



**CIVIL PRACTICE DIRECTIVES
FOR THE
REGIONAL COURTS
IN SOUTH AFRICA**

INTRODUCTION

The Civil Practice Directives deal essentially with the daily functioning of the courts, court- and case-flow management and intend to introduce general uniformity. In addition, also to inform and involve stakeholders and all those who participate or take an interest in the court system at Regional Court level.

These practice directives are binding as Regional Court President's directives and acquire the legal force and effect which such directives have. It does not seek to override the Rules of Court which have the force of law and may be adjusted from time to time by the Regional Court President as and when circumstances so dictate.

These Civil Practice Directives are procedures dictated by general experience and are not intended to impede the freedom of the presiding officer to determine the procedure best suited to ensure just, expeditious and satisfactory determination of any particular case.

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

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1 SUBSTITUTED SERVICE

- 1.1 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.
- 1.2 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 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.

2 PROOF OF SERVICE BY REGISTERED POST

- 2.1 When service 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 as well as an affidavit by the person who procured the dispatch of such document, in which he/she-
 - 2.1.1 confirms the date of dispatch together with the name and address of the addressee;
 - 2.1.2 describes the document so dispatched;
 - 2.1.3 confirms, if that be the case, that the registered item in question has not been returned to the sender by the Post Office as unclaimed.

3 MOTION COURT

- 3.1 Unopposed motion matters are heard on a day (or days) at such a seat (or seats) as determined by the Regional Court President in each Regional Division.

- 3.2 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 for circuit sessions. 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.
- 3.3 Should there be no appearance by or on behalf of any of the parties when a matter is enrolled and called, the court may strike the matter off the roll. The matter will be enrolled upon the application supported by an affidavit setting out full reasons why the matter should be enrolled and the relief the applicant intends asking for.
- 3.4 Draft orders in triplicate are to be submitted in all matters not later than closing of the roll.
- 3.5 Prior to the hearing of the application, the applicant must deliver a complete index of all documentation before the court for the determination of the application. The index should describe each affidavit and annexure as a separate item. This practice applicable to ALL motions (opposed and unopposed).
- 3.6 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.
- 3.7 All handwritten documents are to be copied and typed versions prepared and inserted immediately thereafter in the record as far as practically possible. Exceptions may be considered for indigent litigants.

- 3.8 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.
- 3.9 Continuous rolls should be the norm, except in centres where this is not possible.
- 3.10 Roll call of all motion matters will take place in Court and thereafter the schedule for hearing of matters will be set.

3.11 Practice notes:

- 3.11.1 The legal representative for each party in a motion which appears on the opposed roll, is to file a practice note with the registrar, on closing of the roll.
- 3.11.2 The practice note shall set out -
- 3.11.2.1 the name of the parties, the case number and its number on the roll;
 - 3.11.2.2 the names and telephone numbers of all legal representatives in the motion;
 - 3.11.2.3 the nature of the motion;
 - 3.11.2.4 an indication of the issues to be determined in the application;
 - 3.11.2.5 the relief sought at the hearing by the party on whose behalf the legal representative is completing the practice note;
 - 3.11.2.6 an estimate of the probable duration of the motion;
 - 3.11.2.7 if the matter is urgent, and if so, motivate the urgency;
 - 3.11.2.8 whether or not the papers need to be read and, if so, which portions thereof.
- 3.11.3 In the absence of a practice note from the applicant, a motion appearing on the opposed roll will be removed from the roll, unless the presiding officer directs differently.

- 3.11.4 A practice note must be filed as set out in 1 above on each occasion the motion appears on the opposed roll.
- 3.12 Concise heads of argument are to be attached to the practice note at the time of filing thereof.
- 3.13 In the event that the day on which the practice note and concise heads are to be filed falls on a public holiday, such documents shall be filed on the preceding court day.

4 CIVIL TRIALS

4.1 Allocation Of Civil Trials

- 4.1.1 Only trials that are ready for a hearing will be allocated.
- 4.1.2 An allocation register must be kept and all allocations must be done in an open and transparent manner.
- 4.1.3 The Regional Court President or his/her designated representative will allocate the matter to a presiding officer for hearing.
- 4.1.4 The trial date should be determined by the presiding officer to whom the matter has been allocated to only after the pre-trial procedure is concluded satisfactorily.
- 4.1.5 In the allocation of trials, due regard will be had to any justifiable claim for precedence in allocation.

4.1.6 If it appears at the time of allocation of a presiding officer for the hearing where the parties have opposing expert witnesses that there is no joint expert minute, a presiding officer will not be allocated until there has been proper compliance with this practice. This may result in the parties having to apply anew for the allocation of a presiding officer.

4.1.7 If, after allocation of a trial for hearing, it appears to the presiding officer that there is no joint expert minute, the presiding officer to whom the trial has been allocated, will not commence or continue with the hearing of the trial but will require proper compliance with the practice. That presiding officer must determine the further dates of hearing of the trial.

4.2 **Bundles Of Documents**

4.2.1 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.

4.2.2 Each bundle must be indexed and the index must briefly describe each document in the bundle as a separate item.

4.2.3 The parties should preferably agree upon a joint bundle of documents:-

4.2.3.1 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;

4.2.3.2 the subservient bundle or bundles must not contain documents contained in the dominant bundle or bundles.

4.2.4 The documents should preferably not be bound in volumes of more than 100 pages, unless a lever arch type file is used.

- 4.2.5 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.
- 4.2.6 The parties must agree prior to the commencement of the trial upon the evidential status of the documents contained in the bundle:
- 4.2.6.1 This agreement must be contained in a pre-trial minute;
- 4.2.6.2 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.
- 4.2.7 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.

4.3 **Expert Witnesses**

- 4.3.1 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.
- 4.3.2 Parties upon request are entitled to be furnished with an amplification of the summary.
- 4.3.3 Where practicable, there should be a joint minute where opposing expert witnesses have reduced the points of agreement and disagreement in writing and signed the minute.
- 4.3.4 Failure to comply may result in the matter being removed from the roll.

4.4 **Pre-Trial Conference**

- 4.4.1 When a trial date is applied for from the allocated presiding officer, he/she may direct that a pre-trial conference be held. Either party may request a pre-trial conference in terms of section 54 of the Magistrates' Court Act, 32 of 1944 in writing as provided for in Rule 25.
- 4.4.2 The conference in terms of section 54 of the Magistrates' Court Act, 32 of 1944 should be regarded as an ongoing procedure which, having been convened, can stand adjourned on the directive of the presiding officer, to be reconvened from time to time on reasonable notice to the registrar by either party.
- 4.4.3 In the event of any party failing or refusing or neglecting to attend a pre-trial conference after due notice thereof has been given, it must be reflected in the minutes and the presiding officer may make such order as it considers equitable.
- 4.4.4 In accordance with the spirit of Magistrates' Court Rule 1(3), directives may be given to the parties to hold a party and party pre-trial conference, in particular where a settlement may be possible, in which case the parties must inform the registrar no later than ten court days before the trial date, if already allocated, whether the matter will proceed or be settled.
- 4.4.5 If the trial will not proceed after a trial date has been allocated, the parties must as soon as they become aware of this, but no later than ten court days before the allocated trial date, inform the registrar in writing that the matter will not proceed and/or that one or more parties will request a postponement.
- 4.4.6 Where possible, the same presiding officer that chairs the pre-trial should preside over the trial.

4.5 Settlement Agreements And Draft Orders

4.5.1 Where the parties to a civil trial have entered into a settlement agreement, a presiding officer will make a settlement agreement an order of court only if –

4.5.1.1 The legal representatives of all the parties to the trial are present in court and confirm the signatures of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court, or

4.5.1.2 Proof to the satisfaction of the presiding officer is provided as to the identity of the person who signed the settlement agreement and that the parties thereto want the settlement made an order of court.

4.5.2 Where the parties to a civil trial have settled the trial on the terms set out in a draft order, a presiding officer will make a draft order an order of court only if –

4.5.2.1 The legal representatives of all the parties to the trial are present in court and confirm that the draft order correctly reflects the terms agreed upon, or

4.5.2.2 Proof to the satisfaction of the presiding officer is provided that the draft order correctly reflects the terms agreed upon.

4.6 Withdrawal Of Attorneys

4.6.1 An attorney, ceasing to act for a party, shall give written notice to the registrar and to all other interested parties of this fact or file the notice of withdrawal as attorney at least (14) fourteen days before the date of trial if the matter has been set down for trial.

4.6.2 Unless good cause is shown an attorney who withdraws late, may be ordered to pay wasted costs de bonis propriis.

4.6.3 The attorney should state in writing which steps he/her has taken to advise his/her client of the fact that he intends to withdraw, and that his client has

received such notification and is aware of his/her rights and obligations and of the possible consequences of the attorney's withdrawal.

- 4.6.4 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 MORA INTEREST

- 5.1 A court making an order for the payment of interest may only decide if the rate is lawful at the date of judgment and make an order accordingly. Furthermore, interest at the rate laid down in the Prescribed Rate of Interest Act 55 of 1975 may only be ordered if there is no agreement as to the rate of interest.
- 5.2 When *mora* interest is claimed on a dishonoured cheque, the date of tender of the cheque must be alleged in the summons; if this is not done, interest will run only from the date of service of the summons.

6 DIVORCE MATTERS

6.1 Service of Summons

- 6.1.1 As a decree of divorce impacts on the status of a person, it is required that service of summons must be done personally. In appropriate instances the court may direct a form of substituted service.
- 6.1.2 A defendant is not permitted to waive service on the basis that he/she consents to a decree of divorce.
- 6.1.3 A presiding officer does however have the power in his/her discretion to 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 and allow an early set-down of the undefended action, after service of the summons. This of course is on the premise that the defendant is aware that the matter is to be heard and consents thereto.

- 6.1.4 Where it appears at the hearing of an undefended divorce that service was effected more than six (6) months before the date of the hearing it is the practice to require that the notice of set down be served on the defendant alternatively that the plaintiff satisfy the court by other means that the defendant is aware that the case is to be heard on that day.

6.2 Marriage Certificates

- 6.2.1 The original marriage certificate must be produced, but a certified copy will on good grounds be acceptable.
- 6.2.2 No hard and fast rule can be laid down in regard to whether a copy of a marriage certificate is acceptable.

7 APPLICATIONS FOR DEFAULT JUDGMENT IN ACTIONS FOR DAMAGES

- 7.1 It is permissible in a request for default judgment in an action for damages to place before the Court the evidence of experts, for example medical practitioners, mechanics, assessors and others by way of affidavits, subject to the Court's discretion to require *viva voce* evidence, where it considers it necessary to call for further information or elucidation.
- 7.2 The affidavits shall set out the qualifications of the experts and fully traverse his/her findings and opinions as well as the reasons therefore.

7.3 Requests for default judgments to be dealt with by the presiding officers will be included on the motion roll and will be dealt with in open court accordingly.

8 RESERVED JUDGEMENTS

8.1 Judgments may not be reserved sine die and the presiding officer shall indicate the date on which judgment will be delivered or handed down which should be within a reasonable time from date of hearing the matter.

8.2 Judgment delivery should be, where reasonably possible, done in open court.

9 DOCUMENTS AND PLEADINGS

9.1 All documents and pleadings filed with the Registrar or Assistant Registrar must comply with the provisions of the Rules.

9.2 The Registrar or the Assistant Registrar may refuse to accept any document or pleadings which do not comply with these requirements.

9.3 The correct citation of headings must be used on all pleadings and notices, namely: IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF HELD AT / IN DIE STREEKHOF VIR DIE STREEKAFDELING VAN GEHOU TE.....

10 SECURITY OF CASE FILES

10.1 Files in the Registrar's office

10.1.1 Files may not be removed from the Records Office of the Registrar or the Assistant Registrar.

10.1.2 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.

11 DELEGATION

The Regional Court Presidents may delegate any duty or function in relation to the management of the Regional Courts to a coordinating or any other regional magistrate.

12 CONSULTATION

Whilst some consultation has already taken place on the practice directives, inputs and comments are still being invited from everybody concerned.

13 COMMENCEMENT

The above practice directives will take effect on 15 November 2010 as per resolution of the Regional Court Presidents' Forum on 3 November 2010.