



**TO: LEGAL PRACTICE COUNCIL: WESTERN CAPE PROVINCIAL
OFFICE**

CC: LSSA

FROM: CAPE TOWN ATTORNEYS ASSOCIATION (CTAA)

DATE : 12 APRIL 2020

ATT : DIRECTOR FRANK DOREY

Dear Sir

RE: PERMITS FOR LEGAL PRACTITIONERS

A) Purpose:

1. Our President has rightly acknowledged that keeping the justice system running during the current coronavirus (COVID-19) crisis is vital, and that legal practitioners are fundamental to achieving this aim. Hence the recognition of legal practitioners in the Disaster Management Regulations and Directives as the providers of an essential service.

2. This letter is intended to draw your attention to the unprecedented challenges our members are facing during the COVID-19 lockdown and to suggest ways to reduce them. It is not intended to be a definitive statement of what is occurring on the ground but is intended to highlight practical problems experienced and our respectful submissions as to how the Legal Profession can adhere to the directives and regulations issued in terms of the current State of National Disaster while fulfilling our roles as Officers of the Court.

B) Regulations and LPC Guidelines:

3. We have reviewed the current relevant measures to curb the spread of COVID-19 which included:
 - a) The Regulations;
 - b) Guidance Notes issued by the Legal Practice Council;
 - c) Western Cape High Court Directive/s;
 - d) Regional Court Directive;
 - e) Directive from the Office of the Chief Magistrate (Cape Town);
 - f) Judgments on this issue.
4. We have also considered the objects of the Legal Practice Council which include the promotion of access to the legal profession, upholding and advancing the rule of law, the administration of justice, and the Constitution of the Republic.

C) **Members' complaints:**

Documents required when commuting without a permit.

5. As a result of the withdrawal of the Directions published by Government Notice No. 418 in Government Gazette No. 43167 of 26 March 2020 and its replacement by the Directions published by the Minister of Justice and Correctional Services by Government Notice No. 440 in Government Gazette No. 43191 of 31 March 2020 ("the Replacement Directions"), the LPC issued an additional Guidance Note to assist legal practitioners.
6. In sum, insofar as it relates to commuting during the lockdown period to gain access to courts, legal practitioners require a permit issued by the director of the LPC **for each matter** that complies with the requirements of the Regulations. A legal practitioner, who is unable to obtain a permit to commute between her/his place of residence and the court, will still be able to attend at court to attend to urgent and essential matters, upon presentation of the following documents:

"(i) an original or certified copy of the legal practitioner's admission certificate;

*(ii) proof of identification; **and***

(iii) confirmation from the Registrar or Clerk of the relevant court that the matter is on the court roll for that particular day, that the legal practitioner is on record as the official legal representative in the particular matter and that the matter is urgent or essential” (own emphasis)

7. In addition, a legal practitioner is only allowed to commute from her/his place of residence to a police station for purposes of arranging for police bail if the investigating officer of the case concerned confirms that such arrangements for police bail have been made, and the provisions of paragraph (i) & (ii) above, are complied with.
8. CTAA members complain that the requirements of receiving *confirmation from the Registrar or Clerk of the relevant court that the matter is on the court roll for that particular day, that the legal practitioner is on record as the official legal representative in the particular matter and that the matter is urgent or essential* and of receiving confirmation from an investigating officer that arrangements for police bail was made do not work in practice. In particular, in lower courts:
 - 8.1 Legal practitioners come on record only when his/her matter gets called in open court around 10:00 – 11:00. While the legal practitioner has to be at court at 09h00 to inform the prosecutor of his appearance, this would be the first opportunity when the presiding officer or clerk of the Court would be aware of his appearance in a typical criminal matter;

- 8.2 It is the legal practitioner who must satisfy the court that his/her matter is urgent or essential. It cannot be a tick box exercise delegated to the Clerk of the Court;
 - 8.3 Most investigating officers' works shifts. If they are uncontactable, which is most often the case, clients are unfairly deprived of their liberty;
 - 8.4 At present very few clerks and investigating officers are aware of these regulations. The result is that they are uncooperative if members request their assistance;
 - 8.5 In most circumstances clerks in the lower criminal courts would not be able to provide proof of enrolment because matters are enrolled on the day of the first appearance at court. The LPC's written response to members that they should first provide proof of enrolment is thus out of sync with what's happening in practice in lower courts dealing with, for example, criminal matters.
9. The CTAA propose:
- 9.1 That legal practitioners be issued with **a single permit** as Essential Service Providers in conformity with Form 1 of the Regulations as Gazetted;
 - 9.2 That the permit only be issued to holders of a valid Fidelity Fund Certificate;

- 9.3 That the permit only be valid for the duration of the period of lockdown as Gazetted;
- 9.4 That a legal practitioner be allowed to commute for police bail applications and urgent court attendances provided that they are able to present:
- “(i) an original or certified copy of the legal practitioner’s admission certificate or fidelity fund certificate;*
- (ii) proof of identification; and*
- (iii) the permit issued by the LPC.*
10. The CTAA is aware that the situation in the High Court is different and that at present the Judge President determines whether a matter is urgent or not. By the very nature of things the High Court deals with a lower volume of cases than Lower Courts and therefore the current procedure can work for that Court.
11. We remain mindful that our current circumstances require that our members adopt a common sense and pragmatic approach during this time. The proposal is not intended to undermine the important lockdown measures but to enhance its efficacy.

12. While a Clerk or investigating officer at court might understand the urgency and the reasons for not obtaining a permit timeously, a member of the South African Defence Force at a road block may not have the same understanding/interpretation of the LPC directives. This may lead to possible danger for the legal practitioner especially late at night. We are aware of anecdotal reports of members of the public being injured in similar situations and there are news reports attesting to this as well.
13. A legal practitioner might also have to appear for various matters in a specific court and this would mean that he would have to have a permit for **each** of these appearances.

LPC records not up to date:

14. Permits to perform an essential service under Regulation 11A(B)16 are only issued to legal practitioners who appear on the LPC's list of practicing legal practitioners.
15. The CTAA received complaints that newly admitted legal practitioners were unable to obtain permits from the LPC because their names did not reflect on list. The prejudice for both member and client is obvious.
16. In our view, the legal practitioners who deal with Criminal law, GBV and Children's Court matters are those most severely affected at present. These matters are by their very nature urgent and it is sometimes impossible to obtain the necessary permits after hours.

D) Conclusion:

17. It should be emphasised that only if all the parties as required for *the essential functioning of courts* are able to perform their duties, can the system work. It is our submission that the current LPC requirements have a negative effect on legal practitioners being able to fully perform their function as required by diligent officers of the court.
18. It would be unconscionable if we, as a profession, simply continue to stand by as our members' clients remain incarcerated because we failed to amend an impractical section of the regulations with immediate effect to prevent prolonged detention or severe prejudice.
19. The CTAA urgently request that this submission be provided to the Minister of Justice and Constitutional Development or his Deputy to allow the Minister to consider the CTAA's proposed amendment. In the event that a decision is made by the LPC not to act on our request or proposal, we ask that the LPC make the contemporaneous notes of its reasoning available and notify the CTAA accordingly.
20. We await your reply.

Yours faithfully,



CS Hendricks

Chairperson

clive.hendricks@ctaa.capetown

Cc:- LSSA@lssa.org.za

Cc:- Fiona@LSSA.org.za