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PRACTICE DIRECTIVES FOR MATTERS AGAINST THE ROAD ACCIDENT FUND  
IN BOTH DEFENDED AND UNDEFENDED MATTERS

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**The RAF Trial Roll**

[1] An RAF trial roll is created for the hearing of matters against the Road Accident Fund where an appearance to defend has not been entered.

[2] The RAF trial roll shall be called on a Wednesday and shall be a continuous roll, with matters being allocated to a Trial Judge at the direction of the Senior Civil Judge during that week.

[3] There shall be no more than **10** matters placed on the RAF trial roll during any one given week. Matters shall last no longer than one day.

**Enrolment of Matters on the RAF Trial Roll**

[4] The Plaintiff's attorney of record shall certify that the matter is ready for trial and shall state whether the issue of liability has been settled.

[5] In instances where the issue of liability has been settled, such certification shall include written confirmation of that fact.

[6] In all other instances the matter shall proceed upon a determination of both liability and quantum.

[7] In order to certify the matter ready for trial, the Plaintiff's attorney shall ensure that the following are placed in the court file:

- (a) a photo schedule depicting the scene of the collision, reflecting all points that are relevant to the occurrence of the collision;
- (b) a sketch plan depicting the scene of the collision, reflecting all relevant dimensions;
- (c) a copy of the Motor Vehicle Accident Report compiled by the South African Police Services, if available;
- (d) an affidavit deposed to by the Plaintiff, and/or an eyewitness to the collision setting out, in detail, the circumstances in which the collision occurred with reference to the relevant points and dimensions depicted on the photo schedule and sketch plan;
- (e) a paginated and indexed bundle of the medicolegal reports, which shall at least contain:
  - i) a medicolegal report from a suitably qualified medical practitioner setting out the nature and extent of the injuries suffered by the Plaintiff;
  - ii) in instances where past and future loss of earnings are claimed, a medicolegal report from a suitably qualified expert setting out the extent to which such injuries have precluded, or will in the future preclude, the Plaintiff from engaging in his or her pre-morbid mode of employment and setting out an opinion on what mode of employment the Plaintiff is most probably able to engage in having regard to his or her injuries;
  - iii) in instances where future medical expenses are claimed, a medicolegal report from a suitably qualified expert setting out the nature, extent and cost of such medical treatment;
  - iv) the report of an actuary setting out a calculation of the Plaintiff's claim based upon the opinions expressed in the aforesaid medicolegal reports;
- (f) a paginated and indexed bundle of affidavits deposed to by the aforesaid experts upon whose reports reliance will be placed, confirming the contents of such reports and the opinions expressed therein;

- (g) proof that a serious injury assessment report has been submitted to the Road Accident Fund pursuant to the provisions of the Road Accident Fund Act, No. 56 of 1996 and the Regulations;

[8] Upon compliance with the provisions of paragraph (7) hereof, the Registrar shall set the matter down on the next available date on the RAF trial roll.

[9] In instances where there is uncertainty as to whether the matter is trial ready, the matter shall be referred to a Judge in Chambers, who shall either certify the matter ready for trial, or give directions in respect of the future conduct of the matter.

#### **Set Down of Matters on the RAF Trial Roll**

[10] At least 10 days prior to the date upon which the matter is to be heard on the RAF trial roll, the Plaintiff's attorney shall serve a Notice of Set Down, via the sheriff, upon the Chief Executive Officer, Chief Operations Officer, Regional Manager and Claims Handler of the Road Accident Fund at its regional office in Durban (whichever is the office from which the claim is being administered) which notice shall:

- (a) state the time and date upon which the matter is set down on the RAF trial roll;
- (b) invite the Road Accident Fund to tender an undertaking for future medical expenses pursuant to the provisions of section 17 (4) (a) of the Road Accident Fund Act, No. 56 of 1996; and
- (c) invite the Road Accident Fund to admit that the injury sustained by the Plaintiff is a "serious injury" for the purposes of determining general damages;

[11] At least 5 days prior to the date upon which the matter is to be heard on the RAF trial roll, the Plaintiff's attorney shall file Heads of Argument, which shall at least:

- (a) indicate the nature and extent of the relief to be sought by the Plaintiff;

- (b) make submissions as to why it is contended that the insured driver was negligent in the cause of the collision forming the subject of the proceedings;
- (c) make reference to those portions of the medicolegal reports relied upon by the Plaintiff in substantiation of the relief sought;
- (d) in instances where loss of earnings are claimed, make submissions as to the appropriate contingency deduction to be applied to both past and future earning capacity;
- (e) make submissions, with reference to comparative cases and awards, as to the extent of an appropriate award of general damages;

[12] A failure to comply with the aforesaid procedures will result in the matter being automatically removed from the RAF trial roll and the Plaintiff's attorney will have to reapply to have the matter placed on the roll.

### **Hearing of Matters on the RAF Trial Roll**

[13] Upon the matter being allocated to the Trial Judge, such Judge shall indicate whether the leading of *viva voce* evidence will be dispensed with in respect of any witnesses, pursuant to the provisions of Rule 38 (2).

[14] On the day upon which the matter is to be heard, the Plaintiff's attorney shall ensure that:

- (a) the Plaintiff is present at Court; and
- (b) all expert witnesses are able to attend court within 30 minutes of the Trial Judge indicating that such expert is required to be examined *viva voce*.

[15] In the event of the Road Accident Fund not tendering an undertaking, pursuant to the provisions of section 17 (4) (a) of the Road Accident Fund Act, No. 56 of 1996, for future medical expenses, such expenses shall be determined by the Court at the hearing of the matter.

[16] In the event of the Road Accident Fund not admitting that the injury sustained by the Plaintiff is a “serious injury”, the Court shall:

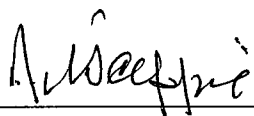
- (a) issue an order directing the Road Accident Fund to either admit or reject the “RAF 4 form” submitted to it by the Plaintiff, and give its reasons for such decision; and thereafter
- (b) adjourn the issue of general damages *sine die* for a determination upon the Road Accident Fund either admitting that the injury constitutes a “serious injury” or the appeal procedure prescribed in the Regulations having been exhausted.

**This practice directive must be read together with practice directive 25 and *Venter v Nel* 1997 (4) SA 1014 (N) at 1016A.**

### **Defended Matters**

[17] In all matters where the Road Accident Fund has entered an appearance to defend:

- (a) the current case flow management directives shall remain applicable;
- (b) the Case Flow Management Clerk shall ascertain whether all prior directives have been complied with and that the file is ready to be certified ready for trial; and
- (c) the Case Flow Management Registrar shall then forward the file to a Judge to certify that the matter is trial ready.



**Judge President Jappie**

6 September 2021