AMENDED FAMILY COURT DIRECTIVE FOR GAUTENG HIGH COURT, PRETORIA

DATE OF COMMENCEMENT: TERM 1 OF 2025

1] As from the First Term 2025 all family law related matters in Pretoria – including opposed divorce actions – will be set down and adjudicated in the Family Court.

2] This Directive replaces the Consolidated Directive 1 of 2024 **ONLY** in respect of matters set down for hearing in Pretoria. The Consolidated Directive 1/2024 shall continue to apply to matters set down and adjudicated in Johannesburg.

3] The Pretoria Family Court shall sit each week throughout the year including the April, June/July and September/October recesses. It shall operate in the December/January recess only in the first and last week of that recess. No opposed matters will be heard in recess periods, save for opposed urgent applications.

4] The objective of this court is to streamline most Family Law cases onto a single roll where they might be dealt with more speedily. This directive shall prevail over any provision in any other directive and the Practice Manual which regulates Family Law cases.

5] A Family Law case includes the following:

- Marriage, including customary and/or religious marriage
- Civil unions
- Domestic partnerships
- Domestic violence interdicts excluding those brought in terms of the Domestic Violence Act 116 of 1998
- Universal partnerships arising between life partners
- Divorce
- Dissolution of civil unions, domestic partnerships, universal partnerships arising from life partnerships and proceedings incidental thereto

- Parental rights and responsibilities
- Maintenance claims by children, spouses or life partners
- Relocation of children
- Representation of children
- Care and maintenance of major but dependent persons
- Children's rights
- The Hague Convention on Civil Aspects of International Child Abduction
- The confirmation of surrogacy agreements in terms of section 295 of the
- Children's Act, 38 of 2005
- Change of Matrimonial Property Regime / late registration of ANC
- Urgent applications relating to the above matters

6] The Family Court shall hear the following matters, opposed and unopposed:

- All rule 43 applications, regardless of estimated duration
- Interdicts related to family disputes/patrimonial issues
- The guardianship, contact, primary care and residence of, and maintenance of children and spouses
- Relocations to other jurisdictions
- Curator *ad litem* applications and applications to appoint a legal representative to represent minors in Family Law matters,
- Urgent applications, subject to the provisions of Par 8 below
- Enforcement of the Practice Manual and directives bearing on Family Law cases, including the exchange of the Financial Disclosure Form (FDF).
- Urgent matters in which the degree of urgency is such that the prescribed enrolment period to access the Family Court constitutes an undue delay and failure to adhere thereto may appropriately be condoned.

7] All other matters which engage the provisions of the Divorce Act 70/1979, the Marriage Act 25/1961, the Civil Union Act 17/2006, the Matrimonial Property Act 88/1984, Recognition of Customary Marriages Act 120/1998 and/or the Children's Act 38/2005 may engage the jurisdiction of the Family Court.

8] The Family court shall **not** hear:

- Appeals about Family Law cases,
- Curator *ad litem* applications to represent, or in respect of, minors in matters where the RAF, PRASA or the MEC are defendants/respondents.
- Urgent Family Law matters brought *after court hours*
    - These matters must be enrolled in the urgent motion court not in the Family Court.
    - Moreover, it must be noted that once a Judge in the urgent court becomes seized with a family matter, it must not be thereafter transferred to the Family Court and that Judge must deal with the matter and may not transfer the matter without the permission of the DJP or the Chair of the Family Court Committee
    - opposed applications the duration of which exceeds 4 hours. A special allocation for these matters must be requested from the DJP.

OPPOSED DIVORCE TRIALS

9] A third judge may be allocated to the Family Court by the DJP to hear these matters. The third judge will sit for a period of 1-2 weeks as appointed by the JP/DJP. One calendar month before the trial date, the parties are to file a joint practice note in which the following is set out:

- the common cause issues
- the disputed issues
- counsel and attorneys details
- whether any experts will be called and, if so, how many
- how many witnesses will give evidence
- the estimated duration of the trial
- whether either party will seek a postponement
- any outstanding interlocutory matter
- attempts made to mediate the outstanding disputes
- whether the Family Advocate has filed a report

- In the event that the parties are unable to agree on a joint practice note, they are to each file their own by the stipulated date
- Failure to file a practice note will result in the matter being removed at the discretion of the DJP/ the allocated judge
- In the event that the parties are engaged in settlement negotiations, the matter will be removed from the trial roll. Parties engaged in settlement negotiations should finalise the negotiations before the allocated trial date, failing which the Judge has the discretion to remove the matter from the roll.
- the number of trials set down for a week will depend on the estimated duration of the trials for that week and are to be set down on a Monday or Tuesday of that week
- If the duration of the matter is 5 days or longer, a special allocation is required and parties are directed to apply to the office of the DJP to request a trial date for such an allocation. Parties are to provide the DJP with a practice note setting out the same details as required in terms of the first part of paragraph 9 supra.

GENERAL PROCEDURE IN ORDINARY FAMILY COURT MATTERS

10] A party shall seek a set down date by inviting the relevant office profile to the electronic file on Court Online, in accordance with all the applicable prescripts of the motion court directives and the Practice Manual.

11] All requests for a set down date shall be clearly marked as a Family Law case, in accordance with the classifications in use namely:

- Rule 43 applications,
- Primary care & residence / contact,
- Interdict,
- Other Family Law matters.

12] A date so allocated by the registrar must be regarded as final and if the application is unopposed, and should a party decide not to proceed with the hearing of the matter, the party must ensure that the matter is removed from the roll and the senior presiding judge informed accordingly.

13] All queries relating to enrolments in the Family Court must be made by way of FamilyCourtPTA@judiciary.org.za

14] A Family Court Judge may, if not satisfied that appropriate efforts have been made to mediate a dispute which appears to be susceptible to mediation, exercise a discretion to stay the proceedings to afford the parties an opportunity to reflect thereon, and not permit re-enrolment until such time as the parties adduce cogent reasons of having properly engaged on the prospects of mediation and having given an explanation why it would be fruitless to resort thereto.

15] All matters in the Family Court shall be set down on a Monday whereupon the senior Judge shall allocate the roll.

16] The registrar shall maintain a 4-week cycle depending on the number of applications received for setting down the cases, opposed and unopposed, i.e., a request for a set down date in week 1 shall be addressed by the registrar in week 2 and set down a fortnight hence, i.e., in week 4. The cycle shall include recess periods save as set out in Par 3 supra.

17] The roll shall be published in week 2 for week 4. The roll shall reflect the Judges sitting and their secretaries' contact details. The opposed matters and the unopposed matters shall be listed separately. The roll shall be divided as follows:

- unopposed divorces
- unopposed and opposed Rule 43's
- other matters
    - unopposed
    - opposed

UNOPPOSED DIVORCES

18] A date of hearing shall not be allocated unless the following documents have been uploaded to Court Online/Caselines:

- all pleadings and returns of service
- all notices

- certified copy of the marriage certificate/document confirming that a valid customary or religious marriage exists
- certified copy of the settlement agreement, if any
- report of the Family Advocate, if any/necessary
- an affidavit from the plaintiff setting out the relevant evidence
- practice note. The practice note must include reference to:
    - Submissions, if any, by counsel for the party,
    - A request, if any, to make oral submissions,
    - The affidavit from the plaintiff
- draft order in MS WORD format which must contain the name, email and cell phone details of counsel, if any.

Mode of hearings of unopposed divorces in Pretoria

19] There are three categories of unopposed divorce matters, and the roll shall, as far as possible, be clearly demarcated:

- A: Matters not involving minor children.
- B: Matters involving minor children.
- C: Matters in which the party is unrepresented.

Category A (Matters not involving minor children)

20] All matters that do not involve minor children *must* be dealt with by adducing evidence on affidavit and no party shall testify in person, save where the Judge indicates otherwise.

21] The matters shall be disposed of at the discretion of the allocated Judge, in respect of which ad hoc directives may be issued, which may include:

- Disposal without an oral hearing,
- Disposal during a video conference which the court must host,
- Disposal at a physical traditional hearing.

Category B (Matters involving minor children)

22] All matters that involve minor children should preferably be dealt with by adducing *viva voce* evidence[1] in the judge's discretion and the Office of the Family Advocate invited to the Caselines profile

23] The matters shall be disposed of at the discretion of the allocated Judge, in respect of which *ad hoc* directives may be issued, which may include:

- Disposal without an oral hearing,
- Disposal during a video conference which the court must host,
- Disposal at a physical traditional hearing.

Category C (Matters where the party is unrepresented)

24] Unopposed divorces in which the party appears in person shall be disposed of at the discretion of the allocated Judge, in respect of which ad hoc directives may be issued, which may include:

- Disposal during a video conference which the court must host,
- Disposal at a physical traditional hearing.

25] In those cases where an unrepresented party goes to the court building, that party shall approach the designated official at the court building who shall render assistance to that litigant through the use of the virtual courtroom, in the event of a virtual hearing. A notice to this effect shall be posted in the foyer of the court by the Judge's secretary.

26] In those cases where an unrepresented party can be contacted because the relevant contact details are known, the secretary of the Judge shall endeavour to make contact to communicate the relevant information concerning the manner of the hearing.

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[1] See: AR v BMR and IMVD v CVD (case no 060704/2023 – Gauteng Division, Pretoria); Haupt AJ (8/12/2023)

27] In those cases where an unrepresented party has personal access to teleconferencing facilities an appropriate link may be set up accordingly, as the Judge directs.

RULE 43 APPLICATIONS

Unopposed

28] A date of hearing shall not be allocated unless the following documents have been uploaded to Court Online:

- the application
- proof of service
- the applicant's FDF
- report of the Family Advocate, if any
- practice note. The practice note must include reference to submissions, if any, by the legal representative for the party,
- draft order in MS WORD format which must contain the name, email and cell phone details of counsel, if any.
- compliance with all other compliance requirements in terms of Directive 1/2024
- the applicant shall file short heads of argument on/before the Monday of the week prior to the date of hearing.

Opposed

29] A date of hearing shall not be allocated unless the following documents have been uploaded to Court Online:

- the application and all other relevant affidavits
- both parties' FDFs
- report of the Family Advocate, if any
- draft order in MS WORD format which must contain the names, email and cell phone details of counsel, if any.
- compliance with all other requirements set out in Directive 1/2024
- the parties shall file short heads of argument on/before the Monday of the week prior to the date of hearing, together with a joint practice note which include reference to submissions, if any, by counsel for the parties as well

as a table setting out the common cause and disputed issues. Where there is no agreement with regard to the joint practice note, each party shall file their own practice note.

30] Failure to comply with any of the above – in both unopposed and opposed R43's may result in the matter being removed from the roll at the discretion of the presiding judge, with an appropriate costs order against the defaulting party or a *de bonis propriis* costs order. Should one of the parties fail to file short heads, the matter may still proceed.

31] The delay of a party in filing their FDF shall not delay a hearing. The failure to comply, timeously or at all, may be visited with a punitive costs order.

UNOPPOSED APPLICATIONS

32] A date of hearing shall not be allocated unless the following documents have been uploaded to Court Online:

- the application
- proof of service
- practice note. The practice note must include reference to submissions, if any, by counsel for the party,
- draft order in MS WORD format which must contain the name, email and cell phone details of counsel, if any.
- compliance with all other compliance requirements in terms of Directive 1/2024

OPPOSED APPLICATIONS

33] A date of hearing shall not be allocated unless the following documents have been uploaded to Court Online:

- the application and all other relevant affidavits

- the applicant's practice note and draft order in MS WORD format which must contain the names, email and cell phone details of counsel, if any.
- compliance with all other compliance requirements in terms of Directive 1/2024
- applicant's heads of argument
- On the Monday of the week prior to the date of hearing:
- A practice note shall be filed which must state clearly the relief sought and any other material information relevant to the matter; in particular:
    - the representatives and all their contact details
    - the exact relief sought
    - a succinct description of the points in issue as between the parties (elaboration must be avoided)
    - the duration of the matter
    - what papers must be read
- The practice note must be addressed to the senior Family Court Judge presiding in that week who shall give directions as to when each matter shall be heard and by whom
- the respondent shall file heads of argument on/before the Monday of the week prior to the date of hearing. Heads of argument shall avoid prolixity and state unequivocally the precise questions the court is being asked to decide and reference the passages or documents relevant to every submission as they appear in the bundle.
- In a case where an adversary is in default of filing heads of argument timeously, the aggrieved party must file heads and declare the adversary's default. The failure of a party to comply with this injunction shall not delay the hearing. The failure to comply, timeously or at all, may be visited by a punitive costs order.

URGENT APPLICATIONS

34] In Pretoria, all urgent Family Law applications must be filed in terms of par 29 of Directive 1/2024 as well as Rule 6(12) and *Republikeinse Publikasies (Edms) Bopk*

v Afrikaanse Pers Publikasies (Edms) Bpk 1972 (1) SA 773 (A) at 782A-G and *Luna Meubelvervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufactureres) 1977 (4) SA 135 (W) at 137.*[2]

35] An urgent Family Law case is one where a case can be cogently made out that the relief is required before the prescribed procedure has run its course. Such matters may be set down before noon on a Thursday for the following Tuesday, in accordance with standard urgent motion court practice. All other standard factors pertinent to urgent matters shall continue to apply.

36] Where the senior Judge in the ordinary urgent motion court examines the matters set down for the Tuesday of the next week for allocation, if any Family Law matters have been set down in that court, they must at once be referred to the senior Judge in the Family Court, failing which par 8 supra shall apply.

37] A Family Law case which is so urgent that it is necessary to bring it after court hours whether during term or any recess, shall be enrolled in the ordinary urgent motion court, not in the family court.

SURROGACY APPLICATIONS

38] Surrogacy matters are dealt with by a Judge designated *ad hoc* by the DJP or Chair of the Family Court Committee

- Any party who seeks to bring an application must cause same to be issued by the Registrar in the ordinary course.
- The application must be accompanied by a letter addressed to the DJP or Chair of the Family Court Committee explaining the facts and that the application is brought in terms of s295 of Act 38 of 2005 and requesting a date for hearing. In the event that there exists any urgency in the hearing of the matter, that must be set out in the letter as well.

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[2] See also High Court Motion Procedure: A Practical Guide; Joffe et al at Chapter 1.3

- The court file must thereafter immediately be given to the DJP who will allocate it further.
- All surrogacy matters will be heard *in camera* in court as directed by the judge allocated to the matter. Any considerations as to a hearing *in camera* must be addressed to the judge allocated to hear the matter once the parties have been notified who the allocated judge is
- the parties must comply fully with the provisions of Chapter 19 of the Children's Act, 2005

HAGUE CONVENTION APPLICATIONS

39] Hague Convention matters are heard by a Judge designated *ad hoc* by the DJP or a Judge in the Family Court:

- Any party who seeks to bring an application will cause same to be issued by the Registrar.
- The application must be accompanied by a letter explaining the facts and requesting a date for hearing. It is per se urgent.
- The court file must thereafter immediately be given to the DJP or a Judge in the Family Court who will allocate further.
- In the event that a Hague Convention matter is enrolled for the urgent court, the Senior Judge must immediately bring it to the attention of the DJP to deal with as set out supra.

CASE MANAGEMENT

40] In an appropriate case, an opposed Family Law case may be case managed by a Judge assigned to undertake that task by the DJP.

41] An appropriate case is one in which there is a substantial degree of complexity of either law or of fact and the intervention of a Judge is necessary to overcome the risk of delay or promote the prospect of settlement.

42] An appropriate case is not one in which the respective parties or their representatives merely encounter interpersonal difficulties or experience difficulty in securing agreement on the expeditious preparation of the case.

43] An application for case management is made by letter, copied to the adversary, addressed to the DJP.

44] The assignment of a case-manager (Judge) by the DJP shall be subject to the availability, from time to time, of Judges to undertake such assignments, and a meritorious case may be refused the assignment of a case manager for reasons of such unavailability at the time of the request.

45] The case management Judge may at any time request the parties to seriously consider mediation.

PROCEDURE

46] The existing directives will be applicable in respect of Family Law Court matters. All documents must be filed in accordance with the Directives for that particular matter before a date of hearing is sought. The application for a date of hearing is to be filed with the registrar.

47] A register will be kept for each type of matter for which a date of hearing is sought. The register is to be completed by the party seeking the date of hearing.

REGISTERS

48] The Registrar will keep a separate register in respect of Family Court matters. Separate registers will be kept for each type of matter.