



OFFICE OF THE DEPUTY JUDGE PRESIDENT  
HIGH COURT OF SOUTH AFRICA, GAUTENG PROVINCIAL DIVISION, PRETORIA

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20 SEPTEMBER 2019

## **DIRECTIVE IN RESPECT OF SETTLEMENT/CONSENT DRAFT ORDERS, RELATING TO PERSONAL INJURY MATTERS**

To all practitioners:

### **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 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 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. Such SUBMISSIONS DOCUMENT, together with the draft order shall be delivered to a Registrar designated by the Deputy Judge President at least a day but not more than 5 days before the trial date for the smooth operation of the Roll Call Court and for the Judge to be satisfied before roll call that the order to be made is justified.

4.3. Note that in cases on the trial roll when the SUBMISSION DOCUMENTS are handed to the Court on the trial date, the matter may be removed from the roll and be postponed to a settlement roll for the matter to be finalised if the documents are in order.

#### **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 sequelae and a plaintiff 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 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."

#### **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 the 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:

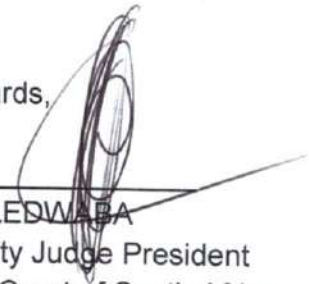
“ I declare that I have held myself ready and available to give evidence on [date/s] in the following matters [a list setting out case numbers, parties names, attorneys names and counsels names] and the charge I intend to debit for the day in respect of each matter is [R\_\_\_\_\_].”

### **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 call.

This directive will be fully operational as from 7 October 2019.

Regards,



A P LEDWABA  
Deputy Judge President  
High Court of South Africa  
Gauteng Division, Pretoria