MAGISTRATES' COURTS JUDICIARY

JOHANNESBURG

PRACTICE GUIDELINES (PART A) - THE NATIONAL CREDIT ACT 34 OF 2005 (DEBT REVIEWS)

Johannesburg Magistrates' Court, Civil Section

These Guidelines should be read in conjunction with the Guidelines regarding Motion Court (hyperlink to Motion Court Guidelines).

These Guidelines came into operation on the 6th July 2020.

Updated: 7 July 2022

1. COURT DAYS FOR DEBT REVIEW APPLICATIONS

(a) A date needs to be arranged with the Clerk of the Court before a matter can be set filed or set down. CHECK LIST FORM A (insert link) is to be completed and handed to the Clerk of the Court when applying for a date of hearing. Every debt review application must be accompanied by a fully completed FORM A (insert link) before it is accepted by the Clerk of the Court for enrolment.

(b) Debt Review applications where FORM A (insert link) is improperly completed will be removed from the roll.

(c) In all matters the Debt Counsellor(s) must ensure that matters are filed with all the required documents within the Timelines provided for in the National Credit Act Regulations paragraph 24 (see DEBT REVIEW PRACTICE GUIDELINES PART B).

(d) Debt Review Applications can be allocated date from Monday to Thursday – which is not public holiday.

2. COURT SITTINGS

(a) Debt Review matters are to be set down for hearing in Court 27 and no other Court.

(b) The PRACTICE (FORM B) (insert link) must be placed on the file at least by 15h00 the Thursday preceding the week prior to the hearing.

3. PRACTICE NOTE

(a) Each application must be accompanied by FORM B (insert link).

(b) This practice is equally applicable to opposed and unopposed applications.

(c) The practice note shall set out the name of the applicant as well as the consumer and the case number. In addition, it will contain a table making provision (as per the specimen below) for:

(i) the name and relevant reference number of each of credit provider;

(ii) the page reference in respect of each credit provider regarding consent to service by email;

(iii) the page reference in respect of each credit provider regarding the certificate of balance (where provided);

(iv) whether the papers need to be read before the hearing and what parts are relevant for determination of the application;

(v) page references to new proposals and acceptance (those generated and obtained subsequent to the delivery of the application);

(d) FORM B (insert link) must also be filed on each occasion that the application is enrolled.

(e) Where the application is postponed or reinstated for hearing a new FORM B must be filed with the notice of set down.

4. NEW PROPOSAL(S) AND ACCEPTANCES

(a) Where the Debt Counsellor wishes to bring a new proposal and acceptance thereof (if any), to the attention of the Court, such must be done by way of a substantive application for leave to supplement with notice to all parties.

(b) The Debt Counsellor shall apply to the Court with notice to all parties for leave to supplement its papers: see the in *Pat Hinde and Sons (Brakpan) (Pty) Ltd v Carrim* 1976 (4) SA 58 (T) in this regard. The supplementary affidavit must explain what caused the Debt Counsellor to draft a new proposal subsequent to the service of the application.

5. SERVICE AFFIDAVIT

In all instances where service is required, including a notice of set down, a service affidavit needs to be filed.

6. JURISDICTION

The application must be brought in the Magistrates' Court having jurisdiction in respect of the Consumer; that is where the Consumer resides, works or carries on business. Couples who are married in Community of Property must apply jointly for Debt Review and, in this case, the Magistrates' Court where the couple resides has jurisdiction. Where the applicant is a Trust, the registered address of the Trust will determine jurisdiction. Proof of jurisdiction must be attached to the Debt Review Court Application as an Annexure.

7. SERVICE

Service of the application must be effected as per Rule 9 of the Magistrates' Court Regulations (MCR).

8. POSTPONEMENTS

(a) A date needs to be arranged with the Clerk of the Court. FORM C (insert link) needs to be completed and handed to the Clerk of the Court. Once the Clerk of the Court has determined a suitable date FORM C (insert link) will be issued. The issued FORM C must be handed in to the Court when the matter is considered.

9. HEARING

(a) The Debt Counsellor is to be present at each hearing of the relevant application and must have in their possession the credit agreements that form the basis of the debt review application (to facilitate the hearing). The Court may in appropriate circumstances order otherwise.

(b) An application for Debt Review should be paginated and indexed in terms Rule 63(3) of the Magistrates' Court Rules (MCR).

(c) In the event that the original proposal – as served on each Credit Provider – is amended, such amended proposal needs to be served upon all the Credit Providers.

(d) The amended proposal is to be accompanied by an explanatory affidavit deposed to be by the Credit Counsellor. The Court may, in its discretion, direct otherwise.

(e) A notice of set down must be served on all Credit Providers cited in the papers.

10. COURT ORDER

(a) The debt review order should make provision that:

(i) the Consumer is declared over-indebted;

(ii) the Consumer's debt obligations in terms of the National Credit Act 34 of 2005 are re-arranged in accordance with the information/proposal/terms contained in the Table; and

(iii) provision is made regarding costs.

(b) The Table should make provision for either fixed payments or fluctuating payments that have a cascading effect.

(c) Unnecessary information should not be included in the order.

(d) Where a Credit Provider has accepted the proposal, such acceptance must be attached to the order. The order must contain a reference to each and every acceptance so attached and the acceptance must be numbered. Other unnecessary documents must not be attached to the order.

(e) Draft orders must be filed in duplicate and space must be left for a Magistrate to sign.

(f) A pro forma order with options is attached hereto for the guidance of practitioners. The orders must be adapted to meet the exigencies of each case.