

**MINUTES OF A MEETING BETWEEN THE DECEASED & INSOLVENT ESTATES COMMITTEE OF THE LAW SOCIETY OF THE NORTHERN PROVINCE AND THE MASTER HELD ON FRIDAY, 31 AUGUST 2018 AT 10:00 AT THE OFFICES OF THE MASTER IN PRETORIA**

**PRESENT:**

Ms K van Niekerk (Chairperson LSNP) (PAA & LSSA)  
Mr V Noko on behalf of Ms L Malatsi-Tefo (LSNP)  
Mr A Theron (JAA) (PAA) (GLC)

**IN ATTENDANCE:**

Ms A Cook  
(Legal Official)

**MASTER OF THE NORTH GAUTENG HIGH COURT:**

Ms T Bezuidenhout (Acting Chief Master: Pretoria)  
Ms C Rossouw (Acting Master)  
Ms A Pearson (Acting Deputy Master; Deceased Groups)  
F Strauss (Deputy Master: Guardian's Fund)  
M Barnard (Deputy Master: Insolvencies)  
R Nchabeleng (Acting Deputy Master)  
Ms MSF Mamabolo (Registry Supervisor: Registry Section)  
Mr M Segoane (Office Manager)  
MS HC Venter  
Mr SA Maponya  
Ms N Mokate  
Mr D van Schalkwyk  
Ms P Roseas (Johannesburg)  
Ms M Mduvhuno (Johannesburg)

**APOLOGIES:**

Mr K La Manamela (LSNP)  
Mr JDS De Bruyn (APA)  
Ms K Gascoigne (JAA)  
Ms A van der Merwe (GLC)  
Ms NM Ntsoane (Deputy Master: Appointments: Deceased Estates)

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## **1. FORMALITIES**

### **1.1 Welcome and apologies**

Ms C Rossouw, the Acting Master, chaired the meeting and welcomed everybody present.

It was noted that Mr V Noko attended the meeting on behalf of Ms Malatsi-Teffo and that Mr K La Manamela, Mr JDS De Bruyn, Ms K Gascoigne, Ms A van der Merwe and Ms NM Ntsoane tendered their apologies for not attending the meeting.

Mr Theron noted that in future, after the establishing of the Legal Practice Council (LPC), the Pretoria and Johannesburg Attorneys Association and a new organisation, the Gauteng Attorneys Association, would meet with the Masters' Office on a regular basis.

## **2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING**

The minutes of the previous meeting held on 08 May 2018 was approved and signed by the chairperson.

## **3. MATTERS ARISING FROM THE PREVIOUS MEETING**

### **3.1 Item 3.1: Call Centre**

Regarding a question raised by Mr. Theron pertaining to the new performance agreements of staff of the Master specifically regarding the non-answering of telephone calls. Ms Bezuidenhout indicated that the Masters' office system would return to Telkom as the service provider and there was no further development to the proposed call centre. She said it was difficult to address the problem of the non-answering of phones as in many cases the assistant masters were not always in their offices to answer calls and that files were also not always in their offices. It would be impossible for an Assistant Master of an estate controller to assist with a telephone query if they do not have the file in front of them. She said that in many cases when the telephone line is engaged the caller will still hear the ringtone but that the telephone is actually engaged. She requested that attorneys should rather sent e-mails regarding

queries. If necessary problems must be escalated to the assistant masters and then to the Deputy Masters of the section.

Mr. Theron said that in the previous minutes of the meeting held on 08 May 2018, it was recorded that the Master would sign new performance agreements with staff members. The Master indicated that these agreements were already in place.

Ms. Venter said that should there be no response, or solutions, after complaints have been lodged with the Master following the specific escalation process to the Assistance Master and Deputy Master, these matters should be referred to the Chief Masters' office for investigation.

### 3.2 Item 5.3: Missing Files – Metro File

Pertaining to a question raised by Ms. van Niekerk, Mr. Segokane indicated that there were still some outstanding files to be moved from docufile to metrofile. Mr. Segokane said that attorneys should be requested to wait with payment for the copies until the file had been secured by the Master from metrofile. He said that registers of requested copies were kept by the Master and that most requests for copies were received via e-mail.

Attorneys may still pay for copies when ordered but no refund will be done by the Master should the file not be found.

Regarding a question raised, Ms. Mamabolo indicated that 80% of clients request copies via e-mail and that she also corresponds with clients via e-mail to confirm whether or not the file had been located and the copies were ready for collection.

Dummy files must be opened by the Master if a file is not found within a reasonable time.

Ms. Bezuidenhout further noted and agreed that in matters where the file was missing and the attorney provides a request to the Master for urgent copies as well as confirmed under oath that the original documents are in their possession; the Master must assist and provide a certified copy. These matters must be referred to the relevant assistant Master.

Ms. Bezuidenhout said that in matters registered after 2012, these documents had been scanned and would be available on the system and that in these cases, files must not be ordered.

**It was noted that the following process was followed by the Master when there was a request for copies of documents:**

- Applications could be made by e-mail and the necessary forms should be completed;
- Requests could be in person and the necessary form must be completed;
- Clients who were attorneys must add their contact details and e-mail addresses on the request forms;
- The requests for certified copies could be e-mailed to [mamabolo@justice.gov.za](mailto:mamabolo@justice.gov.za) or [smaponya@justice.gov.za](mailto:smaponya@justice.gov.za);
- The Master must contact the client (if the request was via e-mail) to indicate when the file would be available;
- Attorneys may lodge a duplicate copy request form to be stamped by the Master as proof that the request was made.

Ms. Bezuidenhout indicated that the staff was requested to follow a specific procedure and if it was not adhered to a disciplinary process would follow.

### 3.3 Item 9.3: Complaints lodged by the Master

It was noted that Mr. Fourie of the Law Society was in a process of addressing this matter directly with Ms. Rossouw.

## 4. **APPOINTMENT OF THE NEW MASTER: PRETORIA**

Ms. Bezuidenhout indicated that the position for the Master in Pretoria would be advertised within the next 14 days by the Department and that the position for the Deputy Master in the Trust and Curatorship department would also be advertised.

## **5. UPDATED TELEPHONE LIST**

Ms. Venter indicated that the updated telephone list of the Master was available on the Master's website but that the Law Society would be provided with the most recent copy thereof.

## **6. SCANNED DOCUMENTS – MASTER'S WEB PORTAL**

Regarding a question raised by Ms. van Niekerk, the Master indicated that all new documents and new files were being scanned but that the J84 query sheets were not available on the Master's portal.

Pertaining to a question raised by Ms. van Niekerk, Ms. Pearson indicated that the letters of executorship as well as a copy of the liquidation and distribution account were available on the Masters portal and that the information and permission to advertise would be available on the Masters' website and not on the portal. She said that the following information was also available on the Masters' website; the date when the liquidation and distribution account was examined and a query sheet issued and permission to advertise the account.

## **7. COMPLAINTS AND ISSUES BY ATTORNEYS**

Ms. van Niekerk said that she had been provided with complaints from members of the Law Society and Pretoria Attorneys Association regarding service delivery. It was noted that Ms. Bezuidenhout was provided with copies thereof.

Ms. Bezuidenhout confirmed that these matters would be addressed.

Ms. Van Niekerk said that there seemed to be a delay on issuing of the letters of executorship in some instances. Ms. Bezuidenhout indicated that members of the Law Society should provide specific examples of these problems and she confirmed that disciplinary action would be taken against staff members of the Master's office where investigations led to specific instances where staff members did not follow protocol. She specifically said that she has requested the Deputy Masters to provide her with reports where there were delays in the issuing of the processes and that she had not received any reports of delays so far.

It was **agreed** that a newsflash should be issued to members regarding several issues specifically pertaining to delays in issuing of letters of executorship and complaints where J84 query sheets were not issued within a reasonable time.

It was also **agreed** that a draft be prepared and distributed to Ms. Bezuidenhout and Ms. Rossouw for their comments before it was issued to members of the Law Society.

Ms. Mamabolo said that there was also a challenge with the Post Office and the delivering of letters. She said that in many instances, letters were re-issued on request of attorneys.

It was **agreed** that the Master would monitor and investigate the complaints pertaining to copies which was a huge problem. Ms. Rossouw proposed that attorneys should request certified copies of wills in the beginning of the reporting process to secure certified copies and that this would reduce the risk to request copies at a later stage as the files were already available at that stage.

Ms. van Niekerk indicated that there were also complaints regarding liquidation and distribution accounts that did not have the accepted stamp when attorneys requested copies thereof. The files then had to go back to the Assistant Master for approval of the liquidation and distribution account and the affixing of the stamp. Ms. Pearson said that the problem was that the stamp of the Master's approval could only be affixed to the liquidation and distribution account after the account had lain for inspection free from any objections.

Ms. Bezuidenhout indicated that this matter would be addressed by the Master. She requested the Law Society to request its members to rather escalate serious problems to the Chief Master's office before attorneys brought applications to Court. She indicated that this request could be included in a newsflash to members.

Ms. Rossouw said that she previously requested the Law Society to request its members to send a copy of a Court Order directly to the Deputy Master of the section. Ms. Bezuidenhout said that in instances where Court documents were served on the Master, the registry section must make sure that these documents reach the Deputy Masters on an urgent basis.

Ms. van Niekerk said that the issuing of filing slips and discharge documents were also problematic. Ms. Bezuidenhout said that she understood the

essence and complications for attorneys with the Attorneys' Indemnity Insurance Fund (AIIF) and that she recently attended a meeting with the AIIF, specifically in relation to formal discharge and a reduction of the bond of security to nil in old matters.

Ms. Bezuidenhout in discussion with Mr. van Schalkwyk indicated that the form and application for a filing slip and formal discharge would be combined and would be changed in future and that there must be a paragraph to include formal discharge of a bond of security. She said that in a recent workshop, that she attended, the matter pertaining to bonds of security was discussed. In future a list would be created by the Master and preferred security companies would be listed and that there would be one document that would include a formal discharge a filing slip as well as provision for a bond of security to be reduced.

Mr. van Schalkwyk said that a filing notice must be issued by the Master when matters had been finalized in an estate but that only an executor could bring an application for a formal discharge to the Master.

Pertaining to a question raised by Ms. van Niekerk regarding the appointment of overseas executors, the Master indicated that if there was no power of assumption in the will and the nominated executor did not have any domicile in South Africa, the Master could only appoint a South African executor in terms of the act, with or without security. A formal renunciation from the overseas executor is not necessary.

## **8. GENERAL**

### **8.1 Chief Master's Directive: Attorneys' Trust Account**

Ms. Venter said that in terms of the previous Chief Master's Directive, attorneys were allowed to use their trust accounts to deposit moneys of the estate and to administer the estate but the attorney must apply to the Master for consent to use his trust account (as recorded by the Directive issued by the Chief Master). She said that in terms of the Deceased Estates Act, a separate bank account must be opened and that attorneys must be made aware of the fact that they should apply for permission from the Master to use their trust accounts.



## 8.2 Regulation 910

Ms. Venter said that the existence of Regulation 910 had been discussed and deliberated on many occasions and that the Master requested many different legal opinions in this regard but that in general, it was problematic for the Master to hold the correct party responsible in instances of noncompliance. Attorneys are appointed as an agent in most instances and not as the executor of the estate. She said it was agreed that Regulation 910 must be scrapped and that in future executors who had been nominated and exempted from providing security in the will, could be requested to provide security to the Master to be appointed. She said that to protect beneficiaries, the attorney would then have to be appointed as the executor of the estate and not the agent. She said that in general, the Master would always have discretion to require security and would do so in terms of their discretion.

Ms. Bezuidenhout said that there are problems where staff members received kick-backs from attorneys when they refer the public to the specific attorneys to assist as agents. She said it was agreed by the Master's office that the Master had no authority to insist on the appointment of an agent in terms of Deceased Estates Act and that there was freedom of testation and that the testator could appoint or nominate any person he felt comfortable with.

She said that these and other possible changes would still be considered and finalised pending the Minister's approval and a workshop with the Law Societies will follow.

## 8.3 Medical Negligence/Road Accident Fund

Ms. Bezuidenhout said that the Master's office was also struggling with cases where attorneys were instructed to deal with Road Accident Fund (RAF) matters that specifically created trusts. The Master could not monitor and control the assets of the individuals where the trustees who were appointed in terms of the trust were the attorneys of record also. She said that in many of these cases of RAF the clients were not incapacitated and could handle their own affairs but that a trust was created by the attorney where the Master would have no control in. She said it is a serious problem and that the Minister indicated that there should be considered, proposed amendments to the Trust Property Control Act to eliminate this problem. Ms. Rossouw indicated that the Insolvency Act would also be amended soon.

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