



## OFFICE OF THE JUDGE PRESIDENT

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

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02 October 2019

To:-

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



## JUDGE PRESIDENT'S PRACTICE DIRECTIVE 2.1 of 2019

### RE: SETTLEMENT/CONSENT DRAFT ORDERS RELATING TO PERSONAL INJURY MATTERS IN THE GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

This directive is effective from 7 October 2019 and applies to the Gauteng Division of the High Court in Johannesburg. Settlement/Consent Draft Orders relating to personal injury matters at the Gauteng Division, Pretoria are regulated through a Directive that was issued by the Deputy Judge President of that Court on 20 September 2019. A copy of the said directive is enclosed herewith for ease of reference.

#### GENERAL

1. No settlement/consent draft order shall be considered by a Judge unless this directive has been fully complied with.
2. Every settlement/consent draft order presented would be interrogated by a Judge who is requested to make the settlement/consent draft 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.
3. 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.
4. In order to facilitate a swift but nevertheless substantive consideration of the settlement consent/draft order and justification:
  - 4.1 Plaintiff's and Defendant's 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.



- 4.2 The SUBMISSIONS DOCUMENT shall, together with the draft consent order, and FORM 9; i.e. a request for a Judge to consider a settlement order, in terms paragraph 3.5.1.3 of directive 2 of 2019, be presented to the Registrar at room 128, whereupon the Registrar shall set the matter down on the Roll of the Court dealing with consent orders, a fortnight hence.
- 4.3 Note that matters which have been left on the Trial Roll, which ought to have been removed in terms of paragraph 3.5.1.2 or 3.5.1.3 of Directive 2 of 2019 shall be summarily struck off the Roll and no costs may be charged in respect thereof.
- 4.4 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 in accordance with paragraph 4.3 above be struck off whereupon the parties may seek to have the consent order considered in accordance with this directive and paragraph 3.5.1.3 of Directive 2 of 2019.
- 4.5 Note further that these administrative arrangements for Johannesburg differ from those in Pretoria.

#### **AS REGARDS THE FACTS RELIED UPON**

5. All factual material relied upon by the plaintiff and defendant to reach agreement on –
  - 5.1 The liability of the defendant for the accident.
  - 5.2 The apportionment of liability for the accident, if any.
  - 5.3 The causal connection between the accident and injuries.
  - 5.4 The causal connection between the injuries and the medical sequelae.
  - 5.5 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.
  - 5.6 The amount of the vouched for medical expenses.
  - 5.7 The base-line data to provide a basis to compute:



5.7.1 past and future loss of earnings or earning capacity.

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

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

6. Factual material and legal submissions made should be supported by the admissible and relevant document which is part of the court file.
7. Where disputes of fact have been resolved by agreement, these disputes must be pertinently recorded.
8. 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.
9. 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 authorised to give instructions shall in addition sign an affidavit stating that "he/she has personally applied her/her mind to the facts, records and circumstances of the case and is satisfied that the offer or settlement amount is rational and appropriate."

## **AWARDS OF COSTS**

10. In cases where the issue of determination of quantum is separated from the other issues in the matter and those other issues are settled, no order will be granted in respect of the settled issues, unless persuasive submissions are recorded in the SUBMISSIONS DOCUMENT why costs should be awarded.
11. No costs on trial shall be allowed in respect of a separated issue becoming settled; costs on the presentation of settlement only may be granted unless there is a justification for such costs.
12. The costs of experts fall into two categories:
  - 12.1 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.



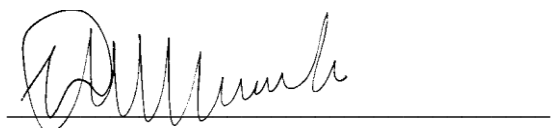
12.2 The expert costs of reserving time to attend court to testify (a reservation fee shall only be allowed, and only to the extent expressly authorised by a Judge, if an affidavit is presented, which affidavit shall contain the prescribed information and contain this declaration:

“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\_\_\_\_\_].”

### MANAGEMENT OF THIS DIRECTIVE

13. This directive may be amended from time to time on notice to the Legal Profession.
14. Legal Practitioners should ensure that they comply.
15. 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.
16. 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.
17. Nothing in this directive detracts from any provision of the Practice Manual, 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.

Sincerely,



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

