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JAA NEWSLETTER 1 / 2015

GAUTENG LOCAL DIVISION

THE DIRECTIVE FOR 2015 – FIRST TERM

The following has become apparent to the Johannesburg Attorneys Association from discussions at the monitoring committee and the Registrar: -

1. Due to the volume of cases issued out of the Gauteng Local Division, Johannesburg, not all matters are subject to case management. Case management is only necessary in the following instances:
   1.1 In matters involving damages claims and / or matters which require expert evidence; and
   1.2 After close of pleadings.

2. The Registrar's involvement prior to close of pleadings (e.g. indicating to the parties that the Defendant's plea is overdue) is an unnecessary waste of money and energy by all stakeholders (not just the litigating parties) more especially if the filing in the filing office is not up to date.

3. If a matter originates as a money claim but a subsequent Plea and/or Counterclaim give rise to the necessity for expert evidence, then the matter will be dealt with in accordance with the procedures described in paragraph 5 of the Directive and the paragraphs subsequent thereto.

4. In all instances where a party applies for a trial date, a trial date will be allocated notwithstanding the nature of the claims involved. However, in matters requiring expert

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evidence, the practice note referred to in paragraph 5 of the Directive is to be submitted simultaneously with the delivery of the application for a trial date.

This will be beneficial to practitioners involved in matters concerning damages claims and expert evidence, as there is certainty about the trial date and it will be up to the practitioners, in order to retain the trial date that was allocated, to comply with the requirements applicable to such matters as contained on page 3 of the Directive and thereafter.

5. Practitioners are to take notice that paragraph 13 of the Directive only concerns matters with damages claims requiring expert evidence. With regard to other matters that have been enrolled, the practitioners are required to comply with the normal Rules and procedures applicable to trial readiness. Furthermore, parties are at liberty to make use of the Rule 37(8) judicial case management procedure in terms of the Practice Manual at any time after the issue of summons.

6. The trial interlocutory court, as provided for in all the paragraphs on page 2 of the Directive, is applicable to all matters notwithstanding the nature of the claims involved in the matters. Mr. Elvis Sathekge has been appointed as the Registrar for the trial interlocutory court and is also the Registrar in charge of pre-trials and trial matters. In the event of a duplicate file having to be opened, practitioners are to approach Mr. Elvis Sathekge directly.

7. The files for matters which have been enrolled for a pre-trial are kept at Room 128.

8. Matters set down for trial, are to be indexed and paginated not later than ten days before the trial. The court rolls are prepared the day before the trial date and the files are kept in the office of Mr. Elvis Sathekge.

9. The files in respect of which trial interlocutory court orders and trial court orders have been typed are returned to Mr. Elvis Sathekge's office who will attend to the signature of the court order.

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10. In order for the plaintiff to properly comply with the requirements contained in paragraphs 7 & 8 of the Directive, it will be necessary for the parties to have had a prior pre-trial conference amongst themselves in order for the plaintiff's attorney to be properly prepared to deal with the issues at the certification conference.

11. The succinct summary referred to in paragraph 8.3.2 of the directive, should contain an agreed procedural chronology as well as a chronology of facts.

12. The 5 weeks requirement as indicated in paragraph 7 of the Directive has now been relaxed where non-compliance occurs due to no fault of a party and/or as a result of a fault in the office of the Registrar such as a court file not being found and duplicate files having to be opened. Accordingly, practitioners are accommodated in this regard by complying with the requirement within 4 weeks of the date of trial. Practitioners are, however, encouraged to deal with this requirement at least 6 – 7 weeks prior to the trial in order to timeously deal with any difficulties arising as aforesaid.

    Where it is evident that a matter is trial ready and the time period as referred to in paragraph 7 was not timeously adhered to, the party may approach the Judge tasked with the certification process with a request for latitude, on good cause shown, to be granted.

13. Where attorneys make use of lever arch files containing served and filed documents such as bundles of expert witnesses, bundles of discovered documents etc, whilst they must still be served and "filed" (i.e. stamped by the Registrar) timeously, they must be retained by the litigating attorney / advocate until the hearing of the matter when these arch lever files can be handed to the relevant Judge. The only documents to remain with the Registrar for placement in the Court file are an indexed bundle of pleadings, the pre-trial minutes and the notices. This is regarded as a precautionary measure to avoid lever arch files going astray in the filing office and to avoid such files from cluttering the Registrar's office's already limited office space.

14. Despite the implementation of the Directive, practitioners are currently still experiencing problems with court files not being found in the Registrar's office and therefore not being on

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the trial roll – often after duplicate files have been opened. Similar problems arise with matters enrolled for hearing in the trial interlocutory court. The success of the case management system is entirely dependent on the proper functioning of the Registrar's office and, regretfully, this is something which is not being experienced at present.

14. The temporary filing clerks contracts were terminated at the end of February 2015, which has once again resulted in long queues in the general office, where practitioners and messengers have to stand in a queue for up to two hours to draw files and / or file documents at court. This is a most unsatisfactory situation and is a situation which re-occurs on a regular basis where the temporary filing clerks contracts are terminated.

15. Practitioners who have been notified by the Registrar to attend a Pre-Trial Conference in terms of Rule 37 (8)(a) at court can complete, as far as they are able to, the attached Pre-Trial Agenda / Minute in advance so as to limit the time spent at court.

16. The Archives space is planned for renovation as part of the scope from the current Refurbishment Project. The contractor has requested handover of the Archives space to commence with renovation works.

    16.1 Court Management has reported that there is an unoccupied Open Plan Office space on the Eastern and Western Wings of the 10th Floor to accommodate files from the Archives.

    16.2 The space has been earmarked for accommodation of files from the current Archives at the High Court.

    16.3 The creation of space provides the Court with an opportunity to sort dormant and active files. Upon completion of the Renovations of the Archives, the only files that would be sent back to the existing Archives would be limited to active files to ensure easy management of files and documents by Personnel. This will enhance efficiency at the Archives section as staff will only be expected to manage active files.

    16.4 The remaining dormant files will be kept on the 10th Floor pending removal to an Offsite Storage Facility in consultation with National OCJ.

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16.5 Court Management is expected to commence with procurement process, for installation of Shelving on the 10th Floor in anticipation of the transfer of Archive files beginning of the new Financial Year, effective 01st April 2015 – March 2016.

16.6 The procurement process and installation of shelving is planned for completion during the end of June 2015.

JOHANNESBURG MAGISTRATES COURT

1. In terms of the amendment to the rules on the 27th June 2014, Government Gazette No 37769, which came into operation on the 28th July 2014 inter alia, the original summons and return of service must be filed on receipt of a Notice to Defend.

2. In terms of Government Gazette No 38380 dated 9 January 2015, which came into operation on the 13th February 2015, certain amendments were made to Rule 27 and 55.

3. In terms of the Chief Justice's Directive as published in Government Gazette 37390 No 147 dated 28 February 2014 which requires a matter to be certified as being trial ready before a trial date is allocated. In future when application is made for a trial date, the clerk of court will issue a Notice calling upon the Plaintiff and the Defendant's attorneys to attend a hearing in Court 25 at 9h00. The date allocated will be at least three weeks in advance. The Notice issued by the clerk of the court to the party applying for a trial date is to be served and filed on the opposing attorney 10 (ten) court days before the allocated date. The court file is to be indexed and paginated. The persons appearing for both parties are to take their diaries with them to court as a trial date will be allocated there and then, if the judicial officer certifies that the matter is trial ready.

   A Notice of Set Down still has to be served and filed.

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In some instances the proceedings are postponed for various reasons, and practitioners are to make use of the interlocutory procedures (i.e. applications to discover etc) to ensure a matter is trial ready, at the time application is made for a trial date.

Magistrate Viana has updated the Practice Directive.

4. The issuing of emoluments attachment orders is still problematic. Mr. Ramolefe has advised that some are being issued except if the judgment appears to be suspicious or fraudulent. A copy of the judgment as reflected on the court file where the judgment was granted should accompany the EAO, to assist in the process. There is currently a pending application to compel the granting of an EAO.

5. Messengers who have submitted warrants of execution to be issued, have been informed by the clerk of the court to return in three week's time to collect same, which is totally unacceptable. It was resolved that a period of one week would be sufficient for the clerk of the court to draw the file, to verify the judgment and to issue the warrant. Certain practitioners have attempted to issue warrants in respect of judgments granted in other courts.

   In urgent circumstances a practitioner can with an affidavit setting out the grounds for urgency approach the senior clerk, to have same issued. All default judgments are being granted by the Magistrates. The files are thereafter taken to ITC, Ms Page's office, to be captured.

   Practitioners who have Default judgments outstanding for a month, are to compile a list and forward same to Mr D Makhani at D Makhani@justice.gov.za, who will look into the matter.

   There is a backlog since January 2015 for the issuing of Section 57 & 58 Consents to Judgments, and efforts are being made to resolve the matter.

6. It is crucial for all practitioners to make use of their pigeon holes. Court processes will in future only be returned to practitioners via pigeon hole or docex as the postal system is slow

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and costly. Only where the litigants are acting in person or practitioners do not have a docex number or pigeon hole number will the processes be posted to them provided that they have furnished a self -addressed stamped envelope within which to return the document.

7. Since the new court boundaries have been aligned to the municipal boundaries from the 1st December 2014, this has impacted on the sheriff's areas of jurisdiction. Mr Makhani advised that Head Office had compiled a point to point area of jurisdiction for the sheriffs.

8. Practice guidelines in respect of Section 65A matters is attached hereto.

PROTEA MAGISTRATES AND REGIONAL COURT

1. The court is situated at the corner of Ndaba and Kunene Streets, Protea North and services the areas as per the attached list attached.

2. Practitioners are reminded that as from 1 December 2014, if the whole cause of action does not arise within the jurisdiction of the Johannesburg Magistrates Court, it will no longer be competent to issue summons out of this court for service on the Defendant residing in areas as per the attached list.

3. The JAA was recently invited to visit the Court and is considering opening a branch office at this court, space permitting. We will keep practitioners advised in this regard.

PROVINCIAL EFFICIENCY ENHANCEMENT COMMITTEE

This is a meeting that is held once a term under the chair the Judge President Mlambo and at which all major stakeholders of the courts are invited to participate.

The last meeting took place on the 6th March 2015 at which the following issues concerning attorneys were raised:

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1. The Department of Justice should involve both Sheriff and the attorney's representatives from the JAA and PAA in resolving demarcation and jurisdictional issues.

2. Practitioners are invited to report long outstanding High Court judgments to the Judge President. He reiterated that, if practitioners did not report such judgments to him or any problems that they may have with Judges for fear of being targeted, this could be done through the intermediary of the JAA who acts as a buffer. Practitioners are therefore again invited to advise any of the committee members of outstanding judgments or problems that they may be experiencing with Judges.

3. Most RDJs in the Magistrates Court have queries. Magistrates indicated concern at the quality of work presented by attorneys.

4. The iAfrica contract still has three years still to run. This is of concern given the long delays being experienced in getting transcripts. This issue will be discussed with Ms. Mokoena who has recently been appointed as the director of Court operations at the Office of the Chief Justice under whom the administration of the High Court falls.

5. Lack of accountability of the admin staff in both the High Court and Magistrates Court. This is becoming a very serious problem as, without the co-operation of the admin staff, any system to improve the case flow management of these courts is doomed to failure. This will continue to be raised at all levels until the matter is satisfactorily resolved.

REPORT FROM THE DECEASED ESTATES COMMITTEE

The JAA met with the Johannesburg Master's Office on 12 March 2015. A number of issues were discussed that were raised by both the Master's office staff and by the JAA and were resolved.

1. Immediate Issue Of Letters Of Appointment

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The Master's Office has agreed that it will assist attorneys, who do not qualify for the Fastrack process, with the immediate issue of Letters of Executorship/Authority on the following conditions:

a. Attorneys who are prepared to queue and wait for letters of appointments in testate matters will be assisted at 5th floor and in case of intestate estates on the ground floor. All documents must be in order.
b. This will be limited to two matters per day per attorney.
c. For security reasons, the Master may want and/or require to verify an executor and/or Master representative on Movit (Masters own Verification Information Technology), before the appointment letters can be issued.

2. Submission Of Section 42(2) Endorsements

a. Attorneys are requested to submit Applications to endorse Powers of Attorney to Transfer Immovable Property in terms of section 42(2) directly to the teams and not to registry on 5th Floor.
b. The Master appreciates that by their nature these endorsements are urgent and undertakes to treat them as such.

3. Contact With Master's Office

a. Attorneys are advised to communicate with the Master's Office via email as Master's are often not in their offices due to the fact that the files are stored in a central filing system and not in their offices, or engaged with persons requiring assistance. The latest email addresses are listed on the Master's website.
b. Attorneys are also requested to communicate with the Master's Office in English.
c. Attorneys should escalate issues to the Assistant Master who heads up the team to which the particular estate is allocated. Should the Assistant Master not be able to assist with the resolution of the issue, this should be escalated to NTHABISENG MASINA who heads up Communications on the 5th Floor. Nthabiseng's email address is NMasina@justice.gov.za.

4. Touts And Improper Practice In The Master's Office

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a. The Master's Office staff are becoming increasingly aware of touts in the Master's office and will not hesitate to report this type of behavior as unprofessional conduct to the Johannesburg Attorneys Association, the Gauteng Law Council and the Law Society of the Northern Provinces.
b. The Master's Office staff are also noting that appointed agents and executors are making heirs attend at the Master's Office in order to attend to the administration for which they are being remunerated. The Master has indicated that this is unprofessional behavior and practitioners who abuse the unwitting public in this manner will also be reported to the abovementioned associations.

5. Advertising And Lying For Inspection

a. Attorneys are reminded that they are only required to submit L & D Accounts to Magistrate's Courts to lie for inspection in terms of section 35 if the deceased resided in areas falling outside of the area of the Master's Office Office.
b. In respect of Johannesburg, the L & D Account must be submitted to the 5th Floor.

6. Quarterly Meetings

It was agreed that the quarterly meetings are helpful to both the Master's Office and to the profession and the date for the next meeting will be advised shortly. Attorneys are invited to advise the JAA of issues to be raised at the next meeting and in the event of issues arising which require urgent attention, the JAA is happy to address the Master to find ways to resolve the issues.

RESUMPTION OF VARIOUS OTHER LIAISON MEETINGS

The JAA will, within the coming month, be resuming liaison meetings with the following bodies / persons:

1. The Magistracy, the Administration and the Sheriffs at the Randburg Magistrates Court;
2. The director of Court Operations at the Office of the Chief Justice (OCJ) who is now responsible for the administration of the High Courts; and

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3. The Regional Office of the Department of Justice who is still responsible for the administration of the lower courts.

ANNUAL GENERAL MEETING

1. Kindly take note that our AGM will be held on the 10th September 2013.

2. Members will be advised of the guest speakers in due course but your suggestions are always welcome.

3. Members are requested to diarize the date in the meanwhile.

SUGGESTIONS FOR THE JAA WEBSITE

We are looking to revamping the JAA website and we are looking for suggestions from members as to what you would like to be featured on the website. Please communicate your suggestions to us.

With kind regards,

JOHANNESBURG ATTORNEYS ASSOCIATION

14 April 2015