



PRETORIA ATTORNEYS ASSOCIATION  
PRETORIASE PROKUREURSVERENIGING  
MOKGATLHO WA BAEMEDI BA PRETORIA

PO Box / Posbus 3864  
PRETORIA  
0001  
Room 5.18 / Kamer 5.18  
High Court Building / Hooggeregshofgebou  
c/o Paul Kruger & Madiba Street  
PRETORIA  
0001  
Tel: (012) 323 6201  
[ppv@ppv.co.za](mailto:ppv@ppv.co.za)

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15 September 2023

**THE HONOURABLE DEPUTY JUDGE PRESIDENT LEDWABA  
GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA  
PRETORIA  
BY EMAIL**

**COPY TO-  
THE HONOURABLE JUDGE PRESIDENT MLAMBO  
GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA  
BY EMAIL**

**COPY TO-  
THE HONOURABLE DEPUTY JUDGE PRESIDENT SUTHERLAND  
GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA,  
JOHANNESBURG  
BY EMAIL**

Honourable DJP Ledwaba,

**PRETORIA ATTORNEYS ASSOCIATION SUBMISSIONS ON PRACTICE  
DIRECTIVE 1 OF 2023**

**1. INTRODUCTION**

- 1.1. These submissions have been prepared by the PAA in response to the invitation extended by the Honourable DJP Ledwaba, at the Pretoria EEC meeting held on

Thursday 14 September 2023 for submissions by the legal profession on Practice Directive 1 of 2023, which stands to come into effect on 1 October 2023.

- 1.2. DJP Ledwaba further requested that a meeting be arranged with the heads of court and representatives from the profession on 28 September 2023 at which these submissions, as well as further proposals to overcome the challenges currently experienced at the Pretoria High Court, especially in terms of lead times for trial-, default- and taxation hearing dates, will be discussed. Such lead times were confirmed as follows by the Chief Registrar of the Pretoria division during the EEC meeting:

| <b>Pretoria High Court lead times 5 September 2023</b><br><b>(Sorted longest to shortest)</b> |                                          |                                             |
|-----------------------------------------------------------------------------------------------|------------------------------------------|---------------------------------------------|
| <b>Description</b>                                                                            | <b>Hearing dates being allocated for</b> | <b>Lead time allocation to hearing date</b> |
| RAF trials                                                                                    | May 2026                                 | 2 years 5 months                            |
| Non RAF Civil trials                                                                          | April 2026                               | 2 years 4 months                            |
| Unopposed motions – RAF<br>Default judgments                                                  | November 2025                            | 1 year 2 months                             |
| Civil appeals to full court                                                                   | November 2024                            | 1 year 2 months                             |
| Taxations                                                                                     | September 2024                           | 1 year                                      |
| Unopposed motions – Other                                                                     | February 2024                            | 5 months                                    |
| Civil appeals from Mag Court                                                                  | February 2024                            | 5 months                                    |
| Special interlocutory matters<br>(SIC)                                                        | February 2025                            | 5 months                                    |
| Insolvencies                                                                                  | December 2023                            | 3 months                                    |
| Interlocutory motions (Non SIC)                                                               | December 2023                            | 3 months                                    |
| Return dates                                                                                  | December 2023                            | 3 months                                    |
| LPC matters                                                                                   | November 2024                            | 2 months                                    |
| Family court                                                                                  | October 2023                             | 1 month                                     |
| Opposed motions                                                                               | October 2023                             | 1 month                                     |
| Divorce, Rule43 and Summary judgments                                                         | October 2023                             | 1 month                                     |

|             |              |         |
|-------------|--------------|---------|
| Settlements | October 2023 | 2 weeks |
|-------------|--------------|---------|

- 1.3. The PAA hereby expresses its sincere appreciation on behalf of its members towards DJP Ledwaba for his willingness to engage the legal profession on the above, which we view as nothing short of a crisis.

## 2. **INTRODUCTORY REMARKS – FORMATTING, CROSS REFERENCING AND TYPOGRAPHICAL INCONSISTENCIES IN DOCUMENT**

- 2.1. There are various issues relating to formatting, numbering, typographical inconsistencies, and cross referencing with the document “Consolidated Practice Directive 1 of 2023”.
- 2.2. We have prepared a marked-up version of the document<sup>1</sup>, with track changes highlighting these issues, as well as a clean document<sup>2</sup> in which the proposed track changes were accepted.
- 2.3. We also took the liberty of utilising the “linked” indexing function of MS Word to amend the index so that it now contains a link to the section of the document, when one clicks on the relevant index item at the beginning of the document. This will make navigation of the document much more user friendly.

## 3. **IN PRINCIPLE ISSUES**

There are a number of in principle issues that would inform further amendments to the directive. We proceed to briefly discuss said issues below.

### 3.1. **Preferential treatment of category “Y” defendants**

- 3.1.1. There is an outcry from the profession regarding the preferential treatment afforded to the RAF in the Practice Directive(s).
- 3.1.2. We mention this with specific reference to the requirement that it is incumbent on the plaintiff to bring an application to the SIC court to force the RAF to file a discovery affidavit, where this is not required of a plaintiff in terms of the Uniform rules of court.

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<sup>1</sup> Annexure PAA1

<sup>2</sup> Annexure PAA2

- 3.1.3. The litigation process after close of pleadings is significantly delayed by this requirement, given the RAF's general recalcitrance in filing discovery affidavits, and when the discovery affidavit is eventually filed it is a two liner that only refers to the documents in the court file and the documents discovered by the RAF. We therefore propose that this requirement be abandoned altogether.
- 3.1.4. The second instance of preferential treatment is the fact that the Plaintiff is required to force the RAF to attend a pre-trial meeting by means of an application to the interlocutory court in the event that the RAF does not attend a duly arranged pre-trial meeting.
- 3.1.5. Again, precious time, costs and court resources are consumed to satisfy this requirement to the detriment not only of the Plaintiff, but also to the resource strained courts.
- 3.1.6. We annex in this regard a copy of the directive by the then Acting DJP Potterill on 23 June 2020 on the very same issue. It is proposed that the directive be amended to bring it in line with this directive which was introduced as a fair solution to both parties when it comes to the issue of pre-trials.
- 3.2. Clarity in simplicity when it comes to types of matters to be enrolled in which courts
- 3.2.1. The directive in its present form is somewhat ambiguous as to which matters must be enrolled in which courts. We kindly request that this be fully clarified.
- 3.3. Most effective use of available resources: Utilisation of virtual court rooms for certain types of matters
- 3.3.1. It is proposed that the following matters be heard virtually as a rule so as to enable pro-bono acting judges to be used during the court term to assist to address the crisis, which is evident from the lead timetable above.
- 3.3.2. These are:
- Unopposed motions;
  - Trials interlocutory courts;
  - Appeals.
- 3.3.3. We further propose that the notion of satellite courts, where physical hearings are heard at venues other than the court buildings, be investigated. In this regard, we fully appreciate the possible logistical challenges that may arise when it comes to recording of proceedings and

other court resources which have to be made available at physical hearings. It is, however, submitted that these desperate times call for desperate measures. The profession has indicated its willingness to assist, and the proposal is simply that this avenue be further investigated and perhaps tested at one of the Advocates' Chambers that has already indicated their willingness to provide a venue for court purposes.

#### 4. SUBMISSIONS ON SPECIFIC PARAGRAPHS

##### 4.1. Par 1.2. (P3)

###### Matter classification

This paragraph provides that all other claims for damages against otherwise category Y defendants are classified as "C". However, Commercial matters are already classified as "C". A new category number must be allocated here.

##### 4.2. Par 2 (P3)

###### Matter classification list

The paragraph does not provide full the classification of matters referred to in paragraph 1.2.

We propose that a new paragraph 2.2 which reads as per the below be inserted here:

"2.2 a statement that the matter is a damages claim not for personal injury (as contemplated in Par 1.2 above) 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 ...

##### 4.3. Par 30 (P11)

###### Civil trial allocations

*"Civil Trial allocations shall be published by the secretary of the DJP as soon as possible before the set down date, by email to the professional bodies and to the parties' attorneys at the email address given in the practice note".*

This paragraph should be amended to read:

*"Civil Trial allocations shall be published by the secretary of the DJP as soon as possible before the **hearing** (not set down) date, by email to the professional bodies and to the parties' attorneys at the email address given in the practice note."*

#### 4.4. Par 50 (P15)

##### Reference to specific forms

Where reference is made to a particular form, and in order that no room is left for confusion, it is proposed that the name of that form also be noted in the Directive and that a hyperlink (click through) to the relevant form be added to the document. The PAA offers to assist to do this throughout the document, once provided with the go-ahead to do so.

#### 4.5. Par 88 (P15)

##### Requirement for signed pre-trial minute

We refer to our proposal in Par 3.1.6 above and repeat same here.

#### 4.6. Par 101 (P24)

##### Procedure when application found to be non-compliant

This paragraph provides that-

*“The Office of the Registrar is specifically mandated to disregard matters that are non-compliant with this Directive and is instructed in the Directive not to allocate dates for matters that are non-compliant...”*

We kindly propose that the following be added to this paragraph after the word “non-compliant”. We do so in order to make this provision a bit more balanced, and to facilitate constructive communication between the Office of the Registrar and Attorneys and Litigants.

***“The Registrar is instructed to, when a finding of non-compliance is made, post the reason for such finding in a widely shared note on Caselines.”***

#### 4.7. Par 104 (P24) - 109

##### Applying for a set down date including certification for trial readiness

- 4.7.1. Clarity is sought on whether the compliance confirmation statement requested in this paragraph must be a statement under oath, or not.
- 4.7.2. Assistant registrars and registrars, notwithstanding the fact that the directive refers to a statement, and not to a sworn statement or affidavit, continue to require that affidavits be uploaded. It is our respectful view that

this results in unnecessary costs being incurred for attendances before commissioners of oaths in circumstances where these costs might not be taxable, because the directive does not explicitly request that an affidavit be filed.

4.7.3. It is further submitted that the process of issuing a physical trial readiness certificate, re-applying for a hearing date pursuant to the issuing of same, and thereafter issuing a hearing date that is a cumbersome and time-consuming process, will, with respect, unnecessarily burden the registrar's office. In Pretoria the Trial Registrar's office, where a combined process (see below) is presently followed, remains at pains to process trial applications within a 4-week period after submission of the date of the application.

4.7.4. It is therefore proposed that instead of the cumbersome process detailed in this paragraph, a combined process be followed, the outcome of which, in the event of a finding of trial readiness, would be the issuing of a trial date. In the event of non-compliance, the registrar will make a note on caselines detailing the nature of the non-compliance.

4.8. Par 108(12) (P26)

*“(12) 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.”*

We submit that this paragraph is somewhat ambiguous. It does not specify which documents would be deemed unnecessary. We propose that this line be removed entirely, alternatively, the Practice Directive should elucidate which documents would be considered as unnecessary.

4.9. Par 126 (P29)

*“All RAF personal injury or dependents' claims matters in which a default judgment is sought must be enrolled on the default judgment roll.”*

The cumbersome trend, which has become more the rule than the exception, whereby the RAF files its notice of intention to defend a day or two before a matter is due to be heard on the default roll is, in our view, a blatant abuse of the court

process and a delaying tactic on the part of the RAF, which is very well aware of the lead time for trial matters.

We propose that the directive contains similar provisions to those contained in the Clarification notice published by DJP Sutherland on 12 May 2023<sup>3</sup> with reference to the special interlocutory court.

#### 4.10. Par 112 (P30)

##### Application for judicial case management

This paragraph provides that-

*“An Application for Judicial Case Management shall be by a letter via email addressed to the secretary of the DJP...”*

Given that the DJP has more than one secretary in the Pretoria division we kindly request that the correct e-mail address be inserted here, and that the directive also instructs the relevant secretary to acknowledge receipt in reply to the letter so received.

Please do note that in practice, we have received reports from our members that they have been advised by the secretaries in the DJP's office that e-mail correspondence is not permitted and that all correspondence to the DJP's office must be delivered in hard copy to the 7th floor.

Clarity in this regard would be appreciated.

#### 4.11. Par 176 (P37)

##### Special interlocutory court – 30 applications per day Monday to Thursday

Given the lead times for interlocutory applications to be heard which is currently at 5 months, the quantity is simply not sufficient. These applications have to, in many instances, be brought for a Plaintiff to get a matter ready for trial / to enable a Plaintiff to apply for a default hearing date.

We propose that the quantities of these hearings be exponentially increased by making use of Pro-Bono Acting Judges who can in addition to acting for a week, also take turns to sit and deal with these matters on Fridays.

We are confident that a number of the attorneys, who indicated their willingness to act as pro-bono acting judges would be willing to offer their services once a

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<sup>3</sup> Annexure PAA4



month to take up the Friday interlocutory roll in our division, if this will serve to reduce the lead time.

If dealt with electronically, the current backlog can be significantly reduced for matters to be advanced to trial / default hearing more expeditiously.

#### 4.12. Par 272 (P37)

*“The orders obtainable in the SIC are of a strictly interlocutory nature, not of a substantive nature. There is one exception: where for procedural delinquency an order by the SIC has been granted striking out a defence or a claim, thereafter a substantive order to dismiss that claim or to grant the substantive relief as prayed, shall be brought in the SIC.”*

If our interpretation of this proviso is correct, it would follow that certain applications for default judgments would have to be enrolled in the Special Interlocutory Roll.

Given the confusion that will be caused amongst legal practitioners and registrars alike, in determining which default judgment applications have to be enrolled in which court, we propose that the current position where all applications for default judgments pursuant to non-compliance with an SIC order, remain in place.

One also has to consider that judges have a discretion to ask for oral evidence even on matters enrolled for default judgement, and that the SIC roll would be brought to a complete halt, if this were to be necessary.

#### 4.13. Par 277.2 (P37)

*“in RAF matters such final substantive relief must be sought by enrolling the case on the Default Judgment Roll, not in the SIC”*

The provision quoted above does not tally up with what is stated in Par 272.

Clarity needs to be provided to prevent confusion.

### 5. IN CLOSURE

- 5.1. We look forward to meeting with the Judiciary and colleagues from the organised profession on 28 September 2023 to discuss these submissions, as well as the submissions made by other colleagues.

Kind regards



Nicolette de Witt  
Convenor High Court Committee  
On behalf of Pretoria Attorneys' Association