



OFFICE OF THE DEPUTY JUDGE PRESIDENT

(HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, JOHANNESBURG)
OFFICE 1210

Telephone number: 011 335 0116/011 335 0162 / 011 335 0163

Fax number: (011) 335 0219

e-mail address: Secretarydj@judiciary.org.za / LTulleken@judiciary.org.za

TO :

1. Judges of the High Court, Gauteng Division, Johannesburg
2. Chief Registrar
3. Legal Practice Council – Gauteng
4. Law Society of South Africa
5. Gauteng Family Law Forum
6. Gauteng Attorneys Association
7. Pretoria Attorneys Association
8. Johannesburg Attorneys Association
9. West Rand Attorneys Association
10. South African Black Women in Law
11. National Association of Democratic Lawyers
12. Black Lawyers Association
13. South African Women Lawyers Association
14. South African Medical Malpractice Lawyers Association
15. Personal Injury Plaintiff Lawyers Association
16. South African Medico-Legal Association
17. Office of the Director of Public Prosecutions, Pretoria and Johannesburg
18. Office of the State Attorneys, Pretoria and Johannesburg
19. Solicitor General
20. Office of the Family Advocate, Pretoria and Johannesburg
21. Legal Aid South Africa
22. Johannesburg Society of Advocates
23. Pretoria Society of Advocates

24. Gauteng Society of Advocates
25. Pan African Bar Association of South Africa
26. General Council of the Bar of South Africa
27. National Bar Council of South Africa
28. South African Bar Association
29. National Forum of Advocates
30. North Gauteng Association of Advocates
31. Church Square Association of Advocates
32. Advocates for Transformation
33. Legal Division of the Department of Health: Gauteng
34. Legal Division of the Department of Sport, Arts, Culture and Recreation
35. Gauteng Department of Agriculture and Rural Development
36. Legal Services - Gauteng Provincial Department of Education
37. Gauteng Society of Advocates

DATE : 06 June 2022

OUR REF : DJP/342/2022/lt

RE : **DIRECTIVE FOR THE FAMILY COURT IN THE JOHANNESBURG HIGH COURT**

Establishment of the Family court

1. With effect from 18 July 2022, the first day of the third term 2022, a dedicated **Family Court** shall sit each week during term. The objective of this court is to consolidate and stream most Family Law cases into a single stream in which they might be dealt with more speedily.
2. This Directive shall prevail over any provision in any other Directive and the Practice manual which regulates Family Law cases

3. A Family Law case includes the following:
 - 3.1. Marriage, including customary and/or religious marriage;
 - 3.2. Civil unions;
 - 3.3. Domestic partnerships;
 - 3.4. Domestic Violence;
 - 3.5. Universal partnerships arising from life partnerships;
 - 3.6. Divorce;
 - 3.7. Dissolution of civil unions, domestic partnerships, universal partnerships arising from life partnerships and proceedings incidental thereto;
 - 3.8. Parental rights and responsibilities;
 - 3.9. Maintenance;
 - 3.10. Relocation of children;
 - 3.11. Representation of children;
 - 3.12. Care and maintenance of major but dependant persons;
 - 3.13. Children's rights;
 - 3.14. The Hague Convention on Civil Aspects of International Child Abduction;
 - 3.15. The confirmation of surrogacy agreements in terms of section 295 of the Children's Act, 38 of 2005.

4. Each week two judges shall preside in the Family Court.

What cases the Family shall hear or not hear

5. The Family court shall hear only these matters, opposed and unopposed:
 - 5.1. All rule 43 applications, regardless of estimated duration.
 - 5.2. Interdicts.
 - 5.3. The access, care of, and maintenance of children and spouses.
 - 5.4. Urgent applications (subject to paragraph 6.5.)

5.5. Enforcement of the practice manual and Directives bearing on Family Law cases, including the exchange of the Financial Disclosure Form (FDF).

5.6. Other family law applications.

6. The Family court shall not hear:

6.1. Unopposed divorces which shall continue to be heard on Fridays.

6.2. Opposed divorce trials which shall continue to be heard as part of the general civil trial roll.

6.3. Judicial approval of surrogacy agreements in open court; instead they shall be dealt with in confidence by referring the application to the DJP in accordance with current practice.

6.4. Appeals about Family Law cases.

6.5. Urgent matters brought **after court hours** in term and in **during any recess**—such matters which must be enrolled in the urgent motion court.

Transition in respect of unopposed motion matters already enrolled

7. All Rule 43 applications, and unopposed applications dealing with matters classified as Family Law matters, which have already been enrolled, shall automatically be placed on the Family Court Roll and no additional steps from practitioners are required.

Procedure to access the Family Court

8. Access to the family court and procedure for setting down of cases is as follows:

8.1. A party shall seek a set down date by inviting JHBFamilycourt@judiciary.org.za on CaseLines, in accordance with all the applicable prescripts of the Motion Court Directives and the Practice Manual.

8.2. All requests for a set down date shall be clearly marked as a Family Law case, in accordance with the classifications in use: ie,

8.2.1. rule 43 applications,

8.2.2. custody

8.2.3. interdict,

8.2.4. other Family law matter.

8.3. A date so allocated by the Registrar must be regarded as final and should a party decide not to proceed with the hearing of the matter, the party must ensure that the matter is removed from the roll.

8.4. All queries relating to enrolments in the Family Court must be made by way of email to JHBFamilycourt@judiciary.org.za.

9. A request for a set down date of any opposed Family Law case:

9.1. must include a full set of papers properly indexed and uploaded in accordance with prevailing directives.

9.2. Must include in a distinct section of the affidavits, the issue of mediation as a means to resolve or narrow the dispute, including a motivation why mediation was not embarked on, or if already utilised and either unsuccessful or not wholly successful, why that outcome eventuated. A family Court judge may, if not satisfied that appropriate efforts have been made to mediate a dispute which appears to be susceptible to mediation, exercise a discretion to stay the proceedings to afford the parties an opportunity to reflect thereon, and not permit re-enrolment until such time as the parties adduce cogent evidence of having properly engaged on the prospects of mediation and having given an explanation why it would be fruitless to resort thereto.

9.3. The Heads of Argument, shall become due to be filed;

9.3.1. by the applicant, not later than five court days after the papers are complete, and

9.3.2. by the respondent, not later than five court days after the filing of the applicant's heads of argument.

9.4. Heads of argument shall avoid prolixity and state unequivocally the precise questions the court is being asked to decide and reference the passages or documents relevant to every submission as they appear in the CaseLines record.

9.5. In a case where an adversary is in default of filing heads of argument timeously, the aggrieved party must file Heads and declare the adversary's default. The failure of a party to comply with this injunction shall not delay the request for a date. the failure to comply, timeously or at all, may be visited by a punitive costs order.

9.6. All matters in the Family Court shall be set down on a Monday.

9.7. The registrar shall maintain a 4-week cycle for setting down all cases, opposed and unopposed: ie a request for a set down date in week 1 shall be addressed by the registrar in week 2 and set down a fortnight hence; i.e., in week 4. This cycle shall exclude recess periods.

10. The Roll shall be published in week 2 for week 4. The Roll shall reflect the judges sitting and their contact details. The opposed matters and the unopposed matters shall be listed separately.

Opposed Family Law cases

11. Upon the roll being published, in all opposed matters the parties must file a joint practice note by not later than noon on Tuesday of week 3. If agreement on its content cannot be reached, each party shall file its own practice note. Filing of the practice

note must not be delayed; in the absence of receipt the matter shall be struck off the Roll.

11.1. A practice note shall state clearly the relief sought and any other material information relevant to the matter; in particular-

11.1.1. the representatives and all their contact details,

11.1.2. a preferred date in the week between Monday and Friday, if any, for the hearing, however no guarantee can be given that the preference shall be accommodated,

11.1.3. the exact relief sought,

11.1.4. a succinct description of the points in issue as between the parties.

(Elaboration must be avoided)

11.2. The practice note must be addressed to the senior Family Court Judge presiding in that week who shall give directions as to when each matter shall be heard and by whom.

Urgent Family Law Cases

12. An urgent Family Law case is one where a case can be cogently made out that the relief is required before the prescribed procedure has run its course. Such matters may be set down before noon on a Thursday for the following Tuesday, in accordance with standard urgent motion court practice. All other standard factors pertinent to urgent matters shall continue to apply.

13. No urgent Family Law case to be heard during court hours during term shall, after 16 July 2022, be enrolled in the general urgent motion court and should a matter be so enrolled, it shall be automatically transferred to the Family Court Roll.
14. A Family Law case which is so urgent that it is necessary to bring it after court hours during term or during any recess, shall be enrolled in the urgent motion court, not in the Family Court. As a general rule, such a case would be in respect of interim relief.

Anterior Directives and other injunctions relevant to Family cases

15. The applicable directives and related procedural injunctions in all types of Family Law cases, to which practitioners must have regard, include the following, which are all subject to the procedural injunctions in this directive:

- 15.1. The Practice Manual of the Johannesburg High Court (including Chapters 9.9 and 9.23);
- 15.2. Practice Directive 1 of 2020;
- 15.3. Practice Directive 2 of 2020, in particular as it relates to motion court proceedings, rule 43 applications and Financial Disclosure Forms (FDFs);
- 15.4. Revised Practice Directive 1 of 2021, dated 11 June 2021 but in particular Part B;
- 15.5. The revised consolidated Directive of 18 September 2020, dated 11 June 2021;

- 15.6. Paragraph 10.15 of the Johannesburg Consolidated Practice Directive dated October 2018 insofar as it relates to The Hague Convention on Civil Aspects of International Child Abduction.
- 15.7. Paragraph 10.16 of the Johannesburg Consolidated Practice Directive dated October 2018 insofar as it relates to applications for the confirmation of surrogacy agreements in terms of section 295 of the Children's Act, 38 of 2005.

Case management of Family cases

16. In an appropriate case, an opposed Family Law case may be case-managed by a Judge assigned to undertake that task by the Deputy Judge-president (DJP).
- 16.1. an appropriate case is one in which there is substantial degree of complexity of either law or of fact and the intervention of a judge is necessary to overcome the risk of delay or promote the prospect of settlement.
- 16.2. an appropriate case is not one in which the respective parties or their representatives merely encounter inter-personal difficulties or experience difficulty in securing agreement on the expeditious preparation of the case.
- 16.3. An application for case management is made by letter, copied to the adversary, addressed to the DJP.
- 16.4. The assignment of a case-manager-Judge by the DJP shall be subject to the availability, from time to time, of Judges to undertake such assignments, and a meritorious case may be refused the assignment of a case manager for reasons of such unavailability at the time of the request.

Re-evaluation and consultation on this directive

17. This directive shall be re-evaluated at the conclusion of the third term of 2022 and appropriate revisions shall be effected. Accordingly, constructive comment from practitioners on the efficacy of the model shall be appreciated. These may be directed to the office of the DJP and shall receive the attention of the Judges' Family Law Committee

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

**ROLAND SUTHERLAND
DEPUTY JUDGE PRESIDENT, JOHANNESBURG**

6 June 2022.