MAGISTRATES' COURTS JUDICIARY

JOHANNESBURG

PRACTICE GUIDELINES: MATTERS IN RESPECT OF SECTION 65A OF THE MAGISTRATES' COURTS ACT 32 OF 1944, AS AMENDED

Johannesburg Magistrates' Court Civil Section
Date: 25 March 2015 (to be applicable insofar as circumstances allow from 2 April 2015)
Revised: 8 July 2022

These Practice Guidelines in respect of section 65A matters set out the practice of Civil Section of the Magistrates' Court, Johannesburg, South Africa.

1. All matters pertaining to section 65A to 65M shall be heard in **Court 26** and only on Thursdays and in accordance with the annual Recess Calendar.
2. Only five (5) matters per attorney firm are allowed per day. Should there be a need for more than this number of judgment creditors, his or her attorney may approach the Head of the Civil Section to make suitable arrangements.
3. A maximum of (thirty (30)) matters per day shall be enrolled.
4. Where the judgment creditor wishes to issue a Section 65A(1) notice in respect of a judgment debt given in any other Court other than the Court of the district in which the judgment debt was granted, the judgment creditor shall deliver to the Clerk of the Court a certified copy of such judgment debt and an affidavit or affirmation by the judgment creditor or an affidavit by his or her attorney in which is mentioned the outstanding balance of the judgment debt, in what respects the judgment debtor has failed to comply with the court order, to what extent he or she is in arrear with the payment of the instalments and that the judgment debtor was advised by registered letter of the terms of the judgment (Section 65A(1) read with rule 45(4)). It will not be required that the **original judgment debt and Court file** be transferred from the Court where such judgment debt was given.
5. In line with the provisions of rule 45(1) the section 65A(1) notice must be supported by an affidavit or affirmation by the judgment creditor, or a certificate by his/her attorney stating-
   5.1 The date of the judgment,
   5.2 That the judgment or order has remained satisfied for a period of 10 days from the date on which it was given or became payable;

5.3 In what respect the judgment debtor has failed to comply with the judgment or order, the amount in arrear and outstanding balance on the date on which the notice is issued; and

5.4 That the judgment debtor has been advised by registered letter of the terms of the judgment, and that a period of 10 days has elapsed since the date on which the letter was posted.

6. A notice referred to in subrule (1) shall state the consequences of failure to appear in court on the date determined for the enquiry; or where the proceedings were postponed in the presence of the judgment debtor to a date and time determined by the court; and the judgment debtor has failed to appear before the court on that date and at that time; or where the debtor has failed to remain in attendance at the proceedings or at the proceedings so postponed (section 65A(6)) read with rule 45(2) and section 65A(9)).
7. The section 65A(1) notice must be preceded by a notice advising the debtor of the judgment, unless the debtor was personally present when the judgment was granted or the warrant of execution was served on him or her personally.
8. The notice advising the debtor of the judgment must be sent by registered post and advise him or her of the terms of the judgment.
9. Proof of this notice must be provided to the clerk of the court, and at least 10 days must have lapsed since the posting of the letter before the section 65A(1) notice may be issued (Section 65A(2)).
10. If costs to be taxed was awarded to the judgment creditor, the costs must be taxed by the taxing master, before section 65A proceedings are pursued (see rule 41(2) (a)).
11. If the judgment debtor is a juristic person it must be distinctly indicated in the notice that the responsible person is summoned in his or her personal capacity **and** in his or her capacity as the representative of the juristic person (Form 40 of Annexure 1).
12. The section 65A(1) notice should correspond substantially with Form 40 of Annexure 1. (See also rule 45(1)).
13. The judgment creditor has a duty to ensure that the correct judgment debtor and his or her responsible person in the case of a juristic person is/are correctly cited in the notice so that in the event that the debtor fails to appear after being served with a section 65A(1) notice or after the matter was postponed in his or her presence, the court may authorise a warrant for the correct judgment debtor his or her arrest. (See also rule 45(1)).
14. The judgment debtor should be warned to appear before the court on the date and time determined by the court if a matter is postponed in his or her presence or to remain in attendance at such proceedings (and court records or minutes of the proceedings should clearly record the name of the debtor who is present) in order to avoid delays in the proceedings and if the debtor fails to appear after being served with a section 65A(1) notice or after the matter was postponed in his or her presence or to remain in attendance at the proceedings, the court may authorise a warrant for his or her arrest. The court must be satisfied that the notice came to the debtor's knowledge (Section 65A(6)).
15. A person arrested under a warrant referred to in section 65A(6) shall, in accordance with section 35(1)(*d*) of the Constitution of the Republic of South Africa, 1996, be brought as soon as reasonably possible before the court within the district of which that person was arrested (Section 65A(8)).