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REPUBLIC OF SOUTH AFRICA  
KWAZULU-NATAL HIGH COURTS

**THE HONOURABLE JUDGE PRESIDENT MR JUSTICE A.N. JAPPIE**

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## **DIRECTIVES (02 OCTOBER 2020)**

To give effect to the requirements of social distancing and such Covid-19 regulations still applicable, and after consultation with the Deputy Judge President, the Society of Advocates, the Legal Practice Council and the Registrars of the Division, and seeking to strike a balance between access to Justice and the lack of infrastructure, equipment and personnel, the following Directives will apply in the High Court of KwaZulu-Natal from 02 October 2020 and the remaining period of the extended Lockdown (level 1).

### **CRIMINAL TRIALS**

1. Criminal trials will be conducted in the normal course from Monday 05 October 2020 during the remaining period of the lockdown, subject to the availability of courts.
2. All Criminal Courts will be operational in Durban and Pietermaritzburg having due regard to social distancing within the courts.
3. The Director of Public Prosecutions and/or Legal Practitioners are to inform witnesses timeously that their presence at court will be required.
4. Bail and Bail Appeals which in the opinion of the Judge President/ Deputy Judge President and or the Senior Judge require urgent attention may be dealt with at their discretion and direction.
5. Preference will be given to part heard matters.
6. The DPP is required to notify the Judge President/ Deputy Judge President and or the Senior Judge by the Wednesday preceding the week the matter is to commence for allocation to a Judge.

7. In order to obviate or overcome problems relating to consultations with witnesses and accused persons who are in custody at the correctional centers, the first day of the trial may be utilized to conduct consultations by both the state and defence counsel. The trial proceedings should commence on the following day in earnest to ensure proceedings are finalized insofar as possible in the session.
8. In all criminal trial matters detainees will complete a Covid-19 compliance form ( which is to be completed each day by Captain Govender ( Durban ) and Captain Sithole (Pmb), which thereafter to be filed with the Covid-19 Compliance Officer at the end of each week. Witnesses and accused on bail will also be required to complete a similar form which is to be completed by the Investigating Officer and handed to the Covid-19 Compliance Officer at the end of each week.
9. Criminal pre-trials will also resume in both Durban and Pietermaritzburg High Courts on the allocated dates. The parties must ensure that pre-trials take place as scheduled and adjourned or postponed for insubstantial reasons.

#### **CIVIL TRIALS**

1. Civil trials will be conducted from the 05 October 2020 during the remaining lockdown period, subject to the availability of courts.
2. Matters may be removed from the trial roll with the consent of all the parties.
3. There will be a trial roll call every Monday. Parties are to notify the Registrar's Office on the Wednesday prior to the Monday whether the matter has become settled and/or if the parties require the matter to be adjourned to an arranged date or to be allocated to a Judge.
4. A draft consent order is to be filed with the Registrar's Office on the Wednesday preceding the Monday roll call, or to be e-mailed to the Judge President/ Deputy Judge President and/or Senior Judge on duty if such draft order is required to be filed after the roll has closed.
5. Matters which have become settled prior to the trial date may be brought forward by arrangement with the Judge President/Deputy Judge President and/or Senior Judge's

- Registrar where an order is required consequent upon such settlement.
6. To maintain social distancing only legal practitioners and the instructing attorneys will be allowed in the court building for Trial Roll Call.
  7. All persons requiring to enter the court precinct must comply with the social distancing regulations as contained in the applicable various Government Notices and will be required to complete a Covid 19 compliance form upon entering the court building.

### **MOTION COURT**

1. The motion court in Durban will convene in “C” court and in “H” court in Pietermaritzburg. The motion court will deal with all urgent applications, unopposed motions, divorces and rule 43 applications as well as **opposed motions**. The Judge allocated motion court will decide how the proceedings are to be conducted.
2. The following will apply to all unopposed divorces conducted in motion court:
  - 2.1 Not less than 3 (three) clear days prior to the hearing of a trial a separate specially indexed and paginated bundle of documents (separate and in addition to the usual set of divorce trial pleadings and related documents), without a filing notice, shall be placed in the court file:
    - 2.1.1 containing the **original marriage certificate** securely and neatly stapled to a blank A4 sheet of paper;
    - 2.1.2 containing the **original settlement agreement (or other agreement)**, if the attorney requires such agreement/s to be lodged with the court;
    - 2.1.3 If possible, containing the **original** of an affidavit deposed to by the witness who is to testify at the trial confirming that he/she has examined the original marriage certificate (a copy of which is additionally annexed to the affidavit) and that the copy annexed to the affidavit is a true copy of the original. In matters where the original of any agreement is lodged

in terms of sub-paragraph 2.1.2 the affidavit must also identify such agreement and identify the signatures to such agreement with reference to and by annexing to the affidavit a copy of the page/s bearing the signatures.

- 2.2 The Registrar shall not accept any documents relating to UDTs later than 3 (three) clear days prior to the hearing and attorneys are directed to ensure that the court files are in order, properly indexed and paginated, with due regard to that time frame.
  - 2.3 No documents shall be handed in at court, only if need be, to assist the litigants in person to comply.
  - 2.4 On the day of the hearing only the attorney (and counsel where instructed) and the witness will be allowed into the courtroom, and are required to be at court prior to 09h30 and to remain in attendance within the court precinct (at or within an area that will be designated for this purpose, with everyone observing proper social distancing protocols) until his/her matter has been disposed of. A non-appearance will result in the matter being struck off the roll and with the result that it will have to be set down on another day. No application to have a matter recalled will be entertained.
3. Urgent matters which have not been enrolled on the Motion Court Roll and only if the Motion Court Judge is sitting are to be referred to the Judge President/Deputy Judge President and/or Senior Civil Judge on duty for allocation.
  4. The motion court rolls will be published by noon 2 court days in advance and will reflect the time slot allocated to each matter.
  5. A group of five matters will be disposed of in ten minute intervals and the times will be reflected on the motion court roll.
  6. Only 5 matters at a time will be dealt with in the motion court. The legal practitioners will be required to remain in court until all 5 matters have been dealt with and then leave the court room and the court precinct.

7. Should a Legal practitioner not appear at the allocated time slot and have failed to communicate with the presiding Judge's registrar regarding his/her matter, the matter will be struck off the roll. No matter will be re-enrolled. Legal practitioners will be required to obtain a new date in the normal course.
8. To maintain social distancing in the motion court only legal practitioners and/or the instructing attorney will be allowed in court, the exception being in divorce matters.
9. No orders or court processes will be handed in at the hearing. All draft orders for motion court are to be placed in the court file before the roll closes. In the event of this not being possible, then parties are to email the draft order to the Judge's registrar. At the hearing all persons present in the courtroom shall be properly masked with a cloth mask covering the mouth and nose. The Judge may give permission to the witness to remove the mask while giving evidence.
10. Counsel/attorneys shall occupy the rear row of stations in court.
11. Where suitable physical distancing (1.5m or more) cannot be achieved between the witness and the stenographer the registrar shall ensure that the stenographer is equipped with, and wears, both a face shield and a cloth mask.

#### **OPPOSED MOTIONS**

1. All Judges will be allocated opposed motions.
2. All opposed motions will be disposed of in the following manner:
  - 2.1. Parties are to ensure strict compliance with practice directive 9 in particular practice directive 9.4.1.
  - 2.2. Parties are to file all heads of arguments, practice notes and unreported authorities with the Registrar's Office in the normal course;
  - 2.3. In respect of all opposed matters and opposed rule 43 applications the legal representatives of the parties shall provide a joint statement indicating inter alia the issues in dispute and which of those issues the presiding Judge will be required to rule on.

3. Parties can elect to have the issues decided on the papers without the need for an oral hearing. The presiding Judge may direct that further written submissions be filed.
4. In the event of parties deeming it necessary for oral argument to be heard then:
  - 4.1. The Presiding Judge may at his/her discretion convene a court for this purpose on a date and time to be arranged.
  - 4.2. In the alternative the Presiding Judge may in his/her discretion convene a hearing by way of video conferencing or any other electronic means which are appropriate;
  - 4.3. If the options in 4.1 and 4.2 cannot be achieved, the matter will be adjourned to a date to be arranged.
5. In respect of the opposed motions being adjourned to a future date such Presiding Judge will be deemed to be seized with the matter.

#### **APPEALS**

1. All Judges will be allocated appeals.
2. The presiding Judge shall solicit the views of the parties prior to the appeal panel making a determination in terms of section 19 of the Superior Courts Act.
3. Having made such determination, the appeal may be disposed of in terms of section 19. At the appeal panel's discretion the appeal may be disposed of as follows:
  - 3.1. a court may be convened for the purpose of deciding the appeal;
  - 3.2. convene a hearing by way of video conferencing or any other electronic means which are appropriate;
5. In the event of the appeal not being disposed of as per paragraph 4 above, it is to be adjourned to a date to be arranged.
6. In respect of those appeals which have been adjourned to a future date such Presiding panel will be deemed to be seized with the matter.

#### **JUDICIAL CASE FLOW MANAGEMENT**

The parties are to comply with the directive issued on 5 August 2020.

## LEAVE TO APPEALS

The manner in which leave to appeals are to be dealt with are to be left to the discretion of the individual Judges.

## GENERAL

### REGISTRARS' OFFICE

1. The Registrars' Office at the Durban and Pietermaritzburg High Court are to have all staff on duty in-order to comply with the above directives and the various regulations issued.
2. The Registrar's office will be opened to issue new processes and for the filing of all pleadings, notices, documents and the enrolling of matters. All processes will be issued at the counter with the exception of warrants of executions, these will be required to be left at the general office with the necessary email and mobile contact details. Once these have been issued the Registrar's office will make contact for collection.
3. To maintain social distancing only two parties at a time will be allowed into the general office for this purpose.
4. Urgent matters or matters outside of court hours matters will be dealt with by the after hours registrar and duty Judge mindful of the curfew imposed.

  
JUDGE PRESIDENT – A. N. JAPPIE

KWAZULU-NATAL HIGH COURT

02 October 2020