



**MAGISTRATES' COURT  
JUDICIARY  
REPUBLIC OF SOUTH AFRICA  
SOWETO**

**CIVIL COURT TRIAL ROLL PRACTICE GUIDELINES  
Dated 1 October 2015  
Updated: 18 July 2017**

In revising these guidelines, this office acknowledges:

- (i) the Practice Manual of the Gauteng Local Division of the High Court of South Africa
- (ii) the contribution of my colleagues in the Civil/Family Section at the Magistrates Court of Soweto and the Magistrate's Court in Johannesburg Central with the initial guidelines.

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**Head: Civil/Family Courts**  
18 July 2017

**# 1 APPLICATION OF THE PRACTICE GUIDELINES**

- 1.1 These practice guidelines sets out the practice of Civil Section of the Magistrate's Court, Soweto Republic of South Africa.
- 1.2 The purpose of these practice guidelines is to promote and expedite access to the courts. The practice guidelines are to be applied so as to facilitate the expeditious handling of disputes and the minimization of costs involved. As such it seeks to inform how the courts in this magistrate court function. It also seeks to obtain uniformity amongst magistrates in respect of practice rulings. It must be emphasised that no magistrate is bound by practice guidelines. Accordingly, the practice guidelines are not intended to bind judicial discretion. Nonetheless, it should be noted, that the magistrates of this magistrate's court strive for uniformity in the functioning of the courts and their practice rulings.

- 1.3 These practice guidelines will not only enable the courts to commence as soon as possible, but will also ensure that all matters are attended to as soon as possible.
- 1.4 These practice guidelines supersedes all previous practice guidelines in respect of the trial roll and comes into effect on immediately.
- 1.5 Amendments to these practice guidelines can only be made by the Senior Magistrate after consultation with the other magistrates of the Soweto Magistrate's Court Civil Section.
- 1.6 References in these practice guidelines to the rules are to the rules of the Magistrate's Court Act 32 of 1944 as amended.
- 1.7 References in these rules to "attorney", includes "counsel".
- 1.8 Reference to "court" is to "**court 1**".
- 1.9 Reference to the "clerk of the court" is – unless indicated otherwise – the clerk of the court in the civil office dealing with the trial roll.

## **# 2 CERTIFICATION and PRE-TRIAL CONFERENCES**

In terms of the requirements of the Chief Justice's Norms and Standards ("the CJNS") published on 28 February 2014 (Government Gazette 37390 GN 147) no matter may be enrolled for hearing unless it is certified trial ready by a Judicial Officer.

In order to achieve that object the following guidelines are provided:

- 2.1 A certification hearing (including a pre-trial conference as provided for in Rule 25) as contemplated in Regulation 5.2.4 headed "Judicial Case Flow Management" of the CJNS must be held in every matter (including evictions where a summons was issued) which is to proceed to trial.
- 2.2 Where a party wish to request for the allocation of a trial date, such party shall approach the clerk of the court (trial dates) and cause a FORM "A" to be issued. A copy of the FORM "A" as well as the annexure (FORM "B") containing list of notices and pleadings shall be delivered on each and every party to the action at least 10 days before the hearing of the matter. In order to determine whether a matter is trial ready the FORM "B" needs to be completed for consideration by the magistrate allocated for certification hearings.
- 2.3 In order to ensure whether a matter is trial ready a certification hearing must be held after discovery and after the parties have exchanged documents as contemplated in Rule 23. In the event of discovery being made after the holding of the certification hearing, a further certification hearing must be held after such discovery and exchange of discovered documents.

- 2.4 A matter will be considered ripe for trial where it appears at the certification hearing:
- 2.4.1 that the parties have seriously endeavoured to narrow the issues and explore settlement;
  - 2.4.2 that the pleadings disclose a proper cause of action/defence in terms of the Rules;
  - 2.4.3 that there are no outstanding requests for admissions or particularity and no outstanding requests for documents;
  - 2.4.4 that, where applicable, all the experts notices have been delivered;
  - 2.4.5 that the trial is ready to commence immediately and run to a conclusion. This implies that there was consultation with the witnesses before the pre-trial.
- 2.5 Parties have a continuous obligation to seek to narrow issues and to comply with the substantive requirements of Rule 25 read with section 54.
- 2.6 If it appears at the roll call that one party has prevented substantial compliance with Rule 25 despite genuine and timeous efforts by the other party to achieve substantial compliance therewith, the court may allocate the matter if it appears the matter can run to a conclusion.
- 2.7 The court may deal with the issues of costs arising out of any postponement at the certification hearing rather than reserving the costs.

### **# 3 ATTORNEY'S DRESS**

- 3.1 Attorneys are required to be properly dressed at roll call. If not properly dressed they run the risk of not been "seen" by the presiding magistrate.
- 3.2 Proper dress for attorneys comprises:
- A black attorney's gown.
  - Appropriate clothing (no t-shirts, takkies, or any other inappropriate dress).
- 3.3 It is not proper for attorneys to enter court not fully robed as set out in paragraph 2 and 3 supra. It follows that attorneys should not robe in court.

### **# 4 COURT SITTINGS**

- 4.1 Trial matters are to be set down for Court 1 and no other court.
- 4.2 Roll call of civil trials commences at 8h30.
- 4.3 All other courts in the Civil Section will commence sitting at 9h00. The courts adjourn at 11h00 and resumes sitting at 11h15. The courts adjourn at 13h00 and resume sitting at 14h00. The courts adjourn for the day at 15h30.
- 4.4 Attorneys must be punctual in their attendance in court at the aforesaid times.

- 4.5 The presiding magistrate may – except for the roll call court – at his/her discretion deviate from the times set out above.

## **#5 ALLOCATIONS OF CIVIL TRIALS**

- 5.1 A trial will normally be allocated by the Senior Magistrate or a senior additional magistrate for hearing by a specific magistrate.
- 5.2 Only trials that are ready for immediate commencement and continuous running to their conclusion will be allocated for hearing.
- 5.3 Matters that are ready to proceed, as well as opposed postponements, will be allocated to a magistrate immediately after the matter is called, and not after the entire roll has been called.
- 5.4 The allocation of the magistrate will be withdrawn should the parties in respect of such allocation not be ready to commence the proceedings within 15 minutes after the allocation.
- 5.5 Where parties have a signed settlement agreement they wish to make an order of court such matter will either be attended to immediately by the magistrate calling the roll or will immediately be allocated to another magistrate to record the settlement. In instances where another magistrate is allocated attorneys must approach the magistrate within 15 minutes of the allocation.
- 5.6 Matters that require standing down for settlement or discussion will be stood down until 10h00. Should the parties involved not approach the magistrate tasked with the allocation of magistrates by 10h00 the matter will be automatically removed from the roll.

## **#6 CLOSURE OF THE TRIAL ROLL**

- 6.1 The trial roll closes at 13h00 on the day preceding the allocated trial date whereafter access to the court file will not be permitted.
- 6.2 The prohibition of access to the court file continues for the duration of the trial save with leave of the trial magistrate.
- 6.3 No trials are allocated from 15 December until the second week of the following year.

## **# 7 PREPARATION OF PAPERS**

- 7.1 The original summons, the original return of service, and other original documents in respect of the action must be contained in the court file.

## **# 8 ENROLMENT**

- 8.1 The trial roll for a particular week closes at 12h00 on the Thursday preceding the week. If the Thursday is a public holiday the roll closes one day earlier.
- 8.2 After the closure of the roll, the parties to a trial roll matter are not entitled to access to the court file and may not insert or remove documents from it. Such leave must be sought at the first calling of the matter and must be supported by an affidavit.
- 8.3 Access to the court file must not be sought from the relevant magistrate.

## **# 9 MATTERS NOT ON ROLL**

- 9.1 Any matters not on the roll must be brought to the attention of the presiding magistrate at roll call. AFTER the call of the trial roll at least once the presiding magistrate will invite attorneys to mention matters not on the roll. It is imperative that attorneys appear in court from the outset and inform the court about the matter/s not on roll. Once the matter is enrolled the presiding magistrate will give directions for the hearing of the matter.
- 9.2 Once attorneys have determined that a matter is not on the trial roll and the relevant court file has been located, the court file should be handed to the presiding magistrate or stenographer in court 1.
- 9.3 If the matter is not on the roll due to a fault in the clerk of the court's office, the file should be so endorsed to that effect by the clerk of the court dealing with trial matters.
- 9.4 If the matter is not on the roll due to an act or omission on the part of the attorney who was responsible for the enrolment of matter, an affidavit explaining the act or omission by the attorney must be filed in the court file. In the absence of urgency and prejudice the matter will not be enrolled.

## **#10 POSTPONEMENTS**

- 10.1 A date must be arranged with all parties concerned and the clerk of the court (trial dates) when a trial matter, whether opposed or unopposed, needs to be postponed. FORM "C" prepared for this purpose must be completed by the attorney and handed to the clerk of the court for confirmation that the date was entered onto the court roll. The document so prepared is to be handed in to the presiding magistrate.

## **#11 PART-HEARD TRIALS**

- 11.1 As a general rule, part-heard trials should be avoided. Accordingly no trial should be commenced where any issue or consideration exists to the knowledge of the attorneys that would interfere with the completion of the trial.
- 11.2 A magistrate hearing a trial will be most reluctant to postpone a trial which will result in a part-heard trial.

## # 12 SETTLEMENT AGREEMENTS

- 12.1 Where the parties to a civil trial have entered into a settlement agreement, a magistrate will only make such settlement agreement an order of court if -
- 12.1.1 the attorneys representing all the parties to the trial are present in court and confirm the signature of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court,
- or
- 12.1.2 proof to the satisfaction of the presiding magistrate 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.
- 12.2 Without derogating from the above requirements, where a Minister of State, Member of an Executive Council (MEC) or State-owned company or enterprise is a defendant in a civil trial and the parties have concluded a settlement agreement, a judge will only make such settlement agreement an order of court if the parties provide written proof to the satisfaction of the presiding judge that the responsible Minister, MEC or chief executive officer of the State-owned company or enterprise is aware of the settlement and has approved it.
- 12.3 Where the Minister of Police is the defendant in a civil trial, the parties shall, in addition to the requirements set out in 12.1 and 12.2 above, provide the presiding judge with a certified copy of the plaintiff's identification document or passport.

### 12. 4. **Contingency Fees Act 66 of 1997.**

In all matters where the parties seeks a settlement agreement to be made an order of court, such parties must also comply with the provisions of the Contingency Fee Act, 66 of 1997 read with the judgment in *Masango v The RAF* 2016 (6) SA 508 (GJ).

11 November 2015 (First issued)  
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