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



The Practice Directives are intended to improve uniformity, share best practices, assist with court and case flow management and inform apply to 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. If, for instance, any party has deliberately or negligently fail to comply with a provision of the directives it can be a matter for consideration when a court adjudicates on an application for postponement or finds that the proceedings have been unnecessarily delayed and opts to make any of the orders in terms of Section 342A of the Criminal Procedure Act, or when the court finds that there is an ethical breach and decides to refer the matter to the 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.

INTRODUCTION

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1. COURT AVAILABILITY AND COURT SESSIONS

- 1.1 A court must timeously prepare a roster of its sittings and maintain a diary of the cases placed on the roll, including circuit court sessions. Travelling itineraries must be authorised by the Regional Court President in advance. A court must always be available on all court days as scheduled. Where this is not possible it must be timeously disclosed to all stakeholders by appropriate notices being affixed to the courtroom door and communicated to all the parties concerned.
- 1.2 The regional magistrate must, without being called to do so, no later than 09h00 enter his/her court and sit until the court adjourns for any reason which must be recorded in the Court Book and/or on the Charge sheet (J15). The Court must inform the parties of the time of resumption of the sitting and at which said time the Court will resume sitting without having to be called. Eg. Court adjourns at 09h30 for a witness and directs the appropriate action to be taken to secure the presence of the witness at court and that it will resume at 10h00 unless earlier called.
- 1.3 All role players are expected to be ready to commence proceedings at no later than 09h00 and to remain in attendance until excused by the Court.
- 1.4 Actual court times must be accurately recorded in the Court Book.
- 1.5 In instances where the security of the court or the safety of a regional magistrate is seen by the security personnel and/or court orderly to be at issue, such fact must be timeously communicated to the regional magistrate of the court concerned and arrangements are to be made with minimal disruption of court starting/sitting times.

- 1.6 In centres where more than one court sits and such courts have circuit courts, the Regional Court President or his/her delegate must always ensure that there is a court at the main centre to deal with urgent and/or other matters pertaining to regional courts.
- 2. **CASE ALLOCATIONS AND APPEARANCES**
 - 2.1 In centres where more than one regional court ordinarily sits, the Regional Court President or his/her delegate may decide that there is one port of entry / or allocating Regional Magistrate for all matters that come before that regional court centre for the first time and that port of entry (Regional Court Allocating Regional Magistrate) will allocate these cases to itself and the other courts as and when the need arises. In such circumstances a court other than the allocating court / allocating Regional Magistrate shall not try a matter unless it has been appropriately allocated by the allocating court or the Regional Court President/ allocating Regional Magistrate and such allocation is in writing either on the J15 or other written authority. Allocation of cases must be transparent, fair and equitable.
 - 2.2 An allocation register (where applicable) must be kept by the Regional Court President/allocating regional magistrate.
 - 2.3 At each first appearance in the regional court or such other court seized with the trial of the matter the rights of the accused and other relevant information must be explained [especially in the case of an unrepresented accused] and the necessary assistance accorded to ensure that such rights are, where applicable, enjoyed and such must be made part of the court records. Such rights and information include but are not limited to, legal representation, bail, docket information, competent verdicts, minimum sentences, etc.

4.1 Only cases in relation to which the prosecution and defence have confirmed their readiness for trial should be set down for trial. Regional Magistrates must be proactive and only set the matter down for trial after confirmation of at least the following aspects :
4.1.1 that the defence has received full disclosure

4. CASE READINESS, ENROLMENTS AND TRIAL SET DOWNS

3.2 Court clerks/assistant registrars/registrars are not to communicate to the presiding officer any information which relates to the merits of the matter or could otherwise compromise the presiding officer unless this is done in open court when the matter is called as part of the day's roll. In circumstances where the court clerk/assistant registrar/registrar feels that the matter is urgent and is unsure as to what to do he/she must approach the Regional Court President or his delegate or another regional magistrate for advice.

3.1 Communications with the presiding regional magistrate must be in open court. Communication in chambers must only be in the presence of both the prosecutor and defence counsel. The practice of prosecutors or lawyers phoning the presiding officer for whatever 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 court clerk/assistant registrar/registrar or the Regional Court President or the delegate of the latter.

3. COMMUNICATIONS WITH COURT (REGIONAL MAGISTRATE)

4.1.2 that the final charge sheet containing all charges had been received by the defence

4.1.3 that consultations necessary for trial purposes had taken place by both the defence and the state

4.1.4 that the defence had been placed in sufficient funds for the dates the trial had been set down

4.1.5 the parties had satisfied the presiding regional magistrate that they had exhausted all possibilities to make representations to the prosecution and/or enter into a plea and sentence agreement

4.2 When a party confirms his/her readiness for trial he/she undertakes that the commencement of the trial will not be delayed by reason of a fact which existed at the time of readiness when such was pronounced. The facts not existing at the time of readiness will be unavailability due to death, illness, power shortages or *vis major*.

4.3 During the determination of the trial date the court shall enquire from the parties upon the following:

4.3.1 The number and nature of the charges to be preferred against the accused

4.3.2 The possible plea, if any, to such charges;

4.3.3 The number of witnesses to be called by each party;

4.3.4 The envisaged length of the evidence of any such witness, including possible admissions;

4.3.5 Determine need for the use of assessors, intermediaries, foreign, specialised or specific language practitioners

NB: Where practical and possible, accused should be asked to plead before a matter is set down for trial.

4.6 In the event of a reason necessitating a postponement arising prior to the trial date the affected party must immediately communicate same in writing to the registrar/assistant registrar. This communication does not absolve the party concerned from properly making the application

4.5 The final decision as to the period to which the case should be postponed for trial, is that of the court and it may be a period/s which are not necessarily suitable to the respective litigants in instances where the interest of justice so requires and it may be a period that necessitates that the prosecution brings in another prosecutor who can be available and the same may in certain circumstances apply to the defence/accused.

4.4 Every attempt should be made to allocate a continuous roll during which the matter could be tried to completion. Where this is not possible the court should, when setting the matter down for trial, determine the envisaged time for the matter to be finalised. For instance, if the estimated duration of the trial is five days and the only five days are available in the distant future (and accused are in custody) it would be appropriate to staggered dates to cover the required period of five days. (e.g. the matter is to be set down for September and the first available five days are in March whilst there are two days available in January and another two or three days in February the court may then set these staggering dates as trial dates.) Staggering of dates is a very effective strategy and should be encouraged. The good thing about this approach is that the court does not wait for the two days in January to identify the extra time required because by then the available period is likely to be May or later. Neither does it help to just go for March because should the case for whatever reason not proceed in March the only other available period could be in July/August and if the accused is in custody the situation could be even more embarrassing.

4.8 The practice of legal representatives simply not appearing on trial dates or simply sending a message that he/she cannot attend for some or other reason is very disturbing and must not be tolerated. Not only does this result in the case concerned not proceeding but embarrasses the court because witnesses who had been subpoenaed are inconvenienced as well as friends and relatives or members of the public who have sacrificed their time to attend the trial are also inconvenienced and financially prejudiced but more than this time is wasted which could have been utilised in hearing other urgent matters in relation to which some accused may be in custody. Similarly, the practice of prosecutions being withdrawn and/or prosecutors not being available on trial dates is equally embarrassing for the same reasons as mentioned earlier. Regional magistrates must, in terms of the Code of Conduct (number 14) of Regulation 54A of the Magistrates' Act, Act 90 of 1993, report any such practice that amounts to unprofessional conduct to the appropriate controlling authority.

4.7 Regional Courts are enjoined to place at least 3 trial cases (inclusive of part-heard matters where evidence is still to be presented) per day on the roll that would be sufficient to occupy the court for full court hours. One may be a preferential case and the other two can be 'back-up' cases which remain on stand by for a situation where the preferential case does not for some reason proceed or is finalised earlier than anticipated

for postponement in court and does not necessarily mean that the postponement will be granted or that the court may not make any other appropriate order resulting there from. The timous communication, may, of course, indicate that the party concerned is conscientious and responsible and may enable the court to timously set down 'back-up' cases for the day.

5.3 Regional Magistrates must at all times ensure that all court officials (which include attorneys, advocates, language practitioners, intermediaries, clerks of the court, registrars, assistant registrars, etc) are duly qualified to appear and act before them. Court officials are

5.2 Regional Court Presidents find any sitting of less than three hours on any one day as completely unacceptable and the regional magistrate whose court sits less than three hours on any particular day must immediately report same in writing with reasons to the Regional Court President so as to urgently solve the problem. Furthermore it is expected of such a court to first take the necessary action pertaining to the problem and to, where necessary, invoke the provisions of Section 342A of the Criminal Procedure Act, Act 51 of 1977.

5.1 Court sitting times are generally from 09h00 -11h00; 11h15- 13h00; 14h00 – 16h00 which totals 05h45. The Court may sit before and after the specified times and even outside these times including breaks. In fact this is often encouraged. Because of the challenges that often attend court sittings, Regional Court Presidents still find an average sitting of 4 hours 30 minutes per day in any one month acceptable.

5. COURT AND TRIAL MANAGEMENT

The relevant ethical institutions to which the court make referrals for internal disciplinary investigations (especially in terms of Section 342A of the Criminal Procedure Act 51 of 1977) are implored to view such conduct in a serious light. It may well be that where the court considers such conduct as constituting a serious disruption or contemptuous behaviour the court may consider invoking the provisions of Section 108 of the Magistrates Court Act, Act 32 of 1944.

- expected to supply proof of the appointment, oath of office, instructing brief etc.
- 5.4 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.
 - 5.5 Court should take responsibility of and not fail to appropriately apologise to the witnesses, accused and other affected persons for failure to commence with a trial on the trial date, postponement or where the court time expires before the testimony of a witness and to explain the situation and how it hopes to remedy the situation at the next appearance. 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. 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.
 - 5.6 The Regional Court always expects that the investigating officer whose case is before court to be in attendance or be represented by a colleague who would urgently inform him /her of the developments in court regarding the case. The practice of waiting for the docket to be returned to the said officer who is more often than not delayed frustrates the smooth operation of the courts and should be reviewed.
 - 5.7 In cases where amends can be made by way of police/investigating officers going to look for an absent witness where it is not difficult to do so rather than wasting time or necessitating a postponement such amend should be done and mechanisms put in place to ensure such amends are carried out.

6.1 In principle it should be accepted that cases at a specific seat are the responsibility of ALL courts at that seat and not only the court to which the case was originally allocated to. Therefore it is expected of a court which has finished its work for the day and a court which will probably not be sitting normal court hours for that day to draw a case from another court subject to the following guidelines:

6. DRAWING OF CRIMINAL CASES

5.10 Requests for postponements should only be made in court and prosecutors are not to excuse witnesses until the postponement has been granted by court. Before a case is postponed or crowded out due to roll congestion the regional magistrate must first consider whether another court cannot deal with the case. In such instance it is suggested that the case be transferred to the other court by not later than 12h00 to enable the parties to consult and prepare for trial.

5.9 When a case is postponed for sentence and the convicted accused is a primary care giver this must be brought to the attention of the court for an appropriate investigation and report to be ordered timeously and/or the prosecution/defence must secure such investigation and report timeously and not wait until the matter comes to court again.

5.8 When a court makes an order or a party requests a pre-sentence report it must specify the aspects which the said report should cover, including the offence/s he/she had been convicted off, specific relevant findings made by the court regarding the accused role in the commission of the crime and whether the provisions of the Criminal Law Amendment Act, Act 105 of 1997, are applicable.

7.1 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.

7. DELEGATION:

- 6.1.1 A case should only be drawn from a court if it is reasonably expected that the court from which is to be drawn will still be busy for at least one hour from the time the case is drawn.
- 6.1.2 Only a case that is ready for trial should be drawn: The state witnesses (or at least one of them) should be present (or available within a reasonable time) and the prosecution and defence should be ready (or ready within a reasonable time). The case does not need to be finalised within that day.
- 6.1.3 If the prosecutor and/or legal aid attorney which usually appears in the court from which the case is drawn is appearing in the case in the court drawing the case (i.e. the case is drawn with prosecutor and/or legal aid attorney), the court from which the case was drawn will accommodate the court drawing the case regarding a postponement date as the partly heard drawn case should take preference to other new cases.
- 6.1.4 No court has to draw a case after 14h00.
- 6.1.5 It is not expected of a court to draw a very long and involved case. Drawing of cases may not be used to get rid of involved cases.
- 6.1.6 No Regional Magistrate may refuse to draw a case from any other Regional Court. Written reasons for the refusal to draw a case must be recorded on the case record or be sent to the Regional Court President.

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

8. COMMENCEMENT: