



# the doj & cd

Department:  
Justice and Constitutional Development  
**REPUBLIC OF SOUTH AFRICA**

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Sub Office File: 1/4/1


**5 February 2024**

**CIRCULAR ...6.. OF 2024**

**(HEAD OFFICE FILE 11/1/P and 12/P)**

## **CHIEF MASTER DIRECTIVE 1 OF 2024– DEALING WITH LITIGATION**

1. Your attention is drawn to the contents of the attached Directive with regards to DEALING WITH LITIGATION in the Master's Office.
2. This Directive amends and /or repeals prior Chief Master's Directives, - Circulars or instructions regarding this subject as per the effective date indicated on the Directive.
3. Any enquiries should be addressed in writing to the Office of the Chief Master.



**Ms P Roberts**  
**ACTING CHIEF MASTER**

**TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**



## **CHIEF MASTER'S DIRECTIVE 1 OF 2024**

### **DEALING WITH LITIGATION**

#### **1) PURPOSE OF THIS DIRECTIVE**

The purpose of this Directive is to direct all Masters in the performance of their functions regarding dealing with civil litigation matters involving the Master of the High Court.

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**

a) As per Circular 66 of 2023 (**ANNEXURE A**), all civil litigation involving the Department are to be dealt with on national level. However, in matters where the Master is cited as a party (respondent / defendant) the court documents are normally served on the relevant Master’s Office directly. It is only in exceptional circumstance that it is served on the State Attorney and not the relevant Master’s Office.

b) Instructions to the State Attorney concerning civil litigation may only be given by the Directorate: Liability and Litigation Management (“LLM”) at National Office. Likewise, the State Attorney may only act on instructions given by LLM. The exclusion to this is in instances where the Master is responsible to perform a specific function in terms of a statutory provision, in which case the Master may directly request the assistance of the State Attorney.

- c) LLM in turn, will only act on a matter when it was referred to them, or they were instructed, by the Office of the Chief Master.
- d) However, as civil litigation is not served on the Office of the Chief Master, but directly on the relevant Master's Office, the Office of the Chief Master cannot request the assistance of LLM, if the served court papers have not been brought under the attention of the Office of the Chief Master.
- e) Court proceeding also have specific time frames within which the cited parties needs to take action. It is thus imperative that all civil litigation matter be referred to the Office of the Chief Master urgently in order to request the State Attorney's assistance before expiry of the dies.
- f) It has, however, become more and more prevalent that these documents are not timeously acted on by offices, causing adverse findings and cost orders to be granted against the Master as well as writs of execution be served. In most of these cases there is no further remedy available to the Master anymore and consequently the Department then has to pay these orders.

As part of the Chief Master's statutory obligations, a decision has been made to implement the following procedure when dealing with civil litigation matters, to ensure uniformity in all Master's Offices:

**3) THE FOLLOWING HAVE BEEN DECIDED:**

- 3.1)** Office should at all time endeavour to avoid the high legal costs brought on by unnecessary litigation.
  - i. When there is a dispute / complaint and there is a threat of possible litigation, the Master should endeavour to resolve the matter as soon as possible.

- ii. Should the relevant Master and complainant not be able to reach an agreement, mediation by the Office of the Chief Master should be considered.

**3.2)** Litigation cannot be dealt with like normal post. Each office must identify a central point of entry for all litigation as well as establish a Litigation Register for recording all received litigation.

- i. The details of this central point should be clearly indicated at the entrance of the office and all officials should be alerted and informed accordingly;
- ii. Only official(s) identified to manage the litigation point, may receive litigation matters for that office;
- iii. The official being served with the court documents must sign and date stamp the received papers and enter the details into a Litigation register, which should make provision for at least the following:
  1. Date received;
  2. Type of application (e.g. Notice of motion / summons / court order / notice of taxation / writ of execution etc.);
  3. Details of applicant, plaintiff, respondent, defendant (whichever applicable);
  4. Court case no;
  5. By whom it was served on your office;
  6. By whom it was received in the office;
  7. Details of the Masters matter it is related to;
  8. Space for the Head of the Section / HOO to sign receipt and date of receipt.

**3.3)** Served documents should be dealt with immediately and brought under the attention of the relevant Head of the section, or if not available, the Head of Office (even if the file cannot be found at that stage), without delay.

- i. The relevant Section Head / Head of Office must sign the Litigation register, confirming that they received the documents;
- ii. If the file could not be found prior to handing the documents over, the retrieval of the file should be prioritised consequently.
- iii. The relevant Head of the Section should advise the Head of Office on the proposed action to be taken.

**3.4)** Instructions should be sent to Office of the Chief Master and may not be sent directly to LLM/ State Attorney (unless otherwise directed by the Office of the Chief Master). The following procedure should be followed when referring the matter to the Office of the Chief Master:

- i. Written instructions should come directly from the Head of Office (or acting Head of Office) and
- ii. it should be forwarded to the Office of the Chief Master **within 48 hours** of receipt of the court documents.
- iii. Unless otherwise indicated, an electronic copy of the court documents must be forwarded via e-mail to Office of the Chief Master for attention Ms Tebogo Tladi ([TeTladi@justice.gov.za](mailto:TeTladi@justice.gov.za)) and Ms Patrys Venter ([HVenter@justice.gov.za](mailto:HVenter@justice.gov.za));
- iv. If there is any pecuniary relief sought against the Master or the office wishes to oppose/defend the application, the Chief Master should also be copied;
- v. The subject line of your e-mail should always start with **“NoM”** or **“Summons”**(whichever is applicable) then the **name of the applicant/plaintiff** as well as the **respondent/defendant** and the **case number**.

*For instance: **NoM: G Phillips/ Master Pta (case no....)***

1. If costs are sought, it should be indicated in the subject line of your mail as well.

*For instance: **Costs NoM: G Phillips/ Master Pta (case no....)***

2. You can also at the end of the subject line indicate which estate it relates to, if the details are available.

*For instance: **Costs NoM: G Phillips/ Master Pta (case no....) in re E/L H Viljoen 234/2021***

- vi. The Head of Office must indicate what their instructions are in respect of abiding/ opposing/ defending / settling etc.
  1. The following (amongst others) should be considered in deciding whether to oppose / abide:
    - a) What is the prejudice to the Master/Department, if any, should the order be granted;
    - b) Is there a sound basis in law to oppose;
    - c) Is there a factual basis to oppose;

- d) Was there any wrongdoing / negligence / dereliction of duty (whether *mala fide* or *bona fide*) on the side of the Master, causing the applicant/plaintiff to have to resort to a court application/action;
- e) Are there well founded reasons for the decision taken by the Master (can they be substantiated);
- f) Can the matter rather be settled out of court;
- g) The cost implications to the Department.

2. **If opposing/defending:**

- a) clear reasons must be given to enable the State Attorney to argue on your behalf and a full report must follow shortly, if not yet attached;
- b) Indicate which of the prayers are to be opposed;
- c) Indicate whether the office will abide should the applicant be willing to waive the granting of a cost order;
- d) Any request for specific / senior counsel, needs to be endorsed/confirmed by the Chief Master in writing.

3. **In matters where the office abides:**

- a) The office needs to file a Master's report directly with Court, where required, and a copy of the report must also be forwarded to Office of the Chief Master.
- b) The report must deal with the relevant facts of the application and indicate that the Master will abide.
- c) If the office is, for some reason, unable to lodge the report to court, it must be attached to the e-mail with a request the State Attorney assist in lodging same.

vii. It is the responsibility of the Head of Office to

- 1. ensure litigation matters are sent and dealt with, within the dies as per court documents;
- 2. give instructions on whether a matter needs to be opposed/defended or whether the office will abide;
- 3. ensure that court reports are quality checked and correct - all legal personnel are well versed in report writing skills.

- viii. NOTE: If the office receives an application to compel, it does not mean the application can be ignored if the matter/request is then dealt with by the office prior to the court date, for example the issuing of a Letter of Executorship. The matter still needs to be reported to Office of the Chief Master and dealt with, especially if costs are sought;
- ix. Once the matter has been allocated to a specific Legal Admin Officer at LLM, the office may correspond directly with said officer, but should always copy Office of the Chief Master in any such correspondence (**note that par 3.4(v) above is also applicable to any further correspondence** on a litigation matter– refrain from using heading like “XEROX scan” and such)

**3.5)** Should a cost order be granted against any office and the Department proceeds to pay it, the Office of the Chief Master may request that LLM do a determination of liability to determine whether any official should be liable to contribute / pay the costs, due to negligence, dereliction of duty or any other valid reason on their side.

**3.6)** The Master has a very important duty to report to court on a number of issues and the court attaches great value to the Master’s arguments and recommendations. Whether the Master opposes the application or abides by the decision of the court, they remain obliged to place all the relevant facts before the court. In light of this, all court reports lodged to court should be quality checked by the Head of Office to ensure that the logic, layout and language of a document is up to standard.


Court reports should comply with at least the following:

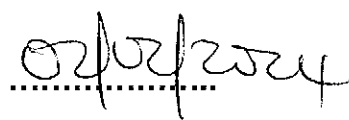
- i. Reports should be accurate and comprehensive;
- ii. the Master’s account of the facts and recommendations should be laid before court;
- iii. report fully on all information that will be relevant to a decision;
- iv. the first paragraph of the report will always be the confirmation that the founding affidavit together with annexures have been lodged with the writer;

- v. make sure that the particular court has jurisdiction in the matter, and confirm this aspect in the report;
- vi. check whether there are any errors/omissions/procedural defects in the application and point out exactly where the defects are to the court;
- vii. Where the Master decides not to oppose the application it is suggested that the writer points this out to the court. This could be phrased as follows: *“Although I am cited as a/first/third/ respondent I do not wish to oppose the application. I, however, wish to bring the following to the attention of the Honorable Court.”*
- viii. Deal with all the paragraphs of the founding affidavit / particulars of claim
  1. Where all the facts are incorporated in the application it is expected of the Master to verify the facts with the file contents and to confirm in the report that the facts correspond with the Master’s records.
  2. Any differences that are evident must be brought to the court’s attention, with reference to the specific discrepancies;
  3. Ensure that any relevant facts the Master has knowledge of, but which were not relayed in the application, are laid before the court;
  4. Provide substantiated reasons for any decision taken by the Master.
- ix. If there are conflicting legal views on a matter the writer must place the different views before the court and then give their opinion on which view is to be preferred (substantiate the Master’s views with reference to cases, legal textbooks and legal articles where possible;)

**4 EFFECTIVE DATE**

This directive repeals prior Chief Master’s Directives, Circulars or instructions regarding this subject, with effect from date of signature of this Directive.

  
 .....  
**Ms P Roberts**  
**ACTING CHIEF MASTER**

  
 .....  
**Date**





**Date: 12 December 2023**

**Sub Office File: 1/4/1**

**CIRCULAR 66 OF 2023**  
**(National Office File 11/2/P)**

**CIVIL LITIGATION AND LEGAL MATTERS**

1. The object of this Circular is to update offices in respect of the procedure to be followed in civil litigation matters involving the Department of Justice and Constitutional Development ("the Department"). For purposes of this Circular, the Department includes all officials/employees (including temporary employees) of the Department. Magistrates will be provided for under a separate circular initiated by the Magistrates Commission.

2. All civil litigation matters involving the Department are to be dealt with at national level. In order to ensure a consistent approach and uniform procedure in respect of litigation matters, the following directions are issued:

2.1 Instructions to the State Attorney concerning civil litigation may, with the exception of matters mentioned in paragraph 2.5 below, only be given by the Directorate: Liability and Litigation Management ("LLM") at National Office. Likewise, the State Attorney may only act on instructions given by LLM, with exception of the matters mentioned in paragraph 2.5 below.

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- 2.2 Once a Notice of Motion has been served on an official, it should be forwarded immediately to the officials listed in paragraph 3 below together with any information and/or supporting documentation to enable LLM to determine whether the matter should be opposed or not.
- 2.3 Letters of demand and summonses involving the Department must be forwarded to the officials listed in paragraph 3 below without delay.
- 2.4 Requests for state legal representation are dealt with in terms of paragraphs 12.6.1 to 12.6.8 of the Department of Justice Financial Instructions ("the DFI"). It should be noted that legal representation only applies to "claims" as defined in paragraph 1.1 of the DFI. Legal representation for disciplinary matters and defamation claims are excluded.
- 2.5 The following matters are exceptions in terms of paragraph 2.1 above:
- 2.5.1 The National Director of Public Prosecutions and/or the various Directors of Public Prosecutions will instruct the State Attorney directly in litigation proceedings relating to prosecutions and LLM will not provide instructions on their behalf. LLM will, however, still be responsible for instructions on behalf of the Minister of Justice in all damages wherein the Minister is cited as a party. It is expected of the State Attorney to keep LLM informed of developments in such matters, failing which LLM will not take responsibility for the payment of costs associated with such matters.
- 2.5.2 The Office of the Chief Justice is a separate, independent Department from the Department of Justice and Constitutional Development and all litigation matters where the Minister of Justice, an official of the High

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Court (for example a Registrar) or a Judge is cited in respect of High Court proceedings, must be forwarded to the Office of the Chief Justice for instructions.

2.5.3 Where a functionary (eg the Master of the High Court) is responsible to perform a specific function in terms of a statutory provision, the said functionary may approach/instruct the State Attorney directly should he/she require the State Attorney's assistance in that regard. The exception does not apply to review applications brought against the said functionary, where costs are sought against the functionary, or where it is necessary to brief counsel to provide assistance. Master's Offices should note that ALL litigation matters should be reported to the Office of the Chief Master for the attention of the relevant dedicated officials which will be communicated from time to time to the relevant Master's Offices. The Chief Master should be copied in all correspondence relating to opposed litigation. Requests for opposition should be well motivated and sound in law. Prejudice that the Master may suffer as well as the factual and legal position should be set out in the request to oppose.

2.5.4 Instructions in respect of labour matters will be given to the State Attorney directly by the relevant HR division (Employee Relations).

2.5.5 State Attorneys should note that all instructions relating to the vetting of Service Level Agreements, contractual disputes and opinions relating to the Supply Chain Management environment must only be accepted and acted upon when instructions are expressly provided by LLM.

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2.5.6 Any instructions to the State Attorney from the provincial offices regarding the recovery of a loss and/or debt should only be acted upon if such instruction is accompanied by a signed letter by the Director: LLM approving such referral.

3. In view of the strict time limits applicable to civil litigation, officials are requested to report civil litigation matters without delay, but not more than two (2) working days after receipt of the matter as follows:

All litigation matters should be reported to [Legalservices@justice.gov.za](mailto:Legalservices@justice.gov.za) and Mr Raymond Venkatsamy (Director: Liability and Litigation Management) should be copied in all correspondence relating to the reporting of new matters. His contact details are as follows:

[rvenkatsamy@justice.gov.za](mailto:rvenkatsamy@justice.gov.za)

Cell: 083 269 0339

Tel: 012-357 4636/012-315 1501

**Enquiries in respect of notices of motion should be directed to:**

Ms Elzana Allers

[estrauss@justice.gov.za](mailto:estrauss@justice.gov.za)

Senior Legal Administration Officer: Liability and Litigation Management

Tel: 012-315 1742

Cell: 083 762 9347

**Enquiries in respect of summonses and letters of demand should be directed to:**

Ms Ansie Fourie

**TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT**

ansfourie@justice.gov.za

Senior Legal Administration Officer: Liability and Litigation Management

Tel: 012-315 1519

Cell: 083 294 7570

4. It is from time to time required from officials to testify in Court. Once the Department has informed an official in writing that he/she is required to testify in Court on a particular day, the official must see to it that he/she is available on that date and that the necessary travel, accommodation and subsistence arrangements are made by the office to which he/she is assigned. These arrangements are not the responsibility of LLM or the State Attorney. Budget Controllers must kindly see to it that funds are set aside for this purpose as each office is responsible for its official's expenses. Officials who refuse to testify in Court on behalf of the Department or who fail to appear in Court on the trial date will face disciplinary action and may furthermore be held liable for wasted costs incurred as a result of their failure to attend and/or testify.

5. Civil litigation matters are dealt with in terms of the State Attorneys Act, 1957 (Act No. 56 of 1957) and Chapter 12 of the Treasury Regulations issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) read with Chapter 12 of the DFI. It is required from all officials who play a role in litigation to co-operate with LLM in respect of requests to provide comments and any other information within the strict timeframes provided.

6. Heads of Branches must ensure that officials cooperate with the provision of documents, instructions and/or any draft responses to ensure that LLM complies with the rules of court and/or any deadlines set by authors of letters or directives. Refusal to co-operate with a request for information will result in disciplinary steps being considered against the said officials. Any delays by Heads of Branches and officials will compel LLM to take the necessary

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steps to protect the interests of the Department while Heads of Branches and/or officials attend to compliance for the provision of information and/or instructions. Speedy attention to legal matters is necessitated by the need to ensure that the Department abides its legal obligations and to avoid exposure of the Department where there is non-compliance. Officials should further note that where officials continue with litigation against the advice from LLM, the state attorney or counsel and costs are awarded against the official, a determination of liability will follow the bill of costs to establish if the official should be personally liable for the costs.

7. Non-compliance with the above directions may result in disciplinary proceedings and/or the recovery of fruitless expenditure or costs incurred.

8. Circular 17 of 2004, Circular 102 of 2014 and Circular 44 of 2022 are hereby withdrawn.



ADV D MASHABANE  
DIRECTOR-GENERAL: JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DATE: 7/12/2023

TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE  
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