



## OFFICE OF THE JUDGE PRESIDENT

### GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA

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18 February 2021

To:-

1. Judges - Gauteng Division of the High Court, Pretoria and Johannesburg
2. Chief Registrar - Gauteng Division of the High Court, Pretoria and Johannesburg
3. Secretariat – Judicial Case Flow Management, Office of the Chief Justice
4. Registrars - Gauteng Division of the High Court, Johannesburg and Pretoria
5. Legal Practice Council – Gauteng
6. Law Society of South Africa
7. Johannesburg Society of Advocates
8. Pan African Bar Association of South Africa
9. Gauteng Family Law Forum
10. Gauteng Attorneys Association
11. Pretoria Attorneys Association
12. Johannesburg Attorneys Association
13. West Rand Attorneys Association
14. South African Black Women in Law
15. South African Women Lawyers Association
16. General Council of the Bar of South Africa
17. National Bar Council of South Africa
18. South African Bar Association
19. National Forum for Advocates
20. Pretoria Society of Advocates
21. North Gauteng Association of Advocates
22. Church Square Association of Advocates
23. Advocates for Transformation



24. Black Lawyers Association
25. South African Medical Malpractice Lawyers Association
26. Personal Injury Plaintiff Lawyers Association
27. National Association of Democratic Lawyers
28. Office of the Director of Public Prosecutions, Pretoria and Johannesburg
29. Office of the State Attorneys, Pretoria and Johannesburg
30. CEO – Legal Aid South Africa
31. CEO – Road Accident Fund
32. CEO – PRASA
33. Director General – Gauteng Province
34. Head of Legal Department – Department of Health – Gauteng Province
35. South African Medico-Legal Association
36. Solicitor General

#### **JUDGE PRESIDENT'S PRACTICE DIRECTIVE 1 of 2021**

This Directive is a revision and amplification of Judge President's Practice Directive 2 of 2019 issued on 5 July 2019 and simultaneously incorporates Judge President's Practice Directive 2.1 of 2019 issued on 2 October 2019 which are withdrawn and replaced by this Directive. This Directive is effective immediately upon publication on 18 February 2020.

This Directive refers to two Parts, i.e., Part A and Part B. Part A relates to the Case Management, Trial Allocation and Enrolment of Civil Trial matters and Part B relates to the Issuing of Process, electronic service and filing of Practice notes and Heads of Argument.

**PART A:- TO REGULATE THE CASE MANAGEMENT, TRIAL ALLOCATION AND ENROLMENT OF TRIAL MATTERS WITH EFFECT FROM 18 FEBRUARY 2021 IN THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA AND JOHANNESBURG.**



## CHAPTER 1: THE SCOPE OF APPLICATION OF THIS DIRECTIVE

1. This directive is to be read with Uniform Rules of Court 36, 37 and 37A, as amended and published in Government Gazette Notice 42497, which are in force from 1 July 2019 as well as the Amended Consolidated Directive of 18 September 2020 relating to court operations during the COVID-19 pandemic, for as long as the Consolidated Directive remains in force and effect.
2. The scope of the directive is as follows:
  - 2.1. This directive applies to both the Pretoria High Court seat and to the Johannesburg High Court seat.
  - 2.2. The provisions of this directive prevail over any provision in the practice manuals of either seat of the Division.
  - 2.3. Different parts of this directive apply to different categories of cases.
  - 2.4. All trial matters in which the Defendant is the Road Accident Fund or PRASA or the MEC for Health, Gauteng, are classified “Y” and are subject to the prescribed Judicial Case Management procedure set out herein.
  - 2.5. All other trial matters constitute the categories - Commercial “C”, Family “F”, Delictual “D,” and Public Law “P” in respect of which chapter 7 shall apply.
  - 2.6. All trial matters in all categories are subject to the provisions of paragraphs 4-5, and 9-38.

## CHAPTER 2: INTERPRETATION OF THIS DIRECTIVE

3. This directive shall be construed and applied in accordance with the principle that notwithstanding the provisions herein providing for judicial case management, the primary responsibility remains with the parties and their legal representatives to prepare



properly, to comply with all Rules of Court, the practice manual and this directive and to act professionally in expediting the matter towards trial and adjudication. The objectives of judicial case management in the interests of justice are to alleviate congested trial rolls and to address the problems which cause delays in the finalisation of cases. The principle underpinning judicial case management in this division is that trial dates will be allocated to matters that have a clearly identified triable issue(s). Any failure by a party to adhere to the principles in this directive may be penalised by way of an adverse costs order on a punitive scale, *de bonis propriis*, and may further include an order disallowing fees to be charged to a litigant by that litigant's own legal practitioners.

### CHAPTER 3: PROCEDURE AT COMMENCEMENT OF AN ACTION APPLICABLE TO ALL TRIAL MATTERS WITH EFFECT FROM 18 FEBRUARY 2021.

#### 4. At the time a summons is issued:

4.1. The Plaintiff shall, together with the summons, present to the Registrar, in the prescribed form:

4.1.1. a statement that the matter is one in which the Defendant is the **RAF, or the MEC Health, Gauteng or PRASA** whereupon the Registrar shall add to the case number the letter "Y", or

4.1.2. a statement that the matter does not involve any of the above-named Defendants, and further, shall classify the matter as:

- (1) a Commercial matter "C", or
- (2) a Family law matter "F", or
- (3) a Delictual matter "D", or
- (4) a Public law matter "P". (A constitutional or administrative law matter)

4.1.3. the details of an email address and contact person to whom all communications in terms of this paragraph shall be sent.



- 4.1.4. the Registrar shall maintain a record and schedule of the different categories of cases, and routinely report such statistical information as the Judge President directs.
- 4.2. The Plaintiff shall, upon filing the return of service of the summons, in the prescribed form, state:
- 4.2.1. the date, in terms of the Rules of Court, upon which the notice of intention to defend is due.
- 4.2.2. the date, in terms of the Rules of Court, upon which a plea is due if notice of intention to defend was given on the date mentioned in paragraph 4.2.1.
- 4.3. A Defendant shall, upon delivering a notice of intention to defend, in the prescribed form, furnish details of an email address and contact person to whom all communications in terms of this paragraph shall be sent.
- 4.4. A Plaintiff is generally entitled, in terms of the Rules of Court, to proceed to seek a default judgment in the unopposed motion Court where a Defendant fails or refuses to file a notice of intention to defend or fails or refuses to file a plea. In such instances and with respect to “Y” matters, the Plaintiff must comply with paragraphs 4.5 and 4.6 hereunder.
- 4.5. Where the Defendant fails or refuses to file a notice of intention to defend, a Plaintiff must apply to the Registrar for a date in the Trials Court to make application to obtain Judgement by default as contemplated in Chapter 6 of this directive. Upon being satisfied that the application is compliant, having regard to a written declaration by the attorney of record that service was effective, a copy of the return of service being attached, and that the prescribed dies expired on a stipulated date before the request for a set-down date, the Registrar must allocate a date in the Trials Court and notify the parties accordingly.



4.6. Where the Defendant in category “Y” has filed a notice of intention to defend but has failed or refused to file a plea, and the Plaintiff has served and filed a notice of bar in terms of the Rules of Court, the Plaintiff must follow the procedure set out in paragraph 4.5 above.

#### **CHAPTER 4: PROCEDURE TO PREPARE FOR A CASE MANAGEMENT CONFERENCE FOR MATTERS IN WHICH THE DEFENDANT IS THE RAF OR THE MEC HEALTH, GAUTENG OR PRASA - CATEGORY “Y”.**

5. The underlying principle that governs the Judicial Case Management regime is that the procedure applies to matters where both parties have engaged each other thus far regarding the requisite pre-trial procedures. A matter in which only one party has been active in this regard shall be dealt with in terms of Chapter 6 below.

6. A party who contends that any matter in which the Defendant is the **RAF, or the MEC Health, Gauteng or PRASA**, (category “Y”) is ripe to be allocated a trial date, excluding the matters dealt with as referred to in paragraphs 4.4, 4.5 and 4.6, shall:

6.1. apply, in the prescribed form to the designated Registrar for a case management conference, and

6.2. together with such application, deliver to the Registrar a practice note by the attorney or Counsel dealing fully with these issues:

6.2.1. the issues in the case that are not in dispute, and in respect of which by reason thereof no evidence shall be allowed at the trial.

6.2.2. the issues in the case that are in dispute, describing:

6.2.2.1. the exact nature of the disputes of fact and disputes of law,

6.2.2.2. the exact contentions of each party in respect of that issue.



6.3. The descriptions required in paragraphs 6.2.2.1 and 6.2.2.2 shall not be vague generalities, but shall be concrete and facilitate a clear grasp of the decisions a court shall be required to decide.

7. Upon such application being lodged in terms of paragraph 6.1, the Registrar shall notify all parties, by email:

7.1. of the date, time and place of a case management conference,

7.2. of the identity of the designated Judge, if known at that time,

7.3. that the parties must, if not already having done so, hold a pre-trial conference before the date fixed for the conference, which conference shall address all the questions identified in paragraph 11-12 of this directive,

7.4. that the Plaintiff shall not later than the Thursday before the date fixed for the conference, invite the relevant office profile:

7.4.1. to the Court file as uploaded on CaseLines in accordance with the prescribed format as set out in Part B, paragraph 7. The Court file must be suitably sectioned, ordered, and bundled in a logical chronological order, containing legible copies of every document (uploaded as an individual document, appropriately described and without duplication) as follows:

7.4.1.1. under "01 Master bundle" with separate sections:

7.4.1.1.1. for pleadings - a full set of the pleadings,

7.4.1.1.2. for pre-amended pleadings – a full set of pre-amended pleadings,

7.4.1.1.3. for notices - all notices,



7.4.1.1.4. for discovery - the discovery affidavits of all parties with a statement that discovery is complete, alternatively if not complete, a full explanation why not, and what steps are necessary to achieve completion,

7.4.1.1.5. for expert reports - a set of the expert reports, as contemplated in Uniform Rule 36(9)(b), which reports conform to the following:

(a) expert reports must be drafted in a format designated for lucidity, brevity, and convenient cross-referencing. To this end, it must be in numbered paragraphs. When referring to other expert reports, refer to the numbered paragraphs therein.

(b) where more than one expert has reported on a given aspect, joint minutes of experts must identify precisely what is agreed and what is not agreed, with reasons stated why an agreement could not be achieved, especially as to whether the disagreement relates to a fact clinically observed or an interpretation of the facts.

(c) the attorney responsible for the reports' procurement is accountable for compliance in this regard, and failure to adhere hereto may imperil certification.

7.4.1.1.6. for pre-trial minutes – the signed pre-trial minutes subject to paragraph 7.4.2 below,

7.4.1.1.7. for practice notes - all required practice notes,

7.4.1.1.8. for trial bundle - all documents that the parties intend to use at the trial:



There must be a single bundle of legible copies, without duplication, in logical order, whether chronological or thematic, as needs be, and indexed in accordance with CaseLines indexing page numbering. Disagreement, if any, about the contents of the bundle must be raised with the allocated Judge at the hearing.

Before the trial, the parties must agree upon the documents' evidential status and which documents form part of the record in the instance of an appeal. The pre-trial minute must include this agreement.

Where a party includes unnecessary documents in the bundle, the Court may, on the application of any party to the trial, or *mero motu*, make a punitive costs Order in respect thereof.

7.4.1.2. Parties must not create separate sections for every document. They must upload the individual document to the appropriate group/section to which the document belongs.

7.4.2. The signed, agreed, minute of the pre-trial conference which has addressed all the questions identified in paragraph 8; alternatively, in the event that the parties have not reached agreement on the contents of the minute, a minute signed by the party filing the document together with an explanation why agreement on its content was not obtained. (In this regard attention is drawn to paragraphs 19 and 39 to 50 dealing with the utilisation of the Trials Interlocutory Court to procure compliance and cooperation from an adversary).



8. The minute referred to in paragraph 7.4.2 shall:

8.1. particularise the parties' agreement or respective positions on each of the following questions:

8.1.1. the matters mentioned in Rule of Court 37(6);

8.1.2. the soliciting of admissions and the making of enquiries from and by the parties with a view to narrowing the issues or curtailing the need for oral evidence.

8.1.3. In respect of expert witnesses:

8.1.3.1. the feasibility and reasonableness, in the circumstances of the case, that a single joint expert be appointed by the parties in respect of any issue.

8.1.3.2. if a single joint expert witness is not appointed, why a single expert on a given aspect is inappropriate.

8.1.4. the identity of the witnesses the parties intend to call and in broad terms the nature of such evidence to be given by each witness.

8.1.5. whether a separation of issues within the contemplation of Uniform Rule 33 is appropriate, and if so, why that is so.

8.1.6. any other matter germane to expediting the trial readiness of the case.

8.2. in the event that further steps are necessary to render the matter trial ready, explicitly:

8.2.1. identify those steps, and



8.2.2. set out a proposed time table according to which the parties commit to achieving readiness.

**CHAPTER 5: PROCEDURE AT A JUDICIAL CASE MANAGEMENT CONFERENCE IN MATTERS IN WHICH THE DEFENDANT IS THE RAF OR THE MEC, HEALTH GAUTENG OR PRASA. (CATEGORY “Y”)**

9. The Judge who presides over a case management conference:

9.1. shall not preside over the trial unless the parties agreed thereto;

9.2. however, such Judge may make a final Order in a settled matter if such Order is by consent of all parties.

10. At a conference, without limiting the scope of judicial engagement, the Judge shall:

10.1. explore settlement, on all or some of the issues, including, if appropriate, enquiring whether the parties have considered voluntary mediation, irrespective of whatever prior responses may have been given by any party in terms of Rule 41A, and may in this regard, if deemed appropriate, elicit information from the parties on matters such as the existence and content of settlement offers that would ordinarily be without prejudice and not disclosable to a trial Judge.

10.2. endeavour to promote agreement on limiting the number of witnesses that will be called at the trial eliminating pointless repetition or evidence covering facts already admitted.

10.3. identify and record the issues as adequately defined to be tried in the action and be satisfied that all issues amenable to be resolved without a trial have been dealt with.



- 10.4. address any potential causes of delay in the commencement of the trial and be satisfied that such potential causes have been pre-empted to the extent practically possible.
  - 10.5. address the sufficiency of expert witness reports and joint minutes and be satisfied that in form and substance there has been compliance with the provisions of this directive.
11. At a conference, without limiting the scope of judicial engagement and the powers of the Judge, the Judge may:
- 11.1. order, in terms of Rule 33(4), a separation of issues in appropriate cases notwithstanding the absence of agreement by the parties thereto.
  - 11.2. in exceptional circumstances, and on good cause shown, put the parties on such terms as are appropriate to achieve trial readiness, and direct them to report to that Judge at a further conference to be convened on a fixed date.
  - 11.3. give directions for the hearing of opposed interlocutory applications by a Motion Court on an expedited basis.
  - 11.4. strike the matter from the case management roll and direct that it be re-enrolled only after any non-compliance with the Rules of Court or the Practice Manual or this directive, have been purged, including, when appropriate in respect of RAF matters, a direction to comply with this Directive.
  - 11.5. refuse certification; in which case the parties must again apply *ab initio* for certification.
  - 11.6. certify a matter trial ready:
    - 11.6.1. including a directive whether to hear oral evidence or to hear as a stated case on specified issues, as contemplated in Rule 33(1) – (3), in which



case an Order in the prescribed form shall be issued for presentation to the Registrar who shall allocate a trial date.

11.6.2. including an indication of the duration thereof and whether it requires to be referred to the DJP for a directive owing to it being a trial of long duration.

11.6.3 If a matter is of long duration, i.e., more than 5 days, the Plaintiff must not approach the Registrar for a set down date before approaching the office of the DJP for a directive as to the date.

11.7. make any Order as to costs against the parties' legal representatives or any other person whose conduct unreasonably frustrated the objectives of the judicial case management process, which Order may include costs on the attorney and client scale, *de bonis propriis* and the disallowance of a fee to be charged by a legal practitioner to the client.

11.8. at the conclusion of the conference, summarise the decisions made in the certificate of readiness, and, if deemed necessary, direct the Plaintiff to file a minute thereof to the Judge who issued the certificate for approval. No party may seek to amend its pleadings after a certificate has been issued without the leave of the Court and any such application may cause the certificate of readiness to lapse.

12. The record of the case management conference, including:

12.1. the minutes submitted by the parties to the Judge, and

12.2. any directives issued by the Judge and the Judge's record of the issues to be tried in the action,

12.3. but excluding any settlement discussions and offers,



shall be included in the court file placed before the trial Judge, who shall be entitled to have regard thereto in relation to the conduct of the trial including:

- (i) the determination of any applications for postponement, and
- (ii) issues of costs.

13. Parties who have been allocated a court date shall not later than 6 weeks before that court date:

13.1. file a statement, signed by one or both attorneys, verifying that the matter remains ready to proceed to trial, or,

13.2. file a statement that the matter has become unready, setting out full particulars, including the parties proposals for the future, which may include a referral to mediation, and request the assignment of a Judge to case manage the case or request time to finalise any proposed mediation, or

13.3. file a statement that the matter has become settled, and request a referral to a Judge to consider the consent order agreed upon.

14. Upon receipt thereof, the DJP shall direct the further course of the matter.

## **CHAPTER 6: SPECIAL PROCEDURE IN RESPECT OF “Y” MATTERS WHERE THE DEFENDANT HAS –**

**A: FAILED AND/OR REFUSED TO FILE A NOTICE OF INTENTION TO DEFEND;**

**B: HAS FILED SUCH A NOTICE BUT HAS FAILED AND/OR REFUSED TO FILE A PLEA AND HAS BEEN BARRED;**

**C: WHERE THE DEFENDANT HAS NOT EFFECTIVELY ENGAGED WITH THE PLAINTIFF REGARDING PRE-TRIAL PROCESSES, AND**



## D: WHERE THE DEFENDANT HAS WITHDRAWN LEGAL REPRESENTATION BEFORE THE TRIAL DATE

### *General*

15. The provisions of this chapter must be read together with the provisions of chapter 3, 4 and 5. These provisions have been introduced especially to address the habitual failure of the RAF, *qua* Defendant, in particular, to engage constructively with Plaintiffs, but is equally applicable to any other Defendant in the category “Y” who fails to constructively engage with Plaintiffs.
16. The following procedure will take effect from 18 February 2021, subject to the transitional procedures set out in paragraphs 32 to 36.
17. This chapter requires, from a Plaintiff, full compliance with the duty of disclosure as would be expected in an *ex parte* application and any failure shall imperil an Order being granted and may also result in punitive costs Orders against practitioners, a referral of the infraction to the Legal Practice Council and the professional representative Societies/Associations.
18. A Plaintiff must not apply for a case management conference to obtain a certificate of trial readiness in a matter that is not ready as a result of the non-engagement in any respect by the Defendant, and in particular the RAF. Whenever the Defendant is in default of any obligation, whether in terms of the Law, the Rules of Court, the Practice Manual or this Directive, the Plaintiff must, save in the instances mentioned in paragraphs 4.4, 4.5 and 4.6, seek compelling Orders in the Trials Interlocutory Court to secure compliance by the Defendant. For this purpose a dedicated TRIALS INTERLOCUTORY COURT has been initiated as provided in chapter 8.



19. In applications for such compelling Orders in the Trials Interlocutory Court, a Plaintiff must:

19.1. describe succinctly the material facts relevant to the efforts of the Plaintiff to secure compliance.

19.2. in respect of matters where the RAF is a Defendant, identify the claims handlers or other officials of the RAF, where their identity is known, who are ostensibly responsible for the conduct of the specific matter, or the supervision of the claims handlers, and such persons may be cited in their personal capacity in relation to any allegations of dereliction of a duty to deal with a specific matter where appropriate.

20. Where a Plaintiff has sought a response three times without an appropriate reaction from a Defendant, especially the RAF, the Court may, in an appropriate case, infer a wilful refusal to engage with the Plaintiff, and in respect of such wilfulness, make an Order appropriate to such circumstances, including a punitive costs Order.

21. If the Defendant fails to comply with any compelling Order, the Plaintiff must apply in the Trials Interlocutory Court to strike out the defence pleaded, if any, and apply for a referral to the Registrar to allocate a date to obtain a Default Judgment. Provided that the Plaintiff shall also apply in the Trials Interlocutory Court, to strike out the defence pleaded, if any, and also apply for a referral to the Registrar to allocate a date to obtain default judgement in matters where:

- (a) a judicial case management conference has not yet been convened, or
- (b) a trial readiness certificate has been issued but no trial date allocated;  
where in both categories the Defendant, especially the RAF, has not engaged or complied with the requirements of Rule 36, 37 and 37A.

22. If a referral as described in paragraph 21 is granted, the Plaintiff must properly prefix the file with DJ Trial and then approach the Civil Trials Registrar, with a copy of that Order, to allocate a set-down date for the relevant evidence to be presented in the



Default Judgment Trial Court. With regard to the matters referred to in paragraphs 4.4, 4.5 and 4.6, the Plaintiff must only seek a set down date in the Trials Interlocutory Court to obtain Judgment by default when all necessary preparation to present the relevant evidence is accomplished.

23. Upon being granted such date, the Plaintiff shall serve a notice of such set-down on the Defendant which shall include copies of the Orders granted in the Trials Interlocutory Court, where applicable.
24. If the matter becomes settled prior to the set-down date, the matter must be withdrawn from the default trial roll and re-enrolled in the Settlements Court.
25. If the matter remains unsettled and it is therefore necessary to proceed with the application for default judgment, a hearing in the Default Trial Court shall take place.
26. The Plaintiff shall, notwithstanding the non-engagement of the Defendant in whatever respect, be required to have complied with whatever prescripts in chapter 4 of this directive which can unilaterally be performed by the Plaintiff, and further, the Plaintiff must be ready to present, fully, all the evidence necessary to justify the Orders that are sought at the hearing for a default judgment.

### ***Procedure at the Default Judgment Trial Court***

27. In the standard practice note filed by the Plaintiff for the purpose of the Trial Roll Call, the Plaintiff must give a full account of the status *quo* of the matter, referred to in paragraphs 4.4, 4.5, 4.6 and 21, and of any engagement with the Defendant since the matter was before the Trials Interlocutory Court, where applicable. In respect of matters against the RAF, the claims handlers or other officials of the RAF must be named, where known, and the attempts made to make contact must be stated, with specific reference to:

- 27.1. efforts to settle and offers, if any, made.
- 27.2. the prospects of settling.
- 27.3. Proposals to mediate in terms of Rule 41A.



27.4. the reasons why settlement is unlikely.

28. Until further notice, it is assumed that all trials, including matters in which it is necessary to present evidence to obtain a default judgment shall be conducted by video link. In the event that a physical hearing is deemed necessary by the trial Judge, which ought to be the exception, evidence from one or more witnesses may nevertheless still be adduced via video link to the court room, subject to the discretion of the trial Judge.

29. In all such matters in which default judgment is sought, evidence may be tendered on affidavit and the trial Judge may, in the exercise of a discretion, accept such evidence or call for oral evidence.

30. In all such matters in which default judgment is sought, medical reports should generally be confirmed under oath by the expert and be tendered as evidence, subject to the discretion of the Trial Judge to interrogate such reports and call for oral evidence to amplify or clarify the reports, should this be deemed necessary. All expert reports must comply fully with the prescripts set out in chapter 4 of this directive.

31. In all such matters in which default judgment is sought, argument as to the computation of damages must be presented in written format to the Trial Judge with full references to the relevant case law, which should be uploaded to the electronic file on CaseLines.

### *Transitional arrangements*

32. The arrangements for the transition in respect of matters (1) in which a Judicial Case Management Conference date has not yet been allocated and (2) matters in which a certificate of readiness has been issued despite the non-engagement of the Defendant, but to which no trial date has yet been allocated, are that the Plaintiff must follow the procedure set out in this chapter from paragraph 21 above.

33. The arrangements for the transition in respect of matters which have already been allocated trial dates from 3 May 2021 onwards, shall be as follows:



34. In cases where certificates of trial readiness were granted and trial dates have been allocated and in which the Defendant, especially the RAF, has not engaged or complied with the requirements of Rule 36, 37 and 37A and/or the defendant, especially the RAF was represented at the readiness hearing and the issues for trial were delineated in the certificate, but subsequently thereto, the Defendant has withdrawn legal representation as a result of which the Plaintiff can reasonably anticipate that there shall be no representation or opposition at the trial:

34.1. The Plaintiff shall retain the set down date.

34.2. The Plaintiff shall nevertheless approach the Trials Interlocutory Court, in terms of the procedure as set out in paragraphs 21 to 31 to obtain an Order striking out the defence, if any, of the Defendant, and seek a referral to the Trial Court to proceed to seek a default judgment on the set down date, which referral must, as soon as possible thereafter, but not later than twenty days before the set down date be uploaded to the electronic file on CaseLines.

35. In cases where certificates of trial readiness were granted because the Plaintiff was ready and despite the Defendant's non-engagement or non-compliance with any obligation in the pre-trial preparation, in any respect:

35.1. the Plaintiff shall retain the set down date.

35.2. the Plaintiff must similarly approach the Trials Interlocutory Court, in terms of the procedure as set out in paragraphs 21 to 31 to obtain an Order striking out the defence, if any, of the Defendant, and seek a referral to the Trial Court to proceed to seek a default judgment, which referral must, as soon as possible thereafter, but not later than twenty days before the set down date be uploaded to the electronic file on CaseLines.

35.3. at trial, the Plaintiff shall proceed as described in this chapter.

36. Failure by the Plaintiff to comply with these directives will result in the lapsing of the trial date allocated; the Registrar will automatically remove such matters from the roll



if a copy of the Order to proceed to trial by default is not uploaded to CaseLines twenty days before the trial set-down date.

**CHAPTER 7: PROCEDURE TO APPLY FOR A TRIAL DATE IN A MATTER IN WHICH THE DEFENDANT IS NOT THE RAF, THE MEC HEALTH, GAUTENG OR PRASA; I.E, IS A MATTER IN CATEGORIES C, F, D, OR P.**

37. Paragraph 7.4.1 shall apply *mutadi mutandis* to this Chapter of the directive.
38. A party who contends that a matter categorised C, F, D or P, is ripe to be allocated a trial date shall apply in the prescribed form, to the Registrar for a certificate of trial readiness and together with such application, shall further provide the following in a statement, signed by the attorney for the party applying for the certificate, confirming that:
- 38.1. he or she has personally verified full compliance with the prescripts of this directive, in particular, paragraph 7.4.1 herein.
  - 38.2. that no interlocutory applications are outstanding or anticipated.
  - 38.3. a copy of a pre-trial minute signed by all parties, which was held not earlier than 30 calendar days before the date the application is made, accompanies the statement and is compliant with the provisions of this directive.
  - 38.4. all documentation has been uploaded to the electronic file on CaseLines and is compliant with the prescribed format as set out in Part B, paragraphs 8 to 23.
39. Upon receipt of an application that is fully compliant with these prescripts the Registrar shall issue a certificate in the prescribed form.
40. The application form and accompanying documents shall be made available to the trial Judge in due course, and the attorney applying for the certificate must ensure that a



copy of the application and the accompanying documents is retained in his or her safekeeping, and that the documents are available at trial.

41. In the event that any misrepresentation is made in such application, whether intentional or negligently, the certificate shall automatically be invalid, and the attorney and/or Counsel responsible for the application shall be referred to the DJP for an investigation into the misrepresentation and may be referred to the Legal Practice Council, for a further investigation into whether or not professional misconduct has been committed.

## **CHAPTER 8: THE TRIALS INTERLOCUTORY COURT: ROLE AND FUNCTIONS, APPLICABLE TO ALL CATEGORIES OF MATTERS**

42. A Motion Court, the Trials Interlocutory Court, dedicated to interlocutory matters in Civil Trials to address issues of non-compliance with this Directive, the practice manual of the Court and any Rule of Court, will sit Mondays to Thursdays every week, except during the period of *dies non*, between 16 December and 15 January. Matters qualifying for referral and adjudication in the Trials Interlocutory Court shall be matters in which trial dates have not been allocated as well as matters in which trial dates have been allocated.
43. Save as provided in paragraph 41, matters shall be set down on notice filed before noon 7 clear Court days before the hearing date; be succinct and rarely more than five pages of affidavit, and, where appropriate, brief heads of argument shall be submitted at the hearing. A full explanation must be provided where the page limit mentioned in this paragraph is exceeded.
44. In an application to strike out a non-compliant Defendant's defence, such application shall be set down on notice and filed before noon on a Thursday of a week, one clear week before the week in which the matter is set down.
45. Ordinary opposed or unopposed interlocutory matters relating to matters other than those in Civil Trials as described in paragraph 41 must not be enrolled in this Court



and must instead be enrolled in the GENERAL opposed or unopposed motion court, whichever is applicable.

46. Draft Orders in the Trials interlocutory Court, in addition to being uploaded to the files on CaseLines, must also be sent in word format by email to the Secretary of the presiding Judge to enable revisions, if required, at the discretion of the Judge. The Draft Orders must bear the name of Counsel, the attorney and their respective email addresses. Upon an Order being granted, the Registrar shall prepare the Order and upload it to the electronic file on CaseLines by not later than the day following the date of the Order. Copies shall be emailed to the attorney at the email address stated on the Draft.
47. Any party who, having reason to be aggrieved by the other party's neglect, dilatoriness, failure or refusal to comply with any Rule of Court, provision of the Practice Manual or provision of this Directive, must utilise the Trials Interlocutory Court to compel compliance from the delinquent party.
48. Furthermore, any breach by a Legal Practitioner to promote and advance the efficacy of the Legal Process as stipulated in paragraph 60.1 of the Code of Conduct for Legal Practitioners may be referred to the Legal Practice Council for investigation into possible professional misconduct.
49. In particular, Plaintiffs in category "Y" matters who allege that the Defendant is culpable in any way for an unnecessary delay, must not hesitate to utilise this court.
50. Among the matters which this court will deal with will be:
  - 50.1. the failure to deliver timeously any practice note or Heads of Argument that are due,
  - 50.2. a failure to comply with Rule 36,
  - 50.3. a failure to sign a Rule 37 minute promptly,



- 50.4. a failure to comply timeously with any undertaking given in a Rule 37 conference,
- 50.5. a failure to secure an expert timeously for an interview with a patient,
- 50.6. a failure to secure a meeting of experts for the purpose of preparing joint minutes,
- 50.7. non-compliance with any provision of this directive,
- 50.8. any other act of non-compliance in respect of an obligation that rests upon a party which may imperil expeditious progress of a matter may be the subject matter of an application to compel; the list is not limited.
51. In a proper case, punitive costs (including an Order disallowing legal practitioners from charging a fee to their clients) may be awarded where recalcitrance or obfuscation is apparent and is the cause of inappropriately delaying the progress of any matter.

## **CHAPTER 9: INTERROGATION OF SETTLEMENT/CONSENT DRAFT ORDERS RELATING TO ALL "Y" MATTERS**

52. No Settlement/Consent draft Order shall be considered by a Judge unless this chapter of the directive has been fully complied with.
53. Every Settlement/Consent draft Order presented shall be interrogated by a Judge who is requested to make the settlement/consent Order to determine whether or not the circumstances upon which order is premised are justified in relation to the law, the facts, and the expert reports upon which they are based.
54. Because no evidence is adduced under Oath, as might have been presented on the trial, the Court may further require that the submissions relied upon should be confirmed by affidavit or oral evidence as more fully stipulated hereunder.



55. In order to facilitate a swift but nevertheless substantive consideration of the Settlement/Consent draft Order and justification:

55.1. Plaintiffs' and Defendants' legal practitioners shall, jointly, prepare and sign a document, styled SUBMISSIONS IN SUPPORT OF SETTLEMENT/CONSENT DRAFT ORDER, in appropriate detail, indexed and paginated, where necessary, in which the facts and opinions upon which the agreements are premised, are set out, appropriately cross-referenced to the source documentation relied upon, and the connection demonstrated between the facts and the conclusions in the opinions/reports.

55.2. The SUBMISSIONS DOCUMENT shall, together with the draft consent order, and FORM 9 be presented to the Registrar, whereupon the Registrar shall set the matter down on the Roll of the Court dealing with consent orders, a fortnight hence.

55.3. Note that matters which have been left on the Trial Roll, which ought to have been removed from that roll and re-enrolled in the Settlements Court shall be summarily struck off the Trial Roll and no costs may be charged in respect thereof.

55.4. Such a matter left on the trial Roll, which is at that time settled, shall not be dealt with at the trial Roll, but shall be struck off, whereupon the parties may seek to have the consent order considered in accordance with this directive in the SETTLEMENTS COURT.

55.5. Not more than 20 matters shall be enrolled per Judge per day on the Settlement Roll.

56. All factual material relied upon by the Plaintiff and Defendant to reach agreement on –

56.1. The liability of the Defendant for the accident.

56.2. The apportionment of liability for the accident, if any.



56.3. The causal connection between the accident and injuries.

56.4. The causal connection between the injuries and the medical sequelae.

56.5. The causal connection between the sequelae and a Plaintiff's inability to be economically active on the same basis as that Plaintiff was prior to the accident.

56.6. The amount of the vouched for medical expenses.

56.7. The base-line data to provide a basis to compute:

56.7.1. past and future loss of earnings or earning capacity.

56.7.2. the quantum of support actually received from a deceased in respect of a dependant's claim.

shall be set out in the SUBMISSION DOCUMENT or affidavit as the Court may require.

57. Factual, material and legal submissions made should be supported by the admissible and relevant document which is part of the court file.

58. Where disputes of fact have been resolved by agreement, these disputes must be pertinently recorded.

59. Regarding General Damages where a sum is agreed as general damages, both legal practitioners shall sign a SUBMISSIONS DOCUMENT in which the figure agreed upon is motivated by reference to the case law, which must be referred to and, where appropriate, copies attached.

60. PLEASE NOTE THAT in matters where the total agreed quantum exceeds R5 million, the RAF legal officer and/or claims handler or any person duly authorized to give instructions shall in addition sign an affidavit stating that "he/she has personally



applied his/her mind to the facts, records and circumstances of the case and is satisfied that the offer or settlement amount is rational and appropriate”.

61. As a general rule, trial costs shall not be awarded in respect of a matter that is settled and only costs on the presentation of a settlement agreement shall be allowed.
62. Where the issue of liability for the collision and the issue of the quantum of damages have been separated, and one or other issue, but not both, has been settled, trial costs shall not be allowed in respect of the settled issue, even though trial costs are appropriate in respect of the issue that went to trial.
63. In the event that a party is of the view that the particular circumstances of a matter, or an aspect of it, warrants a deviation from paragraphs 57 and 58 to allow trial costs, a full motivation must be set out in the submissions document to facilitate a consideration thereof by the Judge.
64. The costs of experts fall into two categories:
  - 64.1. the costs of a report shall only be allowed if the report was properly filed on time or if the parties make written submissions that the costs are justifiable.
  - 64.2. the expert costs of reserving time to attend court to testify (a reservation fee shall only be allowed, and only to the extent expressly authorized by a Judge,) if an affidavit is presented, which affidavit shall contain the prescribed information and contain this declaration:

“I declare that I have held myself ready and available to give evidence on [date/s] in the following matters [a list setting out case numbers, parties’ names, attorneys’ names and counsel’s names] and the charge I intent to debit for the day in respect of each matter is [R\_\_\_\_\_].”



## CHAPTER 10: MANAGEMENT OF THIS DIRECTIVE

65. This directive may be amended from time to time on notice to the Legal Profession.
66. Legal Practitioners should ensure that they comply fully.
67. Personnel of the RAF who are held to be culpable for non-compliance shall be reported to the CEO of the RAF for consideration of disciplinary action.
68. Conduct which is held to be obstructive to the speedy resolution of the matter may attract punitive costs orders and also may result in a referral of the persons *prima facie* responsible therefore, to the appropriate regulatory bodies.
69. This Directive takes precedence over the Practice Manual, but nothing in this directive detracts from any provision of the Practice Manual, unless superseded, and, in particular, the efforts that should be made at the certification stage to settle matters and avoid them being enrolled on the trial roll.

### PART B: ISSUING OF PROCESS, ELECTRONIC SERVICE AND FILING OF PRACTICE NOTES and HEADS OF ARGUMENT.

1. This Directive is intended to regulate the filing of practice notes and heads of argument electronically at both High Courts of the Division. The Directive also aims to regulate the issuing of process in the Gauteng Division of the High Court, Johannesburg.
2. For as long as the Amended Consolidated Directive of 18 September 2020 is in force and effect, the provisions of this Directive must be read with the Consolidated Directive. In particular, attention especially in as far- as uploading of practice notes and heads of argument on the electronic files CaseLines and invitation of the relevant office profiles instead of submission of practice notes by email are concerned.
3. The Directive applies to all Civil Trials; Full Bench and Full Court appeals; Opposed Motions; Special Motions, 3<sup>rd</sup> Court applications and Unopposed Motions.



4. The service and filing of Practice Notes and Heads of argument shall comply with the applicable time periods contained in the Practice Manual of the respective Court in which the matter is/was initiated.

## **5. PRACTICE NOTES AND HEADS OF ARGUMENT:**

5.1. All practice notes and Heads of Argument must be uploaded to the electronic file(s) on CaseLines, followed by inviting the relevant Judge's Secretary and the relevant Registrar Office profile as published from time to time. This directive does not abolish the provisions and timelines for the filing of practice notes and heads of argument as provided for in the 18 September 2020 Consolidated Directive.

5.2. All documents filed electronically and uploaded must be in PDF format and proof of the electronic delivery thereof must be produced as directed by the Judge(s) presiding in the respective matters.

## **6. EMAIL ADDRESSES:**

6.1. No pleading, notice or process will be accepted unless the email address of the attorney(s) and/or party issuing same is provided.

6.2. Email addresses of the attorneys involved in a matter must be provided at the bottom of each draft order sought and the onus of providing same shall vest in the party enrolling the matter.

6.3. In instances where a draft order is not a precursor for the matter to be disposed of, the email address of the attorneys involved must be provided on their respective practice notes.



## 7. PRESCRIBED FORMAT FOR UPLOADING AND INDEXING DOCUMENTS ON CASELINES

- 7.1. The presentation of documents on CaseLines must be in a format that makes it reader-friendly. It must be possible to use the automatic index to identify every document uploaded. An additional index may be included that cross-references both CaseLines page numbers and another page number sequence; where this is done, such index must be in a single document.
- 7.2. Heads of Argument must, when referring to the uploaded documents, cross reference the CaseLines page number and the paragraph, where applicable.
- 7.3. If caselaw is uploaded, the automatic index must be capable of identifying the case name.
- 7.4. The uploaded file must be suitably sectioned, ordered, and bundled in a logical chronological order, containing legible copies of every document uploaded as an individual document.
- 7.5. Every document uploaded must be fully described. Where an annexure to an affidavit or other document is uploaded it is insufficient to merely describe it as, e.g., FA 1 or R13.
- 7.6. The file as uploaded must be in separate named sections.
- 7.7. The sections, unless sound reasons exist to present them differently, shall include the following:
  - 7.7.1. Pleadings – a full set of pleadings applicable as at the date of trial.
  - 7.7.2. Pre-amendment pleadings, if any: a full set.
  - 7.7.3. Notices.



- 7.7.4. Discovery: the discovery affidavits of all parties, the Plaintiffs first, the Defendants thereafter. A statement that discovery is complete must be filed, alternatively if not complete, a full explanation why not, and what steps were taken and which remain necessary to achieve competition.
- 7.7.5. Expert reports: a set of the expert reports, as contemplated in Uniform Rule 56(9)(b), which reports conform to the following:
- 7.7.5.1. Expert reports must be drafted in a format designated for lucidity, brevity, and convenient cross-referencing. To this end, it must be in numbered paragraphs. When referring to other expert reports, refer to the numbered paragraphs therein.
- 7.7.5.2. Where more than one expert has reported on a given aspect, joint minutes of experts must identify precisely what is agreed and what is not agreed, with reasons stated why an agreement could not be achieved, especially as to whether the disagreement relates to a fact clinically observed or an interpretation of the facts.
- 7.7.6. Pre-trial-conference minutes: a signed, agreed minute of the pre-trial conference that addresses all the questions in paragraph 8 of the Directive must be filed. Alternatively, if the parties do not agree to the minute's contents, a minute signed by the party filing the document must be filed together with an explanation why the parties cannot agree, including an explanation as to the utilisation of the trials interlocutory court to endeavour to procure compliance and cooperation from an adversary.
- 7.7.7. Practice notes, in chronological sequence.
- 7.7.8. Trial bundle: a single bundle of all documents that the parties intend to use at the trial, together with, a statement as to the agreed or disputed evidential status. Where a party includes unnecessary documents in the bundle, the court may, on the application of any party to the trial, or *mero motu*, make a punitive costs order in respect thereof.



- 7.8. Parties must not create separate sections for every *document* unless sound reasons exist to do so; the individual document must be uploaded to the appropriate section to which the document belongs.
- 7.9. A Judge may request certain documentation to be provided in word format and parties must retain documents such as pleadings, affidavits and heads of argument in that format to be able to respond to such a request.

This Directive shall come into operation on 18 February 2021.

*D MRAKHO*

**JUDGE PRESIDENT OF THE GAUTENG DIVISION OF THE  
HIGH COURT OF SOUTH AFRICA**

*Electronically submitted therefore unsigned*

