



OFFICE OF THE DEPUTY JUDGE PRESIDENT

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

TO

1. Judges of the Gauteng Division, Johannesburg
2. Chief Registrar - Gauteng Division of the High Court, Pretoria and Johannesburg
3. Secretariat – Judicial Case Flow Management, Office of the Chief Justice
4. Registrars - Gauteng Division of the High Court, Johannesburg and Pretoria
5. Legal Practice Council – Gauteng
6. Law Society of South Africa
7. Johannesburg Society of Advocates
8. Pan African Bar Association of South Africa
9. Gauteng Family Law Forum
10. Gauteng Attorneys Association
11. Pretoria Attorneys Association
12. Johannesburg Attorneys Association
13. West Rand Attorneys Association
14. South African Black Women in Law
15. South African Women Lawyers Association
16. General Council of the Bar of South Africa
17. National Bar Council of South Africa
18. South African Bar Association
19. National Forum for Advocates
20. Pretoria Society of Advocates
21. North Gauteng Association of Advocates
22. Church Square Association of Advocates
23. Advocates for Transformation
24. Black Lawyers Association
25. South African Medical Malpractice Lawyers Association
26. Personal Injury Plaintiff Lawyers Association
27. National Association of Democratic Lawyers

28. Office of the Director of Public Prosecutions, Pretoria and Johannesburg
29. Office of the State Attorneys, Pretoria and Johannesburg
30. CEO – Legal Aid South Africa
31. CEO – Road Accident Fund
32. CEO – PRASA
33. Director General – Gauteng Province
34. Head of Legal Department – Department of Health – Gauteng Province
35. South African Medico-Legal Association
36. Solicitor General :

DATE : 21 February 2022

RE : CLARIFICATION NOTICE: IN RE DIRECTIVE 01 OF 2021: CHAPTER 8, TRIALS INTERLOCUTORY COURT

1. It has been drawn to my attention that a confusion may exist in respect of the interpretation of and application of paragraphs 43 - 47 of this chapter.

2. The relevant text reads thus:

“CHAPTER 8: THE TRIALS INTERLOCUTORY COURT: ROLE AND FUNCTIONS, APPLICABLE TO ALL CATEGORIES OF MATTERS

43. A Motion Court, the Trials Interlocutory Court, dedicated to interlocutory matters in Civil Trials to address issues of non-compliance with this Directive, the practice manual of the Court and any Rule of Court, will sit Mondays to Thursdays every week, except during the period of dies non, between 16 December and 15 January. Matters qualifying for referral and adjudication in the Trials Interlocutory Court shall be matters in which trial dates have not been allocated as well as matters in which trial dates have been allocated.

44. Save as provided in paragraph 43, matters shall be set down on notice filed before noon 7 clear Court days before the hearing date; be succinct and, where appropriate, brief heads of argument shall be submitted at the hearing.

45. Ordinary opposed or unopposed interlocutory matters relating to matters other than those in Civil Trials as described in paragraph 43 must not be enrolled in this Court and must instead be enrolled in the GENERAL opposed or unopposed motion court, whichever is applicable.

46. Draft Orders in the Trials Interlocutory Court, in addition to being uploaded to the files on CaseLines, must also be sent in word format by email to the Secretary of the presiding Judge to enable revisions, if required, at the discretion of the Judge. The Draft Orders must bear the name

of Counsel, the attorney and their respective email addresses. Upon an Order being granted, the Registrar shall prepare the Order and upload it to the electronic file on CaseLines by no later than the day following the date of the Order. Copies shall be emailed to the attorney at the email address stated on the Draft.

47. Any party who, having reason to be aggrieved by the other party's neglect, dilatoriness, failure or refusal to comply with any Rule of Court, provision of the Practice Manual or provision of this Directive, must utilise the Trials Interlocutory Court to compel compliance from the delinquent party.”

3. The text relevant to a confusion is underlined. A view has been taken by some practitioners' that a contradiction exists between the passages in paragraph 45 and in paragraph 47. This is a misreading of the text.
4. The Trials Interlocutory Court is a recent invention whose purpose is to give aggrieved practitioners a quick and easy access to a court to overcome their adversaries' non-compliance with the directives *et al.* A matter can be set down on 7 days' notice and a hearing is guaranteed within a three-week cycle of the application for a set down date. The ordinary unopposed motion court has, at this time, a long lead time for a hearing and to wait that long to seek the aid of the court to defeat a delaying tactic by a non-compliant adversary would be inappropriate and self-defeating.
5. What paragraph 45 addresses is the *GENERAL interlocutory matter* that does not involve a non-compliance per se. For example: An application to compel discovery of a specified document which has been refused on grounds which may or may not be justified belongs in the General Unopposed Motion Court, but a failure to discover, at all, belongs in the Trials Interlocutory Court.
6. From time to time matters which are entitled to be enrolled in the Trials Interlocutory Court are instead enrolled in the General Unopposed Motion Court. This is not an “error” that warrants it being struck off; the judge in the General

Unopposed Motion court shall deal with the application. The important point is that the aggrieved practitioner is wasting an opportunity to get quicker relief.

7. I appreciate practitioners seeking clarity on aspects of the Directives and Practice Manual and I shall respond to any requests.

Yours faithfully

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

**ROLAND SUTHERLAND
DEPUTY JUDGE PRESIDENT**