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GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA**

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TO:

- All Judges – Gauteng Division of the High Court, Pretoria and Johannesburg
 - The Chief Registrars – Gauteng Division of the High Court, Pretoria and Johannesburg
 - Court Staff, Professional Bodies and Organisations, Legal Practitioners, Litigants and Members of the Public
 - Government Departments, Entities and Functionaries
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DIRECTIVE

INTRODUCING MANDATORY MEDIATION IN THE GAUTENG DIVISION

A: Introduction

1. This Directive is issued in conformity with and in terms of the authority vested in the Head of Court in terms of Section 8(4) (b) of the Superior Courts Act, 2013, Act 10 of 2013, as amended. The Directive is also in line with Section 173 of the Constitution authorising the Judiciary to regulate their own processes.
2. The Directive is effective from 22 April 2025.
3. The last occasion the Judicial establishment of the Gauteng Division of the High Court was increased was in 2008, yet the caseload of the Division continued to rise and has now reached unmanageable levels. The state of the Civil Trial rolls, in particular, is a source of serious concern. Civil Trial dates in the Division, are currently issued as far ahead as 2031 i.e. seven years in the future. This state of affairs is self-evidently unacceptable and intolerable. Objectively

viewed, this situation is inimical to effective and timeous access to justice, within the meaning of the Constitution, and must be forthrightly condemned as unconstitutional.

4. The right of access to Courts as guaranteed in section 34 of the Constitution is not capable of being properly honoured by the lead-time for dates of hearing, described above. It would be irresponsible for me as the Head of the Gauteng Division to ignore this situation and not develop and initiate appropriate means in an effort to address and overcome the problem.
5. Accordingly, to ensure access to justice and to the Courts, as well as to fulfil the objective of providing an effective litigation service within reasonable timelines, revision of Court processes must be made. It is critical to ensure that cases that genuinely deserve the attention of a Judge are able to be timeously heard. Moreover, it is critical that cases that do not reasonably require a Judge to resolve the parties' dispute, do not clog up the Court roll and consume precious Court time. Currently the majority of cases on the Civil Trial roll, are capable of resolution through mediation, settlement, and other alternative dispute resolution means. These are the cases that take up a sizeable portion of the Civil Trial roll and inevitably cause deserving cases to wait for inordinate long periods for a hearing. The statistics of cases accommodated on the Civil Trial roll of this Division evince that up to 85% of them are settled on the morning of the trial date. These are matters where the parties had obtained trial dates two to three years before. Furthermore, a sizeable number of cases per week, are dealt with in the Default Judgement and Settlement rolls of the Division.
6. In order to filter the caseload to enable only cases warranting judicial attention to be enrolled, the diversion of cases capable of being resolved/settled after effective mediation by professional mediators is appropriate, to institutionalize in the processes of the Court, a methodology which can ensure that outcome. The introduction of this Directive and the Protocol for Mediation in the Gauteng Division must be understood in this context.
7. The introduction of mandatory mediation is a progressive policy choice which draws support from several sources.
 - 7.1. First, there is the intrinsic common sense of the mediation process itself.
 - 7.2. Second, mandatory mediation has already been part of our law for three decades in the labour law field pursuant to the labour relations act 66 of 1995. further, the Land Court act 6 of 2023 provides for mandatory mediation.

- 7.3. Third, there is the Report of the Law Reform Commission and its Draft Mediation Bill, in which chapter 7, provides for mandatory mediation.
- 7.4. Fourth, the application of mandatory mediation in other jurisdictions has demonstrated a global policy shift in favour of mediation as an effective option to guarantee effective access to justice and Courts. These developments are calculated to safeguard the effectiveness of the Courts' capacity to adjudicate cases that truly require adjudication.
8. Thus, the direction of policy development towards mandatory mediation in litigation is clear. In the Gauteng Division it has been decided to pioneer this progressive development so that effectiveness of the litigation service can be achieved without further delay.
9. It is to this end that this Directive is issued. The Directive applies only to civil trials. It should be understood that this Directive does not affect nor inhibit a Court ordering or encouraging the parties to engage in mediation in a case which is not a trial.
10. From date of this Directive, the Mediation Protocol for the Gauteng Division (the Protocol), published herewith, shall be in force.
11. New procedures for civil trials are introduced for two periods:
- 11.1. the period commencing 1 January 2027,
- 11.2. and for a transitional period from the issue of this Directive until 31 December 2026.

B: The procedure applicable to the civil trial roll for all categories of litigation from 1 January 2027

12. All trial dates for all categories of Trials set down after 1 January 2027 are hereby withdrawn. The effect of this withdrawal is twofold. First, space on the trial roll is created for earlier enrolments and the seven-year delay is eliminated. Second, fresh enrolments can be made within a period from date of compliant request, not exceeding 18 months.
13. With effect from the date of this Directive, no case shall be issued a trial date unless the request is accompanied by a report on the mediation as contemplated in the Protocol, given by either an accredited mediator or, in the case of matters certified to be heard in the commercial court, a report on the mediation as contemplated by the Protocol, by the judicial case manager.

14. The registrar shall:

14.1. each week collate all requests for trial-dates received in that week,

14.2. compliant requests which had previously been enrolled where a previous set-down date had been pursuant to this Directive, shall, in that particular week, be afforded preference in the allocations made.

C: The procedures applicable to the civil trial roll during the transitional period from 2025 to 31 December 2026

15. Distinct procedures are applicable to cases against the RAF and to all other categories of cases as set out in paragraphs CA and CB.

CA: Revision of the status of trial dates already allocated in cases against the RAF in 2025 - 2026

16. In respect of all trial dates issued to cases against the RAF in 2025:

16.1. Dates allocated in term 2 of 2025 shall remain intact.

16.2. Dates allocated in terms 3 and 4 shall provisionally remain on the roll, subject to the following:

16.2.1. If a mediator's report is presented to the court with the civil trial practice note, 7 court days before the trial date the case shall be heard.

16.2.2. If a mediator's report is not so presented the case shall be struck from roll with no costs order.

17. All trial dates issued to cases against the RAF on dates from 1 January 2026 are withdrawn. All such cases set down after that date must seek a fresh set-down date and the request must be accompanied by a mediator's report.

CB: Revision of the status of trial dates already allocated in all cases other than the RAF, 2025 - 2026.

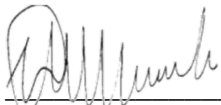
18. All trial dates set down in 2025 shall remain intact.

19. All matters with trial dates allocated in 2026 shall provisionally remain on the roll, subject to the: following:

- 19.1. If a mediator's report is presented to the civil trial registrar 30 court days before the trial date, the case shall be heard.
- 19.2. If a mediator's report is not so presented the case shall be struck from roll with no costs order.

GENERAL

20. In the event that parties settle a matter by agreement among themselves or settle the matter after mediation such a matter may be enrolled on the settlement roll. Enrolment on the settlement roll shall be on not more than 4 weeks' notice.
21. In the event that a party is recalcitrant or dilatory in engaging about mediation (the delinquent party) and an aggrieved party approaches the special interlocutory court (sic) for a compelling order, as contemplated in para 4.6 of the mediation Protocol, such an application shall be enrolled on not more than 4 weeks' notice.
22. All fresh trial enrolments shall be made within a period of 18 months, calculated from the date of a compliant request for a trial date.



DUNSTAN MLAMBO
JUDGE PRESIDENT
GAUTENG DIVISION OF THE HIGH COURT
22 APRIL 2025