



OFFICE OF THE DEPUTY JUDGE PRESIDENT

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

Telephone number: 010 494 8491

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

NOTICE

TO:

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

25. Pan African Bar Association of South Africa
26. General Council of the Bar of South Africa
27. National Bar Council of South Africa
28. South African Bar Association
29. National Forum of Advocates
30. North Gauteng Association of Advocates
31. Church Square Association of Advocates
32. Advocates for Transformation
33. Legal Division of the Department of Health: Gauteng
34. Legal Division of the Department of Sport, Arts, Culture and Recreation
35. Gauteng Department of Agriculture and Rural Development
36. Legal Services - Gauteng Provincial Department of Education
37. Gauteng Society of Advocates
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 Secretarydjp@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
Electronically transmitted, therefore no signature*

**ROLAND SUTHERLAND
DEPUTY JUDGE PRESIDENT**