



**CIVIL PRACTICE DIRECTIVES**

**FOR THE**

**REGIONAL COURTS**

**IN SOUTH AFRICA**

**2020 Fifth Revision**

## **PREAMBLE**

**Whereas** the Chief Justice has issued Norms and Standards for the performance of judicial functions in terms of section 8(3) read with 8(5) of the Superior Courts Act, 10 of 2013;

Whereas in terms of the published Norms and Standards all current protocols and directives will remain extant;

And whereas the objectives of the Norms and Standards as well as these Practice Directives are to

- improve uniformity,
- promote best practices,
- improve the efficiency and effectiveness of court and case flow management and
- eliminate unnecessary and/or unreasonable delays in court proceedings.

The Civil Practice Directives embraces the constitutional principle that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum as well as the principle that justice must also be seen to be done.

No interpretation of these practice directives should have the effect that access to justice is denied to any litigant, in particular the indigent.

Now, therefore, the Regional Court Presidents' Forum hereby issues these revised Practice Directives which apply to all Regional Courts in the Republic of South Africa.

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## **1 SUBSTITUTED SERVICE AND EDICTAL CITATION**

- 1.1 When a party is resident in a foreign country, the application for Substituted Service must include an application for Edictal Citation [Rule 10(1)(a)].
- 1.2 A summons or order of court to be served by way of publication in a newspaper or other publication must be published in the language of the newspaper or publication unless otherwise ordered.
- 1.3 As proof of such publication the whole page showing the name and the date of the newspaper should be filed. If only a cutting of the summons or order is produced, the date and newspaper in which it was published should be proved by way of an affidavit. An explanation as to why the whole page was not submitted should also be given.
- 1.4 If substituted service is to be effected by service at the electronic mail address of a party, the following is applicable:
  - 1.4.1 The application in terms of Rule 10 must be accompanied by an affidavit confirming the identity of the respondent, postal/physical address and the electronic mail address at which the respondent will receive service of the summons (See Rule 10 (1) (b) read with the Rule 55).
  - 1.4.2 A copy of any electronic mail correspondence including attachments between the parties may be attached as proof of the validity of the electronic mail address.
  - 1.4.3 The sheriff is ordered to serve the summons, annexures and pleadings by way of electronic mail on the address as is ordered by the court, indicating what processes have been served by way of electronic mail and the number of pages that were mailed.
  - 1.4.4 In applications for Substituted Service in foreign countries, where service could be effected as provided for in terms of Rule 9(14) and/or Rule 9(15), an application in terms of Rule 10(1)(b) must be accompanied by an affidavit in which proper and fully motivated reasons must be furnished as to why service as provided for in Rule 9(14) and/or Rule 9(15) cannot be effected.

## **2 JUDICIAL CASE MANAGEMENT: PRE-TRIAL CONFERENCES AND TRIAL-READINESS CERTIFICATION**

- 2.1 Every Regional Magistrate presiding in civil matters must take judicial control and management of all civil cases allocated to him/her by the Regional Court President or delegate.
- 2.2 For purposes of efficient judicial case management, the following provisions of Rule 1 must be considered:
- (2) These rules are to be applied so as to facilitate the expeditious handling of disputes and the minimization of costs involved.*
- (3) In order to promote access to the courts or when it is in the interest of justice to do so, a court may, at a conference convened in terms of section 54(1) of the Act, dispense with any provision of these rules and give directions as to the procedure to be followed by the parties so as to dispose of the action in the most expeditious and least costly manner.*
- 2.3 A pre-trial conference must be held in all opposed matters.
- 2.4 For the purpose of judicial case management the presiding regional magistrate may at any time of the proceedings, *mero motu* direct that a pre-trial conference be held in terms of section 54(1) of the MCA to limit and clarify issues [Rule 22(4)].
- 2.5 The decision regarding how the matter should be dealt with must be taken within 10 days after receiving the matter in order to ensure compliance with Rule 22(4).
- 2.6 Any party may request a pre-trial conference in terms of section 54 of the Magistrates' Court Act, 32 of 1944 (MCA) in writing as provided for in Rule 25.
- 2.7 The conference in terms of section 54 of the Magistrates' Court Act, 32 of 1944 should be regarded as an on-going procedure which can be adjourned for further hearing and/or compliance with the directives of the presiding officer.
- 2.8 Failure, refusal or neglect by any party to attend a pre-trial conference after due notice has been given must be noted in the record and the presiding officer may make any equitable order [section 54(4) and (5)].
- 2.9 Parties are expected to be suitably prepared for the pre-trial conference to facilitate case management and to formulate issues.

Parties are encouraged to consider engaging in party-to-party pre-trial discussions before their appearance at the pre-trial conference and to hand in a minute signed by both parties in this regard at the pre-trial conference.

- 2.10 In order to facilitate case management and to formulate issues, the court must make necessary orders in terms of section 54(2) of the Magistrates' Court Act, 1944 in all pre-trial conferences including party to party pre-trial conferences.
- 2.11 The court must certify the case as trial-ready and allocate a trial date. If the matter cannot be certified trial-ready the necessary orders to facilitate compliance and trial-readiness must be made. Trial dates should be allocated only to matters certified as trial-ready. [See also Rule 1(2) and (3)]
- 2.12 Unless impractical, the same presiding officer that chairs the pre-trial should preside over the hearing.
- 2.13 In all matters involving children where the Family Advocate has submitted a report or a report is required, the assistant registrar must notify the Office of the Family Advocate of the date of any pre-trial proceedings and notify thereafter of applicable directives given at the pre-trial conference.
- 2.14 Pre-trial proceedings may not be postponed *sine die*, unless good cause is shown.

### **3 REGISTERED POST**

- 3.1 Service of any document by registered post by the Sheriff must be in compliance with Rule 9(9) and (13).
- 3.2 Where service or delivery of any document by registered post is prescribed or authorized in any action or application, such service shall be proven by the production of documentary proof of such posting, a track and trace report where applicable, as well as an affidavit by the party who procured the dispatch of such document, in which he/she-
  - (a) confirms the date of dispatch together with the name and address of the addressee;
  - (b) describes the document so dispatched; and

- (c) confirms, that the registered item in question had been delivered by attaching proof of delivery.

#### **4. MOTION COURT**

- 4.1 Unopposed motion matters are heard on a day (or days) at such a seat (or seats) as determined by the Regional Court President or his/her delegate in each Regional Division.
- 4.2 The roll closes at 12h00 at least five (5) court days prior the date determined for the hearing of the application. Longer periods may be determined by the Regional Court President or his/her delegate for circuit sessions.
- 4.3 Once the roll is closed the parties are not entitled to access the court file and may only insert or remove documents from it under exceptional circumstances and when authorized by the presiding officer.
- 4.4 Should there be no appearance by or on behalf of any of the parties when a matter is enrolled and called, the court may remove the matter from the roll.
- 4.5 The Family Advocate must be informed of all set-downs, removals and postponements in all matters involving children.
- 4.6 Draft orders in triplicate are to be submitted in all matters.
- 4.7 Prior to the hearing of the application, the applicant must deliver a complete index of all documentation of the matter to be heard. The index should describe each affidavit and annexure as a separate item. This practice is applicable to opposed and unopposed motion proceedings. In the case of unrepresented litigants, the assistant registrar should assist in the binding, indexing and pagination of all documentation.
- 4.8 Binding of Documents: Documents shall be bound in such a way that allows easy and unhindered turning of pages and each bundle shall not consist of more than 100 pages each.
- 4.9 Where practicable and if necessary, handwritten documents are to be copied and typed versions prepared and inserted immediately thereafter in the record. Exceptions should be considered for indigent litigants.

4.10 All the documents should be properly paginated. Applicant must ensure that all the documents including the Notice of motion, founding affidavit and annexures and any replying affidavit are properly paginated before service on the respondent. The respondent must also ensure that the answering affidavit and annexures are properly paginated prior to serving on the applicant.

#### **4.11 Requests for default judgment**

4.11.1 Requests for default judgment referred by the Registrar or Assistant Registrar to the Court for consideration in terms of Rules 12(4), (5) or (7), shall be placed on the motion roll and be heard in open court.

4.11.2 The plaintiff must lodge with the Registrar or Assistant Registrar the request for default judgment in writing similar to Form 5 of Annexure 1, in duplicate, together with the original summons and the return of service as provided for in Rule 12(1).

4.11.3 The Registrar or Assistant Registrar must in terms of Rule (7A) record the referral to court on the cover of the court file, date and sign it and notify the plaintiff concerned of the court date: Provided that where the court deems it necessary or in the interest of justice, it may order that the defendant/s be notified of the court date.

#### **4.12 Case Flow Management**

4.12.1 In order to avoid unnecessary costs and facilitate efficient case flow management, a party must as soon as he/she becomes aware that any motion will not proceed on the allocated date/s and intends requesting a postponement must as soon as reasonably possible inform the registrar in writing.

4.12.2 Where an attorney acting in any proceedings for a party withdraws, get appointed or is substituted, such attorney must comply with Rule 52A and deliver such notices as required in terms of the said Rule.

#### **4.13 Opposed Motions**

4.13.1 In an opposed motion each party or the legal representative must exchange and file concise heads of arguments, including replies and Practice Notes with the Registrar or Assistant Registrar before the closing of the roll or as directed by the court.

4.13.2 In court parties will be restricted to amplifications of issues from the heads of argument and replies to issues raised by the other party only.



- 4.14 Motions may not be postponed *sine die*, unless good cause is shown.

## **5 CIVIL (WHICH INCLUDE DIVORCE) TRIALS**

### **5.1 Allocation of Civil Trials**

- 5.1.1 Only matters that are certified trial-ready, properly indexed and paginated will be allocated a trial date.
- 5.1.2 If it appears at the trial-readiness certification that the parties have opposing expert witnesses, the matter will not be certified trial-ready and allocated a trial date until a joint expert minute is filed.
- 5.1.3 The roll closes at 12h00 at least five (5) court days prior the date determined for the hearing of the matter. Longer periods may be determined by the Regional Court President or his/her delegate for circuit sessions.
- 5.1.4 Once the roll is closed the parties are not entitled to access the court file and may only insert or remove documents from it under exceptional circumstances and when authorized by the presiding officer.
- 5.1.5 In unopposed divorce matters, where 6 months or more has lapsed from the date of service of the summons, the court may direct that a notice of set down be served on the other party.

### **5.2 Case Flow Management**

- 5.2.1 In order to facilitate efficient case flow management, the parties must as soon as they agree that that any trial may not proceed on the allocated date/s the parties must comply with Rule 27(5).
- 5.2.2 Civil proceedings may not be postponed *sine die*, unless good cause is shown.

### **5.3 Bundles of Documents**

- 5.3.1 Where a party or the parties to a civil trial intend utilizing documents in their conduct of the trial, such documents must be collated, numbered consecutively and suitably bound.
- 5.3.2 Each bundle must be indexed and the index must briefly describe each document in the bundle as a separate item.
- 5.3.3 The parties should preferably agree upon a joint bundle of

documents-

- 5.3.3.1 Where the parties are unable to agree upon a joint bundle, the parties must agree which party's bundle/s shall be the dominant bundle;
- 5.3.3.2 The subservient bundle or bundles must not contain documents contained in the dominant bundle or bundles.
- 5.3.4 The documents should preferably not be bound in volumes of more than 100 pages, unless a lever arch type file is used.
- 5.3.5 The bundle of documents must be bound in a manner that does not hinder the turning of pages and which enables it to remain open without being held open.
- 5.3.6 The parties must agree prior to the commencement of the trial upon the evidential status of the documents contained in the bundle:
  - 5.3.6.1 This agreement must be contained in a pre-trial minute;
  - 5.3.6.2 The agreement must also cover the issue as to which document will be part of the record before the court, to deal with the eventuality of an appeal.
- 5.3.7 If unnecessary documents are included in the bundle the court may on the application of any party to the trial, or *mero motu*, make a punitive cost order in respect thereof.

#### **5.4 Expert Witnesses**

- 5.4.1 Where a party intends calling an expert witness, this fact must be canvassed at the pre-trial conference.
- 5.4.2 The summary of the evidence to be given by an expert witness must contain at least sufficient information to enable the other party to determine the extent to which he agrees or disagrees with the evidence of such expert.
- 5.4.3 Parties upon request are entitled to be furnished with an amplification of the summary.
- 5.4.4 A joint expert minute in the case of opposing expert witnesses must be filed prior to trial-readiness certification and must set out in writing the points in dispute and points agreed on and must be signed by the experts. [See also Rule 24(9).]

#### **5.5 Withdrawal of Attorneys**

- 5.5.1 An attorney, ceasing to act on behalf of a party, shall give written

notice to the registrar and to all other interested parties, including the Family Advocate where applicable and file a notice of withdrawal as attorney of record as soon as he/she ceases to act for the party as provided for in Rule 52A. The last known address and contact details of the client should be included in the notice of withdrawal.

- 5.5.2 The attorney should state in writing which steps he/she has taken to advise his/her client of the fact that he/she intends to withdraw, and that his/her client was notified in writing of such notification informing him/her of his/her rights and obligations and of the possible consequences of the attorney's withdrawal.
- 5.5.3 Where a date of hearing has already been allocated at the time the attorney withdraws, the notice of withdrawal should state whether and in what manner the client has been informed of the date of the hearing.

## **5.6 Divorce Matters**

### **5.6.1 Matters involving children**

- 5.6.1.1 In all divorce and related matters, where there are children involved, including Rule 58 applications, the Office of the Family Advocate must be furnished copies of all the pleadings and set-downs.
- 5.6.1.2 Where Family Advocate Reports are older than 6 months at the time of the hearing, an updated recommendation should be filed.

### **5.6.2 Orders in Divorce matters**

- 5.6.2.1 Regional Magistrates must ensure that all orders made are executable, including in respect of settlement agreements.
- 5.6.2.2 The wording of pension fund orders must be done correctly and contain the relevant details required by the pension and provident funds in order to enable them to comply with the order as required in Section 37D of the Pension Fund Act, Act 24 of 1956.

#### 5.6.1.3

## **6 FINALIZATION OF CIVIL CASES**

- 6.1 All Regional Magistrates must strive to finalise civil matters within nine months from the date of issuing in compliance with paragraph 5.2.5(i)(b) of the Norms and Standards.

- 6.2 In order to ensure the expeditious finalization of cases involving children, which have not yet been finalised after a period of 6 months, the Office of the Family Advocate must submit a monthly list of such cases together with the reasons for such delays to the RCP. The RCP must follow up and take such steps as are necessary to expedite the finalisation of the cases.
- 6.3 Regional magistrates must report monthly to the RCP on all part-heard cases that had not been finalised within six months from the date of commencement of the trial.
- 6.4 Regional Magistrates should not have more than 10 part heard cases at any given time. A Regional Magistrate with 10 or more part heard cases should not start any new cases without a written approval from the RCP or delegate.
- 6.5 Regional Magistrates who have more than 10 part heard cases must submit an action plan on how they are going to reduce their part heard cases and monthly report on progress.

## **7 RESERVED JUDGMENTS**

- 7.1 Judgments may not be reserved *sine die* and the presiding officer shall indicate the date on which judgment will be handed down in open court by the presiding officer of record or another judicial officer at the instance of the presiding officer within a reasonable time from date of hearing the matter.
- 7.2 Although the Norms and Standards in paragraph 5.2.6 state that judgments should be handed down within three months after the last date of hearing, regional magistrates must submit reasons why a judgment cannot be delivered within 30 days after the last date of hearing to the RCP.

## **8 SECURITY OF COURT FILES**

- 8.1 Files may not be removed from the Records Office of the Registrar or the Assistant Registrar.
- 8.2 Any inspection of the contents of a file, or indexing of the papers, must be done under the supervision of the Registrar or Assistant Registrar.

- 8.3 No attorney, party or third party may uplift and/or remove anything from the court file in any circumstances. Parties to request copies from the Registrar or Assistant Registrar.
- 8.4 Immediately after closure of the court roll, all relevant files must be handed to the Regional Magistrate hearing the matters on the particular court day.

## **9 GENERAL PROVISIONS**

- 9.1 The presiding officer must note in the Civil Record Book the duration of each sitting.
- 9.2 The presiding officer must note on the record of the proceedings in respect of each case:–
- 9.2.1 the time of the day when the proceedings actually commenced and actually ended; and
- 9.2.2 the time of the day of the commencement and conclusion of each adjournment on that day.
- 9.3 Upon the direction of the RCP or his/her delegate a regional magistrate must submit any information and any assessment material including statistics, roll collapse reports, other reports, etc. required by the RCP to assess the functioning and efficiency of the court. (See paragraph 6(ii) of the Norms and Standards).
- 9.4 Practitioners/ parties are encouraged to utilise the provisions of section 35, particularly in line with the extended civil seats per notice published on the 1<sup>st</sup> of December 2020.
- 9.5 All cases heard in Court must be registered on ICMS and must have a URN number.

## **10 VIRTUAL PROCEEDINGS**

- 10.1 Utilisation of virtual proceedings must be considered and used to promote efficient and speedy finalisation of matters, especially for urgent matters.
- 10.2 On requesting a date for hearing (both motion and trial matters), parties must furnish their current email addresses and those of

witnesses to be called to testify, to enable connections and conducting of proceedings through virtual platforms.

- 10.3 All virtual proceedings to be recorded on the CRT machine unless this is not practically possible. All proceedings must be recorded on the virtual platform as well, the recording must be saved with the relevant URN number and case number, and provided to the Registrar/Assistant Registrar and the Court Manager.
- 10.4 The court will have a discretion to decide on whether or not a matter shall be held through a virtual platform. Parties can also apply to court to have their matters heard or for the testimony of specific witnesses through a virtual platform.

## **11 COMMENCEMENT**

The amended practice directives will take effect from the 14 December 2020 as per resolution of the Regional Court Presidents' Forum meeting of 09 December 2020.