the preceding procedures, the applicant's counsel and attorney may give notice to the Listing Officer and a Justice on the civil side of the Court will hear the application, at once, interrupting his list, if necessary. In such a case the applicant's counsel and attorney must be prepared to justify taking such an exceptional course.

3. (1) Attention is drawn to the provisions of the Rules of the Supreme Court, 1978, Order 29 rule 1, which ordinarily requires the issue of a writ or originating summons and the swearing of an affidavit in support of an ex parte application for an injunction before it is made.

(2) The affidavit in support should contain a clear and concise statement – (a) of the facts giving rise to the claim against the defendant in the proceedings; (b) of the facts giving rise to the claim for the interlocutory relief; (c) of the facts relied on as justifying the application being made ex parte, including details of any notice given to the defendant or, if none has been given, the reasons for giving none; (d) of any answer

asserted by the defendant (or which he is thought likely to assert) either to the claim in the action or to the claim for interlocutory relief; (e) of any facts known to the applicant which might lead the court not to grant relief ex parte; (f) of the precise relief sought.

(3) Applicants for ex parte relief should prepare and lodge with the papers relating to the application a draft minute of the order sought. Such minute should specify the precise relief that the court is asked to grant. While the undertakings required of an applicant may vary from case to case, the applicant will usually be required (a) to give an undertaking in damages, (b) to notify the defendant of the terms of the order forthwith, by cable or telefax or e-mail if he is abroad, (c) in a Mareva-type application, to pay the reasonable costs and expenses incurred in complying with the order by any third party to whom notice of the order is given, (d) in the exceptional case where proceedings have not been issued, to issue the same forthwith, (e) in the exceptional case where a draft affidavit has not been sworn, or where the facts have been placed before the court orally, to procure the swearing of the affidavit or the verification on affidavit of the facts outlined orally to the court.

The order should, as a general rule, contain provision for the defendant to apply on notice for discharge or variation of the order and for costs to be reserved.

Fixing Dates for Civil Trials

A party wishing to set an action down for trial before a Judge alone, must (1) deliver to the Registrar, a written request, which must be copied to counsel and attorney for the opposite side and must contain at least three dates which are convenient to counsel on both sides, that the action may be set down for trial at the place specified in the order made on the summons for directions, together with two bundles (agreed, where possible) (one of which shall serve as the record and the other be for the use of the Judge) containing one copy of each of the following documents –

(a) the writ,

(b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given, and

(c) all orders made on the summons for directions.

Each of the bundles must be bound in proper chronological order. The bundle which is to serve as the record must be stamped with the stamp denoting payment of the fee which is payable on setting down the action and must have indorsed thereon the names, addresses and telephone numbers of the counsel and attorneys for the parties or, in the case of a party who has no counsel and attorney, of the party himself.

Once the Listing Officer is satisfied that the provisions of Order 34 rule 3(1) have been complied with, he or she will then enter the case number, together with the names of the parties and their respective counsel and attorneys in a general list of matters to be tried.

Each case will be assigned a date for hearing, where it is fit for hearing, by one of the Judges assigned to the civil side of the Court. The Listing Officer will then notify the parties of that date in writing.

Once a date for a hearing is assigned by a judge, it cannot be changed without the Judge's consent and no application for an adjournment of the hearing will be entertained unless there are exceptional circumstances and then only in the presence of the party requesting it and the opposite party.

Dame Joan A. Sawyer, DBE
Chief Justice

17th October, 2000

PRACTICE DIRECTION
NO. 9 OF 1999

APPEALS FROM MAGISTRATES' COURTS

It has been the experience of judges dealing with appeals from Magistrates' Courts, that in many cases, the procedure laid down in sections 228, 230(2), 232 and 233 of the Criminal Procedure Code Act (Ch. 84) [now sections 232, 235(2), 236 and 237 of ch 91, 2000 Revised Statute Laws] is not being followed and, in some cases, it appears that a person convicted of crime may not be informed of his or her right of appeal – either against conviction and sentence or against sentence only, where appropriate.

Magistrates are reminded that in order to avoid unnecessary delays in the administration of justice compliance with the very words of the statute is required.

Section 228 [232] reads:-

> **"228 [232]. When any person is convicted by a magistrate's court, the magistrate shall inform him, at the time when the sentence is passed, of his right of appeal and the steps which must be taken by a party wishing to appeal and a note shall be made at the time by the magistrate that such information has been given by him to such person and such note shall be conclusive as to the provisions of this section having been complied with."**

Subsection 230(2) [235(2)] reads-

> **"(2) An appellant, within seven days after the day upon which the decision was given from which the appeal is made, *shall* serve a notice in writing, signed by the appellant or his counsel, on the other party and on the magistrate's court of his intention to appeal and of the general grounds of his appeal:**
>
> **Provided that any person aggrieved by the decision of magistrates court may upon notice to the other party apply to the court to which an appeal from such decision lies, for leave to extend the time within which such notice of appeal prescribed by this subsection may be served, and the court upon the hearing of such application may extend such time as it deems fit."**(Italics added by me)

Once a magistrate receives such notice (whether in writing or orally), upon appearance in open court of the appellant, the magistrate is required to consider whether or not to require the appellant to enter into a bond to prosecute the appeal to judgment and to abide the judgment thereon of the court and to pay such costs as may be awarded by it, or the magistrate may, if it is thought expedient, instead of requiring the appellant to enter into

such a bond, require the appellant to deposit a sum of money with the magistrate's court – except, of course, where the appellant is the Crown, the Attorney-General, the Commissioner of Police or any department of the government or a public officer acting in an official capacity – see section 232 [236].

It then becomes the duty of the magistrate's court to transmit **"without delay to the Registrar a copy of the conviction, order or judgment and *all* papers relating to the appeal..."** (Italics added, immaterial words omitted).

Magistrates are hereby reminded of the need to inform persons convicted of offences before them of their right of appeal, the court to which an appeal lies, the time within which appeal by notice of motion must be filed, the requirement for the magistrate to be notified of the intention to appeal so that the record may be prepared, the requirement for the appellant to appear before the magistrate within three (3) days after serving the notice of intention to appeal on the magistrate as well as the opposing party and the fact that the magistrate may require a bond to prosecute the appeal to be executed by the appellant.

It is to be hoped that by so doing some delays may be obviated.

Dame Joan A. Sawyer, DBE
Chief Justice

18th November, 1999

PRACTICE DIRECTION
NO.5 OF 1999

FIXING DATES FOR HEARING OF CRIMINAL CASES

In recent times, the dates for the trial of criminal cases have, apparently, been fixed by Counsel for the Prosecution by agreement with defence counsel but without any input from the Court. The net result of that practice has been a great wastage of scarce judicial time and manpower resources and, on occasion, visible as well as audible indications from the jurors of dissatisfaction with the loss of their time and the jeopardy of their employment.

In addition, some cases which are comparatively new, as well as some where the accused persons are on bail, appear to be given priority to older cases and cases where the accused persons are in custody. This has led, understandably perhaps, to unfavorable comments about the way in which different persons are treated who are charged with the commission of serious crimes.

Effective 1st July, 1999, trial dates for serious criminal cases will be fixed on an as needed basis by the Court in open court, in consultation with counsel for the prosecution and the defence. In fixing dates for trials, the Court will obviously consider the age of the cases, whether or not the Accused is on bail or in custody, the convenience of witnesses as well as counsel as far as possible.

Dame Joan A. Sawyer, DBE
Chief Justice

1st June, 1999

PRACTICE DIRECTION
NO. 4 OF 1999

By section 3 of the Coroners' Act (Ch.43) [now ch 56, 2000 Revised Statute Laws], every Family Island Administrator is, by virtue of that office, a coroner for the district over which the Administrator presides.

Therefore, under the provisions of that Act, Family Island Administrators are under statutory duty to inquire into the cause of death and, if necessary, hold an inquest in the case of any person found dead in his district, every case of sudden or unnatural death arising either from accident or violence, or in the case of a sudden death of which the cause is unknown occurring in his district and where a skeleton is found, to hold an inquest as well as in the case of any person in lawful detention within his district – see section 10 – as well as where no body is found – section 17.

Dame Joan A. Sawyer, DBE
Chief Justice

14th May, 1999

PRACTICE DIRECTION
NO. 3 OF 1999

By subsection (2) of section 231 of the Criminal Procedure Code Act (Ch. 84) [now section 235 of ch 91, 2000 Revised Statute Laws], (the **"CPC"**) **"an appellant, within seven days after the day upon which the decision was given from which the appeal is made, shall serve a notice in writing, signed by the appellant or his counsel, on the other party *and on the magistrate's court* of his intention to appeal and of the general grounds of his appeal. . ."**(italics mine).

Recent experience has shown that that provision is not being observed with the consequence that the Magistrate whose decision is under appeal has not been made aware of the need to prepare the record for the appeal.

Similarly, section 232 [now section 236] of the CPC has not always been observed. That section provides that **"the appellant shall within three days after the day on which he served notice of his intention to appeal, enter into a recognizance before a magistrate, with or without sureties as the magistrate may direct, conditioned to prosecute the appeal to judgment and to abide the judgment thereon of the court, and to pay such costs as may be awarded by it, or if the magistrate thinks it expedient, the appellant may instead of entering into recognisances give such other security by deposit of money with the magistrate's court or otherwise as the magistrate deems sufficient..."**

Practitioners are reminded that the magistrate should be notified of the intention to appeal so that the process of preparing the record and, if required, of entering into recognisance to prosecute the appeal can be carried out.

Dame Joan A. Sawyer, DBE
Chief Justice

20th May, 1999

PRACTICE DIRECTION
NO. 2 OF 1999

It has been bought to my attention that in a number of cases, orders purporting to have been made by a Justice or Registrar have been presented to clerks in the Registry of the Supreme Court for sealing without having been passed by the Justice or Registrar whose Order it purports to be.

Effective immediately, the staff in the Registry are ordered **NOT** to accept any Order purporting to be made by a Justice or Registrar **UNLESS** the initials of the Justice or Registrar appear on the document presented for filing.

Dame Joan A. Sawyer,
Chief Justice

13th May, 1999

PRACTICE DIRECTION
No. 1 of 1999

Many complaints have reached me about matters listed for hearing before a Justice, Registrar, Magistrate or Tribunal, having been **"taken out of the list"** without the knowledge of the Justice, Registrar, Magistrate or Presiding Officer of a Tribunal and without notice to opposing counsel.

It is to be remembered that when a matter is listed for hearing before a Justice, Registrar, Magistrate or Tribunal, and that matter does not proceed, then not only are the clients of counsel on the opposite side inconvenienced, but it also means that other persons with pressing matters may not be able, at short notice, to appear before the court or tribunal and counsel who does appear may have difficulty obtaining the costs of appearing on the schedule date.

Such conduct is clearly inconsistent with the duty counsel owe to their clients, the court or tribunal as well as counsel for the opposing side and is also contrary to the spirit and intention of the Bar of the Association's Code of Conduct Rule V111, paragraphs 12 and 14 of which provide (omitting irrelevant words):

> **"When acting as an advocate the attorney must, while treating the tribunal with courtesy and respect, represent his client resolutely, honourably and within the limits of the law.**
>
> **...12. At all times the attorney should be courteous and civil to the court and to those engaged on the other side.**
>
> **...14. The principles of the present Rule apply generally to the attorney in his capacity as advocate and therefore extend not only to court proceedings but also to appearance and proceedings before boards, administrative tribunals and other bodies, regardless of their function or the informality of their procedures."**

When counsel who are scheduled to appear in a matter listed before a Justice, Registrar, Magistrate or Tribunal, are unable to appear on the date and time fixed for hearing, he or she should notify the clerk of the Justice, the Registrar, Magistrate or Presiding Officer of a Tribunal as well as counsel on the opposing side, of the difficulty as far in advance as possible of the scheduled date or time for hearing and indicate a suitable alternative date for the hearing.

It is appreciated that emergencies may arise from time to time but they should not pose any difficulty in practice if the above is faithfully followed.

It should be remembered that once a matter is fixed for hearing before a court or tribunal, only the Justice, Registrar, Magistrate or Presiding Officer, has authority to take such a matter out of their respective lists, on good cause being shown.

Dame Joan A. Sawyer,
Chief Justice

12th May, 1999

PRACTICE DIRECTION
NO. 5 OF 1998

The practice has developed of sending a nolle prosequi in a criminal case to the Registrar of the Supreme Court rather than being presented in open court when the presiding Justice is required to discharge the accused person upon presentation of a document signed by the Attorney-General or upon the Attorney-General stating in open court that the Crown intends that the proceedings shall not continue.

Section 48 of the Criminal Procedure Code Act (Ch. 84) [now section 52 of ch 91, 2000 Revised Statute Laws] reads:

> **"48 [52]. In any proceedings against any person, and at any stage thereof before verdict or judgment as the case may be, the Attorney-General may enter a nolle prosequi, *either by stating in court or by informing the court in writing* that the Crown intends that the proceedings, whether undertaken by himself or by any other person or authority, shall not continue, and thereupon the accused person shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and, if he has been committed to prison, shall be released, or if on bail, his recognisances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts."** (Italics Added)

In addition, Order 32, rule 11 (1)(a) and (b) of the Rules of the Supreme Court read:

> **"11. – (1) The Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as under the Act or these rules may be transacted and exercised by a judge in chambers *except in respect to the following matters and proceedings, that is to say-***
>
> ***matters relating to criminal proceedings;***
>
> ***matters relating to liberty of the subject;..."***
>
> (Italics added)

The reason for those provisions is simple: very few proceedings in criminal cases can be dealt with in private; in addition, the alleged victims and witnesses as well as the general public all have a right to know what has happened in any criminal cases.

Until and unless the foregoing provisions are repealed and replaced, a nolle prosequi in any matter must be entered in open court before a trial judge who will then exercise the jurisdiction of the court to discharge the accused person.

Dame Joan A. Sawyer
Chief Justice

5th November, 1998

PRACTICE NOTE
NO. 4 OF 1998

It has come to my attention that separate files are opened – sometimes several of them – in respect of applications for bail by accused persons who are remanded in custody pending the hearing and determination of preliminary inquires into the charges laid against them.

Where an accused person is committed to the Supreme Court for trial then, if bail was granted by this court prior to the determination of the preliminary inquiry, the complete bail file should be amalgamated with the case file so that at the arraignment, the judge would have all of the requisite material on which to make all relevant decisions regarding the case. This should result in a reduction of loss of judicial time while search is made for a relevant bail file as well as avoid unnecessary duplication of effort.

In addition, where bail is granted by a Supreme Court Judge a notice should be sent to the relevant magistrate's court so that that court's record would be complete with regard to that matter. Finally, to ensure continuity, all applications for bail by the same person should be put in the same file.

Joan A. Sawyer
Chief Justice

5th November, 1998

PRACTICE NOTE
NO. 3 OF 1998

SECTION 224 of the Criminal Procedure Code Act (Ch. 84) as amended by the Criminal Procedure Code (Amendment) Act, 1996 (No. 25 of 1996) [now section 228 of ch 91, 2000 Revised Statute Laws] reads:

> **"224 [228]. – (1) Every magistrate's court shall without delay forward to the Registrar, through the Chief Magistrate, a monthly return under the hand of the magistrate, of all proceedings had before the court under this Part of this Code.**
>
> **(2) Where required by the Supreme Court, a magistrate shall forward to such court without delay a complete copy of the record in respect of any proceedings forming the basis of a return under subsection (1) for the purpose of enabling the court to satisfy itself as to the correctness, legality and propriety of any finding, sentence or order recorded or passed and as to the regularity of any such proceedings.**
>
> **(3) Notwithstanding section 255 [now 263] of this Code, subsections (1) and (2) of this section apply *mutatis mutandis* as respects proceedings had before a juvenile court under the Children and Young Persons (Administration of Justice) Act, as if reference in those subsections-**
>
> **(a) to a magistrate's court, were reference to a juveniles court; and**
>
> **(b) to a magistrate, were references to the magistrate sitting as chairman of the juvenile court."**

It has been drawn to my attention that not all magistrates send the returns required by the foregoing provisions.

Magistrates are reminded that the foregoing provision impose a statutory duty on them which is intended to ensure the smooth operation of the machinery of justice and to enable us to accurately account to the public, whose servants we all are.

Faithful compliance with that provision will also enable the collection of statistical data for our annual report to the nation easier and may also help to identify where and what are the problems in the system which has created the "backlog" which is said to exist.

Joan A. Sawyer
Chief Justice

5th November, 1998