PROPOSED GUIDELINES FOR COURT OPERATIONS POST NATIONAL STATE OF DISASTER

1] The Judge President of this Division issued a Directive authorising the utilisation of available electronic means/mediums, either through teleconference and/or video conference to hear and dispose of any matters requiring judicial attention during the lockdown. The Directive applied from midnight 26 March 2020.

2] Since the national lockdown ensued, the default position was that court hearings be held only via teleconferencing/ videoconferencing and/or other electronic means, and only where it is impossible to arrange teleconferencing or alternative electronic means, the Judge seized with a matter can direct a hearing in which the representatives of the parties may appear physically.[1] The position was altered slightly with the publication of the Judge President's Consolidated Directive dated 11 June 2021 . The general principle that physical proximity and contact between persons be eliminated was again emphasised but the final discretion as to whether a matter will be heard in open court remained with the presiding Judge without the stipulation added that matters shall only be heard in open court where it is

[1] See e.g. Judge President's Directive dated 25 March 2020 *Re: Special arrangements to address COVID-19 implications for all litigation in the Pretoria and Johannesburg High Courts;* Directives issued by Chief Justice Mogoeng Mogoeng in terms of section 8(3)(b) of the Superior Courts Act 10 of 2013 for the management of Courts during the lockdown period dated 17 April 2020; Judge President's Directive (17 April revised Directive) dated 24 April 2020 applicable until the first week of the July 2020 recess; Judge President's Consolidated Directive dated 11 June 2021.

impossible to be dealt with by electronic means. It was directed that criminal trials are to be heard in open court.[2]

3] The current position regarding civil matters appears to be that the majority of Judges work from home and conduct hearings using Microsoft Teams. The Pretoria Society of Advocates has requested the Acting Judge President to direct that civil hearings be conducted in open court.

4] There are a number of challenges that still face the pre-COVID state of operations in our courts: the country is still in lockdown albeit on alert level 1, physical proximity and contact between people should be limited and mask-wearing is still mandatory. To date, the air-conditioning in courtrooms are not functioning optimally and the bandwidth available at our courts is unreliable especially when there are multiple users logged on to the network at the same time. Given this, the following guidelines are proposed:

4.1 it is/remains the presiding judge's prerogative to determine whether a civil matter is heard in open court or via a virtual platform;

4.2 in matters where evidence is required, the judge retains the discretion to determine whether the matter should be heard in open court and, in taking the decision, should bear the following in mind:

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[2] The presiding judge retained a discretion in instances where the fairness of a trial would not be adversely affected if certain parts of the trial are conducted via a virtual hearing.

4.2.1 the submissions of the parties on whether a physical court hearing is preferred by any one or both of them;

4.2.2 the nature of the evidence to be presented;

4.2.3 whether either/any of the parties has the means to attend a physical court hearing[3];

4.2.4 whether, were a virtual hearing to be conducted, any of the parties would be unable to access the electronic means for the period that the matter is to be heard;

4.2.5 whether justice will be properly served, and the interests of the parties fully catered for, were the matter to be conducted either in court or via electronic methods;

4.3 it is preferable that all admissions of legal practitioners be conducted in open court;

4.4 where no evidence is required, eg urgent court, opposed motions, third court matters and unopposed motions, the discretion remains that of the presiding judge to determine the method of hearing;

4.5 in unique situations, eg Case Management Conferences, a judge retains the discretion whether to decide the matter on paper or convene a hearing (whether in court or via electronic platform);

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[3] For example a physically impaired person who has difficulty accessing transport to get to the court, or difficulty accessing the court building; indigent persons who may not have the financial means to attend court, but are able to access electronic means for a virtual hearing to take place

4.6 insofar as appeals are concerned, the judges presiding retain the discretion to either dispose of the appeal without the hearing of oral argument[4], or hear argument[5] whether in court or via a virtual platform;

4.7 it is preferable that all judges issue any directive pertaining to the conduct of their various courts, at least one week prior to the commencement of the hearings.

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4 Section 19(a) Superior Courts Act 10 of 2013

5 Either in court or via electronic platform