



CRIMINAL PRACTICE DIRECTIVES

FOR THE

REGIONAL COURTS

IN SOUTH AFRICA

2017 5th 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.

And whereas these practice directives are **binding as Regional Court President's Forum directives** and have legal force

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. COURT SESSIONS AND SITTINGS

- 1.1 Court sitting times are from 09h00 - 16h00. If the interest of justice so require, the Court may sit before and after the specified times and even outside these times including breaks. All judicial officers should strictly comply with court hours, save where, for good reason, this cannot be done. [See also Regulation 35, Magistrates Act, Act 90 of 1993: official hours: 07h45 – 16h15. Paragraph 5.2.1(iv) of the Norms and Standards requires trial courts to strive for a minimum of 4.5 hours sitting per day.].
- 1.2 Court sittings of less than 3.5 hours on any day **must be reported immediately on the day of occurrence** by each and every affected Regional Magistrate to the Office of the Regional Court President with reasons.
- 1.3 Every Regional Magistrate must maintain a diary of his/her court rolls, including circuit court rolls.
- 1.4 All Regional Magistrates sitting in different courts must keep and maintain a roster of all court sittings for a period not less than a month. The roster must be approved by the Regional Court President (RCP) prior to the sittings. The roster must be made available to all relevant stakeholders upon approval by the RCP. Any amendment to the roster/travelling itinerary must be approved in advance by the RCP. The MC9 trip authority must always be accompanied by an approved roster.
- 1.5 In order to improve efficiency, every regional magistrate must start his/her court no later than 09h00.
 - 1.5.1 At the commencement of the proceedings for the day, the Regional Magistrate must enquire as to the status of each case on the court roll and give necessary direction. It is expected from the Court to enquire not later than 11h00 from the prosecution which witnesses are at court and to call them before court, explain circumstances relating to their cases and where necessary, excuse those witnesses who will not be accommodated on that particular day.
 - 1.5.2 Should the court not be able to proceed at 09h00, the reasons must be recorded in the Court Record Book and be announced in court for the benefit of the public.
 - 1.5.3 Case Flow Management blockages in each specific case must be recorded on the Charge Sheet (J15) of that case as well as the Court Record Book where applicable.
 - 1.5.4 Case Flow Management blockages (general as well as specific to each case) must also be captured daily on the Judicial Statistics Tool under 'Court and Case Flow Management Blockages'.
- 1.6 When the court adjourns, all must be informed of the reason for the adjournment as well as when the court will resume again and this must be recorded in the Court Record Book. The Regional Magistrate must resume with the court sitting at the scheduled or agreed time without having to be called.
- 1.7 All role players are expected to be in court not later than 09h00 and any other time as ordered by court or per court scheduled times. All court officials must remain in attendance until excused by the Court. Any failure to comply must be recorded in the Court Record Book and the Charge Sheet where applicable.

- 1.8 All actual court sitting times (commencement, resumption and adjournment times) must be accurately recorded in the Court Record Book (J546).
- 1.9 A court must always be available on all court days and throughout the court day as scheduled. Where this is not possible the RCP must be notified immediately. Any non-availability or delay of the court sitting must be timeously communicated to all concerned parties and disclosed to all stakeholders by appropriate notices affixed to the court room door.
- 1.10 In centres where more than one court sits and such courts have circuit courts, the Regional Court President or his/her delegate must ensure that there is a regional magistrate at the main centre to deal with urgent and/or other matters pertaining to regional courts.

2. CASE ALLOCATIONS AND APPEARANCES

- 2.1 The Regional Court President or his/her delegate will be responsible for the allocation of cases in the Regional Division. Where applicable, allocation lists must be made available to all other regional magistrates and the RCP in writing. Allocation of cases must be transparent, fair and equitable.
- 2.2 In compliance with paragraph 5.2.4 (iv) and (v) of the published Norms and Standards each regional magistrate must take control of the management of cases at the earliest possible opportunity and take active and primary responsibility to ensure that cases are concluded without unnecessary delay, including but not limited to:
- 2.2.1 The rights of the accused and other relevant information must be explained to the Accused by every regional magistrate at every first appearance in his/her court.
- 2.2.2 Every regional magistrate must ensure that the necessary assistance is accorded to the Accused for the exercise of such rights.
- 2.3 Regional Magistrates must at all times ensure that all court officials (which include attorneys, advocates, prosecutors, language practitioners, intermediaries, registrars, assistant registrars, etc) are duly qualified to appear and act before them. Attorneys giving instructions to counsel must be present at court together with the instructed advocate as provided for in Rule 49.15 of the Rules for Attorneys, unless excused by the court. Court officials are expected to supply proof of the appointment, oath of office, etc.

3 JUDICIAL CASE MANAGEMENT: PRE-TRIAL HEARING AND CERTIFICATION OF CASES AS TRIAL READY

In compliance with paragraph 5.2.4 of the Norms and Standards dealing with judicial case flow management, no matter may be enrolled for trial unless certified trial-ready by a court.

- 3.1 Prior to certifying the case as trial ready a court must have conducted a pre-trial hearing during the court proceedings.

- 3.2 At the pre-trial hearing the issues enumerated below, but not limited thereto, are to be considered and addressed, where relevant:
- 3.2.1 Whether the prosecution is ready to proceed to trial?
 - 3.2.2 Whether the accused/defence is ready to proceed to trial?
 - 3.2.3 Whether the accused person is legally represented and in the case of a private practitioner, whether the legal representative has sufficient funds or acceptable financial arrangements for the determined number of trial dates.
 - 3.2.4 Whether the legal representative has received copies of the final charge sheet, further particulars (if any) and a copy of the docket/statements;
 - 3.2.5 Whether the legal representative has consulted with accused person.
 - 3.2.6 Where multiple accused have the same legal representative, whether there is a possibility of any conflict of interest.
 - 3.2.7 Whether the parties had exhausted all possibilities to make representations to the prosecution
 - 3.2.8 Whether the state intends to present any evidence of a technical nature. This may include, for example, admissions or confessions, pointing out by the accused person, forensic evidence, expert testimony or statements in terms of section 212 of the Criminal Procedure Act, 51 of 1977 (CPA) or other documentary evidence.
 - 3.2.9 The number of Accused and the number of legal representatives.
 - 3.2.10 The number of witnesses the prosecution intends to call.
 - 3.2.11 Whether such witnesses include any child witnesses, witnesses with mental or other disabilities.
 - 3.2.12 Whether an appropriate language intermediary is necessary and whether arrangements have been made.
 - 3.2.13 Whether there are any technical requirements for the trial, such as the use of an intermediary, audio visual equipment, etc.
 - 3.2.14 Whether any foreign language interpreters or other specific interpreters are necessary for any of the Accused or for any of the witnesses and whether any arrangements have been made.
 - 3.2.14.1 The court must conduct an inquiry to determine the language the Accused understands (as provided in s 35(k) of the Constitution) rather than the mother tongue or preferred language of the Accused. Such enquiry must be recorded.
 - 3.2.15 Whether the appointment of assessors is necessary?

3.3 The estimated duration of the trial and proposed trial dates:

- 3.3.1 When setting the matter down for trial, the regional magistrate must determine the number of days and time that will be required for the matter to be finalised with reference to the information obtained in 3.2 above.
- 3.3.2 Every attempt should be made to allocate a continuous roll during which the matter could be tried to completion.
- 3.3.3 Where the matter cannot be placed on a continuous roll, the matter should be staggered over a number days sufficient to cover the determined trial days (e.g. if the matter requires five trial days, and successive days are not possible, it should be placed staggered by being placed for two or three days in week 1, two or three days in week 2 or another day or two in week 3, to ensure that evidence will be finalised within that month still.).

- 3.4 The case enrolment period and estimated duration should be revisited as the circumstances of the case require or unfold and enrolment should cover the newly determined days.
- 3.5 Where any of the issues above have not been answered satisfactorily the judicial officer may remand the case to a later date for a further pre-trial hearing and may give specific directions to parties.
- 3.6 Any *in limine* or preliminary issues, including legal representation, should be resolved before the matter is set down for trial. This may include referral for observation in terms of section 77 or 78 of the Criminal Procedure Act, 51 of 1977.
- 3.7 The prosecution and defence must as soon as possible determine whether the witnesses required for the trial are available (state witnesses / defence witnesses).
- 3.8 Where a matter has been set down for trial and an issue arises which may prevent the trial proceedings this should be brought to the attention of the presiding officer and other parties as soon as possible.
- 3.9 No postponements should be granted unless it is necessary and in the interest of justice. All postponements should be granted for the shortest possible time and the proceedings must be fully recorded mechanically and the reasons for such postponement be adequately recorded on the J15 court record.
- 3.10 Every regional magistrate must ensure that sufficient work is placed on the roll to facilitate finalization of cases and ensure optimal utilization of court time, inclusive of part-heard matters where evidence is still to be presented and / or judgments and sentences.
- 3.11 Court should always ensure that a case that is a 'back-up' on its first date of trial is postponed as a preferential case on the next trial date.
- 3.12 Child and mentally disabled witnesses should not be put on the stopper roll as back-up witnesses. Rolls involving child witnesses should be arranged in such a manner that would enable the rolling over of that case to the next day to facilitate finalization of the testimony of such child.
- 3.13 Cases involving children in conflict with the law must be prioritized when placed for trial and Regional Magistrates must ensure that they comply with the time periods and limits for postponements and finalization of these cases as prescribed by the Child Justice Act.
- 3.14 Cases where Accused had been remand detainees for 18 months or longer must be prioritized when placed for trial.
- 3.15 High priority cases especially sexual offences must not be put on the roll with other high priority/preferential matters.

4. JUDICIAL CASE AND TRIAL MANAGEMENT

- 4.1 Sexual Offences cases must receive priority on the date of trial and care should be taken that such cases are not crowded out.

- 4.2 Cases where a child witness must testify must be dealt with first. Where it is not possible to finalise the evidence of that child on the same day, the case should be rolled over to the next day or the next staggered date.
- 4.3 Partly heard cases must be prioritized in order to ensure the expeditious finalization of cases.
- 4.4 The Regional Magistrates are encouraged to explain to all affected persons the reasons why their cases cannot be dealt with on a scheduled date and how the matter will be dealt with further.
- 4.5 No case may be postponed merely because of the absence of a particular witness, provided that other witnesses are available to testify. Where witnesses are present at court their evidence should, as a rule, be finalised.
- 4.6 Requests for postponements should only be made in court and prosecutors are not to excuse lawyers or witnesses until the postponement has been granted by court.
- 4.7 In terms paragraph 5.2.5(ii)(b) of the Norms and Standard accused should plead within three months after first appearance in the Regional Court and the matter must be finalised within six months after plea.
- 4.8 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 plea.
- 4.9 Regional Magistrates should not have more than 15 part heard cases at any given time. A Regional Magistrate with 15 or more part heard cases should not start any new cases without a written approval from the RCP.
- 4.10 Regional Magistrates who have more than 15 part heard cases must submit an action plan on how they are going to reduce their part heard cases and monthly report on progress. Regional Magistrates who have more than 25 part heard cases must reduce this to no more than 25 part heard cases within six months. All Regional Magistrates must ensure that they have no more than 15 part heard cases within 9 months from these practice directives.
- 4.11 Where a party unreasonably delays a matter, or fails to comply with a provision of the directives, the court must, in appropriate circumstances, hold an enquiry and may make an order in terms of Section 342A of the Criminal Procedure Act, or refer the matter to an appropriate body. This can also be relevant when the court has to decide on an application for a permanent stay of prosecution and/or in determining whether to invoke the provisions of section 108 of the Magistrates' Court Act, Act 32 of 1944 as amended.
- 4.12 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.

5. GENERAL

- 5.1 All proceedings including postponements must be mechanically/digitally recorded.
- 5.2 Upon the direction of the RCP 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).
- 5.3 All itineraries and where applicable MC9 trip authority for official travel, must be submitted timeously to the RCP for approval.
- 5.4 All communications with the presiding regional magistrate must be in open court and recorded, including communications with legal practitioners and prosecutors.
- 5.5 In circumstances where it becomes necessary to bring whatever information to the attention of the court timeously and before a court sitting, the information must be communicated to the court in writing (unless the circumstances dictate otherwise) through the assistant registrar/registrar or the Regional Court President.

6. COMMENCEMENT:

The amended practice directives will take effect on 1 September 2017 as per resolution of the Regional Court Presidents' Forum on 17 August 2017.