# OFFICE OF THE JUDGE PRESIDENT

GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA
**Private Bag X7, JOHANNESBURG 2000**
**Tel 011 335 0482 – Fax 086 207 1291**
Corner Pritchard & Von Brandis Streets, Fifth Floor, Johannesburg
NWalkinshaw@judiciary.org.za


07 December 2018

Dear Sir/Madam,

**JUDGE PRESIDENT'S PRACTICE DIRECTIVE**
**IN TERMS OF SECTION 14(1)(b) OF THE SUPERIOR COURTS ACT, ACT 10 OF 2013**

Kindly find enclosed herewith a Practice Directive in terms of the aforementioned legislation, the Legal Practice Act 28 of 2014 and in relation to the applications for admission as Advocate of the High Court that were referred to the Full Court by the Honourable Madam Justice Modiba and Acting Mr Justice Ramapuputla on 29 November 2018.

Sincerely,

**D Mlambo**
**Judge President of the Gauteng Division of the**
**High Court of South Africa**

**To:-**

1. The Minister of Justice and Correctional Services
2. Legal Practice Council of South Africa
3. The General Council of the Bar of South Africa
4. The National Bar Council of South Africa
5. National Forum for Advocates
6. The Pretoria Society of Advocates
7. The Johannesburg Society of Advocates
8. Pan African Bar Association of South Africa (PABASA)
9. Advocates for Transformation
10. Law Society of South Africa
11. Law Society of the Northern Provinces
12. Black Lawyers Association
13. National Association of Democratic Lawyers
14. Gauteng Attorneys Association
15. Pretoria Attorneys Association
16. Johannesburg Attorneys Association
17. Office of the State Attorney - Pretoria
18. Office of the State Attorney – Johannesburg
19. Secretary – South African Law Reform Commission
20. Secretary of the Judicial Case Flow Management Committee - Office of the Chief Justice
21. The Acting Chief Registrar Gauteng Division of the High Court, Johannesburg

**And to:-**

21. **Mr E R Hart (For the Applicant, Roeline Goosen – Case number: 2018/36880)**
Per Email: eltonr@uj.ac.za

22. **VC Mathevula Inc. (For the Applicant, Hatlane Matimba Michael – Case number: 2018/32920)**
Per Email: vongani@mattorneys.co.za

23. **Rabora Mulele Attorneys (For the Applicant, Simphiwe Mikkhayell Sabela – Case number: 2018/36882)**
Reference: Sabela S.M
Tel: 011 056 6742 - Per Fax: 086 558 1268

24. **Khumalo Attorneys (For the Applicant, Ravindran Narasingam Pillay – Case number: 2018/37067)**
Reference: Mr M Khumalo
Per Email: khumaloatt@webmail.co.za

25. **Lennon Moleele & Partners (For the Applicant, Busisiwe Molefe – Case number: 2018/36820)**
Per Email: Busisiwe.molefe@standardbank.co.za

26. **Mphagi Attorneys (For the Applicant, Mpho Nemutanzhela – Case number: 2018/36209)**
Reference: Mpho Nemutanzhela
Per Email: mphagiattorneys@gmail.com

27. **Shepstone and Wylie Attorneys (For the Applicant, Marshini Rajkumar – Case number: 2018/36823)**
Reference: Mr F Van Rooyen
Per Email: fvanrooyen@wylie.co.za

28. **T P Phalane Attorneys (For the Applicant, Kgaugelo David Motlanthe – Case number: 2018/21884)**
Reference: KD Motlanthe/18
Tel: 011 029 4715 - Per Fax: 086 275 0870

29. **Nkabinde Masibonge Mzwakali Attorneys (For the Applicant, Nqobizitha Mahole Mlilo – Case number: 2018/36876)**
Tel: 083 506 6318 – Per Fax: 086 743 9934

30 **C V Chake Attorneys (For the Applicant, Mamoneuwa Eunice Maduna – Case number: 2018/36318)**
Cell: 076 796 9698

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**Tel 011 335 0482 – Fax 086 207 1291**
Corner Pritchard & Von Brandis Streets, Fifth Floor, Johannesburg
NWalkinshaw@judiciary.org.za

Date: 07 December 2018

*In re*: The matters of:

| | | |
|---|---|---|
| 1. | **CASE NUMBER: 2018/36880**<br>**GOOSEN ROELINE** | **APPLICANT** |
| 2. | **CASE NUMBER: 2018/32920**<br>**HATLANE MATIMBA MICHEAL** | **APPLICANT** |
| 3. | **CASE NUMBER: 2018/36882**<br>**SABELA SIMPHIWE MIKHAYELL** | **APPLICANT** |
| 4. | **CASE NUMBER: 2018/37067**<br>**PILLAY RAVINDARAN NARASINGAM** | **APPLICANT** |
| 5. | **CASE NUMBER: 2018/36820**<br>**BUSISIWE MOLEFE** | **APPLICANT** |
| 6. | **CASE NUMBER: 2018/036209**<br>**MPHO NEMUTANZHELA** | **APPLICANT** |
| 7. | **CASE NUMBER: 2018/36823**<br>**MARSHNI RAJKUMAR** | **APPLICANT** |
| 8. | **CASE NUMBER: 2018/21884**<br>**MOTLANTHE KGAUGELO DAVID** | **APPLICANT** |
| 9. | **CASE NUMBER: 2018/36876**<br>**NQOBIZITHA MAHOLE MLILO** | **APPLICANT** |
| 10. | **CASE NUMBER: 2018/36318**<br>**MAMONEUWA EUNICE MADUNA** | **APPLICANT** |

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG
Private Bag X7, Johannesburg 2000
2018 -12- 07
GLD-JHB-024

**JUDGE PRESIDENT'S PRACTICE DIRECTIVE IN TERMS OF SECTION 14(1)(b) OF THE SUPERIOR COURTS ACT, ACT 10 OF 2013**

1. This is a Directive issued in terms of Section 14(1)(b) of the Superior Courts Act, Act 10 of 2013, read with Section 173 of The Constitution of the Republic of South Africa. The purpose of the Directive is to make provision for the constitution of a Full Court, to sit at first instance to hear and determine the matters referred to it, identified in paragraphs 5 and 6 hereunder. The

further purpose of the Directive is, inter alia, to set timelines for the filing and service of further process regarding the further conduct of this matter as well as the hearing of this matter.

2. The issues referred to the Full Court require resolution and clarification with expedition and urgency. For this reason, it is directed that the normal times for service and filing of any process shall be dispensed with to ensure that this matter is accorded the necessary expedition in resolving the issues raised in this matter.

Background: -

2. On Thursday, 29 November 2018, ten applications for admission as advocate of the High Court of South Africa were referred for hearing by a Full Court pursuant to Section 14(1) (b) read with Section 14 (3) of the Superior Courts Act 10 of 2013. The reason for the referral appears from the written Judgment of that date in the ten matters identified in the heading of this directive.

Legal Issues: -

3. Until 01 November 2018 the admission of Advocates was regulated by the Advocates Admissions Act 74 of 1964 ("the old Act"). On this day the Legal Practice Act 28 of 2014 ("the new Act") came into operation which consequently repealed the "old Act". The new Act contains additional requirements which a prospective Advocate has to fulfil before he/she may qualify for admission as an Advocate. These requisites are contained in Section 24 and 26 of the new Act and include vocational training, a competency examination and community service.

4. It appears that Section 115 of the Legal Practice Act 28 of 2014 may be ambiguous in the sense that it permits any person who was entitled to be admitted as an Advocate under the old Act to be admitted as an Advocate in terms of the new Act. The Section is not clear on the issue of compliance with the additional requirements as set out in Sections 24 and 26 therein. The different interpretations of Section 115 have led to conflicting Judgements which could be detrimental to the advocates profession and the Judiciary if the true intention of the Legislature and meaning of this provision is not clarified.

5. The following issues were raised for the Full Court to consider:

   5.1 Should applications for admission as an Advocate that were filed prior to the commencement of the new Act on 01 November 2018 be granted or should such applications be considered on the basis of the new requirements as set out in the new Act? In other words, does section 115 of the new act apply to applicants for admission as an advocate, whose applications for admission were pending in any Court on 1 November 2018?

   5.2 Does Section 115 of the new Act exempt Applicants who filed their applications before the commencement of the new Act, from complying with the requirements in terms of the new Act?

   5.3 If so, does such exemption apply to all such Applicants ad infinitum and/or should provision be made for a cut off period within which Applicants who are found to qualify for exemption, should apply for admission?



6. The following additional issues are referred to the Full Court to also determine –

6.1 Whether a person admitted as an attorney of the High Court before 1 November 2018 is required to:

6.1.1 have his or her name removed from the roll of attorneys before undergoing the practical vocational training prescribed for pupils who intend to be admitted and enrolled as advocates as contemplated in Regulation 7 of the Regulations promulgated under the LPA;

6.1.2 undergo the practical vocational training prescribed for pupils before converting his or her enrolment as an attorney to that of an advocate as contemplated in section 32(1)(a) of the LPA.

6.1.3 whether it is competent for the Legal Practice Council to impose as a condition for the conversion of enrolment contemplated in section 32(1)(a) of the new Act, that an attorney who wishes to convert his or her enrolment as an attorney to that of an advocate to undergo the practical vocational training prescribed for pupils who wish to be enrolled as advocates?

Directive: -

7. It is directed that a Full Court be constituted in terms of s.14(1)(b) of the Superior Court Act for purposes of hearing and disposing of the matters referred to it, including the legal issues identified herein.

8. Therefore, in anticipation of the constitution of a Full Court for purposes of hearing and disposing of the matters referred to it, including the legal issues identified above, the Judge President hereby directs the Chief Registrar to:

8.1 Cause this Directive to be issued out of the office of the Chief Registrar for publication and placement on the notice board in the High Court foyer, Johannesburg and the High Court foyer, Pretoria;

8.2 To serve copies of this Directive electronically on:

i. The parties involved in the matters identified in the heading of this directive;
ii. The Minister of Justice and Correctional Services, via the Office of the state Attorney, Pretoria
iii. The Legal Practice Council of South Africa
iv. The General Council of the Bar of South Africa;
v. The National Bar Council of South Africa
vi. National Forum for Advocates
vii. The Pretoria Society of Advocates
viii. The Johannesburg Society of Advocates
ix. Advocates for Transformation
x. Pan African Bar Association of South Africa (PABASA)
xi. Law Society of South Africa
xii. Gauteng Attorneys Association
xiii. Pretoria Attorneys Association
xiv. Johannesburg Attorneys Association



8.3 Service of this Directive shall further be effected as follows:

i. On the Minister of Justice and Correctional Services:
By service on the Minister and the State Attorney, Pretoria, by email.

ii. by e-mail on the Legal Practice Council of South Africa, the General Council of the Bar of South Africa and the other Stakeholders listed in paragraph 8.2

9. For purposes of service and filing of any process envisaged in this directive such service and filing shall be by email provided that the appropriate proof of delivery shall be provided. For purposes of filing with the Court the following email address shall be used – NWalkinshaw@judiciary.org.za

10. Copies of the papers already filed in the matters referred to the Full Court will be provided to any party requiring same but such request should be communicated to the Office of the Judge President via the email address provided in this directive by not later than 14h00 on Friday, 14 December 2018.

11. The parties mentioned in paragraph 8 and/or any other interested party who wishes to be admitted as *amicus curiae* in this matter, are directed to serve and file their applications, setting out the basis why they wish to be so admitted as well as the legal argument/heads of argument, they intend to advance in support of their applications by 14h00 on or before 21 December 2018, via email communication to the email address provided.

12. The applicants for admission in the ten applications mentioned in the heading of this directive shall indicate their consent or opposition/objection to any application for admission as *amicus curiae* on or before 11 January 2019. In the event of an opposition/objection, the basis thereof must be provided as well as such legal argument as such applicant wishes to advance in this regard.

13. The hearing of any objection to any application for admission as *amicus curiae* shall be set down for argument on an expedited basis on 17 January 2019.

14. The applicants for admission in the matters referred to the Full Court are directed to serve and file their legal argument/heads of argument, in support of their cases on or before 14h00 on 24 January 2019, at the Office of the Judge President by email communication to the email address provided. The other parties who shall have received consent as well as granted consent to be admitted as *amici*, must serve and file their legal argument/heads of argument by 14h00 on or before 31 January 2019.

15. Thereafter, the further conduct of the matter shall be case-managed by the Judge President and/or the Deputy Judge President, or any other Judge so designated by the Judge President. The case management shall include directions on the indexing and pagination of the papers.

16. The date on which the Full Court will hear the matters referred to it is 13 and 14 February 2019

17. All applications for admission as advocates of the High Court of South Africa which are impacted by the issues referred to the Full Court must be postponed *sine die* pending the Judgment by the Full Court in the matters referred to it.

**D Mlambo**
**Judge President of the Gauteng Division of the**
**High Court of South Africa**