



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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27 MAY 2021

CIRCULAR 27 OF 2021

(HEAD OFFICE FILE 12/P)

CHIEF MASTER DIRECTIVE 2 OF 2021– TRUSTS: MATTERS RELATING TO ROAD ACCIDENT FUND (“RAF”) AND MEDICAL NEGLIGENCE - AMENDED

1. Your attention is drawn to the contents of the attached **amended** Directive with regards to dealing with Road Accident Fund (RAF) and medical negligence trusts
2. This Directive is effective from **27 May 2021** and should be implemented as such.
3. Any enquiries should be addressed in writing to the Office of the Chief Master.


Adv M. M. Mafojane
CHIEF MASTER

2021/05/27

TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT



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Justice and Constitutional Development
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CHIEF MASTER'S DIRECTIVE 2 OF 2021

TRUSTS: MATTERS RELATING TO ROAD ACCIDENT FUND ("RAF") AND MEDICAL NEGLIGENCE

1. **PURPOSE OF THIS DIRECTIVE**

The purpose of this Directive is to direct all Masters in the performance of their functions regarding RAF and medical negligence trusts.

2. This Directive is issued in terms of:

2.1 Section 3 of the Judicial Matters Amendment Act, 2005 which requires the Chief Master to "exercise control, direction and supervision over all the Masters"; and

2.2 Section 2(1) of the Administration of Estates Act 66 of 1965 ("the Estates Act").

3. This Directive **withdraws** and **replaces** Directive 1 of 2021.

4. **BACKGROUND**

4.1 It is becoming more and more prevalent that practitioners in the RAF and medical negligence matters are purportedly circumventing legislative processes that ensure the Master's oversight in its function to protect the interest of minors and persons incapable of managing their own affairs.

4.2 This practice is often used through a creation of an inter vivos Trust as opposed to appointing a curator bonis who would function under the Master's supervision as

guided by the provisions of the Estates Act.

4.3 The creation of Trusts in these matters has become an ideal vehicle to evade these supervisory powers by the Master.

4.4 The Master lodged a report to Court in terms of Section 96(2) of the Estates Act in order to:

- i) bring to the attention of the Judge President [North Gauteng Division of the High Court] the practical difficulties which the Master experiences in implementing the ambiguous Court Orders issued by the Court in relation to the RAF and/or medical negligence matters; and
- ii) request the intervention and direction of the Court in the interpretation and practical implementation of these Court Orders;

4.5 The report is still being considered and a direction from the Court in terms of section 96(2) of the Estates Act will be provided in due course.

5. **NEW DIRECTIVE PENDING CONSIDERATION OF THE MASTER'S REPORT**

As part of the Chief Master's statutory obligations and in order to ensure uniformity in all Master's Offices, a decision has been made to implement the following;

5.1 **Clause 3.2** (inclusive of **i**) to **ix**) of **Chief Master's Directive 2 of 2017** is hereby suspended, pending determination of the Master's report in terms of section 96 of Act 66 of 1965.

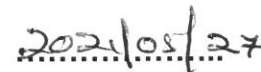
5.2 Once the abovementioned report has been considered and a directive issued by the Court, a further Directive in this regard will follow.

6. **EFFECTIVE DATE**

6.1 This directive recalls prior Directives, Circulars or instructions regarding this subject, with effect from the date of signature hereof.

6.2 This Directive will come into effect as from **date of signature** of this Directive.


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Adv. M. M. Mafojane
CHIEF MASTER


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Date