



OFFICE OF THE EXECUTIVE DIRECTOR

Minister of Justice and Correctional Services:
Honourable Ronald Lamola
Department of Justice and Constitutional Development
Pretoria
13 April 2020
By e-mail: Bsarela@justice.gov.za

Dear Minister, Lamola

**Short memorandum
on the comments by legal practitioners
concerning practice under the Covid-19 coronavirus regulations**

Introduction

1. The LSSA requested input from legal practitioners as to the lockdown regulations which came into force at 23h58 on Thursday night 26 March 2020, and many have expressed their wishes for changes. In effect the lockdown has operated since 27 March 2020 and, for the moment, has been extended to endure until 30 April 2020.¹
2. This memorandum does not address the Deeds office and the related practice and this will be addressed in a separate memorandum to the responsible Minister and a copy will be circulated once ready.
3. The reaction to the Covid-19 lockdown has exposed a pre-existing difficulty concerning the rule of law and access to (affordable) justice. There has been a plethora of directives.
4. The lack of uniformity of directives impedes the rule of law and makes access to justice more difficult because legal practitioners have more and more hoops to jump through and hurdles to clear. That is the central message one may extrapolate from the comments by legal practitioners, especially attorneys as they bear the burden to comply with the formalities required in the directives. And the clients pay the costs of compliance with the directives.
5. The Law Society of South Africa ('LSSA') has an ethical and moral responsibility to ensure the protection and enforcement of the rule of law, access to justice and the protection of human rights and the dignity of citizens and people currently residing in South Africa. Especially during these times, the LSSA is supportive of the regulations where they seek to protect our people and the country, notably the vulnerable, indigent and rural people who will bear the brunt of the Covid-19 virus, given their economic and social circumstances.

Practical questions: open the courts

¹ The lockdown is in terms of the regulations published under the Disaster Management Act 57 of 2002. It is not necessary to deal with the regulations in this memorandum. There are many regulations to consider.

6. Allow litigation and conveyancing to continue. Current cases need to be finalised. Allow the Sheriffs to continue their work of serving process. Legal firms must work using skeleton staff at the office. All other staff continue to work at home.
7. Allow staff to work at the office on condition that they do not show signs of Covid-19 infection. Allow such staff to do the administrative work. At the office, all staff to adhere to the social distancing requirements.
8. Legal Aid South Africa is mandated by the Legal Aid South Africa Act 39 of 2014 to help the poor get tax-funded legal assistance. During the lockdown criminal trials and those awaiting trial or bail hearings are prejudiced. Legal Aid South Africa should have been designated as an essential service.
9. The impact on victims of road accidents and the administration thereof must be allowed to continue. This should have been designated as an essential service.
10. Do not allow clients to consult at the practitioners' offices. However, after a telephonic or other electronic media consultation, allow clients to drop off necessary documents identified by the legal practitioner at the practitioner's workplace.
11. But, allow clients to consult at the practitioners' offices only for urgent cases. Let the legal practitioner determine whether a matter is urgent. Trust the legal practitioners. They are officers of court.
12. Legal practitioners are officers of court and should be trusted as such and be given the benefit of the doubt that they do not need to be policed and should be granted a general permit to attend office, attend courts, advocates chambers and other institutions, to do their work.
13. Abolish the permit system for legal practitioners (including candidate legal practitioners).
14. Abolish the requirements that Clerks of Court or Registrars must issue certificates of urgency. Let those matters rest with the legal practitioners. They are officers of court. If the presiding judicial officer is satisfied that a matter is not urgent, the Court will deal with the matter as it deems meet.
15. Process in the High Court runs throughout South Africa. Legal practitioners need to be able to cross provincial borders unhindered. Again, this is a matter of trusting officers of the court.
16. Open the Courts subject to the temporary proviso that only legal practitioners, magistrates, judges, court staff and witnesses be permitted into the court precincts. For the moment, do not allow the general public into courts.
17. Huge clusters of litigants, for example, at the CCMA need to be avoided if the courts and tribunals are re-opened. Covid-19 social distancing precautions are premium in such situations.
18. Commissioning of affidavits and the proper execution of Last Wills and Testaments require the physical presence of the necessary parties. These functions must have a specific exemption across South Africa, subject only to proper Covid-19 social distancing precautions when being carried out.
19. There are many legal practitioners who do not have the 'luxury of a significant IT structure' to work from home and to join the CaseLines (High Court) platform. Such practitioners need all the courts and tribunals to be re-opened, subject to the guidelines set out above.

20. Legal practitioners, especially attorneys, have files stored at their offices. These files are not electronic. Practitioners cannot assist clients while working from home when they cannot access their client's files.

Practical questions: if the courts stay restricted

21. Bring back the use of *dies non* for compliance with the Uniform Rules of Court and all directives relating to time limits and time bars. Legislate a similar provision for all statutes and regulations. Protect people from the rules of prescription and contractual time bars during the entire Covid-19 lockdown period.
22. If the courts do not open, then all courts must prioritise matters that were on the motion and trial rolls to be disposed of before other matters are heard. This does not apply to urgent applications.
23. The requirement for financial statements due by the end of April needs to be relaxed, especially for those practitioners who do not have access to their bookkeepers and auditors.
24. If the lockdown remains in place for legal practitioners, then a method needs to be developed to allow the commissioning of documents electronically and the signing of Last Wills and Testaments likewise. Perhaps regulations under ECTA 25 of 2002?
25. Legal practitioners implore CIPC to open its website to enable access to data and records in terms of Trade Marks, Companies etc.
26. Legal practices below a certain income threshold must be clearly designated as the services group that is subject to State financial assistance programmes that have been set up by the State.

Practical questions: general application

27. The offices of the State Attorney and the Road Accident Fund need to be re-opened urgently to allow their respective staff to pay fees due to legal practitioners. This is a practical step which will save many legal practitioners from going out of business.
28. The relief provided by the State to small and medium business enterprises needs to include financial assistance to firms of attorneys.

Concluding remarks

29. The comments from legal practitioners indicate a frustration that legal practitioners are not trusted in the justice system. This aspect is of grave concern. When the Covid-19 pandemic subsides, considerable attention must be paid to re-establishing trust in the legal profession.
30. An accountable profession is not garnered by nanny-style regulation. It is garnered by placing responsibility firmly in the hands of the legal profession itself and then holding legal practitioners to account. At present the Covid-19 regulations may seem to be patronising, based on the comments received.

31. Finally, a matter of concern;- the Law Society (United Kingdom) published a report by the [UK] Bar Council that “half of barristers’ chambers will not survive the next six months without financial aid if the pandemic persists, while 81% will collapse within a year under the current pressures”.²
32. Frankly, that report is a clarion call for us to consider more flexible methods to continue to work as legal practitioners having due regard to the advice of health professionals and full adherence to social distancing protocols at work and at home.

Should your office require any further information, please communicate with me.



Anthony Pillay
Acting Executive Director
Law Society of South Africa
083 447 8543
Tel: +27 (0)12 366 8800
Fax: +27 (0)86 677 8832
tony@LSSA.org.za

The Law Society of South Africa brings together the Black Lawyers Association, the National Association of Democratic Lawyers and provincial attorneys’ associations, in representing the attorneys’ profession in South Africa.

Tel +27 (12) 366 8800 Fax +27 (12) 362 0969 www.lssa.org.za PO Box 36626 Menlo Park 0102 Docex 82 Pretoria
304 Brooks Street Menlo Park Pretoria

² <https://www.lawgazette.co.uk/news/81-of-chambers-will-fold-within-a-year-bar-council-survey-finds/5103761.article> [accessed 11 April 2020].