



DISPUTES

Proposed Amendments to the Mandatory Mediation Protocol in the Gauteng Division of the High Court: Will the latest attempt to redirect judicial traffic succeed?

15 October 2026 6 min read

by Dakalo Singo, Director and Head of Pro Bono, and Wamkelwe Ntuli, Candidate Attorney

Introduction

The Gauteng Division of the High Court of South Africa recently published a notice of proposed amendments ("**Proposed Amendments**") to its Mandatory Mediation Protocol ("**Mediation Protocol**"), which operationalises the Division's Mandatory Mediation Directive. The proposed amendments are an attempt to reduce the clogging in the Special Interlocutory Court ("**SIC**").

The Purpose of the SIC

The SIC was established to address procedural non-compliance by an adversary in litigation. The Division's practice directive states that "the very purpose of the SIC is to overcome delinquency and consequent improper delays". It further provides that any litigant who is aggrieved by another litigant's "neglect, dilatoriness, failure, or refusal to comply" with any provision of the Uniform Rules of Court ("**Rules**"), practice manual, or the practice directive must approach the SIC to compel compliance from the delinquent party.

Notably, the orders obtainable in the SIC are strictly of an interlocutory nature and therefore do not deal with the substantive (or main) aspects of the litigation. By having a dedicated court of this nature, it was envisaged that there would be a reduction of the time spent on interlocutory issues which would create more capacity for other court rolls to deal with substantive issues.

Unfortunately, despite best intentions, the SIC as an innovation has faced a significant functional problem – excessive congestion. The Proposed Amendments highlight that at any given time there are approximately 16 000 matters seeking allocation and hearing dates in the SIC, which causes congestion, delays and backlogs.

In some ways, this congestion is a self-fulfilling prophecy. Mandatory Mediation, pursuant to the procedures in the Mediation Protocol, was meant to free up the court rolls and foster the expedient and negotiated settlement of cases between parties. Instead, the Mediation Protocol simply moved the traffic from one intersection to another, and the SIC suffers for it. Resultantly, despite the relative availability of court dates, the cases that previously clogged up the court rolls did not disappear, they have now just clogged up the system meant to expediently resolve procedural issues. Accordingly, the proposed amendments are necessitated by the SIC backlog of procedural delinquency cases, owing to parties not fully complying with the Mediation Protocol.

The Mediation Protocol

The introduction of mandatory mediation in Gauteng, accompanied by the Mediation Protocol to operationalise the system, also made peremptory the rules of procedure pertaining to mediation.

From the perspective of the Gauteng Division, mediation was meant to promote alternative dispute resolution and ensure that only those cases which absolutely require judicial intervention come before the judges of the Division. However, alternative dispute resolution processes require the active participation of all parties to a dispute, failing which the peremptory mediation rules are undermined. Accordingly, and as an example, where a party fails to respond to a notice calling for mediation, that constitutes non-compliance and such delinquency may be brought before the SIC for what should ideally be expedient resolution. The Proposed Amendments explain that the SIC congestion is primarily due to litigants' non-responsiveness to Rule 41A mediation notices. This not only undermines the underlying rationale of the SIC which, in addition to what is stated above, includes the prevention of delay and gamesmanship but also the effective implementation of the Mediation Protocol.

In **Malebane v Road Accident Fund** [2025] ZAGPPHC 1253, the court remarked that of approximately 200 applications serving before the SIC during that week, a significant number were "Delinquency Applications". The court further noted that most, if not all, of these applications arose from respondents' failures to respond to Rule 41A mediation notices. The court expressed growing concern that delinquency applications were increasingly being used as tactical shortcuts to gain access to the Default Judgment Roll. This is an example of the exact gamesmanship the SIC is meant to prevent. The court's observations are particularly relevant to the proposed amendments. The fact that the majority of matters before the SIC comprise of applications of this nature underscores the need for measures aimed at addressing their increase and lessening the misuse of the delinquency mechanism. The proposed amendments are an attempt to address this issue.

The Proposed Amendments

The solution suggested in the Proposed Amendments is to excise matters where the only issue is a litigant's failure to reply to a Rule 41A mediation notice. In terms of the Proposed Amendments, mediation delinquency would instead be dealt with through the procedure prescribed in Rule 30A of the Rules which governs non-compliance with the Rules and Court Orders. This marks a departure from the existing procedure in the Mediation Protocol, which requires an aggrieved party to obtain an order from the SIC compelling the delinquent party to comply with the Mediation Protocol, failing which the aggrieved party may seek that: the delinquent litigant's claim or defence be

struck out, the matter be enrolled on the Default Judgment Roll, and the delinquent litigant be held to be in contempt of the compelling order.

In terms of the proposed solution where a party fails to deliver a response to a Rule 41A mediation notice, the aggrieved party (who delivered such notice) may serve a Rule 30A Notice calling upon the delinquent party to respond within 10 days of delivery of that notice, failing which the aggrieved party may apply to the relevant Registrar for the allocation of the matter on the Default Judgment Roll or the Special Default Judgment Roll if the delinquent party fails to deliver a response after 15 days of expiry of the period called for in the Rule 30A Notice.

Conclusion

While the proposed amendments may result in a reduction of the congestion in the SIC and support the effective implementation of the mandatory mediation regime, they may also just result in another unsuccessful re-direction of judicial traffic; this time from the SIC to the Default Judgment Roll and the Special Default Judgment Roll. It is contemplated in the Proposed Amendments that if the proposed solutions are approved, then transitional provisions to facilitate their pragmatic implementation should be developed and adopted.

It is hoped that the proposed changes have the desired effect and improve the administration of justice in the Gauteng Division. The importance of effective judicial administration cannot be understated, especially given the Gauteng Division’s place as the busiest court in the country.



Dakalo Singo

Head of Pro Bono

[View Profile](#)