



OFFICE OF THE DEPUTY JUDGE PRESIDENT

(HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, JOHANNESBURG)
OFFICE 1210

Telephone number: 010 494 8491

e-mail address: Secretarydjp@judiciary.org.za / LTulleken@judiciary.org.za

NOTICE

TO:

1. Judges of the Gauteng Division, Johannesburg
2. Chief Registrar, Gauteng Division, Johannesburg
3. Secretariat – Judicial Case Flow Management, Office of the Chief Justice
4. Registrars – Gauteng Division of the High Court, Johannesburg
5. Legal Practice Council – Gauteng
6. Law Society of South Africa
7. Gauteng Family Law Forum
8. Gauteng Attorneys Association
9. Pretoria Attorneys Association
10. Johannesburg Attorneys Association
11. West Rand Attorneys Association
12. South African Black Women in Law
13. National Association of Democratic Lawyers
14. Black Lawyers Association
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16. South African Medical Malpractice Lawyers Association
17. Personal Injury Plaintiff Lawyers Association
18. South African Medico-Legal Association
19. Office of the Director of Public Prosecutions, Pretoria and Johannesburg
20. Office of the State Attorneys, Pretoria and Johannesburg
21. Solicitor General
22. Office of the Family Advocate, Pretoria and Johannesburg
23. Legal Aid South Africa

24. Johannesburg Society of Advocates
25. Pretoria Society of Advocates
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27. Tshwane Society of Advocates
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29. General Council of the Bar of South Africa
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34. Church Square Association of Advocates
35. Advocates for Transformation
36. Legal Division of the Department of Health: Gauteng
37. Legal Division of the Department of Sport, Arts, Culture and Recreation
38. Gauteng Department of Agriculture and Rural Development
39. Legal Services - Gauteng Provincial Department of Education
40. South African Board of Sheriffs
41. South African Sheriff Society
42. Road Accident Fund

DATE : 30 November 2023

OUR REF: DJP/373/2023/lt

RE : CLARIFICATION NOTE ABOUT SELECTING CORRECT ROLL TO SET DOWN APPLICATIONS FOR A DEFAULT JUDGMENT OR A SETTLEMENT IN DAMAGES CLAIMS IN THE HIGH COURT IN JOHANNESBURG

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1. A degree of confusion exists about which roll is supposed to deal with the various types of default judgment cases or settlement cases. A clarification notice of 18 January 2023 on default judgments and settlements addressed the practice at that time; since then the practice has changed materially. This notice serves to set out what is required from attorneys.

DEFAULT JUDGMENTS

2. There is a distinction to be made between default judgments and settlements in RAF cases and all other types of cases.

3. The DEDICATED RAF DEFAULT JUDGMENT ROLL is for Road Accident Fund cases only. It sits every week from Tuesday to Friday. The procedure is regulated in a notice of 26 April 2023; a copy is attached for easy reference. The directives therein remain applicable save for one innovation as a result of input from the judges presiding in this court. From 23 January 2024:
 - 3.1. Instead of setting down cases on each of 4 days, all cases are formally set down on the Tuesday.
 - 3.2. The individual judges shall give directives on how and when cases shall be heard during the week.
 - 3.3. This will enable matters which might settle to be addressed earlier and also relieve crowding on Fridays should matters stand down for whatever reason.
 - 3.4. Cases in which the set down dates have already been notified to the plaintiffs shall not be formally changed and practitioners must read the set down notices to mean that all cases are set down on the Tuesday only.

4. All other default judgment cases fall into two categories –those that require evidence to be adduced (unliquidated claims) and those that do not.
 - 4.1. All default judgments for *liquid claims* must be enrolled in the UNOPPOSED MOTION COURT.

4.2. A claim for an *unliquidated claim* where the evidence to establish the sum can be conveniently and succinctly dealt with on affidavit must be enrolled in the UNOPPOSED MOTION COURT.

4.3. A claim for an *unliquidated claim*, typically for personal injuries or a dependent's claim requires evidence, which to some extent can be adduced on affidavit, but cannot be succinctly and conveniently dealt with in the unopposed court. Such matters must be enrolled on the GENERAL CIVIL TRIAL ROLL. Typically, such matters shall be claims against the Minister of Police, PRASA etc.

SETTLEMENTS

5. THE CLARIFICATION NOTICE OF 02 August 2023 remains fully applicable. It is attached hereto for reference.

Yours faithfully

*Dictated by the Deputy Judge President
Electronically transmitted, therefore no signature*

**ROLAND SUTHERLAND
DEPUTY JUDGE PRESIDENT**

Attachments:

Annexure "A" – Clarification Note about Judgments and Orders in Damages Claims against any Organ of State in the High Court in Johannesburg dated 19 January 2023

Annexure "B" – Establishment of a Dedicated Road Accident Fund Default Judgment Court dated 26 April 2023

Annexure "C" – Clarification Directive (A) The setting down of a Settlement Agreement to be made an Order of Court; (B) The setting down of Default

**Judgment Applications; (C) Proper categorization of Unopposed Motion
Applications dated 02 August 2023**



OFFICE OF THE DEPUTY JUDGE PRESIDENT

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OFFICE 1210

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35. Gauteng Department of Agriculture and Rural Development
36. Legal Services - Gauteng Provincial Department of Education
37. Gauteng Society of Advocates

DATE : 19 January 2023

RE : CLARIFICATION NOTE ABOUT JUDGMENTS AND ORDERS IN DAMAGES CLAIMS AGAINST ANY ORGAN OF STATE IN THE HIGH COURT IN JOHANNESBURG

1. It has become apparent that some uncertainty exists about the enrolment of a case by a plaintiff who seeks an order of damages from an organ of state This clarification notice serves to resolve uncertainty.
2. In any case against an organ of state where a **settlement agreement** has been concluded the case must be enrolled in the **Settlements Court**.
 - a. This court's remit was expanded in terms of the revision of Directive 1 of 2021, dated 1 December 2022 to include all organs of state.
 - b. Chapter 9 of Directive 1 of 2021 (as amended) prescribes the steps that must be taken to present to the Settlements Court a rational foundation for the settlement reached.
 - c. The settlement Court in Johannesburg can be accessed on a three –week turnaround.

3. In any case against an organ of state where **default judgment** is sought the case must be enrolled on the **General Civil Trial Roll**.

a. Chapter 7 of the Directive 1 of 2021 (as amended by paras 4, 5, 6 and 7 of the revision of 1 December 2022) sets out the declaration that the plaintiff must make to the registrar to obtain a set down date. Regrettably, the lead times for enrolment of default judgments in the trial court as at the time of writing are unacceptably long and practical methods to reduce the time are being explored.

b. The trial judge must be presented with the relevant evidence to justify the claim and the quantum of damages sought. Where it is appropriate to do so, evidence may be adduced on affidavit.

c. Such a case must not be enrolled in the Unopposed Motion Court which is not able to conduct the appropriate interrogation of the order sought. Where such a matter is enrolled on the Unopposed Motion Court it shall be removed and no costs shall be allowed.

4. Typically, the organs of state that are frequent litigants are the Road Accident Fund, PRASA, the MEC for Health, Gauteng, and the Minister of Police. Other organs of state occasionally are subject to damages claims too.

5. It is appropriate to remind practitioners of the rationale for these procedures. In all the cases public money is being spent. It is incumbent on the courts not to be a rubber stamp for either settlements or default judgments which are not rationally premised. Regrettably, experience has shown that there are frequent

settlements reached which are irrational. Similarly, where an organ of state is remiss in engaging with a plaintiff and a default judgment *per se* is justified, it remains appropriate that a court making an order of court by default does not inadvertently endorse an opportunistic overreaching at the public expense.

6. Compliance with this procedure shall obviate disappointments and delays.

Yours faithfully

*Dictated by the Deputy Judge President
Electronically transmitted, therefore no signature*

**ROLAND SUTHERLAND
DEPUTY JUDGE PRESIDENT**



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36. **Legal Services - Gauteng Provincial Department of Education**
37. **Gauteng Society of Advocates**
38. **Tshwane Society of Advocates**

DATE : 26 April 2023

REF : DJP/21/2012/lt

RE : **ESTABLISHMENT OF A DEDICATED ROAD ACCIDENT FUND DEFAULT JUDGMENT COURT**

1. Legal Practitioners in the field of Road Accident Fund (RAF) litigation will be aware of the unconscionably long lead time for RAF default Judgment cases and for RAF defended cases. The present roll for default judgments reaches May 2025. The Roll for RAF defended cases reaches August 2025. This calls for drastic intervention.
2. The explanation for the predicament is plain: the sheer volume of cases has overwhelmed the capacity available to process the matters within a reasonable time. Set out in this Directive are measures to ameliorate the situation.

RAF DEFAULT JUDGMENT COURT

3. There shall be established a dedicated roll for RAF DEFAULT JUDGMENT CASES. The roll shall be introduced in two phases.
 - 3.1. Phase 1 shall involve all the RAF default cases which, as at 30 April 2023, have already been set down in the general civil trial roll on dates from January 2024 until May 2025. This shall involve the removal of all such cases set down in that period and their automatic set-down in the third and fourth terms of 2023 in accordance with the transfer table set out hereunder.

3.2. Phase 2 shall involve all fresh requests received, as from **2 May 2023**, for a set-down date for a RAF default judgment. This will take effect immediately and set-down dates shall be allocated from the first week of term 1 of 2024.

3.3. All RAF default judgment cases set down during 2023 shall remain as they are on the general Civil trial roll and shall not be removed.

PHASE 1:

4. RAF default judgments cases set-down dates are being automatically advanced. There is no procedural step required from plaintiffs to effect the advanced set down. However, Plaintiffs must take note of the transfers and diarize accordingly. **THIS NOTICE CONSTITUTES NOTICE TO ALL PARTIES OF THE NEW SET-DOWN DATES**

5. All default judgments in a particular month shall be transferred to a specified week in accordance with this table:

Present Set-down in 2024: Transferred to a week in term 3 of 2023:

January	week 1 (17 July 2023 – 21 July 2023)
February	week 2 (24 July 2023 – 28 July 2023)
March	week 3 (31 July 2023 – 04 August 2023)
April	week 4 (07 August 2023 – 11 August 2023; 09 August 2023 is a public holiday)
May	week 5 (14 August 2023 – 18 August 2023)
June & July	week 6 (21 August 2023 – 25 August 2023)
August	week 7 (28 August 2023 – 01 September 2023)
September	week 8 (04 September 2023 – 08 September 2023)
October	week 9 (11 September 2023 – 15 September 2023)

Present set-down in 2024 and 2025: Transferred to a week in term 4 of 2023:

November	week 1 (02 October 2023 – 06 October 2023)
January	week 2 (09 October 2023 – 13 October 2023)
February	week 3 (16 October 2023 – 20 October 2023)
March	week 4 (23 October 2023 – 27 October 2023)

April	week 5 (30 October 2023 – 03 November 2023)
May	week 6 (06 November 2023 – 10 November 2023)

6. The transfers of cases shall be strictly as prescribed to the designated weeks. In the event that a case that is subject to a transfer does not eventually appear on the published roll, an appropriate ad hoc directive shall be made by the DJP upon an emailed query being received.
7. The procedure to be followed in respect of the hearings of these transferred matters shall be as addressed in the Directive about Phase 2.

Effect of the transfers on opening space on the general civil roll

8. The result of these transfers shall be that from January 2024, there shall be spaces in the general civil trials roll to fill as a result of the vacancies resulting from the transfers
9. An invitation to plaintiffs in defended cases set down in 2025 (not in 2024) to withdraw those set-downs and apply afresh for an earlier date in 2024. For practical reasons trials of short duration only, ie, 1 -2 days can be accommodated.

PHASE 2:

10. With effect from 02 May 2023, requests for a set-down date for a RAF default judgment shall be dealt with as follows:
 - 10.1. In each week of term, 200 default judgment cases shall set down.
 - 10.2. 50 will be set down on each Tuesday, Wednesday, Thursday and Friday. In a week where one or more of these days is a public holiday, the number of matters set down shall be reduced by 50 per day.
 - 10.3. Monday is a reading day.
 - 10.4. The hearing will be physical.
 - 10.5. 4 judges shall be rostered to each hear 12 or 13 cases per day.
11. THE FIRST WEEK IN WHICH SUCH MATTERS SHALL BE SET DOWN IS THE FIRST WEEK OF TERM 1 OF 2024.
12. No RAF default judgments shall be set down in recess periods.

13. The roll for a particular week shall be published to the Legal Profession on the Friday of the week preceding the previous week: i.e., a full 10 calendar days before the Monday of the week in which the cases are set down.
14. The judges rostered to hear the cases must be given access to the digital files on that Friday.
15. Plaintiffs must upload to the digital file a practice note by not later than the Friday before the Friday on which the roll is published. There shall be no late practice notes received.
 - 15.1. Failure to meet the deadline shall result in the case being not being enrolled.
 - 15.2. A practice note that does not comply with the prescribed contents shall also result in the case being struck off the roll with no costs allowed.
16. The practice note must ***succinctly*** state:
 - 16.1. Number on roll
 - 16.2. Legal representatives' name and cell.
 - 16.3. The details proving effective service on the RAF of the set down.
 - 16.4. That the matter is ripe to be heard.
 - 16.5. What material evidence is in affidavit form and what material evidence must be orally adduced.
 - 16.6. A succinct explanation why the quantum on each head of damage is justifiable.
 - 16.7. Where necessary the documents must be cross referenced to the practice note.
 - 16.8. That there is an attached draft order.
17. Reckless inaccurate or misleading statements in the practice note shall attract sanctions for counsel and attorney including the disallowance of costs.
18. At the hearing draft orders must be available to handed up and Counsel must be able to effect amendments to the drafts where so directed by the Judge so that the final orders can be uploaded on the set-down date.

STAFFING OF THE DEFAULT JUDGMENT COURT

19. The rostering of the 4 judges to hear matters on this roll is dependent on the recruiting of pro bono acting judges willing to undertake a week' service in a term. Therefore, an appeal is issued to the members of Legal Profession to volunteer a week in the third and fourth terms of 2023. Advocates and Attorneys with the appropriate seniority and experience are invited to submit offers to assist to tmotswasele@judiciary.org.za, stating in which week of term they offer to serve. They must also include a *curriculum vitae*.

Yours faithfully

*Dictated by the Deputy Judge President
Electronically transmitted, therefore no signature*

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38. Tshwane Society of Advocates

DATE : 02 August 2023

RE : CLARIFICATION DIRECTIVE

(A) THE SETTING DOWN OF A SETTLEMENT AGREEMENT TO BE MADE AN ORDER OF COURT

(B) THE SETTING DOWN OF DEFAULT JUDGMENT APPLICATIONS

(C) PROPER CATEGORISATION OF UNOPPOSED MOTION APPLICATIONS

Because the practice concerning the setting down of cases for a settlement agreement made an order of court differs, depending on the type of case, and similarly, because applications for default judgment are heard in different courts, depending on the nature of the matter, this Clarification Directive is being issued to eliminate confusion. An innovation has been introduced with immediate effect to accelerate the lead times for settled matters to seek an order making the agreement an order of court.

A: THE SETTING DOWN OF CASES TO HAVE A SETTLEMENT MADE AN ORDER OF COURT

RAF CASES

1. Cases against the Road Accident Fund in which a settlement has been reached and it is necessary to make the settlement agreement an order of court are dealt with thus:

1.1. If the matter is *already before the trial court*, (ie, at the time of the trial date) the application for that settlement agreement to be made an order of court shall be dealt with by the Trial Judge on the date of the set down.

1.2. If the matter is settled at a time at least three months before the date that the trial has been set down, or the trial is not yet set down, an application to make the settlement agreement an order of court must be enrolled on the Settlement list of General Civil Trial Court in accordance with the procedure as set out in para 3.

1.3. In matters where a curator ad Litem has been appointed and a curator's report needs to be placed before a judge, such applications to approve the reports and recommendations must be enrolled on the Settlement list of General Civil Trial Court as set out in para 3.

1.4. RAF settlement cases and curators' reports shall not be entertained in chambers or on any other Roll, and if placed on the wrong roll, it shall be removed with no costs order.

2. The RAF settlement list shall be enrolled every Thursday as part of the General Civil Trial Court.

2.1. The request to be so enrolled shall be made to the Civil Trials Registrar who shall enroll the matter in the third week following the week in which the request is made. (i.e., a three-week cycle from request to hearing.)

2.2. The application to the Civil Trials Registrar must be accompanied by an uploaded practice note in the format prescribed for trials enrolled on the General Civil Trial Roll and headed prominently FOR SETTLEMENT ORDER ONLY or CURATOR'S REPORT AND/OR SETTLEMENT ORDER.

2.3. The practice note must be copied to Secretarydjip@judiciary.org.za to comply with paras 75 and 76 of Practice Directive 2 of 2022 (as revised), not earlier than 7 court days before and not later than 5 court days before date of set down.

ALL CASES OTHER THAN RAF CASES IN WHICH A DAMAGES CLAIM IS SETTLED AND AN ORDER OF COURT IS REQUIRED

3. All cases in which unliquidated damages are claimed against any defendant, regardless of whether the defendant is an organ of state or a private entity shall:

3.1. if the trial is already before court, be dealt with in the General Civil Trial Court by the Trial Judge allocated to hear the case.

3.2. If the matter is settled more than three months before the set down trial date, the plaintiff or applicant can elect to make an application to make the settlement agreement an order of court in the unopposed motion court. (The unopposed roll operates on a 6-week cycle from request for enrolment of date of hearing.)

3.3. The matter must simultaneously with such application be withdrawn by notice from the trial roll.

ALL OTHER CASES IN WHICH A SETTLEMENT IS TO BE MADE AN ORDER OF COURT

4. All other cases in which an order making a settlement an order of court is sought shall be enrolled on the unopposed motion court roll.

***B: THE SETTING DOWN OF CASES IN DEFAULT JUDGMENT APPLICATIONS
RAF DEFAULT JUDGMENT APPLICATIONS***

5. All such matters shall be set down in accordance with the DJP's directive of 26 April 2023. A copy is attached.

ALL OTHER APPLICATIONS FOR DEFAULT JUDGMENT IN WHICH UNLIQUIDATED DAMAGES MUST BE PROVEN BY EVIDENCE, WHETHER ON AFFIDAVIT OR ORALLY

6. Because the unopposed motion court is under pressure to dispose of the number of cases enrolled each motion court day (50 per judge) it is not a suitable forum

for default judgment applications in which evidence of a substantial nature, whether given orally or on affidavit is required.

7. By and large these are likely to be claims for personal injuries or dependents' claims. The likely defendants are the Minister of Police, PRASA, Municipalities and building owners.

8. To facilitate access to court to obtain the default judgments only one of the 6 judges hearing unopposed motions in any week shall hear all such applications.

The procedure is as follows:

8.1. Upon enrolment the registrar must be alerted that the case is A DEFAULT JUDGMENT WITH EVIDENCE, and the date request form must be properly classified as a "DEFAULT JUDGEMENT WITH EVIDENCE APPLICATION" in the "other" box of the date request form. The classification must not change.

8.2. On CaseLines, enrolment must be made through inviting JHBEvidenceDefaults@judiciary.org.za, and final enrolment must be made 7 clear court days preceding the date of hearing, in accordance with the usual unopposed motion court practice, using the same profile.

8.3. On Court Online, enrolment must be through uploading the date request to "Unopposed Motion- default judgment with evidence". (The allocated date shall be final as per Directive 3 of 2022.)

8.4. All such matters shall be enrolled on Thursdays only before one judge and the published roll shall reflect that fact.

8.5. The enrolment must be accompanied by a comprehensive (NOT a prolix) practice note identifying exactly what the issues are and what text the judge must read and must indicate the estimated duration of the oral evidence to be led, if any.

8.6. All queries in relation to the operations of this part of the roll must be escalated to JHBEvidenceDefaults@judiciary.org.za.

ALL OTHER DEFAULT JUDGMENT APPLICATIONS WHICH DO NOT REQUIRE EVIDENCE

9. All such cases shall be enrolled in the traditional way and be set down on Mondays to Thursdays at the discretion of the registrar.

C: PROPER CATEGORISATION OF UNOPPOSED APPLICATIONS

10. Nothing in this Directive alters the responsibility of the applicants' attorneys to select the correct categorisation. Kindly take categorisation seriously because the efficiency of the litigation service that all practitioners are entitled to expect requires your cooperation in this regard.

Yours faithfully

*Dictated by the Deputy Judge President
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