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THE JOHANNESBURG ATTORNEYS ASSOCIATION

09 July 2019

TO: **DOJ STRATEGIC PLANNING COMMITTEE**

Per Email

RE: **DOJ STRATEGIC PLANNING – ISSUES AFFECTING SERVICE DELIVERY**

With reference to the above, the JAA would like to voice a few concerns, some of which are generalised and others are court specific but they all, in some way, have a direct or indirect influence on service delivery. The JAA has also included certain practices which, we feel, need to be encouraged and/or developed.

These issues and concerns are as follows:

1. Stakeholder Liaison Meetings at each Court

The JAA organises and/or participates in these regular meetings at the Johannesburg Magistrates Court, Johannesburg High Court and Randburg Magistrates Court. These are a natural precursor to the PEEC and GLD-EEC meetings. These regular liaison meetings (both on the criminal and civil side) need to be encouraged in every court and all stakeholders, including the administrative staff of the Courts, should be encouraged to participate regularly. These liaison meetings are the best means of communication between stakeholders, especially between the Courts and its users, to discuss practical problems that are being experienced.

2. Administration and Administrative staff:

2.1. Different location of Court files – Whilst we are acutely aware that there is a shortage of filing space in most courts, the fact that the location of court files can differ depending on the year and on the latest process of the matter results in endless hours of searching, usually at the cost of the litigant (whether represented or not). Very often the court file cannot be found resulting in multiple duplicate court files being opened (again at a cost). Until such time as electronic service and filing is fully implemented in the courts, a central filing system is necessary;

2.2. Observation of official office hours – Rule 3(12) of the Magistrates Court Rules states that, "Except on Saturdays, Sundays and public holidays, the offices of the registrar or clerk of the court shall be open from 8:00 to 13:00 and from 14:00 to 16:00, save that, for the purpose of issuing any process or filing any document, other than a notice of intention to defend, the offices shall be open from 8:00 to 13:00, and from 14:00 to 15:00: Provided that the registrar or clerk of the court may in exceptional circumstances issue process and accept documents at any time, and shall do so when directed by a magistrate." Rule 3 of the Uniform Rules has a similar wording for the High Court. It has become common practice (certainly in our area) in terms of a long standing arrangement between practitioners and the Court administration that the deadline for the issuing of any process (other than an urgent ex parte application) and the filing of any document is 13h00 and not 15h00 in terms of the aforementioned Rules. The motivation behind this agreement was so as to enable the clerks to put the files back on their shelves and to prepare the files for the following day. Regrettably, not all clerks utilise the afternoon for this purpose and in some cases, the clerks are long gone from Court before the closing time of 16h00. It is important to stress that the aforementioned arrangement is between practitioners and the Courts and should not be applicable to members of the public. Regrettably, I have been witness to members of the public being abruptly turned away by clerks after 14h00 and told to return the following day. To aggravate the situation, some courts limit the amount of court files that can be drawn to a mere handful per day;

2.3. Shortage of staff – Whilst we are acutely aware of the lack of funds, there always appears to be a shortage of staff in various sections of the Court which always places an undue burden on existing staff, especially on the more efficient staff members who are usually at management level simply because that is the level at which complaints are lodged;

2.4. Lack of training – Some staff are placed in certain sections of the Court without proper training for that aspect of the law. For example, it has come to our attention that a clerk of the small claims court has allowed a rei vindicatio without the alternative for damages. In another example, one of our exco members has recently represented a mother of 2 children in a domestic violence (DV) matter. When he arrived at the particular court concerned with his client at approximately 12h30 ready with the necessary application and documents for an interim protection order, he was rather abruptly told by the Clerk concerned that new DV applications "close at 11h00 daily" and that any applications after that time must be left with the clerk and the

Applicant must return the next day to see if the order is granted. It would appear that the clerk's approach to the other applicants were similar to what our exco member experienced. There are three general issues that emanate from this conduct:

2.4.1. The supposed daily closing time for new DV applications – this self-imposed rule (not sanctioned by the judiciary) can only be attributed to the lack of training and understanding of the purpose of these applications as well as the severe consequences that can result if they are not attended to immediately;

2.4.2. The abrupt demeanour of the Clerk – the public approaching the domestic violence section (usually women and children) are already in an emotionally vulnerable state of mind and in many instances, not legally represented. For them to be confronted by an abrupt and sometimes unhelpful clerk does not bode well for the applicant's confidence in getting protection from the court. Again, it boils down to training of the clerk to show some empathy towards the applicant's state of mind and to assist the unrepresented applicant to complete the required papers; and

2.4.3. Accountability – the general spin off result is that there appears to be no visible consequences for the Clerk who bulks the system in the performance of his/her duties.

3. Telephone and elevator services:

It is common cause that many courts have non-operative switchboards. It is far easier and less costly means of communication with the Courts (administration and judiciary) but is rarely accessible to the Court users. In so far as communication is concerned, the wider use of electronic mail should be encouraged to minimize costs. As for elevators in multiple story courts, these are often dysfunctional for long periods of time thereby denying easy access to the elderly and disabled.

4. Relocation of the Johannesburg Family and Regional Courts:

4.1. We understand that the Family Court has / will be moved to the vacant spaces left in the Johannesburg Magistrates Court pursuant to the opening of the Booysens Magistrates Court. This move is welcomed;

4.2. We also understand that there is a proposal to move the Johannesburg Regional Court to the premises previously occupied by the Commercial Crimes Court in the city centre. This move is not welcomed for a number of reasons:

4.2.1. The Regional Court needs to be close to the Family Court. In many Divorce cases in the Regional Court, litigants need to access the Family Court for maintenance for the children of for protection orders. Instead of being in the same building, the litigants will have to travel across town to seek assistance from the different sections. This is bound to compromise the public's access to justice and to the efficiency of these courts;

4.2.2. The Family Court / Johannesburg Magistrates Court is far easier for the public to access as it is very close to public transport and there is more than adequate private parking grounds. The Commercial Crimes Court building, on the other hand, is situated in a part of the city that is less accessible and has far less private parking availability;

4.2.3. We do not believe that the Commercial Crimes Court building will have sufficient file storage space and adequate office space to accommodate both the administration and judiciary. Furthermore, the lack of office space will also affect the rendering of pro-bono assistance to unrepresented litigants. Without such assistance, the administrative staff will be placed under severe workload pressure;

4.2.4. The JAA will therefore support a move of the entire Family and Regional Courts to the Johannesburg Magistrates Court.

5. JAA Office in Johannesburg Magistrates Court:

The move of the Family and Regional Courts to the Johannesburg Magistrates Court will tie in nicely with our request to have a smaller but more visible JAA office at the Johannesburg Magistrates Court. The current JAA office in that court, which is situated on the ground floor, is too big and could be more effectively used even as a small court room.

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6. Masters Office:

There have been long delays in the granting of Letters of Executorship, getting copies of documents and accessing files. Emails addressed to the Master's office are often ignored. No indication has been given as to what is happening to the old files that were subjected to flooding.

7. Small Claims and CCMA awards:

The execution of Small Claims and CCMA judgments have become a positive nightmare for sheriffs as their disbursements incurred, let alone the Sheriff's tariff fees, often exceed the judgment debt. The subsidisation of the Sheriff's charges needs to be investigated, alternatively, the judgment / award should incorporate a monthly court order at the time it is granted.

Yours sincerely

CHAIRPERSON OF THE JAA:
MRS GLADWIN-WOOD