



OFFICE OF THE DEPUTY JUDGE PRESIDENT

(HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION)
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NOTICE

TO

1. Chief Registrar - Gauteng Division of the High Court, Pretoria and Johannesburg
2. Secretariat – Judicial Case Flow Management, Office of the Chief Justice
3. Registrars - Gauteng Division of the High Court, Johannesburg and Pretoria
4. Legal Practice Council – Gauteng
5. Law Society of South Africa
6. Johannesburg Society of Advocates
7. Pan African Bar Association of South Africa
8. Gauteng Family Law Forum
9. Gauteng Attorneys Association
10. Pretoria Attorneys Association
11. Johannesburg Attorneys Association
12. West Rand Attorneys Association
13. South African Black Women in Law
14. South African Women Lawyers Association
15. General Council of the Bar of South Africa
16. National Bar Council of South Africa
17. South African Bar Association

18. National Forum for Advocates
19. Pretoria Society of Advocates
20. North Gauteng Association of Advocates
21. Church Square Association of Advocates
22. Advocates for Transformation
23. Black Lawyers Association
24. South African Medical Malpractice Lawyers Association
25. Personal Injury Plaintiff Lawyers Association
26. National Association of Democratic Lawyers
27. Office of the Director of Public Prosecutions, Pretoria and Johannesburg
28. Office of the State Attorneys, Pretoria and Johannesburg
29. CEO – Legal Aid South Africa
30. CEO – Road Accident Fund
31. CEO – PRASA
32. Director General – Gauteng Province
33. Head of Legal Department – Department of Health – Gauteng Province
34. South African Medico-Legal Association
35. Solicitor General :

DATE : 04 October 2021

RE : **NOTICE TO LEGAL ALL PRACTITIONERS ABOUT THE URGENT MOTION COURT, JOHANNESBURG**

Dear Sir/Madam

1. It has become apparent that the effective functioning of the Urgent Motion Court in Johannesburg is being imperilled by several undesirable practises by some attorneys and some counsel. This notice addresses the most serious aspects.

2. The sheer volume of cases enrolled has reached a critical scale. At present two judges are rostered per week. Routinely each is confronted with some 60 matters, or more. There is no spare capacity to supplement the two rostered judges. Often a cry goes up to the DJP to provide a special set down and an additional judge: this is unrealistic. Only in the rarest of circumstances in a matter of especial public importance can this be justified because it implies the ad hoc redeployment of a judge and the disruption of other scheduled work.

Is the matter genuinely urgent?

3. A much more disciplined approach must be adopted by practitioners as to whether or not a matter truly is urgent to justify its enrolment in a particular week. Non-urgent matters clutter up the roll and waste time that could be devoted to truly urgent matters. Practitioners must not be timid in the face of anxious and bullying clients who demand gratification of their subjectively perceived needs. The era of 'lets see what the judge might think' is now officially over.

4. To curb this abuse, judges shall consider the award of punitive costs *de bonis propriis* where non-urgent matters are enrolled. Also, an order forbidding attorneys and counsel to charge their own client a fee may be considered.

5. The ultimate practical test as to whether to set down a matter as urgent is whether an irreparable harm is apparent if an order is not granted in that week; if there is none, it ought not to appear on the roll.

Arguing urgency

6. The requirement to consolidate the case on urgency in a discrete section of the founding papers is mandatory. Often this is not done. In future, a failure to observe this practice shall attract punitive costs orders.

7. Argument on urgency must be succinct. Too often a flaccid and lengthy grandstanding performance is presented. This must stop. If the matter is truly urgent an argument in support if it must be prepared before the hearing and quickly and clinically articulated.

Tuesday is the date to set down a matter

8. The rule and the practice in this Division has been that an urgent matter must be enrolled for the Tuesday before noon the previous Thursday. This rule is often ignored. Matters are set down on any day from Monday to Friday at the whim of the parties. The inference is drawn is that this is often to suit the convenience of counsel. This must stop.
9. A matter may only be enrolled on the Tuesday and no other. In a case where a set down on another day is believed to be justifiable, it requires exceptionable circumstances, and the leave of the judge should first be sought. The reasons are plain. First, it constitutes a queue-jumping abuse; second, the judge has often no time available to read the papers, having already organised the week to hear the matters properly set down on the Tuesday. If an attorney misses the deadline for a Tuesday enrolment, that is no justification to sneak it in on another day. The registrar has been instructed to refuse to enrol any matter in the urgent court except on a Tuesday, unless a judge directs that it be so enrolled.

Unrealistic time frames for an answer from the respondent to be filed

10. Frequently unrealistic times are set by an applicant for the opponent to file opposing papers. Moreover, where opposing papers are required to be filed only after the Thursday before the set down, they do not reach the judge at a time when the judge has the opportunity to read them. One outcome is that the matter is by agreement removed for a later set down, but not before the judge has

squandered valuable time reading the papers. Another outcome is that the judge cannot properly prepare.

11. The basic approach should be that a full set of papers is available to the judge on the previous Thursday so that the judge can organise a programme of preparation and prepare effectively. Counsel shall be required to justify what extreme exigency warrants a deviation from this approach.

Preparation of the papers in a manner suitable to be adjudicated urgently

12. There is seldom an appreciation of the forensic dynamics of an urgent application. There is no time for a judge to study affidavits that are composed in the style of a stream of consciousness. Competent practitioners who understand their briefs will put into an affidavit only what is really important and eliminate the fluff. Often the waffling affidavit is evidence of a failure to properly diagnose what is necessary to say in support the exact relief sought – ie a failure to think through the matter properly. A proper analysis of the prayers sought and the articulation of facts relevant to those prayers only is vital. The urgent court is not a suitable venue for a judge to engage in advocacy training.

13. A similar abuse occurs in the annexing of a plethora of documents, most of which are never referred to and are often of little or peripheral value in the deciding of the case. Care must be taken to trim the bulk of the papers. This can only occur if a practitioner understands the case sought to be presented. Sloppy thinking bedevils all matters but especially those in the urgent court.

14. The habit of respondents giving a long narrative of their response to the founding affidavit without reference to the paragraphs in the founding affidavit and then

providing a series of perfunctory answers to the numbered paragraphs without any cross-referencing to where the material rebuttal is stated is not acceptable. To read such papers wastes much time searching for the relevant passages. This exercise is made virtually impossible when reading papers uploaded on caselines. The papers must be prepared in a way that they are fit for purpose.

The needs of practitioners

15. The workings of the urgent court shall be the subject of study during the 4th term of 2021. All attorneys and counsel are invited to contribute any constructive suggestions about how to achieve an optimal model. This is not an invitation to complain about peculiar events, rather what is wanted is a sharing of insights about the system. Such communications should be sent to

Skajee@judiciary.org.za

Yours faithfully

*Dictated by the Deputy Judge President
Electronically transmitted, therefore no signature*

**ROLAND SUTHERLAND
DEPUTY JUDGE PRESIDENT**