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## **GUIDELINES REGARDING ACCESS OF REPRESENTATIVES OF THE MEDIA DURING COURT PROCEEDINGS AND APPLICATIONS FOR PERMISSION TO PHOTOGRAPH, FILM OR RECORD SUCH PROCEEDINGS**

### **Recognising the following:**

- A. Proceedings in any court must take place in an open court unless otherwise ordered by court ;
- B. The rights enshrined in the Constitution including, but not limited to, the following:
  - i. Freedom of expression, including the freedom of the press and other media and the freedom to receive or impart information;
  - ii. The right to privacy; and
  - iii. The right to a fair trial;
- C. The principles as set out in various decisions regarding the presence of the media and, in particular, the broadcast media, during court proceedings, including that contained in *Van Breda v Media 24 Limited and Others: NDPP v Media 24 Limited and Others* (425/2017, 426/2017) [2017] ZASCA 97 (21 June 2017);

**The following guidelines are issued:**

**1. ACCESS TO MAGISTRATES COURTS PROCEEDINGS BY REPRESENTATIVES OF THE MEDIA**

- 1.1. When considering an application by the media to cover, broadcast and publish court proceedings the court should be mindful of the tension between the right to freedom of expression and the open justice principle, on the one hand and the right to a fair trial, as well other competing constitutional rights such as the privacy of the witnesses and other interested or affected parties, on the other hand.
- 1.2. These competing constitutional rights should as far as possible be harmonized with one another. The court must exercise a proper discretion in each case by balancing the degree of risk involved in allowing the coverage, broadcasting and publication of the court proceedings into the court room against the degree of risk that a fair trial might not ensue.
- 1.3. Courts ought not to restrict the nature and scope of the coverage, broadcasting and publication unless prejudice is demonstrable and there is a real risk that such prejudice will occur – mere conjecture or speculation that prejudice might occur ought not to be enough.
- 1.4. Save as provided for in any law, all representatives of the media shall have the right to attend any court proceedings for the purposes of reporting on such proceedings. Reporting should not in any way interfere with proceedings and it should be balanced and fair.
- 1.5. Representatives of the media shall be entitled to take still photographs and/or video footage during court proceedings, in the following circumstances, unless the court otherwise directs:
  - 1.5.1. Court activities for fifteen minutes before the commencement of proceedings each day;
  - 1.5.2. During any adjournment of proceedings or at the end of proceedings;
  - 1.5.3. Any argument presented to the court where no evidence is led including but not limited to opening and closing argument and sentencing; and

- 1.5.4. Judgment and/or any other judicial rulings.
- 1.6. Subject to the provisions contained in these guidelines, and any order to the contrary made by the court, individual journalists may record the proceedings on handheld digital devices including mobile telephones and may use such digital devices to take photographs where no flashes are used and where such photography does not in any way disrupt the proceedings.

## 2. **FILMING, PHOTOGRAPHING AND AUDIO RECORDING OF PROCEEDINGS**

Should a representative of the media wish to photograph, film or record any judicial proceedings, **he/she shall lodge an application in court**, subject to prior written notice to the clerk of court/assistant registrar and where possible to the parties to the matter. Such notice should be given at least twenty four hours before the commencement of any proceedings. The presiding officer may condone an applicant's failure to adhere to the twenty four hour notice period.

- 2.1. The court must adhere to the *audi alterem partem* rule, which must include any party that may be affected by the application. Any interested party who wishes to oppose the application may lodge a notice of such opposition with the clerk of the court/assistant registrar as soon as they become aware of the application.
- 2.2. To the extent that the presiding Magistrate may require, he/she shall hear all interested parties, or their legal representatives, prior to making a decision.
- Such hearing shall, where practicable, take place before the commencement of proceedings on any particular day so as not to disrupt the proceedings.
  - In making a decision, the starting point must be to allow the photographing and recording of proceedings in the least restrictive manner.
  - The photographing and recording of proceedings shall only be prohibited or limited on good cause shown.
  - Permission may be withdrawn or altered on good cause shown.

### 3. GUIDELINES FOR THE PRESENCE OF CAMERAS AND AUDIO EQUIPMENT IN COURT

In granting the application the court may consider the following:

- 3.1. For the purposes of filming the proceedings, representatives of the media may install a limited number of cameras, fixed on tripods. Anyone wishing to film the proceedings may also install the necessary microphones and shall do so in the least obtrusive way.
- 3.2. The media may also install their own audio equipment provided that this is not obstructive and does not interfere with the proceedings. Where possible, such equipment shall be installed alongside or joined to the court equipment used for recording proceedings.
- 3.3. A limited number of photographers may be allowed to photograph the proceedings by using still cameras fixed on tripods. Paragraphs 3.1 and 3.2 do not limit the amount of handheld or cell phone cameras used to record or photograph proceedings subject to what is set out in the order. .
- 3.4. Anyone filming or taking photographs of the proceedings shall ensure that:
  - 3.4.1. The location of cameras is not changed while the court is in session; and
  - 3.4.2. Lenses and/or film are not changed while the court is in session.
- 3.5. In respect of both video and still cameras, no lighting of any sort, whether fixed or otherwise, is permitted for the purpose of photographing or filming the proceedings.
- 3.6. Each camera may only be operated by one operator.
- 3.7. Arrangements regarding the installation and positioning of equipment to be installed must be agreed with the court manager or his/her delegate prior to the commencement of proceedings.
  - All equipment must be placed in a fixed and un-obstructive position at least fifteen minutes before the start of the proceedings.

- To the extent that any installed equipment (ie equipment that is not handheld) needs to be used outside of the courtroom or the court building, the placement of such installed equipment shall be agreed with the court manager or his/her delegate
- All equipment must be removed at the end of each day's proceedings or during any adjournment.
- To the extent that cabling is required, such cabling must not interfere with free movement inside the court.
- Should any problems arise in relation to the photographing or video and/or audio recording of the proceedings, these may only be attended to during adjournments.

#### **4. RULES RELATING TO THE BEHAVIOUR OF MEDIA REPRESENTATIVES**

- 4.1. The conduct of all media representatives must be consistent with the decorum and dignity of the court. This includes the need for all media representatives to be appropriately dressed.
- 4.2. Equipment must be positioned and operated to minimise any distraction while court is in session.
- 4.3. Recording of any bench discussions is prohibited.
- 4.4. Recording or close-up photography of matters of a private, confidential or privileged nature which may ensue between legal representatives and or parties is prohibited.
- 4.5. Close- up recordings or photographs of judicial officers, lawyers or litigants in court is prohibited.
- 4.6. The use of recordings and photographs for commercial or political advertising purposes is prohibited.

#### **SOME RELEVANT SOUTH AFRICAN CASE LAW**

SABC LTD vs NDPP and Others 2007 (1) SA523 (CC)

Midi Television (Pty) Ltd T/A ETV v Downer NO and Others (Case No. 15927/04) (12 October 2004) – Durban High Court.

Midi Television (Pty) Ltd T/A ETV v DPP (WC) 2007 ZASC 56; 2007 (5) SA 540 SCA.

Thatcher v Minister of Justice and Constitutional Development and Others 2005 (4) SA 543(C).

Director of Public Prosecutions, Gauteng v Pistorius [2015]ZASCA 204; 2016 (2) SA 317 (SCA).

Primedia Broadcasting v Speaker of the National Assembly and Others [2016] ZASCA 142; [2016] 4 All SA 793 (SCA); 2017 (1) SA 572 (SCA).