



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Private Bag X 81, PRETORIA, 0001 • SALU Building, 316 Thabo Sehume Street, PRETORIA
Tel (012) 406 4804

Sub Office File: 7/1/1

28 April 2021

CIRCULAR 19 OF 2021

(HEAD OFFICE FILE 12/P)

CHIEF MASTER DIRECTIVE 1 OF 2021– TRUSTS: MATTERS RELATING TO ROAD ACCIDENT FUND (“RAF”) AND MEDICAL NEGLIGENCE

1. Your attention is drawn to the contents of the attached Directive with regards to dealing with Road Accident Fund (RAF) and medical negligence trusts
2. This Directive is effective from **28 April 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

28/4/2021

TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT



CHIEF MASTER'S DIRECTIVE 1 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.

This Directive is issued in terms of:

- 1.1.** Section 3 of the Judicial Matters Amendment Act, 2005 which requires the Chief Master to "exercise control, direction and supervision over all the Masters".
- 1.2.** Section 2(1) of the Administration of Estates Act 66 of 1965.

2. BACKGROUND

- 2.1** It is becoming more and more prevalent that practitioners in the RAF and medical negligence matters are 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.
- 2.2** 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 Administration of Estates Act 66 of 1965 ("the Estates Act").
- 2.3** The creation of Trusts in these matters has become an ideal vehicle to evade these supervisory powers by the Master.

2.4 The Master lodged a report to court in terms of Section 96(2) of the Administration of Estates Act 66 of 1965 (case number 13707/2021 North Gauteng High Court):

- i) to 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 matters and/or medical negligent matters;
- ii) to request the intervention and direction of the Court in the interpretation and practical implementation of these Court Orders;

2.5 The Judge President's responded by indicating his intention to issue Directive to constitute a Full Court to hear, determine and resolve the legal issues in question. The JP's Directive will bring certainty for the Master, the Courts and the vulnerable as well as eradicate this practice which seeks to undermine the constitutional rights to 'dignity' and 'privacy' of the most vulnerable members of our society.

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

3. THE FOLLOWING HAVE BEEN DECIDED:

3.1 Clause 3.2 (inclusive of i) to ix)) of Chief Master's Directive 2 of 2017 is hereby suspended, pending determination of case number 13707/2021 North Gauteng High Court.

3.2 Once the abovementioned case has been determined, a further Directive in this regard will follow.

4 EFFECTIVE DATE

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

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


.....
Adv. M. M. Marojane
CHIEF MASTER

2021/04/28
.....
Date

