PRETORIA ATTORNEYS ASSOCIATION
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15 June 2019

TO: THE OFFICE OF THE HONOURABLE
JUDGE PRESIDENT MLAMBO,
THE PALACE OF JUSTICE, PRETORIA.

RE: REQUEST TO PEND IMPLEMENTATION OF THE PROPOSED NEW PRACTICE DIRECTIVE TO ALLOW STAKEHOLDER ENGAGEMENT

1. The Pretoria Attorneys' Association is a voluntary association representing the majority of attorneys practicing within the greater Pretoria area. The main purpose of the Association is to provide assistance and support to its members.

2. Our Association accordingly represents approximately 1900 members, of whom a large number specialize in RAF/PRASA and medical negligence matters against the MEC of Health. These practitioners accordingly represent and protect the interests of thousands of desperate victims seeking urgent justice and assistance from the Courts.

3. A meeting with stakeholders was held on **14 June 2019** to:

   a. Consider the draft Practice Directive issued by your office;

b. To discuss the possible ramifications and difficulties which the proposed draft Practice Directive will hold for the most vulnerable of South African citizens namely seriously injured Plaintiffs.

4. A list of stakeholders who attended the meeting is attached hereto.

5. Following the meeting, a number of other role players indicated their concerns, and voiced their support for what the Association aims to achieve through an action plan which was decided upon during the meeting.

6. During the meeting the proposed Directive was carefully considered and debated, and the following were the main points of concern:

a. The proposed Practice Directive is both impractical and impracticable:

i. The Registrar is simply not in a position to diarize thousand of files and then to remind Defendants when they have to file their Notices of Intention to Defend and Pleas (Paragraph 5.2 of the proposed directive);

ii. The Deputy Judge President's office will be inundated with e-mails from the Registrar suggesting that certain Defendants have not filed their Notices of Intention to Defend or Pleas. This additional work is not warranted and the court rules itself provide for sufficient remedies should a Defendant fail to take any further steps. Moreover, the Plaintiff is *dominus litis* and as such should be able to choose if he wants to force

a Defendant to take a further step at any specific stage of the proceedings.

b. It will result in additional costs being incurred for which the Defendant will ultimately be held liable, ie:;

i. The proposed directive requires (at a relatively early stage) a statement of issues as well as the contentions in respect of each. This will result in unnecessary costs being incurred. In addition, it will result in a delay of the matter going to court, as the Plaintiff will not be able to apply for a date until such time as he/she has complied with the directive in this regard. If the Defendant fails to appoint experts either timeously or at all, the Plaintiff's certification would be delayed.

ii. The requirement that expert summaries (as opposed to the filing of expert reports) must be drafted by both the Plaintiff and the Defendant will result in:

1. A substantial and unnecessary increase in costs;
2. A further delay as far as certification is concerned. The Plaintiff will simply be denied access to court if the Defendants fail to draft expert summaries. Generally in practice the Defendants do not even file their expert reports on time.

c. It creates a lot of additional work for Judges, Registrars, attorneys and counsel;

d. The unilateral removal of hundreds of matters already set-down after 31 March 2019 possibly amounts to unlawful administrative action in terms of the Promotion of Administrative Justice Act 3 of 2000;

e. The new Practice Directive makes it very difficult for plaintiffs to obtain access to court. We have noted with concern the often repeated comments during the roll-call that apparently, according to the judiciary, RAF matters do not belong in trial court. If this sentiment is in fact that of the judiciary and the new Practice Directive seeks to achieve that result, it amounts to a denial of access to court in terms of section 34 of the Constitution;

<u>New Practice Directive is at variance with the May 2019 Practice Directive:</u>

f. The new Practice Directive is at variance with the practice directive that was issued several weeks earlier by the honourable Acting Deputy Judge President Raulinga ("the May Practice Directive");

g. The May Practice Directive was the result of a lengthy and collaborative effort between the judiciary and the relevant stakeholders in the industry;

h. Prior to the May Practice Directive, Plaintiffs were not able to obtain trial dates largely as a result of the fact that:

   i. Judges failed to certify matters trial ready, as they regarded this as an administrative task that they were not inclined to do;

   ii. Judges failed to certify matters trial ready, as the Defendant invariably failed to either answer pre-trial questions sensibly or at all;

   iii. Judges failed to certify matters trial ready, as the Defendant failed to appoint corresponding experts;

iv. The May Practice Directive sought to address the concerns held by both the relevant stakeholders as well as the judiciary and all the relevant stakeholders were of the view that if the May Practice Directive was properly implemented it would be hugely successful in resolving the difficulties with which our court system is faced.

7. The above is not an exhaustive list of concerns and questions and only a few preliminary problems raised without delving into too much detail.

8. The objective of the proposed amendment is apparently to relieve the case burden in the Courts, allow speedier finalization of matters and reduce costs. From a practical consideration it would seem as if the opposite will in fact be achieved.

Request by the PAA and stakeholders:

9. At the conclusion of the meeting it was resolved that the PAA would send this urgent request to ask that **the implementation of the proposed Directive be suspended** until a public participation process can take place whereby the practical implications of the draft Directive can be carefully considered and debated with stakeholders, including attorneys, advocates, Judges, Registrar's and Court personnel.

10. We accordingly request an audience for a debate to take place on the **15th July 2019 in court 8E, alternatively another suitable venue.** If the date is not convenient, kindly revert with alternative dates.

11. Members are of the view that justice delayed is justice denied and the view is that the proposed Practice Directive will not achieve its intended objectives.

12. With a debate, an alternative solution can be suggested which will be more practical and effective, and will ensure that the desired results can be achieved.

13. The Association holds a mandate from members to investigate the legal remedies available, should this request be denied and the Practice Directive be implemented, without giving due consideration to the important issues raised and problems foreseen.

14. We kindly but urgently request that your Lordship's office acknowledge receipt of this correspondence. Any future responses can be transmitted to writer at ruan.steenkamp@ppv.co.za

Regards,



RUAN STEENKAMP

EXECUTIVE COMMITTEE MEMBER

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LIST OF FIRMS/ PRACTITIONERS IN SUPPORT OF ACTION PLAN:

1. MacRobert Inc.
2. Tiaan Smuts Inc.
3. Nel Van Der Merwe & Smalman Inc.
4. Van Zyl Le Roux Inc.
5. Savage Jooste & Adams Inc.
6. Adams & Adams;
7. Spruyt Inc.
8. Maritz Van Eeden Inc.
9. Kritzinger Attorneys.
10. Rooth & Wessels Inc.
11. Podbielski Mhlambi Inc.
12. Verster Roos Attorneys.
13. Elmarie De Vos Attorneys.
14. Steenkamp & Spies Inc.
15. Andre Du Plessis Attorneys.
16. N S Swan Inc.