REPUBLIC OF SOUTH AFRICA

THE REGIONAL COURT PRESIDENT'S FORUM

CRIMINAL AND CIVIL PRACTICE DIRECTIVES FOR THE REGIONAL COURTS IN SOUTH AFRICA

ADDENDUM TO THE REGIONAL COURT PRACTICE DIRECTIVES DURING THE 2020 NATIONAL STATE OF DISASTER (CORVID-19 VIRUS)

DATE: 22 JULY 2020

1. Whereas the Chief Justice has issued the Directives in terms of section 8(3) of the Superior Courts Act 2013 (Act no 10 of 2013) giving the Head of Courts the power to issue directives regarding the day to day running of the courts AND;
2. Whereas the Minister of Justice and Correctional Services has issued Directions in terms of the Disaster Management Act , 2002 in terms of which;

- persons with material interest in a case such as litigants, accused persons, legal practitioners, witnesses, or other persons who may be needed to provide support to the litigants, accused persons and witnesses including family members and persons accompanying children etc. are permitted to enter a court room, a court house, or justice service point;
- the number of persons entering a courtroom, courthouse or justice service point may be limited based on the floor space of the courtroom, courthouse or justice service point concerned to ensure compliance with the requirements

relating to physical distancing;

- Entry into a court room, courthouse or justice service point may be allowed in respect of permitted services listed in the Annexure to Alert level 3 Directions by the Minister and subject to the conditions detailed in the Minister's Directions AND;

3. Whereas the Regional Courts are prepared to deal with such permitted services listed in the Annexure to Alert level 3 Directions by the Minister and subject to the conditions detailed in the Minister's Directions AND;
4. Whereas in terms of paragraph 3.10 of the Criminal Practice Directives "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" AND;
5. Considering the fact that the DOJ and other stakeholders such as the NPA are utilizing staff on a rotational basis AND;
6. Taking into account the exponential spike of Covid-19 infections, the concomitant mortality rate and the dangerous circumstances under which the courts and the Magistrates operate in dealing optimally with the permitted services listed in the Annexure to Alert level 3 Directions by the Minister AND;
7. Further taking into account that the optimal enrolment of the court rolls in terms of the Regional Court Practice Directives also contributes to the overcrowding of the Courts AND;
8. Considering that the Regional Court President's Forum, (the RCPF) has, in line with the directions of the Minister and the Directives of the Chief Justice,

decided that the Regional Courts will remain open during the current Alert Level of the National State of Disaster and shall deal with all the cases listed in the current Directions issued by the Minister of Justice in terms of the current Regulations;

9. The RCPF has therefore decided that while the different circumstances prevailing in different courts will attract different responses, the increased levels of the Corona Virus infections in the lower courts have however necessitated an intensified uniform approach and response from the South African Regional Courts in order to enhance the safety of court officials and users whilst simultaneously not negatively impacting on access to justice.
10. The RCPF has decided that Regional Magistrates shall hold bi-weekly judicially managed case management meetings with the relevant court staff including the NPA and the legal practitioners involved, for the purpose of identifying trial ready priority cases and confirmation of trial-readiness of these cases for a specific period.
11. The number of identified cases for trial on each day is to be kept to a minimum. The determination of the number of cases to be enrolled in each court shall be made by the presiding Regional Magistrate as stated in paragraph 10 and she/he will retain the ultimate discretion to determine which cases to enrol for trial.
12. Partly-heard cases and other appropriate cases shall be prioritized for hearing at these judiciary-led consultations. In the event that it becomes known that an identified trial-ready case will not proceed, the official or stakeholder responsible or affected shall immediately inform the court and other

stakeholders in writing so that alternative arrangements can be made.

13. Criminal trials already set down for hearing shall be dealt with and disposed of as directed by the presiding Regional Magistrate: Provided that every effort shall be made to ensure that overcrowding is avoided and the safety of the court personnel and other court users is not compromised. Measures to consider include that not all witnesses be required to be at court at 09h00 but that they be staggered through the day.
14. In prioritizing these cases regard should be had to, *inter alia* the following in order to limit the rate of infections within our courts environment and to improve the safety of the officials and the public from the threat of the Corvid-19 virus:
    1. Prioritization of partly heard cases;
    2. Prioritization of cases involving the accused in custody, provided that they are trial ready and in particular, the defence and the State confirm that full consultations have taken place. In this regard the correctional centres to make available resources to facilitate such consultation. No matter may be set down for trial unless there is confirmation that such consultation has taken place. Trials involving accused <u>not in custody</u> should preferably be postponed for trial to future dates beyond the estimated coronavirus peak period as may be determined by the Regional Magistrate in line with the RCP's directives unless the matter is urgent.
    3. Unless it is absolutely unavoidable, cases involving vulnerable witnesses and small children requiring close contact or intimate

intermediary assistance and older people and generally those which cannot be dealt with without compromising the social distancing rules and the health and safety of court officials and users may be considered for postponement in order to curb the spread of the Covid-19 virus.

4. Potentially lengthy criminal trials which pose a risk to court officials should preferably be postponed in consultation with the State and the defence.
5. Where possible and available, all the postponements of cases involving the accused in custody must be dealt with through the AVR, virtually or other electronic communications in consultation with DCS, the NPA SAPS and the defence.
6. Where required the detention warrants, (J7) should be issued electronically and the DOJ& CS should expedite the facilitation and implementation of this measure.
7. The use by each court of fixed personnel such as Prosecutors, defence counsel (especially legal aid), court clerks, interpreters, etc., over a specified period, which could be a week or two.
8. The release by the management of their personnel on remote work arrangements after the disposal of every day's court sitting, so as to minimize social interactions amongst officials.

CIVIL MATTERS

15. Appearances and hearing in civil matters should as far as possible be done through audio-visual links. The utilisation in civil proceedings of forms and procedures that require physical contact should be minimized unless the

matter is very urgent and there are no other non-contact methods that can be used.

16. The use of written affidavits and submissions in undefended actions, including divorces that would ordinarily have required used oral evidence and oral addresses, should be considered especially where parties agree thereto. Such affidavits and written submissions to be filed together with the requests for trial date or notice of set down.
17. The use of pre-trials and judicially managed pre-trials to be intensified and the courts to give directions regarding the future conduct of every matter including the platform to be used in the hearing of the matter. Therefore when filing their requests for dates of hearing or notices of set down with the Registrar/Assistant Registrars, the parties shall also indicate whether they agree to the use of any virtual platform or electronic/digital hearing of the matter.
18. All civil trials enrolled for trial during the disaster management period and which have not yet commenced should be postponed to post peak period or such other period as may be determined by the Regional Magistrate after consultation with the RCP based on the prevailing circumstances in that court or division.
19. The parties in pending civil matters where the leading of evidence has been concluded may, in consultation with the presiding Regional Magistrate, submit their heads of argument and agree that the matter be decided on the evidence and the written submissions without the need for the presentation of oral argument.

20. Partly heard matters in advanced stages which can be finalized speedily may be proceeded with at the discretion and direction of the presiding Regional Magistrate provided that all the measures necessary to curb the spread of the virus are in place and adhered to. The presiding Regional Magistrate may direct that unopposed and opposed civil matters be heard remotely on the virtual platform where the parties have agreed thereto in writing.
21. Where a trial necessitates the leading of viva voce evidence as in unopposed divorce matters, or default judgment, it shall not be necessary for the plaintiff and his/her attorney to attend court in person. Subject to the discretion of the presiding Regional Magistrate, the evidence necessary for the granting of a decree of divorce may be presented on affidavit, which shall be attached to the Notice of enrolment or request for enrolment, provided that –
    1. Where there are minor children involved the prayers regarding the status of the minor children are as per endorsement and recommendation by the Family Advocate;
    2. All the necessary evidence is set out in the affidavit. In this regard it is emphasised that primary facts and not conclusion of fact must be contained in the affidavit.
    3. The Regional Magistrate may, if needs be, still require oral evidence and may give further directions regarding how such evidence should be given.
22. All opposed trials including divorce matters which cannot be dealt with virtually or decided on affidavit shall be either postponed or removed from the roll as the case may be. Provided that: If a party insists that such a matter be enrolled for hearing he or she shall together with the notice of set down or request for

enrolment file a special request that the matter be so enrolled and specify the manner in which the oral evidence will be adduced. Provided further that upon receipt of such notice or special request the Regional Magistrate grants the application and gives directions regarding the future conduct of the trial.

23. All urgent applications shall be filed with Registrar who will liaise with the Regional Magistrate on urgent duty who upon receipt thereof will give directions as to how the application will be dealt further.
24. Unopposed applications including default judgments shall be dealt with on the papers which shall include heads of argument or written submissions from the party concerned where necessary. The heads of argument shall be filed electronically with the Registrar/Assistant Registrar or where so directed, with the presiding officer concerned.
25. In opposed applications the parties shall endeavour to reach an agreement dispensing with the presentation of oral argument and shall so advice the presiding officer concerned through the Registrar five/seven days before the hearing of the matter. Should the parties not agree on dispensing with oral arguments, the matter will be postponed or removed from the roll and a new date shall be arranged for the hearing thereof in consultation with the presiding Regional Magistrate who will give directions whether or not oral submissions are required and if so how such is to be presented.

GENERAL

26. Where it is necessary, especially at bigger centres, the courts may alternate on a rotational basis in order not to overstretch the available resources and not to overcrowd the court houses. The Regional Magistrates in those centres shall

therefore closely collaborate in putting together a coordinated plan for the court sittings in such centres where rotation is unavoidable.

27. Subject to the approval of the RCP, in the case where ventilation is poor or there is no natural ventilation at all, courts may sit for four to 5 days followed by four to five days (including weekends) non-sitting and working remotely with effect from 01 August. Remote work should be identified and set aside for this period, this might include judgment writing, preparing files for Civil work, and virtual postponements. The four to five remote work intervals/days will provide period during which any corona symptoms may show themselves to any of the court personnel /users, seeing that the average period during which most of the symptoms are reputed to show is five to six days in the 10 day symptoms waiting period.

28. The DOJ to expeditiously provide all the tools required for the virtual or electronic adjudication of cases as well as the full and efficient functioning ICMS. The DOJ also to ensure that an adequate Covid-19 protocol in implemented and complied with.
29. These Directives shall be effective immediately and may be amended from time to time as may be necessary: Provided that they shall not be construed to take away the right of individual Regional Court Presidents to make specific directions which may be necessitated by the special circumstances in a particular court or Division.

Approved by the Regional Court President's Forum on 22nd day of July 2020.