

**PRACTICE DIRECTION ON THE IMPLEMENTATION OF
THE ADMINISTRATION OF CRIMINAL JUSTICE LAW 2018
IN THE COURTS OF EDO STATE JUDICIARY**



ISSUED BY

**HON. JUSTICE ESOHE FRANCES IKPONMWEN
CHIEF JUDGE EDO STATE**

EFFECTIVE 1ST DAY OF JUNE 2018.

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PRACTICE DIRECTION ISSUED BY THE CHIEF JUDGE OF EDO STATE HON. JUSTICE ESOHE FRANCES IKPONMWEN

In exercise of the powers conferred on me as the Chief Judge of Edo State by virtue of section 32(2) of the High Court Law Cap 65 volume III, Laws of Bendel State of Nigeria 1976, as applicable in Edo State of Nigeria; Part 48 (490)(g) of the Administration of Criminal Justice Law, 2018 and by virtue of all other laws enabling me to act in that behalf, I, ESOHE FRANCES IKPONMWEN, Honourable Chief Judge of Edo State of Nigeria, hereby issue the following Practice Directions:

ORDER ONE **OBJECTIVES AND GUIDING PRINCIPLES**

1. The purpose of this practice direction is to ensure that the system of Administration of Justice in Edo State promotes efficient management of Criminal Justice Institutions and speedy dispensation of Justice. The Courts, Law enforcement agencies and other authorities or persons involved in Criminal Justice Administration shall ensure compliance with the Provisions of this practice Directions for the realization of its purposes.
2. It is also aimed at Protecting the Interests and fundamental human rights of the defendant, victim, witnesses and the society; particularly the right to fair hearing.
3. This Practice Directions shall apply to all criminal proceedings in the High Courts, Magistrate Courts, Area customary courts and other Courts that try criminal cases in Edo State.
4. Where this Law is silent on any matter of procedure, a court shall adopt a procedure which in its opinion will result in substantial justice in the matter.

ORDER TWO
FORMS OF INSTITUTING CRIMINAL PROCEEDINGS

- 1) Save as otherwise provided for by any enactment, criminal proceeding shall be commenced In:
 - (a) The High Court by a charge or an information;
 - (b) The Magistrates' Court by a charge or a complaint; and
 - (c) Customary courts by charge or complaint in substantial compliance with the law.
- 2) In commencing or instituting criminal proceedings before the courts as in sub rule (1) above, the complaint or charge or information shall be accompanied by:
 - (a) Copies of proof of evidence;
 - (b) Written statement on oath of the witnesses;
 - (c) List of witnesses to be called at the trial;
 - (d) Copies and list of every document to be relied on at the trial;
 - (e) List of non documentary exhibits.
- 3) **Assignment of cases for trial**

The Chief Judge or his nominee or most senior Judge present at the Criminal division shall assign cases for trial within 5 working days from the date of filing of the charge.

4) Notice of Trial

The court to which a case is assigned shall serve notices of trial within 10 working days of the assignment on:

- (a) The prosecuting authority;
- (b) On the defendant personally if on bail;
- (c) Through the legal representatives by leave of court;

Where the defendant is in custody, a production warrant and the notice of trial shall be served through the officer in charge of the place of detention; not more than 3 days from date of issuance or so soon thereof.

- 5) In all courts, except the court directs otherwise, a charge sheet together with copies of proof of evidence, statement of evidence, list of witnesses and copies and list of exhibits/documents to be relied on at the trial shall be served on the defendant within 14 days of filing.

Service by substituted means

Where it is impossible or impracticable to effect personal service of the notice of trial or information on the defendant, they may be served on him, with leave of court through his legal practitioner, If any or on his surety or sureties or on an adult in his household or in such manner as the court shall deem fit and the service shall be deemed to be duly served on the defendant.

6) If charge or information is amended

It shall not be necessary to file fresh sets of the processes mentioned in (2) above of this order if the complaint or charge or information amended provided that where additional evidence is required to prove the charge, leave of court shall be obtained first before filing same.

ORDER THREE
EFFECT OF NON-COMPLIANCE

1) Non compliance with the Rules

(1) Where in beginning or purporting to begin any proceeding there has been reason of anything done or left undone, being a failure to comply with the requirement of these rules, the failure shall not nullify the proceedings.

(2) Where at any stage in the course of or in connection with any proceedings, there has by reason of anything done or left undone, been failure to comply with the requirement as to time place, manner or form, the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge or Magistrate or Presiding Judicial Officer may give any direction as he thinks fit to regularize such steps.

ORDER FOUR
EVIDENCE GENERALLY

1. Recording of Evidence

Subject to the provisions of the Evidence Act, evidence in any proceedings may be recorded in writing or by mechanical, electronic or any other scientific means.

2. Facts how proved

- 1) Subject to these Rules and to any enactment relating to evidence, any fact required to be proved at the trial of any action shall be proved by written deposition and oral examination of witnesses in open court.
- 2) All agreed documents or other exhibits may be tendered from the bar or by the party where he is not represented by a legal practitioner.
- 3) The oral examination of a witness during his evidence-in-chief shall be limited to confirming his written deposition and tendering in evidence all disputed documents or other exhibits referred to in the deposition and list of documents filed.
- 4) Real evidence shall be tendered during the trial.

3. Limitation of use of documentary evidence

Unless at or before trial, a Judge, Magistrate or President for special reasons otherwise orders or directs, no document, plan, photographs or model shall be

receivable in evidence at the trial of an action which has not been front loaded at the commencement of the action.

4. Documentary evidence

Documentary evidence shall be put in and may be read or taken as read.

5. Close of case of parties

- 1) A party shall close his case when he has concluded his evidence. Either the State or Defense may make Oral application to have the case closed.
- 2) Notwithstanding the provisions of sub-rule 1 above, the Judge, Magistrate or Presiding Judicial Officer may suo motu where he considers that either party fails to conclude his case within a reasonable time, close the case for the party.

ORDER FIVE

TRIAL/PROCEEDING OF THE COURT

- 1) The Judge or Magistrate or presiding Judicial Officer shall ensure that counsel conduct the business of the court with proper professional decorum and stringently avoid any act which is either an abuse of the Justice System or is aimed at truncating the course of justice.
- 2) The Court must take all reasonable practical steps and must endeavour to conduct all of its proceedings regularly and punctually and discourage adjournments made on trivial grounds by counsel.
- 3) The Judge may on the application of the parties or suo motu fix an Interim date to ensure that the parties are complying with court order or directions.
- 4) No application for adjournment shall be entertained on the day fixed for hearing.
- 5) Where a party seeks to change counsel, not more than two (2) adjournments shall be granted during the life span of the use.
- 6) Where the defendant enters a plea of 'guilt', the court shall proceed to convict him immediately and sentence the defendant.
- 7) Where the defendant enters a plea of 'guilt' to a capital offence, a plea of 'not guilty' shall be recorded for him and the hearing of the case shall proceed.
- 8) Only the witnesses listed on the list of witnesses and proof of evidence shall be called in evidence, but where during the course of the trial, it becomes evident that the testimony of an identified and available witness is required in the interest of justice or the evidence such a witness could give, may materially affect the outcome of the use in relation to genuinely disputed relevant issues, the

court may grant a period not exceeding 5 (five) working days at as may be convenient to the court within which to hear the testimony of such witness.

- 9) The prosecutor and the investigating Police Office shall give the court signed undertakings that witnesses and exhibits are available and will be produced as and when required.
- 10) The court shall schedule the time and date of the hearing on such days and times with the aim of concluding the trial within 180 (One Hundred and Eighty) days after the arrangement.
- 11) The hearing of cases shall be on a day-to-day basis as far as the schedule of the court may permit.
- 12) The court and parties shall prevent unnecessary delays as far as practicable and accordingly, not more than five adjournments may be allowed from arraignment to final judgment.
- 13) Where a counsel who was present in court and agreed on the next adjournment date falls to attend the hearing without good reason or sufficient notice, costs may be awarded against him.
- 14) Where the defendant is in custody, the court registrar responsible shall liaise with the detaining authority to produce the defendant in court at every hearing that his attendance is required.
- 15) Counsel that has conduct of a case shall ensure that they are present in court and ready to proceed with their case or trial at all times. Where this is impracticable by reason of ill health or any other unavoidable reason, counsel shall;
 - (a) Immediately notify the court before the hearing of the case, of their circumstances of unavailability or absence, and/or
 - (b) Ensure that another counsel of requisite professional experience and knowledge of the issue before the court as is required to diligently prosecute or defend the case, is present in court and ready to proceed with the use or trial in his absence.
- 16) Where a counsel puts himself forward as holding the brief of another counsel, he shall be deemed to be seized of the facts of the case and ready to proceed with court business of the day.
- 17) Where a counsel holding brief for another counsel is unable to proceed with the court business of the day, due to his unpreparedness, costs may be awarded against him personally.
- 18) The proceeding entitled "Trial within trial" **Shall** not be applicable in criminal proceedings in the High court/magistrate Court/Customary Courts. The confessional statement or oral admission of an offence by an arrested suspect shall be admissible in evidence. The weight to be attached to a confessional statement shall be considered by the Trial Judge or other presiding officers in

lower courts. Trial within trial already commenced shall abate with the commencement of this Practice Direction.

- 19) The judge rule requiring attestation of the confessional statement of the defendant shall not be applicable in criminal proceedings in the High Court/Magistrate court/customary court or any lower court In Edo State.
- 20) An application for stay of proceedings in respect of a criminal matter before the court **shall** not be entertained.
- 21) Where a judge or Presiding Judicial Officer having tried a case is prevented by illness or other unavoidable cause from delivering his judgment or sentence, the judgment or sentence, if it has been reduced into writing and signed by the Judge, or Presiding judicial Officer, may be delivered and pronounced in open court by any other Judge or Magistrate or president.

ORDER SIX **TRIAL IN ABSENCE**

- 1) Where a defendant who has been granted bail, or having due notice or his trial date, fail without reasonable explanation to attend or refuses to attend court for his trial, and a summons and/or warrant as the case may be, has been issued to compel his attendance without success, the trial shall continue in his absence.
- 2) Neither the seriousness of the offence charged nor the severity of the punishment if convicted shall be a bar to proceedings with the trial in the defendant's absence.
- 3) Where a defendant has absconded and sentenced in his absence, the sentence shall begin to run anytime the defendant is re-arrested.

ORDER SEVEN **FILING OF WRITTEN ADDRESS**

1. This Order shall apply to all applications and final addresses.
2. (1) In a situation where a party seeks to make an application, such application shall be by way of a motion/summons together with an Affidavit and shall be accompanied with a written address duly signed by the Applicant's counsel.
(2) Where the Respondent intends to oppose such an application, he shall file a counter affidavit on facts together with a written address within 7 (seven) days of being served the application.

(3) The applicant shall file a Reply on point of Law which may be accompanied with a further affidavit within 3 (Three) days of being served a counter affidavit with a written address.

3. Summation of addresses

All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all authorities referred to shall be submitted with the written address. Where any unreported judgment is relied upon, the Certified True Copy shall be submitted along with the written address.

4. Written address by party beginning in substantive matter

- (1) In substantive matters, where the party (prosecution) beginning has concluded his evidence, the Judge/Magistrate/Presiding Judicial Officer shall determine whether a prima facie case has been made out against the defendant.
- (2) In a situation where a prima facie case has been made out against the defendant, the Judge/Magistrate/Presiding Judicial Officer shall ask the other party (defendant) to open his case, if he intends to call evidence. The party beginning shall within 14 (fourteen) days after the close of evidence file a written address.
- (3) Upon being served with the written address the other party (defendant) shall within 14 (fourteen) days file his own written address.

5. Written address by other Party (Defence)

Where the other party (defence) calls evidence, he shall within 14 (fourteen) days after the close of evidence file a written address.

6. Written address of party beginning

Upon being served with the other party's written address, the party beginning shall within 14 (Fourteen) days file his own written address.

7. Right of reply

The Party who files the first address shall have a right of reply on points of law only. The reply shall be filed within 5 (five) days after service of the other party's address.

8. Oral argument

Oral argument of not more than 10 (ten) minutes may be allowed for each party.

ORDER EIGHT
TRANSFER OF CASES

1. A petition or any application for the transfer of a case shall not act as a stay of proceedings unless there is a specific direction or order for the transfer of the case.

ORDER NINE
NOTICES

1. In furtherance of the objective of the Administration of Criminal Justice Law 2018 of speedy and fair dispensation of justice, electronic means may be employed to give notice in order to inform counsel or unrepresented parties, of unforeseen developments in a case. Provided such a notice is given at least Forty-Eight (48) hours before the scheduled court hearing.
2. Counsel and unrepresented parties will be expected to furnish the Court registrar with primary and secondary phone numbers and e-mail addresses.

ORDER TEN
DECLOGGING PANEL

1. The Chief Judge may set up a panel of Judges which may include Magistrates, and presiding Judicial Officers to review and reduce the backlog of cases on the docket of court. The panel may work by itself or in conjunction with the Administration of Criminal Justice Monitoring Committee (ACJMC).
2. The Panel set up under the preceding paragraph shall make recommendations to the Chief Judge and take such measures subject to the approval of the Chief Judge to expedite trials, courts' caseloads.

ORDER ELEVEN
ATTITUDE OF COUNSEL AND THE COURT DURING PROCEEDINGS

1. Judges, Magistrates and Presiding Judicial Officers shall have a firm control of the daily business of the court. They shall ensure that counsel conducts the business

of the court with professional decorum and avoid any act, which is either an abuse of the justice system or is aimed at causing delay or truncation the course of justice.

2. Costs awarded against counsel or any party under any Order in this Practice Direction shall be treated as a fine.
3. Counsel who may wish to write a petition against a Judge or Magistrate must first inform the Chief Judge in writing about the allegation against the Judge or Magistrate concerned.
4. In investigating a petition made against a Judge or Magistrate/President the Chief Judge shall ensure that petitions do not become a de facto stay of proceedings.
5. Judges/ Magistrates/Presidents shall take concrete and identifiable steps towards improving the efficiency of the Registrars and Bailiffs whose activities shall be reviewed periodically.
6. Judge/Magistrates/Presidents must investigate and report to the Chief Judge all allegations of unethical practices by Court Staff.

ORDER TWELVE **BAIL/BONDSMEN**

1. There shall be bondsmen registered with the High Court Registry under the guidelines given by the Chief Registrar of the High Court which can be reviewed from time to time. These bondsmen who can be individuals or corporate bodies are the only persons, apart from blood parents, brothers and sisters that can take any person/defendant on bail in all courts in Edo State.

ORDER THIRTEEN

1. By this practice direction, all courts, law enforcement agencies/bodies and persons etc involved in criminal justice dispensation shall comply fully with the provisions of the **Administration of Criminal Justice Law 2018 of Edo State**.

INTERPRETATION

In this practice direction, unless the context otherwise requires:

“ACJMC” means the Administration of Criminal Justice Monitoring Committee

“Chief Judge” means the Chief Judge of Edo State.

“Bondsman” means registered professional sureties .

“Designated Magistrate” means a Magistrate empowered by the Chief Judge to hear applications or other matters.

“Direction” means order or instruction of the court to do or abstain from doing something; **“Investigating Officer”** includes a police Officer and other persons charged with the responsibility of investigating complaints, allegation or any suspicion of wrongdoing.

“Judge” Means a Judge of a High Court of Edo State.

“Law or the Law” means the Administration of Criminal Justice Law of Edo State 2018;

“Law Officer” means the Attorney-General of Edo State and includes the Solicitor-General, the Director of Public Prosecutions of Edo State and such other qualified officers, by whatever names designated, to whom any of the powers of a Law Officer are delegated to by law and a Private Legal Practitioner authorized by the Attorney-General of the State to appear for and on behalf of the Attorney-General of the State;

“Magistrates” means a Magistrate appointed in accordance with the law of Edo State;

“Magistrates’ court” means Magistrates' Court established with the law of Edo State.

“Presiding Judicial Officers of the lower court” Includes Magistrates, Customary Court President; and such other qualified officers, by whatever names designated.

“Notices” includes - hearing or trial notices, written and electronic communication

“Officer In charge” includes, the officer in charge of prisons or a place of detention or police station or the officer in charge of a unit in any other law enforcement agency or other officer who acts in the absence of the officer in charge;

“President” means a President of the Customary Court appointed in accordance with the law of Edo State;

“Prosecutor” includes police prosecutor that are not counsel or legal Practitioners prosecuting In the High courts, Magistrate courts and Customary Courts;

“Summary trial” means any trial by a Magistrate or Customary Court commenced without filing a charge or an information; and or as defined by this Administration of Criminal Justice Law (ACJL).

() Commencement

The Orders contained herein shall take effect from the ____ day of
_____ 2018

HON. JUSTICE ESOHE FRANCES IKPONMWEN
CHIEF JUDGE
EDO STATE.