



PRACTICE NOTE: 1/2001

Re-issued pursuant to section 27 Local Court Act 2007

VACATING HEARING DATES AND APPLICATIONS FOR ADJOURNMENT

1. The Chief Magistrate is concerned to ensure that proceedings before the court are conducted in an efficient and expeditious manner and that practitioners and those who appear before the Court do all they can to facilitate the just, quick and cost effective disposal of proceedings before the Court.

2. This Practice Note revokes the following Practice Notes:

- a) 1/1990 : Vacating hearing dates
- b) 2/1990 : Schedules – Section 20 Criminal Procedure Act, 1986
- c) 1/1991 : Changes to the manner of committals to the District Court
- d) 1/1995 : Time Standards
- e) 1/1996 : Compensation as a condition of recognizances under S. 556A or S. 558 of the Crimes Act
- f) 1/1997 : Justices Amendment (Committals) Act, 1996

In lieu thereof, the following Practice Note will apply to the consideration of applications for adjournment that will facilitate the timely and proper finalisation of matters in both the criminal and civil jurisdictions of the Court.

3. Setting matters down for hearing

3.1 When setting matters down for hearing, parties must be in a position to advise the court:

- a) The dates upon which the parties and their witnesses are available;
- b) The estimated length of hearing time;
- c) That all interlocutory matters have been completed;
- d) That the matter is otherwise ready to proceed;
- e) If subpoenae are to be issued and if a date prior to the hearing date is required for return of subpoenae

4. Vacating hearing dates

4.1 When a hearing date has been allocated, it will not be vacated unless the party seeking to vacate shows cogent and compelling reasons.

4.2 Any application to vacate a hearing date must be in writing on Form 1 being part of this Practice Note and must be made not less than 21 days prior to the allocated hearing date, or such other period (whether longer or shorter) as in the opinion of the presiding magistrate will allow time to list other matters for hearing on the date(s) to be vacated.

4.3 In the first instance the application shall be dealt with by a Magistrate in Chambers and shall only be listed in court at the direction of the Magistrate.

4.4 The party bringing the application must give notice to the opposing party(ies) of the application.

5. Urgent applications

5.1 Where urgent and unforeseen circumstances arise within the 21 day period, applications to vacate a hearing date should be made as soon as practicable after a party has become aware of grounds for such application and, in any event, not later than the next working day.

5.2 A party wishing to make an urgent application should advise the opposing party of the application and grounds for such application at the earliest opportunity. The court should be advised, by telephone, at the earliest opportunity that an application is to be made.

5.3 Upon an application to vacate a hearing date on the grounds of illness, the party making the application will be required to produce a medical certificate within a period specified by the court.

6. Change of plea

6.1 When instructions are received to enter a plea of guilty in a matter fixed for defended hearing, the prosecution and the court should be advised at the earliest opportunity.

6.2 Whilst it is appreciated that defendants often give instructions to change plea on or close to the day of hearing, legal representatives should advise clients that any change of instructions (whether change of plea in criminal matters or settlement in civil matters) should be submitted to the legal representatives at the earliest opportunity. Early conferences in preparation for hearing will, of course, assist to this end.

7. Adjournments

7.1 Adjournment applications are a decision for the court in the proper exercise of judicial discretion. While there can be no hard and fast rule on the acceptable number of adjournments that should be granted in any matter, as a general rule, practitioners cannot expect the court to consider applications for adjournment in any matter without cogent and compelling reasons. Tardiness in preparation, the late obtaining of instructions, the making of representations or change of counsel does not, of itself, justify the granting of an adjournment by the court.

7.2 The intention at all times is to ensure the efficient and expeditious conduct of proceedings. Practitioners and those who appear before the court should do all they can to facilitate the just, quick and cost effective disposal of proceedings before the court. Ways in which practitioners can assist the work of the court in finalising matters include:

- * ready identification of issues genuinely in dispute
- * either directly, or by giving appropriate advice to a client, observing the listing procedures, rules and court directions

- * ensuring readiness for trial
- * providing reasonable estimates of the length of hearings
- * giving the earliest practicable notice of an adjournment application

8. Costs and witnesses' expenses

8.1 Practitioners should bear in mind the power of the court to order costs and witnesses' expenses to be paid in appropriate cases.

Graeme Henson
Chief Magistrate