



**OFFICE OF THE DEPUTY JUDGE PRESIDENT LEDWABA
HIGH COURT OF SOUTH AFRICA, GAUTENG PROVINCIAL DIVISION, PRETORIA**

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To:

1. The Judges of the Gauteng Division, Pretoria
2. Chief Registrar, Gauteng Division, Pretoria
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

RE: FAMILY COURT DIRECTIVE

1. It is envisaged that as from the second term 2023, Gauteng Division of the High Court, Pretoria will commence to operate the Family Court. The duty roster will show the names of the Judges in the Family Court. At present, two judges are allocated per week of the duty roster with the exception of the last week of term and the recesses. Those judges will sit in cycles of two weeks each.
2. Practitioners will approach the Family Court Registrar and apply for dates of hearing in Week 1. A date of hearing will be allocated during week 2. All matters will be allocated for a Monday and a Notice of Set Down is to be filed for a Monday and, where applicable, served on the other party. On the Wednesday of Week 2, the Registrar will send the entire roll to the senior judge sitting in the Family Court in Week 4. The senior judge for each

week will then allocate matters to themselves and the junior judge. Each judge shall then send out their allocated roll by the Tuesday of the week prior to the week of hearing.

3. Until May 2023:

- 3.1 unopposed divorces and Rule 43's have been allocated as if they were to be heard in the unopposed motion court.
- 3.2 Those matters will remain set down for the dates already provided to the parties, but they will now be heard in the Family Court. The Family Court judge will contact the parties to arrange the final date of hearing.
- 3.3 A Family Court judge is entitled to contact the parties to arrange to hear the matters during the course of the allocated week, if no extra costs result to the parties.
- 3.4 Save as stated above, apart from these, all other Family Court matters will be set down for the Monday of any given week and will be allocated by the senior judge in accordance with prevailing practice of the opposed motion court. Each judge may then further allocate matters for hearing during the course of that week in their discretion.

4. From May 2023:

- 4.1 The Registrar will allocate Family Court matters for a Monday of each week.
- 4.2 The consolidated Family Court Roll for the week will be sent to the senior judge and in accordance with prevailing practice of the opposed motion court will be further allocated by him/her to the other judge and himself.
- 4.3 Each judge will then further allocate matters for hearing during the course of that week in their discretion.

5. Matters that will be heard by the Family Court will be the following:

- Unopposed divorces
- Opposed and unopposed Rule 43 applications
- Interdicts relating to family issues

- Matters pertaining to guardianship, primary care and residence and/or contact issues
- Relocation applications
- Enforcement of Family Law Procedures (eg section 7 notices, Financial Disclosure Forms)
- "semi-urgent" urgent applications pertaining to family matters
- Surrogacy matters
- Hague Convention matters
- Settled divorce matters on the civil trial roll
- Appointment of curator ad item/legal representative to minor children
- Interlocutory matters relating to family law matters

PROCEDURE

6. The existing directives will be applicable in respect of Family Law Court matters. All documents must be filed in accordance with the Directives for that particular matter before a date of hearing is sought. The application for a date of hearing is to be filed with the registrar.
7. A register will be kept for each type of matter for which a date of hearing is sought. The register is to be completed by the party seeking the date of hearing.
8. Each roll will list unopposed and opposed matters.
9. Matters will be heard during the particular week as allocated by the judge.

REGISTERS

10. The Registrar will keep a separate register in respect of Family Court matters. Separate registers will be kept for each type of matter.

MEDIATION

11. A Rule 41A notice with an explanation as to whether mediation was embarked upon and, if so, the mediator's certificate. If mediation was not attempted, a full explanation as to why not or, if wholly or partially unsuccessful, an explanation why it was unsuccessful.
12. A Family Court judge retains the discretion to stay the proceedings in any matter and refer the parties to mediation.

Urgent Family Court matters

13. The Directives in respect of urgent applications are applicable.
14. Urgent matters will be heard in the Family Court with the exception of matters that are brought as a matter of extreme urgency and set down after hours or over a weekend – those matters are to be set down for hearing in the Urgent Court.
15. All urgent applications must comply with the provisions of Rule 6(12) and a judge may strike off any matter if it is found that it is not urgent.
16. Any urgent matter (save for that brought after hours or over a weekend) must be set down in terms of the usual Practice Directives and drawn to the attention of the senior judge sitting in the Family Court in the week of set down. The senior judge will then allocate the matter further.

Case management

17. In appropriate cases, opposed Family Law cases may be case-managed by a judge assigned to undertake that task by the DJP.
18. A request for case management is to be made by letter, copied to the opponent and addressed to the DJP.
19. The assignment of a case-manager by the DJP shall be subject to availability of judges.

Surrogacy matters

1. Any party who seeks to bring an application will cause same to be issued by the Registrar in the ordinary course.
2. The application must be accompanied by a letter explaining the facts and that the application is brought in terms of s295 of Act 38 of 2005 and requesting a date for hearing. In the event that there exists any urgency in the hearing of the matter, that must be set out in the letter as well.
3. The court file must thereafter immediately be given to the Registrar of Family Court who will deliver it to the senior Judge in the Family Court for that week.
4. All surrogacy matters will be heard *in camera* in court, or via Microsoft Teams, as directed by the judge allocated to the matter. In terms of the Children's Act, 2005 these applications may not be heard in chambers. Any considerations as to a hearing *in camera* must be addressed to the judge allocated to hear the matter once the parties have been notified who the allocated judge is.

DIRECTIVES SPECIFIC TO THE FAMILY COURT

Practice notes

1. The filing of practice notes for various matters is dealt with below.
2. In order to streamline appearances and avoid counsel appearing before multiple judges at the same time, it is the responsibility of the practitioners to draw the judge's attention to the fact that they appear in more than one matter.

Unopposed divorces

1. A date of hearing may only be sought if all papers pertaining to the action have been uploaded to Court Online. This includes an evidence affidavit that must have been

deposed to by the plaintiff. The judge may hear *viva voce* evidence and where minor children are involved, the hearing of *viva voce* evidence is encouraged.

2. Any settlement agreement where minor children are involved must already have been endorsed by the Family Advocate.
3. A practice note and draft order must be filed with the application for a date of hearing.
4. Should the party seeking allocation fail to comply with these requirements, the matter may be struck or removed from the roll.

Rule 43 applications (opposed/unopposed)

1. The request for a date of hearing must include:
 - 1.1 a full set of papers properly indexed, as well heads of argument by both parties, must be uploaded to Court Online in accordance with prevailing directives;
 - 1.2 a Rule 41A notice with an explanation as to whether mediation was embarked upon and, if so, the mediator's certificate. If mediation was not attempted, a full explanation as to why or, if wholly or partially unsuccessful, an explanation why it was unsuccessful.
 - 1.3 a practice note by the party seeking the set down with the following details:
 - Counsels' details
 - Duration
 - Disputes
 - Relief sought by each party
2. A Family Court judge retains the discretion to stay the proceedings in any matter and refer the parties to mediation.

Any interlocutory application

1. A separate folder for the application that is before the court on Court Online is to be opened and marked clearly.
2. The application together with a practice note and a draft order (in word) is to be uploaded.

All opposed applications

1. The request for a date of hearing must include:
 - a. a full set of papers properly indexed and uploaded to Court Online in accordance with prevailing directives;
 - b. a Rule 41A notice with an explanation as to whether mediation was embarked upon and, if so, the mediator's certificate. If mediation was not attempted, a full explanation as to why or, if wholly or partially unsuccessful, an explanation why it was unsuccessful.
2. Heads of argument in all matters in the Family Court must be uploaded to Court Online no later than two weeks prior to the date of hearing. The heads of argument shall be confined to the precise issues the court is called upon to adjudicate.
3. The parties shall at the same time file a joint practice note in which the following is set out:
 - the names and contact details of counsel and attorneys
 - the issues that are common cause
 - the issues in dispute
 - duration of matter
4. If any party does not comply with par 3. above, the other party shall in any event file a practice note pointing out the failure as aforesaid and the attempts made to obtain the cooperation of the other party. The failure to comply, timeously or at all, may be visited by a punitive costs order. A judge may still hear the matter despite the fact that only 1 party has filed a practice note.

5. If parties are unable to agree on the content of the joint practice note, each may file their own in the mentioned time period.

Hague Convention applications

1. All Hague Convention applications will, as a matter of course, be treated as urgent with the aim of achieving finalization within a maximum of 6 weeks from the date on which proceedings were instituted, save where circumstances are such that this is not possible.
2. Once a file for a matter under The Hague Convention has been opened, it must clearly be marked as a Hague Convention matter and must be entered in the register.
3. Although matters under The Hague Convention are dealt with as urgent in nature they are not to be enrolled in the Urgent Court. Instead they are to be dealt with as follows:
 - 3.1 the court file must, after issue, immediately be brought to the senior judge sitting in the Family Court for that week, together with a letter explaining the facts and that the application is brought in terms of The Hague Convention;
 - 3.2 the senior judge shall case manage the matter with due regard to its urgency, and ultimately hear it when ripe for hearing, within the maximum period of 6 weeks.
 - 3.3 Upon finalization of a Hague Convention matter, the date of judgment is to be entered into the register.

Sincerely



A. P LEDWABA
DEPUTY JUDGE PRESIDENT
GAUTENG HIGH COURT OF SOUTH AFRICA, PRETORIA DIVISION
29 March 2023