



# PRACTICE MANUAL

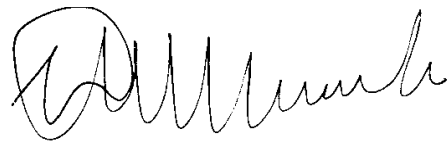
of the

## Gauteng Local Division of the High Court of South Africa

Towards this revised Practice Manual, my office acknowledges the contribution of:

- (i) my predecessors, for the initial Practice Manual;
- (ii) Boruchowitz J, for the initial draft of the revised Manual;
- (iii) all Judges of the Gauteng Local Division of the High Court of South Africa for their comments and inputs; and
- (iv) the Johannesburg Bar, the National Forum of Advocates and the Johannesburg Attorneys Association for their critical comments.

It is thanks to the inclusive contributions of all involved that this Practice Manual is now available in the form in which it is.



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**D MLAMBO**  
**JUDGE PRESIDENT**  
**GAUTENG LOCAL DIVISION OF THE**  
**HIGH COURT OF SOUTH AFRICA**  
**February 2018**

**PRACTITIONERS AND MEMBERS OF THE PUBLIC SHOULD TAKE NOTE OF THE FOLLOWING IN REGARD TO THE FILING OF DOCUMENTS:-**

REQUEST FOR COURT FILES BY MEMBERS OF THE PUBLIC: A REQUEST FORM FOR MOTION AND CIVIL TRIAL FILES MUST BE COMPLETED IN OFFICE 008

OFFICE 018 – PROVISIONAL DATES FOR COURT FILES  
OFFICE 005 – CIVIL TRIAL COURT FILES ALLOCATED TRIAL DATES  
OFFICE 016 – OPPOSED MOTION COURT FILES  
OFFICE 002 – URGENT COURT FILES  
OFFICE 004 – UNOPPOSED MOTION COURT FILES  
OFFICE 019 – FILES ALLOCATED DATES FOR UNOPPOSED MOTION  
OFFICE 128 – FILES ALLOCATED DATES FOR JUDICIAL PRE TRIAL AND FILES FROM JUDICIAL PRE TRIAL COURT  
OFFICE 138 – CIVIL APPEALS, EDICTAL CITATION AND SERVICE OF PROCESS  
OFFICE 142 – CRIMINAL APPEALS FROM MAGISTRATE COURTS  
OFFICE 144 – CRIMINAL TRIALS – FROM THE YEAR 2014 TO 2017  
OFFICE 020 – ADMISSION OF ADVOCATES, RULE 39(22) AND 46  
ARCHIVES – 10<sup>TH</sup> FLOOR – COURT FILES ISSUED FROM 2011 TO 2015  
10<sup>TH</sup> FLOOR – RULE 31(5) DEFAULT JUDGEMENTS

THE ISSUING OF A WRIT OF EXECUTION IS NO LONGER GRANTED THE SAME DAY THE APPLICATION IS MADE. IT MUST BE RECORDED IN THE REGISTER BOOK IN OFFICE 008 AND BE COLLECTED THE FOLLOWING DAY.

**WHILST REGISTRARS HAVE BEEN REQUESTED TO CHECK THAT DOCUMENTS ARE FILED IN THE CORRECT OFFICE, THIS REMAINS THE RESPONSIBILITY OF THE PARTIES AND/OR THEIR LEGAL REPRESENTATIVES.**

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## **CHAPTER 1            APPLICATION OF THE PRACTICE MANUAL**

1. This Practice Manual sets out the practice in the Gauteng Local Division of the High Court, Johannesburg.
2. As such it seeks to inform how the courts in this High Court function. It also seeks to obtain uniformity amongst Judges in respect of practice rulings. It must be emphasised that no Judge is bound by practice directives. Accordingly, the Practice Manual is not intended to bind judicial discretion. Nonetheless, it should be noted, that the Judges of this High Court strive for uniformity in the functioning of the courts and their practice rulings. The Practice Manual thus sets out what can be anticipated occurring, in the normal course of events, on any issue dealt with in the Practice Manual.
3. This Manual supersedes all previous practice directives and consolidates all amendments and additions issued to date. The practice manual will come into effect on 01 March 2018.
4. Amendments to the Practice Manual can only be made by the Judge President after consultation with the other Judges of the Gauteng Local Division of the High Court, Johannesburg.
5. Reference in this Manual to the rules, is a reference to the Uniform Rules of Court in Government Notice R48 of 12 January 1965 as amended and the Transvaal Rules.
6. Reference in this Manual to 'counsel' includes an advocate and an attorney who appears in court or before a Judge in chambers to represent a litigant. Reference in this manual to 'legal representative' means a litigant's attorney of record and includes a party appearing in person.

## **CHAPTER 2            COURT TERMS**

1.    The calendar year is divided into four court terms. The duration of each court term is approximately 10 weeks.
2.    Each court term commences on a Monday and terminates on a Sunday.
3.    The court goes into recess for two weeks between the first and second court term, four weeks between the second and third court term, two weeks between the third and fourth court term and six weeks between the end of the fourth court term and the commencement of the first court term in the succeeding year.
4.    The Chief Justice of the Republic of South Africa determines the duration and dates of each court term.
5.    Court terms from 2014 until 2020 are published in Government Gazette No 37390 dated 28 February 2014.



## **CHAPTER 3            COURT RECESS**

1.    The Judge President determines the duration of recess duty which the Judges of the division must perform during recess. The Judge President further directs in which courts the Judges who are on duty, sit.
2.    Subject to 3 below, only unopposed motion court matters, unopposed divorce actions, opposed rule 43 applications without complexity, urgent applications and bail appeals will be heard during recess.
3.    Save for urgent applications no matters at all may be enrolled for hearing from 25 December to 02 January of each year.
4.    Subject to any direction by the Judge President or the Deputy Judge President, the senior Judge on duty from time to time during the recess, allocates other matters requiring determination during recess to the other Judges on duty.
5.    During recess automatic reviews are distributed equally amongst the Judges on duty, except that the Judges sitting in motion court will not be allocated reviews on Monday or Tuesday of the week and the Judge sitting in the urgent court will not be allocated reviews during the entire week.

## **CHAPTER 4            COUNSEL'S DRESS**

1. Counsel is required to be properly dressed. If not properly dressed they run the risk of not being 'seen' by the presiding Judge.
2. Proper dress for junior counsel comprises:
  - 2.1 A black stuff gown.
  - 2.2 A plain black long sleeved jacket (and not a waistcoat) which has both a collar and lapels. The jacket must have, for closing, one or two buttons at the waist. The buttons must be black.
  - 2.3 A white shirt or blouse closed at the neck.
  - 2.4 A white lace jabot or white bands.
  - 2.5 Dark pants or skirt.
  - 2.6 Black or dark closed shoes.
3. Proper dress for senior counsel comprises:
  - 3.1 A Senior Counsel's (silk) gown.
  - 3.2 A Senior Counsel's (silk) waistcoat.
  - 3.3 A white shirt or blouse closed at the neck.
  - 3.4 A white lace jabot or white bands.
  - 3.5 Dark pants or skirt.
  - 3.6 Black or dark closed shoes.
4. Counsel must ensure when appearing in court that their waistcoats or jackets, as the case may be, are buttoned up.
5. It is not proper for counsel to enter court not fully robed as set out in paragraph 2 to 4 supra. It follows that counsel should not robe in court.
6. Conspicuous ornaments or jewellery should not be worn.
7. On attending a Judge's chambers during the hearing of a case, counsel must be dressed as set out in paragraphs 2 to 4 above. On attending a Judge's chambers otherwise than during the hearing of a case, counsel must be properly dressed as follows:
  - 7.1 A white shirt with a tie (men) or a white blouse closed at the neck (women);
  - 7.2 Dark pants or dark skirt;
  - 7.3 A long sleeved dark jacket; and
  - 7.4 Black or dark closed shoes.

## **CHAPTER 5            COURT SITTINGS**

1.     Save as set out below, all the courts of this division will commence sitting at 10h00. The courts adjourn at 11h15 and resume sitting at 11h30. The courts adjourn at 13h00 and resume sitting at 14h00. The courts adjourn for the day at 16h00.
2.     Counsel must be punctual in their attendance in court at the aforesaid times.
3.     Notwithstanding Para 1 above, it should be noted, that:
  - 3.1     Roll call of civil trials commences at 09h30.
  - 3.2     Motion courts commence sitting during court term at 10h00.
  - 3.3     Applications for leave to appeal are usually enrolled for hearing at 09h30.
4.     The presiding Judge may, at his/her discretion, deviate from the times set out above.

## **CHAPTER 6            CIVIL TRIALS**

- 6.1    Allocation of civil trials
- 6.2    Bundles of documents
- 6.3    Application for case management
- 6.4    Closure of the trial roll
- 6.5    Expert witness
- 6.6    General
- 6.7    Hearing duration
- 6.8    Pagination, indexing, binding and general preparation of papers
- 6.9    Part-heard trials
- 6.10   Practice note for trials
- 6.11   Preferential trial date
- 6.12   Pre-trial conference
- 6.13   Roll call
- 6.14   Settlement agreements and draft orders
- 6.15   Case management
- 5.16   Enrolment of matters struck from the roll

## **6.1 ALLOCATION OF CIVIL TRIALS**

1. A trial will normally be allocated by the Deputy Judge President for hearing by a specific Judge at roll call. Roll call is held at 09h30 in Court GC.
2. An allocation of a trial for hearing by a specific Judge may be made prior to roll call in which event counsel and/or the litigants' legal representatives will be informed of the allocation before roll call.
3. In the allocation of trials due regard will be had to any justifiable claim for precedence in allocation.
4. The application for enrolment on the trial roll must disclose whether a contingency fee agreement was entered into; and if applicable, a copy of the contingency fee agreement must be filed before such application for enrolment can be considered.
5. As a general rule precedence in allocation will be given to trials in which a proper pre-trial minute was timeously filed with the registrar. Certain trials will have been subject to pre-trial certification by a Judge.
6. Only trials that are ready for immediate commencement and continuous running to their conclusion will be allocated for hearing.
7. If it appears at roll call in a trial where the parties have opposing expert witnesses that there is no joint expert minute, the trial will not be allocated until there has been proper compliance with this practice. This may result in the removal of the trial from the roll and the parties having to apply for a new trial date.
8. If, after allocation of a trial for hearing, it appears to the trial Judge that there is no joint expert minute, the presiding Judge to whom the trial has been allocated, will not commence or continue with the hearing of the trial but will require proper compliance with the practice. The presiding Judge will determine the further hearing of the trial.

## 6.2 BUNDLES OF DOCUMENTS

1. Where a party or the parties to a trial intend utilising documents in their conduct of the trial such documents must be collated, numbered consecutively and suitably bound.
2. Each bundle must be indexed. The index must briefly describe each document in the bundle as a separate item.
3. The parties should preferably agree upon a joint bundle of documents. Where the parties are unable to agree upon a joint bundle, the parties must agree which party's bundle shall be the dominant bundle. The subservient bundle or bundles must not contain documents contained in the dominant bundle or bundles.
4. The documents should not be bound in volumes of more than 120 pages. This limit may be exceeded so as to obviate the separation of part of an affidavit or document.
5. The bundle of documents must be bound in a manner that does not hinder the turning of pages and which enables it to remain open without being held open.
6. The parties must agree prior to the commencement of the trial upon the evidential status of the documents contained in the bundle. This agreement must be contained in a pre-trial minute. The agreement must also cover the issue as to which document will be part of the record before the court, to deal with the eventuality of an appeal.
7. If unnecessary documents are included in the bundle the court may on the application of any party to the trial, or *mero motu*, make a punitive cost order in respect thereof.
8. If it will facilitate the hearing of the trial, or if requested by the presiding Judge in the trial, the parties shall prepare a core bundle of documents which deal with the material issues in the trial. This bundle should be prepared in chronological sequence and must be paginated and indexed.

### 6.3 APPLICATION FOR CASE MANAGEMENT

1. This section must be read with 6.15 below, which deals with pre-trial certification for matters involving expert witnesses.
2. Any party to a trial who is of the opinion that by reason of its complexity, long duration or any other reason, the trial requires case management, shall deliver a letter to the Registrar of the Deputy Judge President (DJP's Registrar). The letter must set out:
  - 2.1 the names of the parties to the trial and the case number;
  - 2.2 the nature of the dispute;
  - 2.3 an estimate of the probable duration of the trial; and
  - 2.4 the reason why that party is of the opinion that the trial requires case management.

Proof that a copy of this letter has been forwarded to the other party or parties in the trial must be provided.

3. Any party who is in receipt of such a letter and who wishes to make representations in respect thereof may do so by forthwith delivering a letter to the DJP's Registrar. A copy of the letter must be delivered to all other parties to the trial and proof thereof must be provided. The registrar will advise the parties of the outcome of the request.
4. In the event of the request for case management being granted, the Deputy Judge President (DJP) shall appoint a Judge to undertake the case management of the trial.
5. On the appointment of the Judge as aforesaid:
  - 5.1 all interlocutory applications relating to the trial, will, as far as possible, be heard by that Judge.
  - 5.2 any party to the trial, on notice to all other parties to the trial, may apply to the Judge for directions as to the conduct of the trial. The Judge may furnish such directions or direct that an interlocutory application be brought.
  - 5.3 The appointed Judge may direct that one or more pre-trial conference be held before him or in his absence.
6. The Judge appointed to deal with case management will not be allocated to hear the trial. Reference is also made to para 6.15 below.
7. All matrimonial matters and matters involving children will be sent to the Judge President (JP) upon the matter becoming opposed. The JP will decide whether such case requires case management and if so, such matter will be allocated to a Judge to deal with such case management in terms of paragraph 5 above. 8. In matrimonial matters, parties are encouraged to appoint a mediator, as soon as possible after the inception of the matter, to assist the parties in relation to any issues

involving children. A party who refuses to do so, may be met with an adverse costs order. See *Brownlee v Brownlee* 2010 (3) 220 GSJ



#### **6.4 CLOSURE OF THE TRIAL ROLL**

1. The trial roll closes at 13h00 on the day proceeding the allocated trial date, where after access to the court file will not be permitted.
2. The prohibition of access to the court file continues for the duration of the trial, save with the leave of the trial Judge.
3. Notwithstanding the foregoing, attention is drawn to the requirement in respect of pagination, indexing and binding of papers which must occur not less than five days prior to the date allocated for the hearing of the trial.

## 6.5 EXPERT WITNESSES

1. Whenever it appears, on reasonable grounds, that the time periods for filing and exchanging of experts' notices and reports are in the circumstances of the case, inadequate, subject to the directives in paragraph 6.15 of this manual, the parties may, by agreement, concluded within 30 days of close of pleadings, vary the times for compliance; provided that any variation is positively conducive to the trial being in a state of readiness on the date of the certification hearing as provided for in paragraph 6.15.
2. Such an agreement should provide that notice of intention to call an expert witness be given not less than thirty (30) court days before the allocated trial date and the summary of the expert's opinion be delivered not less than twenty (20) court days before the allocated trial date. Such notice shall be given by the Defendant not less than twenty five (25) court days before the allocated trial date and the summary of the Defendant's expert's opinion be delivered not less than fifteen (15) court days before the allocated trial date. Joint minutes shall be delivered not less than ten (10) court days before the trial date.
3. Where one or more parties to a trial wish to enter into such an agreement, but one of the parties refuses to do so, an application may be brought in terms of Rule 27(1) of the Uniform Rules of Court for the extension of the relevant time periods, which application shall be enrolled in the interlocutory court. Such application shall be brought within 10 days of the opposing parties' refusal as referred to hereinabove.
4. It should be noted that such an agreement, and consequently such an application, is generally conducive to the efficient conduct of a trial. Failure to conclude such an agreement without good cause, and opposition to such an application without good cause, may attract a punitive cost order either on the application by the party or the parties seeking the relief, or *mero motu* by the Judge hearing the application.
5. In all trials in which the parties have opposing expert witnesses, such opposing expert witnesses must meet and reduce their agreements and disagreements to writing in joint expert minutes, signed by them and which minutes must be compliant with the prescripts of paragraph 6.15.11 of this manual.
6. If it appears at roll call in a trial where the parties have opposing expert witnesses that there is no joint expert minute, the trial will not be allocated until there has been proper compliance with this practice. This may result in the removal of the trial from the roll and the parties having to apply for a new trial date.
7. If, after allocation of a trial for hearing, it appears to the trial Judge that there is no joint expert minute, the presiding Judge to whom the trial has been allocated, may in his/her discretion not commence or continue with the hearing of the trial and may either require proper compliance with the practice or postpone the trial. The presiding Judge will determine the further hearing of the trial, if not postponed.

## **6.6 GENERAL**

1. Counsel must ensure that they are available for the entire duration of the trial. The failure to do so will result in counsel's conduct being referred to the relevant society or association of which counsel is a member for disciplinary action.
2. A postponement of a trial will normally not be granted because counsel is not available for the trial or for the entire duration of the trial.
3. Any matter which may affect the continuous running of the trial to its conclusion must be disclosed at roll call and to the Judge to whom the trial is allocated before the commencement of the trial.

## 6.7 HEARING DURATION

**A trial is designated ‘of long duration’ if it is anticipated that it will last more than five (5) days.**

1. If any party to a trial is of the view that a trial will last longer than five days that party shall deliver at least four weeks before the trial date a letter to the Registrar of the Deputy Judge President (DJP’s Registrar). The letter must set out:
  - 2.1 the names of the parties to the trial and the case number;
  - 2.2 the nature of the dispute;
  - 2.3 an estimate of the probable duration of the trial; and
  - 2.4 that a pre-trial conference in terms of Rule 37 has been held and a copy of relevant minute must be annexed to the letter.
2. If any party to a trial is of the view that a trial will last longer than ten days that party shall act as set out in paragraph 2 above, but shall do so at least ten (10) days prior to the end of the court term preceding the term in which the trial is set down.
3. If any party or the parties to a trial are of the view that a trial will last longer than fifteen (15) days, that party shall act as set out in paragraph 2 above, but shall do so at least twenty (20) days prior to the end of the court term proceedings the term in which the trial is set down.
4. In respect of all such trials of long duration, the Deputy Judge President shall inform the parties in writing of the date allocated for the trial upon receipt of the letter that complies with paragraph 2 above.
5. After being informed of the trial date, all the parties to the trial must comply with Transvaal Rule 7(5).
6. If the letter referred to in paragraphs 2, 3 and 4 above is not directed by all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.
7. Any party who is in receipt of a letter referred to in paragraphs 2, 3 and 4 above and who wishes to make representations in respect thereof, may do so by forthwith delivering a letter to the DJP’s Registrar. A copy of this letter must be delivered to all other parties to the trial and proof thereof must be provided.

## **6.8 PAGINATION, INDEXING, BINDING AND GENERAL PREPARATION OF PAPERS**

1. The plaintiff shall, not less than ten days prior to the date allocated for the hearing of the trial:
    - 1.1 collate, number consecutively and suitably bind all the pleadings relating to the trial as a separate bundle and ensure that they are in the court file;
    - 1.2 collate, number consecutively and suitably bind all the notices relating to the trial as a separate bundle and ensure that they are in the court file;
    - 1.3 collate, number consecutively and suitably bind all pleadings which were amended after delivery thereof;
    - 1.4 collate, number consecutively and suitably bind the pre-trial minute and all documents relating thereto; and
    - 1.5 prepare and attach an index to the pleadings bundle, the notices bundle and the pre-amendment pleadings bundle and the pre-trial bundle respectively. The index must briefly describe each pleading, notice or document as a separate item.
  2. In binding the pleadings, notices and documents, care must be taken to ensure that the method of binding does not hinder the turning of pages and the bundle should remain open without being held open.
  3. The pleadings, notices and documents should not be bound in volumes of more than 120 pages. This limit may be exceeded so as to obviate the separation of parts of an affidavit or document.
  4. The pleadings bundle must only contain the original pleadings (as amended, if applicable).
  5. If a document or documents attached to the pleadings, or contained in the bundles as referred to in para 1, is or are
    - 5.1 in manuscript, or
    - 5.2 not readily legible
- the plaintiff shall ensure that legible typed copies of the document or documents are provided.
6. If it will facilitate the hearing of the trial, or if requested by the presiding Judge, the parties shall prepare a core bundle of documents which deal with the material issues in the trial. This bundle should be prepared in chronological sequence and must be paginated and indexed.

## 6.9 PART-HEARD TRIALS

1. As a general rule, part-heard trials should be avoided. Accordingly no trial should be commenced with where any issue or consideration exists to the knowledge of counsel that would interfere with the completion of the trial.
2. In the event that a matter becomes part heard Judges are expected to handle the matter in one of the following ways –
  - 2.1 If the matter will be finalised in less than five (5) court days the Judge must postpone the matter, for completion, to the last week of term and/or recess for finalisation;
  - 2.2 The Offices of the Deputy Judge President and Chief Registrar must be notified of such enrolments to ensure courtroom availability and other necessary support resources;
  - 2.3 If the matter will require five (5) days or longer to complete, the Judge must refer the matter to the Office of the Deputy Judge President for allocation purposes.
  - 2.4 The Deputy Judge President will, taking account of the availability of the Judge, determine the dates during which the matter is to be enrolled and will issue a note to the Judge and Parties in this regard.
  - 2.5 Without derogating from the contents of paragraphs 2.3 and 2.4 above, it is permissible for a Judge, when it becomes clear that a matter will become part heard, to determine the availability of the parties' legal representatives, and consult the Office of the Deputy Judge President, in this regard.
  - 2.6 In the event that the Office of the Deputy Judge President confirms that the matter can be accommodated in the Duty Roster in line with the availability of the parties' legal representatives, the Judge must postpone the matter to the dates concerned and for the duration determined by the Office of the Deputy Judge President.
  - 2.7 The directives in paragraphs 2.3 to 2.6 above do not apply to Acting Judges, who must postpone all part heard matters before them to the recess, for completion irrespective of the duration necessary to complete the matter.
  - 2.8 Under no circumstances are Acting Judges permitted to postpone matters to a period falling within Term.
  - 2.9 This Notice is issued having taken account of the provisions of Section 8(2), (4)(a) and (b) and Section 9(2) of the Superior Courts Act 10 of 2013. Section 9(2) provides:

'Superior Courts may have such recess periods as may be determined by the Chief Justice in consultation with the heads of court and the Minister in order to enable Judges to do research and to attend to outstanding or prospective judicial functions that may be assigned to them.'

## **6.10 PRACTICE NOTE FOR TRIALS**

1. The counsel for each party to a trial shall send a practice note by facsimile transmission in respect of the trial enrolled for hearing.
2. The practice note shall be transmitted to facsimile number (011) 335 0219 and shall be transmitted not earlier than 15h30 on the day preceding the day on which the trial is enrolled for hearing and not later than 08h30 on the day on which the trial is enrolled for hearing.
3. The practice note shall set out:
  - 3.1 the names of the parties to the trial, the case number and its number on the roll;
  - 3.2 the name of each party's counsel, whom they represent and their cellular and landline numbers;
  - 3.3 the nature of the dispute;
  - 3.4 the relief sought at the trial by the party on whose behalf the counsel completing the practice note appears;
  - 3.5 an estimate of the probable duration of the trial;
  - 3.6 the date on which the pre-trial conference was held;
  - 3.7 the date on which the pre-trial conference minute was registered on the registrar's computer system;
  - 3.8 whether any precedence is sought for the hearing of the trial, and if so, the motivation therefore; and
  - 3.9 any issue or consideration that would interfere with the immediate commencement and continuous running of the trial to its conclusion.
  - 3.10 If the trial is one of long duration with an estimated duration of longer than five days but less than sixteen days, a copy of the letter referred to in paragraphs 2, 3 and 4 of the sub-chapter entitled 'Hearing Duration' must be referred to and attached to the practice note of the party who delivered the letter;
  - 3.11 Counsel briefed to appear in matters on the civil trial roll whose matter is stood down to be called at roll call on the following day, must file a practice note in terms of Chapter 6.10 of the Practice Manual on each day that the matter is in roll call.<sup>1</sup>
  - 3.12 Practice notes must, as a minimum requirement, comply with the specific provisions of the Practice Manual.<sup>2</sup>

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<sup>1</sup> As per Practice Note dated 10 February 2016, see Additional Directives.

<sup>2</sup> As above.



## **6.11 PREFERENTIAL TRIAL DATE**

1. A request for a preferential trial date must be made only after following the procedure for the allocation of a trial date as set out in Transvaal Rule 7.
2. A request for a preferential trial date is made by delivering a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out:
  - 2.1 the names of the parties to the trial and the case number;
  - 2.2 the nature of the dispute;
  - 2.3 an estimate of the probable duration of the trial; and
  - 2.4 the motivation for the allocation of a preferential date.
3. If the aforementioned letter is not directed by all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.
4. Any party who is in receipt of a letter referred to in paragraph 2 above, and who wishes to make representations in respect thereof, may do so forthwith by delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of the letter must be delivered to the other party or parties to the trial and proof thereof must be provided.
5. The Deputy Judge President shall inform the parties in writing of the outcome of the request and of the date allocated for the trial in the event of the request being acceded to.
6. After being informed of a trial date, all the parties to the trial must comply with Transvaal Rule 7(5). The letter from the Deputy Judge President allocating the trial date must be attached to Notice of Set-Down delivered in terms of Rule 7(5).

## 6.12 PRE-TRIAL CONFERENCE

1. A pre-trial conference as contemplated in Rule 37 must be held in every matter which is to proceed to trial; furthermore, matters which involve expert evidence must also satisfy the provisions of paragraph 6.15 of the practice manual.
2. In order to ensure that it is effective, a pre-trial conference must ideally be held after discovery and after the parties have exchanged documents as contemplated in Rule 35. In the event of discovery being made after the holding of a pre-trial conference, a further pre-trial conference must be held after such discovery and exchange of discovered documents.
3. If it appears at the roll call:
  - 3.1 that the parties have seriously endeavoured to narrow the issues and explore settlement;
  - 3.2 that there are no outstanding requests for admissions or particularity and no outstanding requests for documents;
  - 3.3 that, where applicable, the experts have met and produced a joint minute; and
  - 3.4 that the trial is ready to commence immediately and run continuously to a conclusion, then the matter will be ripe for allocation, provided a Judge is available.
4. Parties have a continuous obligation to seek to narrow issues and to comply with the substantive requirements of Rule 37, notwithstanding the fact that strict compliance with the Rule may no longer be possible because a pre-trial conference has not been held six (6) weeks before trial. Parties are to seriously consider whether mediation would better serve the interests of the parties.
5. If it appears at the roll call that one party has prevented substantial compliance with Rule 37 despite genuine and timeous efforts by the other party to achieve substantial compliance therewith, the court may allocate the matter if it appears the matter can run continuously to a conclusion within five (5) days despite the said non-compliance.
6. If it appears the matter cannot run continuously to a conclusion within five (5) days due to the prevention of substantial compliance with Rule 37, the matter may be placed under case management in the hands of a designated Judge as contemplated in Rule 6.3 and paragraph 6.15 of the Practice Manual and may on application be granted a preferential trial date when a new trial date is sought.
7. The court may deal with the issues of costs arising out of any postponement at the roll call rather than reserving the costs.
8. If, after allocation of a trial for hearing, it appears to the Judge presiding that there has not been proper compliance with Rule 37, the presiding Judge to whom the trial has been allocated, may, instead of commencing or continuing with the hearing of the trial, order proper compliance with Rule 37. The presiding Judge will then determine the further hearing of the trial.

9. Where a party wishes to request that a Judge presides over the pre-trial conference in terms of Rule 37(8), that party shall do so by delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of this letter must be delivered to all other parties to the trial and proof thereof must appear from the letter directed to the Deputy Judge President. Any party who is in receipt of such a letter and who wishes to make representations in respect thereof, may do so by forthwith delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of this letter must be delivered to all other parties to the trial, and proof thereof must appear from the letter directed to the Deputy Judge President.
10. Where a party wishes to request that the registrar should intervene by fixing the time, date and place for the conference in terms of Rule 37(3)(b) that party shall do so by delivering a letter to the registrar. A copy of this letter must be directed to all other parties to the trial and the procedure contemplated in paragraph 5 above shall apply *mutatis mutandis*.
11. The request for intervention by the registrar as contemplated in Rule 37(3)(b), or the Deputy Judge President, as contemplated in Rule 37(8), must be made timeously and preferably before the time prescribed for the holding of the conference has expired.
12. At roll call priority may be given to cases in which minutes of acceptable quality (proper pre-trial minutes) were timeously filed with the registrar.
13. Where there are competing minutes of acceptable quality, priority may be given to the matter or matters in the order in which (a) the minutes were filed, (b) the pre-trial conferences were held, and (c) the matters appear on the trial roll.
14. Joint Minutes of Experts:
  - 14.1 Where there are overlapping experts, the experts shall meet and produce joint minutes indicating their endeavour to settle, and failing settlement, narrowly defining their differences, as contemplated in paragraph **6.5.5** of the Practice Manual;
  - 14.2 In such a case the legal representatives shall, before commencement of trial, hold a pre-trial conference to achieve the objectives of Rule 37 and of paragraph **6.5.5** of the practice manual with regard to the issue or issues arising between the overlapping experts.
15. Pre-trial minutes filed for matters enrolled on the civil trial roll may not be older than six months. Parties, who held a pre-trial conference more than six months prior to the trial date, must hold a further pre-trial conference and file a fresh pre-trial minute.<sup>3</sup>

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<sup>3</sup> As per Practice Directive dated 10 February 2016, see Additional Directives.

### 6.13 ROLL CALL

1. A roll call will be held at 09h30 on each day during the court term of all trials enrolled for hearing on that day. If necessary further roll calls will be held at 11h30 and 14h00.
2. Unless advised prior to the commencement of roll call that a trial has been allocated to a specific Judge, the parties' legal representatives must attend roll call and continue so attending until the trial has been allocated or otherwise disposed of.
3. If a trial cannot be allocated for hearing on the day for which it is enrolled for hearing, the parties' legal representatives must attend roll call on the next and subsequent days until the trial is allocated for hearing.
4. Unless the parties' legal representatives state the contrary, it will be assumed that:
  - 4.1 the parties' legal representatives are not aware of any reason why the trial, if allocated, cannot commence and run continuously to its conclusion;
  - 4.2 the pleadings have been properly paginated and indexed;
  - 4.3 a bundle of documents (where necessary) properly paginated and indexed has been prepared;
  - 4.4 where separate bundles of documents have been prepared by the parties, there is no duplication of documents in the various bundles; and
  - 4.5 all issues relating to the pre-trial conference have been completed.
5. If any of the assumptions referred to in paragraph 4 above are proved to be incorrect, the trial will not be allocated. If the trial has already been allocated and any of the aforementioned assumptions are proved to be incorrect, the trial will not be commenced but will be referred back to the Judge who conducted the roll call.
6. Unless indicated to the contrary on the daily roll, roll call at 09h30 will be held in court GC. Counsel will be advised by the presiding Judge where the subsequent roll calls, if necessary, will be held.

## 6.14 SETTLEMENT AGREEMENTS AND DRAFT ORDERS

1. Where the parties to a civil trial have entered into a settlement agreement, a Judge will only make such settlement agreement an order of court if:
  - 1.1 counsel representing all the parties to the trial are present in court and confirm the signature of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court;  
  
or
  - 1.2 proof to the satisfaction of the presiding Judge is provided as to the identity of the person who signed the settlement agreement and that the parties thereto want the settlement made an order of court.
2. Where the parties to a civil trial have settled the trial on the terms set out in a draft order, a Judge will only make such draft order an order of court if:
  - 2.1 counsel representing all the parties to the trial are present in court and confirm that the drafter order correctly reflects the terms agreed upon;  
  
or
  - 2.2 proof to the satisfaction of the presiding Judge is provided that the draft order correctly reflects the terms agreed upon.
3.
  - 3.1 Without derogating from the above requirements, where a Minister of State, Member of an Executive Council (MEC) or State-owned company or enterprise is a defendant in a civil trial and the parties have concluded a settlement agreement, a Judge will only make such settlement agreement an order of court if the parties provide written proof to the satisfaction of the presiding Judge that the responsible Minister, MEC or chief executive officer of the State-owned company or enterprise is aware of the settlement and has approved it.
  - 3.2 Where the Minister of Police is the defendant in a civil trial, the parties shall, in addition to the requirements set out in 1, 2 and 3.1 above, provide the presiding Judge with a certified copy of the plaintiff's identification document or passport.
4. The parties shall provide the Judges' Secretary with two (2) copies of the draft order sought to be made an order of Court.

## 6.15 CASE MANAGEMENT

### ALLOCATION OF TRIAL DATES, CERTIFICATION OF MATTERS INVOLVING EXPERT EVIDENCE AS TRIAL READY AND SWIFT REMEDIES FOR DELAYS IN LITIGATION:-

1. Only trial matters involving expert evidence shall be subject to judicial case-flow management and require certification before being allowed to proceed to trial on the set down date, in accordance with the procedures set out herein.
2. At the time a summons is issued, the plaintiff's attorney shall declare to the registrar which of two classifications must be recorded; i.e.:
  - 2.1. 'Trial requiring expert evidence' – in respect of which the registrar shall add an 'X' to the case number.
  - 2.2. 'Other matter'
  - 2.3. Matters which were initially classified under 2.2, but in which, after the issuing of summons, it becomes apparent that expert evidence will be involved, must be referred to the registrar for reclassification from 2.2. to 2.1.
3. Parties shall apply for and be allocated trial dates as provided for in Transvaal Rule 7; ie upon close of pleadings.
4. Attorneys and counsel, and all unrepresented litigants are required to expedite pre-trial preparation by making full use of the rules of court. To promote that outcome:
  - 4.1. A motion court (The Trials Interlocutory Court) dedicated to interlocutory matters in trial matters will sit every Tuesday except during the period of *dies non*, between 15 December and 15 January. See 9.10 below
  - 4.2. This court will, in particular, deal with all instances of non-compliance, *in trial matters*, with the rules and the practice manual, and practitioners are encouraged especially to use Rule 30A. Ordinary unopposed interlocutory matters not involving non-compliance must not be enrolled in this Court.
  - 4.3. Among the matters which this court will deal with will be the failure to deliver timeously any practice note or heads due in the trial matters, a failure to sign a rule 37 minute promptly, a failure to comply timeously with any undertaking given in a rule 37 conference, or the failure to secure an expert timeously for a meeting of experts. The list is not closed.
  - 4.4. In a proper case, penal costs may be awarded where recalcitrance or obfuscation is apparent and is the cause of inappropriately delaying the progress of any matter.

4.5. Matters shall be set down on notice filed before noon on the Thursday before the Tuesday sitting.

4.6. Draft orders in duplicate bearing the name of counsel and attorney shall be presented to the court and the registrar shall prepare orders on the same day as they are granted which shall be available for collection from 9h00 the next day.

5. At the time a trial date is applied for, the plaintiff shall file a practice note that the parties are in agreement that the merits of the claim and the quantum of damages be separated or not be separated, and the registrar shall staple that practice note to the inside left cover of the file. The allocation of a date shall be notified to the attorney by fax.

6. If the parties agree to a separation, the merits leg will not be case managed. If there is no agreement to separate, the Judge convening the certification conference shall deal with the issue as set out in paragraph 12.3.

7. The plaintiff shall, at any time that the matter is believed to be trial ready, but not later than the Monday, five weeks before the week in which the trial is set down, file an application in the prescribed format set out in paragraph 9 for a judicial pre-trial conference to certify trial readiness (the certification conference); A copy of the application shall at the same time be furnished to all other parties to the action. If no application is timeously made the trial shall may be allowed to proceed on the set down date, subject to 8 below.

8. If the application is not timeously made, the Registrar may refuse to set the matter down for a certification conference. If the plaintiff and/or defendant is ready to proceed, and all reports and necessary documents have been filed, and the Registrar has refused to enrol the matter, the parties or any one of them may, on notice to the other party or parties, with an explanatory affidavit, approach the Senior Judge dealing with the certification conference in the following week, requesting that the matter be enrolled for certification. The presiding Judge should enrol the matter if a proper explanation has been furnished and all the necessary expert reports and joint minutes have been filed.

9. An application for a certification conference shall be made by the plaintiff (at room 004) in the following prescribed format which will enable the designated Judge to read quickly and digest the subject matter in order to be optimally prepared to engage with the legal representatives. By applying for certification the attorney represents that the matter is indeed ready and the engagement with the presiding Judge is feasible because all the material necessary to be ready is available and all the necessary preparation has been completed, notwithstanding later deadlines provided for in the rule. The peremptory requirements are as follows and the documents shall be placed in this order, on top of the documents in the file:

9.1. A statement by the plaintiff's attorney, which shall refer to the documents and issues set out in 9.2 to 9.9 below;

- 9.2 Confirmation that discovery is complete for all parties, and if not, why not and when will discovery be complete; if any party is dissatisfied with any aspect of the discovery, that issue must be described and explained.
- 9.3 A succinct summary of common cause facts about which no further evidence shall be allowed at the trial.
- 9.4 A statement of the questions of law and of fact that the trial court must decide.
- 9.5 If the parties have not already agreed to separate merits and quantum, whether they have now agreed to do so, and if not, a motivation why it is appropriate not to do so.
- 9.6 A legible, indexed and paginated set of pleadings.
- 9.7 A copy of a recent Rule 37 conference, in compliance with Rule 37(7), paginated, signed on behalf of all parties and registered (at Room 128); the minute shall not be prolix, repeat the pleadings, be obscure, evasive, be replete with vacuous answers to requests, or manifest ritualistic compliance with the rule. Non-compliance may imperil the certification of the matter. Ideally the parties should in the recent rule 37 conference agree on what should be stated in the certification application.
- 9.8 In regard to expert evidence, copies that are legible, paginated, and bound must be presented; if any reports are not to hand, an explanation must be furnished and a timetable given when they shall be available.
- 9.9 Furthermore:
- 9.9.1 Expert reports must be drafted in a format designed for lucidity, brevity, and convenient cross-referencing and, to this end, must be in numbered paragraphs, and when referring to other expert reports refer to the numbered paragraphs therein.
- 9.9.2 Joint minutes must identify exactly what is agreed and what is not agreed, with reasons stated why disagreement cannot be achieved, especially as to whether the disagreement relates to a fact clinically observed or an interpretation of facts.
- 9.9.3 The attorney responsible for the procurement of the reports shall be responsible for compliance in this regard; failure to adhere hereto may imperil certification.
10. The Judge who presides at the conference shall be furnished by the registrar with the trial files on the Friday before the week in which pre-trial certification court will be sitting.
11. In the pre-trial certification Court, the Judge shall engage the parties' representatives and:



- 11.1 may certify the matter trial ready if all parties have filed all reports (save for an actuary's report which may be filed later but before the set down date);
- 11.2 if the plaintiff's case is fully compliant with the prescripts of these directives, including all experts' reports that the plaintiff intends to reply upon having been filed prior to the certification hearing (save for an actuary's report which may be filed later but before the set down date). Unless this is complied with, certification shall be refused.
- 11.3 In the event that the plaintiff has fully complied with the prescripts of these directives, but the defendant has not complied, unless there are exceptional circumstances, the Judge may certify the matter, ready.
- 11.4 may, refuse certification, in which event the set down date is forfeited; provided that if the matter becomes settled by the date set down for trial, an order by consent may be sought at the roll call, or
- 11.4 may, whenever necessary, direct an issue to be addressed in the Interlocutory Court at its next sitting, or
- 11.5 may make such other order appropriate to expedite the progress of preparation.
- 12. At the conclusion of a certification conference, the Judge shall summarise the decisions made and the Judge may, if deemed necessary, direct the plaintiff to file a minute within five days, which shall be settled by the Judge, and stapled to the inside left cover of the file.
- 13. On the Monday, before noon, of the week before the week during which trial is set down the plaintiff shall file with the DJP a practice note stating:
  - 13.1 any information about a settlement or prospective settlement;
  - 13.2 the status quo about the trial's readiness to proceed;
  - 13.3 estimated duration;
  - 13.4 the names and email addresses of all counsel and attorneys involved; and
  - 13.5 An updated version of the statement referred to in paragraph 9.3 above.
- 14. In appropriate cases, the DJP may allocate a trial Judge before the roll call, in which case attendance at the roll call shall be excused, and all further communication shall be with the designated trial Judge, who may convene a further pre-trial conference, if deemed appropriate.

15. Nothing provided for in this directive shall inhibit litigants from applying in terms of Rule 37(8) for judicial case management at any time after issue of summons, whereupon the DJP shall designate a Judge to conduct such process which Judge shall exercise such powers as provided for herein, *mutatis mutandis*.
16. Practitioners are expected to comply fully with this directive and any relaxation shall require proper motivation. In such cases where the plaintiff is recalcitrant, the defendant may on its initiative take any step that the plaintiff has failed to take.
17. The DJP shall convene a monitoring committee comprising himself, one advocate and one attorney, whose function will be to receive comments of any kind from the legal professions about the system and, insofar appropriate, to adapt the system to achieve the following objectives:
  - 17.1 The avoidance of delays, waste of time and of costs.
  - 17.2 The avoidance of postponements of trials.
  - 17.3 The promotion of early settlement of trials.
  - 17.4 The efficient and competent preparation of trials.
  - 17.5 The reduction of the duration of trials.

## **6.16 ENROLMENT OF MATTERS STRUCK FROM THE ROLL**

Where a matter was struck from the roll after a notice of removal was filed with the Registrar, it will no longer be necessary for the parties or their legal representatives to file affidavits with this office as a prerequisite for re-enrolment. The Registrar may in such a case enrol such matter in accordance with Rule 7 of the Transvaal Rules, upon production to such a Registrar of a notice of removal which was filed with the Registrar at least two (2) court days before the matter was struck from the roll.<sup>4</sup>

## CHAPTER 7 CIVIL APPEALS NEW PROCEDURE

1. Once an appeal has been timeously noted, the registrar shall not accept any appeal matter [as contemplated in Rule 49(2), 6(a) and 7(a) or Rule 50 6(a) and 7(a)], unless the appellant or the attorney of the appellant simultaneously submits to the registrar:

- 1.1 A complete record, indexed and paginated;
- 1.2 The appellant's heads of argument and practice note.

The registrar shall thereupon allocate a case number and shall issue an acknowledgement of receipt thereof.

2. The appellant or the appellant's attorney shall:

- 2.1 Thereupon serve on the respondent or the respondent's attorney of record, the record and the appellant's heads of argument, practice note and a copy of the registrar's acknowledgement, and further state that the respondent's heads of argument and practice note must be filed with the registrar not later than 30 court days from the date of that service; and

- 2.2 File a copy of such service with the registrar within 5 days of such service.

3. The appellant or the appellant's attorney shall not earlier than the day after the respondent's heads of argument and practice not are due, act as follows:

- 3.1 if the respondent has complied with paragraph 2.1, apply to the registrar to have the matter set down, whereupon the registrar shall provide the appellant or the appellant's attorney with a notice of set down, which the appellant or the appellant's attorney shall serve on the respondent or the respondent's attorney forthwith, and file a copy of such service with the registrar within five days of such service;
- 3.2 if the respondent has not complied with paragraph 2.1, set down an application to compel compliance in the special interlocutory court as provided for in paragraph 9.10 of the practice manual, with the necessary changes;
- 3.3 the registrar shall, notwithstanding the non-compliance by the respondent with paragraph 2.1, upon presentation by the appellant or the appellant's attorney with an order of the special interlocutory court, act further in accordance with that order to set down the matter and issue a notice of set down.

4. The Deputy Judge President may direct, in any particular matter, that the parties deliver heads of argument otherwise than as provided for in paragraph 1 and 2 above, either of his/her own accord or on receipt of a written request from one or both parties.
5. Once a date has been allocated for the hearing of any civil appeal, the parties may not agree to postpone the appeal without the leave of the Deputy Judge President or the Judges to whom the appeal has been allocated for hearing.
6. In regard to the content of their heads of argument, practitioners are reminded of the *dicta* in *Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938 (SCA) paras 37-38 and *Ensign-Bickford (South Africa) (Pty) Ltd and Others v AE & CI Explosives and Chemicals Ltd* 1999 (1) SA 70 (SCA) 84H-85C. Apart from those requirements, heads of argument must generally follow the requirements laid down for pleadings: they must be presented in succinct, consecutively numbered paragraphs, with pages likewise consecutively numbered. Where heads of argument are poorly drawn or presented, their costs may be disallowed.
7. Counsels' names and contact details, including email and brief physical addresses and cell phone numbers, must appear on the practice note and the heads of argument.
8. Simultaneously with the filing of their heads of argument counsel shall file a practice note. The practice note shall set out:

A brief summary of each issue that has to be determined in the appeal;

A brief synopsis of the submissions relied on in the heads of argument; and

If relevant, what portion of the record must be read by the Judges hearing the appeal.

9. In all civil appeals the record shall be securely bound in volumes of no more than 120 pages each, save to avoid splitting a document, in which case the volume may be longer but only to that extent. Each volume shall be consecutively numbered and paginated and have a cover sheet reflecting:
  - 9.1. the case number;
  - 9.2. the names of the parties;
  - 9.3. the total number of volumes in the record;
  - 9.4. the volume number of the particular volume;
  - 9.5. the court appealed from; and
  - 9.6. the names, addresses, email addresses and telephone numbers of the parties' legal representatives.
10. The first volume of the record shall contain a combined index of the evidence, documents and exhibits in all volumes. The index must identify each document and exhibit.

11. Unless it is essential for the determination of the appeal, and the parties agree thereto in writing, the appeal record shall not contain:
  - 11.1 the opening address in the court a quo;
  - 11.2 argument at the conclusion of the application or trial;
  - 11.3 discovery affidavits and notices in respect thereof;
  - 11.4 any other notices, unless relevant to the determination of the appeal;
  - 11.5 pages of pleadings before the amendment thereof, unless relevant to the determination of the appeal;
  - 11.6 duplications of any document or exhibit contained in the record; and
  - 11.7 documents that were not proved, referred to or admitted in the court a quo.
11. If it will facilitate the hearing of the appeal, or if requested by the presiding Judge/s in the appeal, the parties shall prepare a core bundle of documents essential to the determination of the appeal. A “core bundle” means a critical extract from the original trial bundle of documents, and not the complete trial bundle. This core bundle should be prepared in chronological sequence and must be paginated and indexed.
12. In the event of a party failing to comply with any of the foregoing, the court may *mero motu*, or on application of any party to the appeal, make a punitive costs order.

In terms of Rule 49(18), the Judge President or the Deputy Judge President, may, in consultation with the parties, direct that an appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as the Judge President or the Deputy Judge President deems meet.

## **CHAPTER 8            CRIMINAL MATTERS**

PRACTICE DIRECTIVES 25 JANUARY 2016 and 3 JUNE 2016

8.1    Petitions for leave from the lower court

8.2    Appeals

8.3    Automatic and special reviews

8.4    Bail appeals

8.5    Reviews

8.6    Trials

8.7    Assessors



## **8.1 PETITIONS FROM THE LOWER COURT**

1. The Criminal Procedure Act now provides that an accused who wishes to note an appeal against conviction or sentence of a lower court must first apply to that court for leave to appeal. If such an application for leave is unsuccessful in the lower court, the accused may 'by petition apply to the Judge President of the Court having jurisdiction' for leave to appeal (Section 309B and 309C). An accused sentenced to life imprisonment by a regional court has an automatic right of appeal.
2. The Judge President has directed that in the Gauteng Local Division of the High Court, Johannesburg, such a petition may be addressed to the Deputy Judge President of this court.
3. The petition from the lower court must be lodged by way of petition procedure (as was formerly the case in the Supreme Court of Appeal) and not by way of notice of motion to the motion court.
4. The petition to the Judge President or Deputy Judge President for leave to appeal against the conviction or sentence of the lower court must be lodged by delivering the original and two (2) copies to the registrar dealing with petitions who shall in turn distribute them to Judges in accordance with the directives given by the Deputy Judge President.
5. Petitions must be dealt with urgently;
6. Petitions should be finalised within seven (7) days;
7. The junior Judge should read the petition and contact the senior Judge with his/her views whether leave to appeal should be granted or not as soon as possible after the record has been studied. It should be indicated whether leave to appeal should be granted against conviction and sentence or only the one or the other where the petitioner requests leave to appeal against both conviction and sentence.
8. An order should be typed and signed by both Judges.

## 8.2 APPEALS

1. Criminal appeals are enrolled by the Director of Public Prosecutions.
2. When giving notice of the set down of a criminal appeal, the Director of Public Prosecutions shall, where the appeal is against conviction, specify the date by which the appellant's heads of argument must be delivered and the date by which the respondent's heads must be delivered. The Director of Public Prosecutions may, at his/her discretion or on the direction of the Deputy Judge President, where the appeal is against sentence only, specify the dates by which heads of argument are to be delivered by the respective parties.
3. Failure to file the heads of argument timeously will, as a general rule, only be condoned in exceptional circumstances. Error or oversight by counsel and legal representatives or the latter's employees will rarely be regarded as exceptional circumstances.
4. Where heads of argument have been required by the Director of Public Prosecutions, the Director of Public Prosecutions must in turn file heads of argument not later than five (5) court days before the date upon which the appeal is enrolled for hearing.
5. The presiding Judge in the criminal appeal, the Judge president or the deputy Judge president may direct that the heads of argument be delivered earlier than the dates referred to above.
6. Counsel's names, contact details including cell phone number, must appear on the heads of argument.
7. If counsel intend to rely on authority not referred to in their heads of argument, copies thereof should be available for the Judges hearing the appeal and counsel for each party. The same should apply where counsel intend to reply on unreported judgments.
8. In regard to the content of their heads of argument counsel are reminded of the dicta in *Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938 (SCA) at 955 B-F and *Ensign-Bickford (South Africa) (Pty) Ltd and Others v AECL Explosives and Chemicals Ltd* 1999 (1) SA 70 (SCA) at 84H-85C.
9. Sitting in appeals during the term: Judges sitting in the criminal trial courts are requested to stand down their criminal trials for the morning only as appeals are usually finalised by tea time.

### 8.3 AUTOMATIC AND SPECIAL REVIEWS

1. Automatic and special reviews in terms of ss 302(1) and 302(4) of the Criminal Procedure Act 51 of 1977 and Sec 85 of the Child Justice Act 75 of 2008, are distributed by the Registrar equally amongst Judges on duty excluding Judges on motion court duty for that particular week. These reviews are by their nature urgent and must be attended to within 2 to 3 days.
2. Subject to para 3 below, where a reviewing Judge has requested reasons from the trial magistrate and the magistrate has responded thereto, that review may then be referred by the Registrar back to the reviewing Judge (unless he/she is no longer available). Similarly, where a reviewing Judge has referred a review to the Director of Public Prosecutions, and the DPP's opinion has been received, the review should be referred back to that Judge for disposal (unless he/she is no longer available).
3. Save in the case of the utmost urgency, reasons must be requested from the trial magistrate before the reviewing Judge interferes with a conviction or sentence on review. In all cases the opinion of the Director of Public Prosecutions must be obtained before the reviewing Judge interferes with a conviction or sentence on review. In cases of urgency it is advisable to obtain the oral opinion of the DPP in the reviewing Judge's chambers, at a mutually convenient date and time to be arranged.
4. Where the reviewing Judge is considering the immediate release of the accused from prison the opinion of the Director of Public Prosecutions, orally if necessary, must first be obtained.
5. The reviewing Judge's order for the immediate release of the accused must forthwith be referred to the Registrar dealing with reviews, for further processing.
6. If proceedings are certified to be in accordance with justice, the review control document in the court file must be signed by the reviewing Judge where provided, and a written judgment will not be necessary, unless the reviewing Judge is of the view that certain aspects relating to the trial need to be brought to the attention of the trial magistrate.
7. As soon as the Magistrate's and Director of Public Prosecution's comments are received and the Judge is of the opinion that he/she must interfere with the conviction and/or sentence he/she must immediately write a judgment.
8. The judgment is given by two (2) Judges. If the two (2) Judges agree, the release of the accused can be achieved by way of email or telephonic communication from the Registrar dealing with reviews.
9. If it is deemed necessary, these judgments can be delivered by the Judges doing appeals in a particular week, or by the Judge/s who have written the review judgment.

#### **8.4 BAIL APPEALS**

1. Irrespective of the urgency thereof, a bail appeal is not heard in the motion court.
2. As soon as the proceedings in the bail application and the magistrate's judgement have been transcribed, application for the enrolment of the appeal is made to the Director of Public Prosecutions. The Director of Public Prosecutions shall then apply to the Deputy Judge President or, in his absence, the senior judge on duty, for the allocation of a date and time for the hearing of the appeal. The Director of Public Prosecutions shall inform all parties of the allocated date and time of the appeal.
3. Bail appeals are heard by a single judge.
4. Judges allocated bail appeals are requested to exercise more vigilance in deciding these matters. A number of instances have come to the fore where a bail appeal is brought allegedly pending either leave to appeal in the SCA or an appeal in that court. It has been discovered that no appeal or application for leave to appeal are pending in the SCA. In some instances investigation from the SCA Registrar revealed that either the leave to appeal or appeal was dismissed by the SCA. Vigilance should be heightened where there is half hearted or no opposition advanced against the bail appeal.

## **8.5 REVIEWS**

1. Irrespective of the urgency thereof, a review of a magistrate's decision in a criminal matter is not heard in the motion court.
2. As soon as the court papers relating to the review have been exchanged between the parties, the applicant may make application for the enrolment of the review to the Director of Public Prosecutions. The Director of Public Prosecutions shall then approach the Deputy Judge President or, in his absence, the senior judge on duty, for the allocation of a date and time for the hearing of the review. The Director of Public Prosecutions shall inform all parties of the allocated date and time of the review.
3. When allocating the date and time for the hearing of the review, the Deputy Judge President or senior Judge on duty may direct when each party is to deliver heads of argument prior to the hearing of the review.
4. The practices in regard to the binding of the papers, indexing and pagination as set out in the chapter hereof dealing with motion court, apply equally to the reviews.
5. Reviews are usually heard by two Judges sitting in the criminal appeal court.

## 8.6 TRIALS

1. Criminal trials are enrolled by the Director of Public Prosecutions. The Judge President, Deputy Judge President or the senior Judge on duty, allocates the matters so enrolled to a particular Judge.
2. Counsel must ensure that they are available for the entire duration of the trial. The failure to do so will result in counsel's conduct being referred to the relevant society or association of which counsel is a member for disciplinary action.
3. A postponement of a trial will normally not be granted because counsel is not available for the trial or for the entire duration of the trial.
4. Counsel shall disclose prior to the commencement of the trial any matter which may result in the matter being unable to run continuously to its conclusion.
5. Counsel will not be released from their obligation to remain in attendance for the duration of the trial.
6. As soon as the next term's roll is available the Director of Public Prosecution's office must be contacted by the Judge's registrar who will be conducting the specific roll to ascertain which counsel will be presenting each case.
7. The Judge's registrar must contact Legal Aid SA's Office to ensure that legal counsel has been appointed in each case.
8. The Judge's registrar must call all legal aid counsel to ascertain whether they have obtained the contents of the dockets and if not, to request them to do so immediately.
9. The Judge's registrar must then, two weeks before the end of term preceding the term in which the Judge will be doing criminal trials, call all counsel to:
  - 9.1 Ascertain in which matters the state is ready to proceed;
  - 9.2 Ascertain which counsel for the defence had not yet consulted and instruct them to do so immediately and to report back to the Judge within a week;
  - 9.3 Indicate to all counsel that all criminal courts on circuit will start at 9 o'clock and at 10 o'clock in Pretoria; and
  - 9.4 Indicate that no matters will stand down for consultation or obtaining witnesses – the case has to be ready to proceed on the first trial date.
10. The Director of Public Prosecutions must be requested to set down cases for a week on the Monday, so that if one case cannot proceed, the next case must be ready. The extra case should be rolled over until it can be heard and if one case has to stand down, the court should start with the next case.

11. A Judge must finalise a case, if possible, before starting the next case.
12. It is compulsory for a pre-trial meeting to be held seven days before the trial date. If the parties cannot agree thereto the Judge should be requested to preside at such a meeting. At this meeting the following should be discussed:
  - 12.1 The plea;
  - 12.2 Any admissions that the defence is prepared to make in terms of section 220 of the Criminal Procedure Act, which includes the so called chain evidence regarding the body of deceased, the identification thereof and injuries sustained etc.; section 212 evidence for example blood and/or DNA analysis; Photo's, plans and key to plan, ballistics etc.; related evidence i.e., fingerprints, pointing out, confessions and/or admissions.
  - 12.3 Whether the defence has received all the necessary documents and the contents of the docket;
  - 12.4 Whether both parties are 100 per cent ready with all witnesses available on the day the trial starts;
  - 12.5 It must be ascertained which language an accused speaks to ensure that an interpreter is available who understands the accused's language;
  - 12.6 Which witnesses on the list of witnesses will be called by the state;
  - 12.7 Whether any of the exhibits handed into the SAP13 register must be available in court;
  - 12.8 The estimated duration of the trial.
13. It is compulsory for Judges to write a report after each term indicating how many matters have been finalised, as well as a list of the postponed cases with detailed reasons for postponement.
14. It is compulsory for all Judges doing duty on circuit to do prison visits. Thereafter a report must be sent to the Inspecting Judge of Prisons, and a copy of the report must be furnished to the Judge President and Deputy Judge President.
15. ENROLMENT OF PART HEARD TRIALS

Any Judge who requires a future date(s) for the further hearing of a trial(s) that has become part heard must postpone the trial to recess should a week or less be necessary to finalise the trial. Should the required period be longer, the Judge is required to enquire from the Part Heard Court Judges Secretary (Ms Louise Smit) when it would be convenient to enrol the trial. The DPP Roll Planner should also be consulted to ensure that the trial is accommodated in the Fixed Roll. Failure to adhere to this procedure results in congested rolls without the necessary support infrastructure.

## **8.7 APPOINTMENT OF ASSESSORS**

Section 145(1)(a) of the Criminal Procedure Act 51 of 1977 (the CPA) provides that an accused arraigned before a superior court 'shall be tried by a Judge of that court sitting with or without assessors.' The assessors appointed to assist a Judge must be suitably qualified and experienced, either in law or in another discipline relevant to the particular criminal trial. An assessor, in terms of section 145(1)(b) of the CPA is '... a person who, in the opinion of the Judge who presides at a trial, has experience in the administration of justice or skill in any matter which may be considered at the trial.' The appointment of assessors should therefore be justified by the matter(s) on that respective Judge's roll. Accountability and transparency have become necessary in this Division in the appointment of assessors. In view of this a Judge who wishes to appoint an assessor(s) is required to direct suitable motivation to the Judge President for approval.



## **CHAPTER 9            MOTION COURT**

- 9.0 Allocation of courts
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- 9.2 Index
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  - 9.8.3 Hearing of opposed matters
- 9.9 Unopposed Motions
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- 9.10 Opposed Interlocutory Applications (excluding exceptions and interlocutory interdicts)
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- 9.15 Matters properly enrolled but which do not appear on the roll
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- 9.19 Service
- 9.20 Stale service
- 9.21 Settlement agreements
- 9.22 Duplicate Files
- 9.23 Urgent Applications and Annexures

## **9.0 ALLOCATION OF COURTS**

### **1. During Court Term:**

#### **1.1 Unopposed Motion Court**

Three courts will sit on each day of the week.

#### **1.2 Opposed Motion Court**

Four courts will sit on each day of the week.

#### **1.3 Urgent Motion Court**

Two courts will sit from 16h00 on the Friday preceding the motion court week and will terminate its sitting on the following Friday at 16h00.

#### **1.4 Special Motion Court**

One court will sit during the week. The DJP will allocate matters to this court.

1.5 The Judge President or the Deputy Judge President may, in terms of the term roll or, where it is required during the court term, increase or decrease the number of courts referred to in 1.1, 1.2, 1.3 and 1.4.

### **2. During Court Recess:**

#### **2.1 Unopposed Motion Court**

Two courts will sit from Tuesday to Friday of each week, save for the weeks of Christmas and New Year.

#### **2.2 Opposed Motion Court**

No opposed matters will be heard during court recess.

#### **2.3 Urgent Motion Court**

One court will sit each day of the week.

The Judge President or Deputy Judge President may in terms of the recess duty roll (or, where it is required during recess, the senior Judge on duty may) increase or decrease the number of courts referred to in 2.1, 2.2 and 2.3.

## **9.1 DEFINITIONS**

For purposes of this chapter, unless the context otherwise indicates:

'deliver' shall mean serve copies on all parties and file the original with the Registrar.

## 9.2 INDEX

1. Before an application is made to the Registrar for the allocation of a date for the hearing of any application, the applicant must deliver a consolidated index of all documentation before the Court for the determination of the application. In addition, each volume of the application papers must be separately indexed. The individual indices must be numbered as Volume 1, 2, 3 etc. If there are many parties which will result in the front page being taken up with the names of the parties, only the first applicant and first respondent need be mentioned to enable the presiding Judge to identify from the index what documents/pleadings appear in each volume.
2. The indices should briefly describe each affidavit and annexure as a separate item.
3. All orders of court throughout the matter must be collated in chronological order and affixed to the left inner cover of the court file, the most recent court order being uppermost.
4. This practice is equally applicable to opposed and unopposed applications.

### **9.3 BINDING OF PAPERS**

1. Prior to the set down of the application the applicant must ensure that all the documentation before the Court for the determination of the application is properly bound.
2. In binding the application, care must be taken to ensure that the method of binding does not hinder the turning of papers.
3. The documentation should not be bound in volumes of more than 100 pages each. This limit may be exceeded so as to obviate the separation of parts of an affidavit or document.
4. This practice is equally applicable to opposed and unopposed applications.

#### **9.4 PAGINATION**

1. The applicant must paginate the notice of motion, founding affidavit and annexures thereto; the replying affidavit, if any, and annexures thereto, prior to serving the documents on the other party.
2. The respondent must likewise paginate the answering affidavit and annexures thereto prior to serving the documents on the other party.
3. The respondent must commence pagination of the answering affidavit and annexures thereto by utilising the next chronological number following the last number utilised by the applicant. The applicant must commence pagination of the replying affidavit and annexures thereto by utilising the next chronological number following the last number utilised by the respondent.
4. Where there are multiple respondents represented by different attorneys, each such respondent is released from the obligation referred to in paragraphs 2 and 3 above. In that event, the obligation to paginate all the affidavits is on the applicant.
5. Additional documents generated during the application (eg returns of service, reports, etc) must be indexed, paginated and placed in an 'Additional Documents Bundle'.
6. Notwithstanding paragraphs 2 and 3 above, the applicant must ensure that prior to the hearing of the application it is properly paginated. In the event that the respondent fails to comply with paragraph 2 above, the applicant may seek a punitive cost order against the respondent in respect of the pagination of the answering affidavit and annexures.
7. This practice is equally applicable to opposed and unopposed applications.

## **9.5 PREPARATION OF PAPERS**

1. The original application, the original return of service and other original documents comprising the application must be contained in the court file. Certified copies of documents may be used save that when a matter is heard counsel appearing in the matter will be required to have the original documents on hand and to provide these to the Judge upon request.
2. If a document or documents attached to the founding or replying affidavit are:
  - 2.1 in manuscript; and
  - 2.2 not readily legible,

the applicant shall ensure that typed and legible copies of the document or documents are provided.
3. The respondent bears the obligation referred to in the previous subparagraph in respect of documents attached to the answering affidavit.
4. The relevant application is to be placed on top of all other papers in the court file. The papers which are irrelevant to the issue which is the subject matter of the application are to be separated from those that are not.



## **9.6 DRAFT ORDERS**

1. All applications, whether opposed or unopposed, must be accompanied by a draft order reflecting the precise terms of the relief sought. Three (3) copies of such draft order must be filed with the Registrar at the time of issuing of the application.
2. Draft orders must be presented in duplicate to the Court in all matters where a draft order is sought to be made an order of court. Handwritten draft orders are not acceptable. A place must be left on the draft order to insert the name of the presiding Judge and of applicant's counsel or legal representative and his/her cell-phone or telephone number.

## **9.7 BRIEFING OF COUNSEL**

1. Legal representatives must ensure that counsel are briefed timeously to enable counsel to file practice notes and heads of argument and to generally comply with the requirements of the practice manual in respect of the motion court.
2. The fact that counsel has not been briefed timeously will normally not be accepted as a reasonable explanation for the failure of counsel to comply with the requirements of the practice manual.

## **9.8 OPPOSED MOTIONS**

### **9.8.1 Practice Notes**

1. The heads of argument of each party must be accompanied by a practice note.
2. The practice note shall set out:
  - 2.1 the names of the parties and the case number;
  - 2.2 the names, telephone numbers (including cell-phone numbers) and email addresses of all counsel and attorneys in the application (if known);
  - 2.3 the nature of the application and relief sought;
  - 2.4 a succinct summary of the main issues to be determined in the application. Each main issue should be stated separately;
  - 2.5 a summary of the contentions in respect of the main issues and the authorities relied on;
  - 2.6 an estimate of the probable duration of the motion;
  - 2.7 whether matter is urgent and, if so, motivation for the urgency;
  - 2.8 whether the papers need to be read and, if so, which parts are relevant for the determination of
  - 2.9 the application; and
  - 2.10 where counsel is briefed in more than one opposed application, the names and case numbers of the other applications in which counsel appears.
3. A practice note must also be filed on each occasion that the application appears on the opposed roll.
4. Where an opposed application is postponed or is reinstated for hearing, a new practice note and heads of argument must be delivered with the notice of set down. An additional copy of the practice note must be hand-delivered or sent by email to the clerk of the senior Judge presiding in the motion court during such week.
5. If a practice note is not delivered as required in terms of this paragraph, or does not contain the prescribed information, the application shall not be allocated for hearing.

### 9.8.2 Enrolment

1. A party to an opposed motion may apply to the Registrar to allocate a date for the hearing of that application in terms of Rule 6(5)(f) of the Uniform Rules of Court only if:
  - 1.1 the papers have been properly secured, indexed and paginated; and
  - 1.2 heads of argument accompanied by a practice note from each party has been delivered.
2. The procedure to enrol an opposed application commences when a consolidated index is delivered.
3. The applicant shall deliver a consolidated index within five (5) days from the service of the applicant's replying affidavit or last affidavit that can permissibly be filed.
4. Should the applicant not timeously deliver the consolidated index, the respondent may do so.
5. The consolidated index must prominently indicate on the front page the date when and in what manner it was served on the opposing party.
6. The applicant shall deliver heads of argument and a practice note within ten (10) days from the date of service of the consolidated index.
7. The respondent shall deliver heads of argument and a practice note within 10 days from the date of receipt of the applicant's heads of argument.
8. If the applicant fails to deliver the heads of argument and practice note within the prescribed period, the respondent shall deliver its heads of argument and practice note, within 10 days of the expiration of the period referred to in paragraph 6 above.
9. When a party fails to deliver heads of argument on the prescribed date, the complying party may apply to the registrar for a provisional enrolment date and simultaneously such party shall bring the application referred to in paragraph 12 below.
10. The Registrar must record on the court file the dates of filing of the parties' heads of argument and practice notes.
11. The heads of argument and practice notes may be served in accordance with Rule 4A of the Uniform Rules but filing with the Registrar shall not be effected by way of facsimile or electronic mail.
12. Where a party fails to deliver heads of argument and/or a practice note within the stipulated period, the complying party may enrol the application for hearing.<sup>5</sup> Such party shall simultaneously bring an

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<sup>5</sup> As per Practice Directive dated 20 January 2017, see Additional Directives.

application on notice to the defaulting party that on the date set out therein, (which shall be at least 5 days from such notice), he or she will apply for an order that the defaulting party delivers his or her heads of argument and practice note within 3 days of such order, failing which the defaulting party's claim or defence be struck out. Such application shall be set down on the interlocutory roll referred to in 9.10 below.

13. Unless condonation is granted on good cause shown by way of written application, failure on the part of the applicant to deliver heads of argument and/or a practice note will result in the matter being struck from the roll with an appropriate order as to costs; and failure on the part of the respondent to deliver such documents will result in the Court making such order as it deems fit, including an appropriate order as to costs. The failure to timeously serve and file heads of argument shall not constitute a ground for postponement of an application.
14. Additional or supplementary heads of argument may only be filed by a party with the leave of the Court.
15. When preparing heads of argument practitioners are reminded of the dicta in *Caterham Car Sales & Coachworks Limited v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938 (SCA) at 955B-G and *Ensign-Bickford (SA) (Pty) Ltd and Others v AE&CI Explosives & Chemicals Ltd* 1999 (1) SA 70 (SCA) 84H-85B.
16. The heads of argument shall include a list of the authorities to be quoted in support of the argument. The parties do NOT need to provide copies of authorities or any statutory enactment relied with the heads of argument, unless requested by the presiding Judge. However, if counsel is to refer to an authority, or statutory enactment or part thereof, copies must be made available to the court and the opposing party at the hearing.
17. The heads of argument of the applicant shall be accompanied by a chronology table, duly cross-referenced, without argument, but including a succinct description of the event. If the respondent disputes the correctness of the chronology table in a material respect, the respondent's heads of argument shall be accompanied by the respondent's version of the chronology table. The chronology must include dates relevant to the material facts of the dispute, as well as the dates on which documents were filed/served.
18. The Registrar will make available a secure location (the location) under the supervision of a person (the supervisor) where a register of matters enrolled on the opposed motion roll will be kept.
19. In the location the Registrar shall make available suitable space where the files of each opposed motion court week will be kept. A designated room will be indicated as the location.
20. The Registrar will prepare and at all times have available in the location a blank register for each court week. The blank register will be in accordance with Annexure 'A' attached hereto.

21. Any person seeking to enrol a matter on the opposed motion court roll shall take the file, ready for hearing, properly paginated and indexed, together with the heads of argument and practice notes and, where applicable, the letters referred to in paragraph 4 above and proof that same have been served, to the location, enter the particulars as set out hereunder and leave the file in the location.
22. The person enrolling the matter shall do so by entering in the next available space, for a particular date, on the register, the case number, the parties' names, the nature of the application, the name of the parties' attorneys, the name of the person enrolling the matter and his or her contact details. The person shall file in the court file a notice of set down stamped by the supervisor.
23. The supervisor shall keep the respective files for each motion court week separately. The files shall be kept in the order that they appear on the register.
24. No more than fifty (50) applications may be enrolled for any court week.
25. Once a matter is enrolled:
  - 25.1 no party may, without the leave of the Court, file any further documents other than a notice of removal, a notice of withdrawal, a notice of postponement or an official document or report.
  - 25.2 the Registrar shall afford access to the court file and permit the filing of documents where an application is required to be brought in terms of ss 4 and 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE).
26. When a matter is removed from the Roll by notice, the supervisor shall stamp the notice of removal, file the notice in the file and return the file to the general office for filing. The supervisor shall also delete the entry pertaining to that matter from the register and sign his or her name next to the deletion with the date of the deletion. Other than this no entry may be removed from the register of opposed motions and no file may be removed from the secure location for any purpose other than to take the files to the senior Judge in the opposed motion court.
27. It shall be the responsibility of the Registrar to prepare a court roll from the register for the opposed motions for each week.
28. Where an opposed application is to be set down for hearing during the first or second week of any term, the parties shall comply with the requirements set out in paragraphs 1 to 23 and 25 by not later than the first day of the last week of the preceding term.
29. The files in all opposed applications that are to be heard during the first and second weeks of any term shall be delivered by the Registrar to the senior Judge or Judges concerned, for allocation on the first day of the last week of the preceding term.

30. Save for applications that are of an urgent nature, no opposed applications must be set down for hearing during the last week of term.
31. If an application is not to proceed on the date allocated, the parties must immediately notify the Registrar.

### 9.8.3 Hearing of opposed matters

1. All matters will be enrolled for the first day of the week in which the matters are to be heard.
2. The senior Judge will have all files at least fifteen (15) clear court days before the first day of the week during which the matters are to be heard and will allocate all matters to Judges for hearing at least ten (10) court days in advance.
3. The senior Judge will prepare a roll reflecting the names of the Judges to whom the matters have been allocated for hearing, which will be distributed to the Registrar and the professions.
4. Each Judge will also prepare his or her own roll for the week, which will be distributed to the Registrar and the professions.
5. Judges will, as far as possible, accommodate counsel and legal practitioners to hear matters on specific dates.
6. Judges may, in their discretion, direct one or more of the parties to file additional or supplementary heads of argument.
7. As soon as a matter becomes settled or the parties agree to postpone, the Judge presiding must immediately be informed of that fact.
8. No opposed application may be postponed to another opposed motion court date unless a new date has been obtained from the Registrar. A new date for hearing must be applied for in terms of paragraph 9.8.2 *supra*.



## 9.9 UNOPPOSED MOTIONS

### 9.9.1 Definitions

1. For purposes of this directive 'unopposed motions' shall include:
  - 1.1 all motions and applications in which the respondent has failed to deliver and answering affidavit and has not given notice of an intention only to raise a question of law (Rule 6(5)(d)(iii) or a point *in limine*; and
  - 1.2 opposed summary judgments, and Rule 43s are to be heard on a separate roll (the SJ roll). The Judge hearing these matters may roll over the hearing of a matter to another day in the week. Convenience of counsel will be taken into account.
  - 1.3 reference below to unopposed motions refer to both 1.1 and 1.2 above, unless specifically referenced.
  - 1.4 reference is also made to 9.12 and 9.13 below, which deals separately with Summary Judgment and Rule 43 applications.

### 9.9.2 Enrolment

1. For practical reasons the enrolment of unopposed motions will require two steps: **provisional enrolment** and **final enrolment**.

#### Provisional Enrolment

2. For purposes of provisional enrolment, the Registrar will prepare and at all times have available a blank register for each court day. The blank register will be in accordance with Annexures 'B' and 'C' attached hereto. The register will be kept available at a location designated by the Registrar.
3. A person seeking to enrol a matter shall do so by entering on the register for the appropriate day, in the next available space on the register under the appropriate heading, the case number, the parties' names, the nature of the application, the name of the applicants' attorneys, the name of the person enrolling the matter and his or her contact details.
4. Before the Court grants a rule *nisi* or postpones a matter, it shall be the responsibility of the applicant or his attorney to provisionally enrol the matter as required in paragraph 3 above.
5. When a rule *nisi* or postponement is granted, it shall be the responsibility of the applicant or his attorney to finally enrol the matter in accordance with paragraph 10 below.

6. An application to anticipate a return day in terms of Rule 6(8) must be enrolled for hearing in the urgent court.
7. Subject to what is stated in paragraph 24 below, no more than 180 applications may be provisionally enrolled on any court day. For the SJ roll, no more than 60 matters may be provisionally enrolled for a particular day.
8. No entry may be removed from the provisional register.
9. When the register for a particular day is full, the Registrar shall remove and keep the register in a safe place until the day after the date to which the register applies.

### **Final Enrolment**

10. Only matters that have been provisionally enrolled for a particular date may be finally enrolled for that date.
11. Unopposed motions may only be finally enrolled when the papers are ready, paginated and indexed where applicable, and the matter is ripe for hearing.
12. Unopposed motions may not be finally enrolled later than noon three clear court days preceding the day on which the matter is to be heard. This requirement will be strictly enforced.
13. Where an unopposed motion is not finally enrolled as required in terms of this subsection, the matter shall not be entertained and a new date for the hearing thereof must be obtained from the Registrar.
14. For the purpose of final enrolment, the Registrar shall make available a secure location (the location) under supervision of a person designated by the Registrar (the supervisor). The supervisor shall at the location oversee the final enrolment process.
15. In the location, the Registrar shall make available suitable space where the files for each motion court day can be stored.
16. A matter is finally enrolled by handing over the court file, ready for hearing, to the supervisor in the manner prescribed in this directive.
17. The person finally enrolling a matter shall enter on the cover of the court file the relevant date and the number from the register where it was enrolled provisionally.
18. When the court file is handed to the supervisor, both the supervisor and the person finally enrolling the matter must sign next to the date and number entered on the cover of the court file as proof of final enrolment.

19. The court file of a matter finally enrolled shall be left with the supervisor in the secure location.
20. The supervisor shall keep the respective files for each motion court day separately. The files shall be kept in the order in which they have been received for final enrolment.
21. Once a matter is finally enrolled, no party may, without the leave of the Court, file any further documents other than a notice of removal, a notice of withdrawal, a notice of postponement, a notice granting leave to defend to a defendant in a summary judgment application, a practice note and heads of argument and an official document or report.
22. It shall be the responsibility of the Registrar to prepare a motion court roll from the files of matters that have been finally enrolled and have been kept, ready for hearing, in the secure location. No matter that has not been enrolled provisionally for that day may be on the motion court roll for a particular day. No matter that has not been finally enrolled as set out herein may appear on the motion court roll for a particular day.
23. The unopposed motions finally enrolled for each day shall be distributed evenly among the motion courts.
24. No more than sixty applications may be finally enrolled before any one standard motion court.
25. In the SJ court, no more than 30 applications may be finally enrolled for each court per day. All matters will be enrolled for the Tuesday of that week and Judges may allocate such matters to be heard on any day during that week.
26. Any matters on the Roll in excess of the numbers mentioned in paragraph 24 and 25 above will be postponed *sine die*.
27. The court postponing matters under paragraph 24 and 25 above may, in its discretion and after hearing the official concerned, order the supervisor or the Registrar who has prepared the Roll to pay the costs of the postponement.

## ANNEXURE TO 9.9.2

Form J118

*			Case # (year first, eg. 92/1236)
*			Date of hearing
*			U (unopposed) / OP (opposed)
*			Case type (see OPTIONS)
*			NAMES OF PARTIES
*			(-Surname, then initials - 1st plaintiff and 1st defendant only)
*			Pigeon hole number

### OPTIONS

FAMILY LAW	PAYMENT	VARIOUS	SOLVENCY
E – DIVORCE	D – DEFAULT JUDGMENT	T – INTERLOCUTORY	R – REHABILITATION
N – RULE 43	S – SUMMARY JUDGMENT	I – INTERDICT	B – SURRENDER
C – CUSTODY	P – PROVISIONAL JUDGMENT	H – REVIEW	PS – PROV. SEQUESTRATION
F – INTERDICT	O – OTHER (specify)	V – DECLARATORY	FS – FINAL SEQUESTRATION
		O – OTHER (specify)	FL – FINAL LIQUIDATION
			PL – PROV. LIQUIDATION

NOTICE OF SET DOWN  
GAUTENG LOCAL DIVISION OF THE HIGH COURT, JOHANNESBURG

To The Registrar

Kindly set the above matter down in accordance with  
the above information.

SIGNED ON THE \_\_\_\_ DAY OF \_\_\_\_\_.

SIGNATURE

### **9.9.3 Closure of the Unopposed Motion Court Roll**

1. The unopposed motion court roll closes at noon two court days preceding the date of hearing. Access to the court file must neither be sought from the relevant Judge nor from the Judge's clerk.

### **9.9.4 Enrolment of applications after notice of intention to oppose**

1. Where the respondent has failed to deliver an answering affidavit and has not given notice of an intention only to raise a question of law (Rule 6(5)(d)(iii)) or a point *in limine*, the application must not be enrolled for hearing on the opposed roll. Such an application must be enrolled on the unopposed roll.
2. In the event of such an application thereafter becoming opposed, the Judge hearing the matter will give the necessary directions for the future conduct of the matter.
3. The notice of set down of such an application must be served on the respondent's attorney of record.

### **9.9.5 Errors on the unopposed roll**

1. If an urgent application is enrolled in the wrong court, the application may be referred to the urgent court with the leave of the Judge in whose court it was erroneously enrolled.
2. If an opposed matter is erroneously placed on the Roll of unopposed matters, the clerk of the Judge on whose roll the matter appears must, on instruction from the Judge, hand the court file to the clerk of the senior opposed motion court Judge, who will deal therewith as the Judge sees fit.

### **9.9.6 Calling of the Roll of unopposed matters**

1. Prior to the calling of the Roll the secretary of the presiding Judge will invite counsel and legal practitioners to call matters which are to be removed from the Roll or postponed.
2. The Roll will then be called page by page and counsel will deal with their matters in order of seniority. If not all matters have been dealt with, counsel and legal representatives will be entitled to call their matters in order of seniority.
3. If a matter has to stand down after it has been called, it must stand down until the Roll has been called once, unless the presiding Judge indicates otherwise.
4. It is emphasised that the courts of the most senior Judges take precedence over the courts of more junior Judges. The unopposed courts will be numbered in the order of seniority of the Judges in those courts, with the first unopposed court being that of the most senior Judge.
5. Judges may arrange the calling of matters in their specific courts other than provided herein.

#### **9.10 OPPOSED INTERLOCUTORY APPLICATIONS (EXCLUDING OPPOSED EXCEPTIONS AND INTERLOCUTORY INTERDICTS)**

1. Opposed interlocutory are set down by the previous Thursday for the Tuesday of every week during term and the Presiding Judge will on the Tuesday at a roll call indicate when the respective matters will be heard during that week. A separate roll exists for these applications, which are to be heard on a Tuesday before a specified Judge. These applications include all unopposed and opposed interlocutory matters and interlocutory applications in terms of 6.5.2 and those for which a trial date has been allocated.
2. Interlocutory applications do not include opposed exceptions and opposed interim or interlocutory interdicts. These applications are to be enrolled for hearing on the opposed Roll.
3. The notice of set down for an opposed interlocutory application shall be accompanied by heads of argument and the applicant's practice note, which shall set out:
  - 3.1 the name of the parties, the case number and its number on the Roll (if known);
  - 3.2 the name, telephone number (including cell-phone number) and email address of counsel for each party;
  - 3.3 the nature of the motion;
  - 3.4 the issues that fall for determination and counsels' contentions in respect of those issues.
  - 3.5 the duration of the matter, which shall not exceed an hour.
4. The respondent shall file a similar practice note and Heads of argument, by 10am on the Monday proceeding the Tuesday on which the matter is to be heard.
5. The supervisor will be obliged to allow the parties to comply with the provisions of paragraphs 3 and 4 above.

## 9.11 SPECIAL MOTIONS (APPLICATIONS OF LONG DURATION)

1. An opposed motion which is expected to require a day or more (4+ hours) (including the delivery of an *ex tempore* judgment) may not be enrolled for hearing without the consent of the Deputy Judge President.
2. The consent of the Deputy Judge President for the enrolment of the matter is sought in writing, a copy of which must simultaneously be made available to the other party or parties to the opposed motion and must contain:
  - 2.1 names of the parties and case number;
  - 2.2 attorneys of record (also the reference person) and counsel for the respective parties (including telephone and fax numbers);
  - 2.3 a short exposition of the nature and complexity of the matter;
  - 2.4 the estimated duration thereof. A letter from the opposing party's attorney must be attached confirming the duration or if the duration is in dispute, a separate estimate;
  - 2.5 an assurance that the matter is ripe for hearing and that all the necessary affidavits have been exchanged (or, in exceptional cases, an indication of the date by when they will have been exchanged);
  - 2.6 an assurance that the papers have been properly indexed and paginated;
  - 2.7 the total number of pages that the application consists of;
  - 2.8 suggestions as to when the application can be heard. The other party or parties to the opposed motion who wish to make representations in respect thereof may do so in writing;
  - 2.9 proposals for the filing of heads of argument by the parties.
3. The Deputy Judge President will determine the date of the hearing of the aforesaid opposed motion and furnish such directives as he deems fit in respect thereof.
4. The opposed motion must forthwith be enrolled for hearing in terms of the determination of the Deputy Judge President.

## 9.12 SUMMARY JUDGMENTS

Only opposed Summary Judgment matters (as defined above) with a duration of one hour will be enrolled on this roll. Matters of a duration longer than one hour may not be enrolled on the SJ Roll. These applications are to be enrolled for hearing on the opposed motion court Roll. Summary Judgment applications are set down for Tuesdays and Thursdays of each week of term. Matters for Tuesday must be set down by the previous Thursday and matters for a Thursday by the previous Friday. The presiding Judge will on each Tuesday and Thursday at roll call indicate when the respective matters will be heard.

1. In the SJ court, the plaintiff must paginate and index the application before it is served and filed.
2. If the defendant files an opposing affidavit in terms of Rule 32(3)(b), such affidavit and annexures must be paginated and an updated index must be served and filed by the defendant at the time the opposing affidavit is delivered.
3. No opposed summary judgment application will be heard unless the plaintiff ensures that all the relevant papers (i.e. the summons, notice of intention to defend, application for summary judgment and any affidavits filed) are indexed and paginated and a practice note is filed.
4. The practice note shall set out:
  - 4.1 The names of the parties and the case number;
  - 4.2 The names, telephone numbers (including cell-phone numbers) and email addresses of all counsel and attorneys in the application (if known);
  - 4.3 The nature of the application and relief sought;
  - 4.4 A succinct summary of the main issues to be determined in the application. Each main issue should be stated separately;
  - 4.5 A summary of the respective contentions in respect of the main issues and the authorities relied on;
  - 4.6 An estimate of the probable duration of the motion.
5. Where a summary judgment application is opposed, a detailed and specific affidavit resisting summary judgment, must be filed 4 (four) days before the hearing. Both parties shall deliver short heads of argument by no later than 13h00 on the court day preceding the hearing of the application. Such heads of argument shall be delivered directly to the Registrar of the Judge on whose roll the matter appears.
6. If the defendant fails to deliver heads of argument as required, the plaintiff will be entitled to proceed with the application provided that it has complied with the provisions of 1 to 4 above. In such event the Court may direct that the defendant's heads of argument be delivered within a specified time and that the wasted costs, if any, be borne by the defendant or its legal representative.
7. If the plaintiff fails to deliver heads of argument as required, the application may not proceed, unless such failure is occasioned by the late delivery of an opposing affidavit by the defendant, the court may direct that the matter proceed or that costs occasioned in postponing the application be borne by the plaintiff or its legal representative, if the failure was not occasioned by the defendant's default. In such circumstances the Court may direct that the costs occasioned in postponing the application be borne by the plaintiff or its legal representative.



8. The parties will be entitled to file, and the supervisor will be obliged to receive and put on the file, opposing affidavits, indices, practice notes and heads of argument in spite of a summary judgment application having been finally enrolled.

### 9.13 RULE 43 APPLICATIONS

1. Every Rule 43 application set down for hearing shall be accompanied by a practice note, which must accompany the notice of set down. The practice note shall be delivered by counsel for each party directly to the registrar of the Judge hearing the matter by no later than 13h00 two court days preceding the hearing of the application.
2. That practice note must set out the following information:
  - 2.1 The name, telephone number (including cell-phone number) and email address of the counsel for each party;
  - 2.2 A comparative table detailing the relief sought by each party in respect of maintenance and/or the regime to regulate care and contact with minor children, clearly distinguishing –
    - 2.2.1 items of relief which are agreed or common cause.
    - 2.2.2 items of relief that are in dispute.
    - 2.2.3 items of relief sought by the applicant that are in competition with items of counter relief sought by the respondent;
    - 2.2.4 The information shall be set out so that the competing propositions are immediately in juxtaposition to facilitate proper and swift comparison, and to enable the Judge to identify exactly what is controversial; and
    - 2.2.5 The duration of the matter
3. The supervisor will be obliged to allow the parties to comply with the provisions of this paragraph.
4. If an opposed matter is erroneously placed on the Roll of unopposed matters, the clerk of the Judge on whose roll the matter appears must, on instruction from the Judge, hand the court file to the clerk of the senior opposed motion court Judge, who will deal therewith as the Judge sees fit.

#### 9.14 DEFAULT CASES – NOTICES OF SET DOWN

1. In addition to any requirement which the Registrar may impose, a notice of set down shall be served and filed in all cases where an intention to defend has been filed. In addition, if the service of the summons or application took place more than 6 months prior to the notice of set down, such notice shall be served on the defendant.
2. In all unopposed applications, except *ex parte* applications, the notice of set down must indicate:
  - 2.1 the rule of court under which application is made;
  - 2.2 the facts which make this rule applicable;
  - 2.3 the precise relief sought;
  - 2.4 the date of service of the application;
  - 2.5 the date by when notice of intention to oppose was to be given; and
  - 2.6 a statement that no notice of intention to oppose was given.
3. Every statement in the notice of set down shall provide a cross-reference to the page(s) in the papers where any fact alleged appears (e.g., the return of service; *domicilium*, mortgage bond, rate of interest, etc).
4. An example of a typical notice of set down appears as an annexure to this section.
5. A draft order in duplicate must also be presented to the Court as required in terms of paragraph 9.6 above. In applications for default judgment, summary judgment and provisional sentence, the draft order must contain:
  - 5.1 the exact amount;
  - 5.2 the rate of interest and the amounts on which and dates from which they run to date of payment; and
  - 5.3 the scale of costs.
6. In an application for **default judgment**, the notice of set down must indicate:
  - 6.1 the date of service of the summons;
  - 6.2 the *dies induciae* allowed in the summons;
  - 6.3 the date when the *dies induciae* lapsed;
  - 6.4 the precise relief sought; and
  - 6.5 contain a statement that no notice of intention to defend was given.
7. In an application for **summary judgment** the notice of set down must indicate:
  - 7.1 the date of delivery of the notice of intention to defend;
  - 7.2 indicate the date on which the application for summary judgment was delivered;
  - 7.3 if applicable, a statement that no opposing affidavit was filed; and
  - 7.4 the precise relief sought.
8. In an application for **provisional sentence**, the notice of set down must:
  - 8.1 indicate the date of service of the provisional sentence summons;
  - 8.2 contain a statement that no opposing affidavit was filed;
  - 8.3 indicate the precise relief sought.

9. In an application in which notice of intention to oppose was given but no answering affidavit filed, the notice of set down must indicate
  - 9.1 the date on which the notice of intention to oppose was given;
  - 9.2 the date by which the answering affidavit had to be filed; and
  - 9.3 contain a statement that no answering affidavit was filed.

## ANNEXURE TO 9.14

### EXAMPLE OF NOTICES OF SET DOWN

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#### NOTICE OF SET DOWN – RULE 8 (OR RULE 31(2)(a) OR RULE 32)

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PLEASE PLACE THIS MATTER on the Roll for \_\_\_\_\_, the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ at 10h00 or so soon thereafter as Counsel may be heard when application will be made for judgment, under the following circumstances.

1. The summons was served on \_\_\_\_\_ 20\_\_;  
[Return of service page \_\_\_\_]  
[Domicilium page \_\_\_\_]
2. The *dies indiciae* (\_\_\_\_\_) expired on \_\_\_\_\_ 20\_\_;
3. The defendant has not entered an appearance or the defendant entered appearance on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_;
4. The plea should have been delivered by the \_\_\_\_ day of \_\_\_\_\_ 20\_\_;
5. Notice of Bar was delivered on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ and a plea has not since that date been delivered.

[Notice of Bar page \_\_\_\_]

SUMMARY OR DEFAULT JUDGMENT or judgment for provisional sentence will be sought against the \_\_\_\_\_ defendant/s for –

1. payment of the sum of \_\_\_\_\_;  
[Agreement/Mortgage Bond/Liquid document relied on page \_\_\_\_]  
[Payment certificate page \_\_\_\_]
2. interest on \_\_\_\_\_ at the rate of \_\_\_\_\_ as from \_\_\_\_\_ to date of payment;  
[Agreement/Mortgage Bond page \_\_\_\_]
3. costs of suit.  
[Attorney/Client Costs page \_\_\_\_]

DATED at \_\_\_\_\_

#### **9.15 MATTERS PROPERLY SET DOWN, BUT WHICH DO NOT APPEAR ON THE ROLL**

1. Any matter properly set down but which does not appear on the Roll must only be brought to the attention of the presiding Judge of the court on whose roll the matter ought to have appeared after the roll of the court has been called at least once.
2. Once counsel has determined that such matter is not on the Roll and the relevant court file has been located, the court file should be handed to the secretary of the Judge presiding. The Judge's secretary shall prepare a list of such matters for use by the Judge's secretary and the presiding Judge.
3. Once the matter is enrolled, the presiding Judge will give directions for the hearing of the matter.
4. A matter will only be considered to have been properly set down if the notice of set down is stamped by the Registrar in the office designated for the setting down of applications.

## **9.16 SETTLEMENT**

1. Prior to allocation and in respect of unallocated matters the clerk of the senior motion court Judge for the particular week must be informed telephonically immediately it becomes known that a matter has become settled.
2. Subsequent to the allocation of a matter to a particular Judge for hearing, the clerk of the Judge to whom the matter has been allocated, must be informed telephonically immediately it becomes known that a matter has become settled, or where it has been agreed that the matter is to be postponed.

### **9.17 STRIKING FROM THE ROLL**

1. If there is no appearance when a matter is called after a court has completed its roll, it may there and then be struck from the roll.
2. If a matter has been struck from the roll, counsel in the course of the week in which the matter was struck from the roll may seek that the matter be re-enrolled. The matter will only be re-enrolled if a proper explanation for non-appearance is given.
3. Such explanation must be on oath.
4. If a matter has been struck from the roll it may only be re-enrolled for a subsequent week if an affidavit explaining the previous non-appearance is filed.
5. The negligence or ignorance of the provisions of the practice manual by counsel or legal representative will not necessarily constitute an acceptable explanation for the non-appearance.
6. Where the applicant or plaintiff has failed to file a practice note and/or heads of argument where they are required to do so in terms of the practice manual, the relevant matter may be struck from the roll.



## 9.18 POSTPONEMENTS

1. Applications, whether opposed or unopposed, will generally not be postponed to a specific date. It will either be postponed *sine die* or removed from the roll. If such application is to be re-enrolled for hearing, the provisions of paragraphs 9.8.2 (in the case of opposed applications) and 9.9.2 (in the case of unopposed applications) *supra* must be followed.
2. Where an application is required to be postponed to a specific date:
  - 2.1 it shall be the responsibility of the applicant or applicant's attorney to first provisionally enrol the matter on the register for the appropriate day as required in terms of paragraph 9.9.2 above; and
  - 2.2 the registrar shall confirm in writing that such matter has been provisionally enrolled on the register, which written confirmation must be presented to the presiding Judge before the application is postponed.
3. Where an application has to be postponed to a specific date, such postponement must generally be for a period of not less than two weeks.
4. Subsequent to the allocation of an opposed matter to a particular Judge for hearing, the clerk of the Judge to whom the matter has been allocated must be informed in person or telephonically immediately it becomes known that a matter is to be postponed.
5. Counsel should notify the presiding Judge that it is their intention to withdraw a matter from the roll as soon as they become aware of the need to do so.

## 9.19 SERVICE

1. Service is proved by filing in the court file the original return of service which establishes the service. In the absence of an acceptable explanation, a return of service will generally not be accepted from the bar.
2. Where publication in the *Government Gazette* or newspaper of a court order, notice or other document has to be proved, the full page of the *Government Gazette* or newspaper containing the relevant order, notice or other document must be filed. The court order, notice or other document must be clearly highlighted. In the absence of an acceptable explanation, proof of publication will generally not be accepted from the bar.
3. Where service is effected at the registered address of a company or close corporation the Sheriff must state in the return that he or she ascertained that there was a board at the address where service was effected indicating that that address was indeed the registered office of the company or close corporation.
4. In the absence of such statement in the return of service, the registered address must be proved by filing in the court file an official document proving the registered address of the company or close corporation.
5. Where service is effected at a *domicilium citandi et executandi*, the original document wherein the *domicilium* is chosen must be in the court file.
6. In actions or applications for the imprisonment or sequestration of the respondent/defendant, and for divorce, and foreclosure in respect of an immovable property, (subject to 10.17 below) personal service of the summons or application and notice of set down must be effected on the defendant/respondent.
7. When service of any document by registered post is prescribed or authorised (in any action or application), such service is proved by the production of an affidavit by the person who procured the dispatch of such document, in which he/she:
  - 7.1 indicates the date of dispatch together with the name and address of the addressee;
  - 7.2 describes the document so dispatched; and
  - 7.3 indicates, if that be the case, that the item in question has not been returned to the sender by the Post Office as being undelivered, and annexes the documentary proof of posting of a registered article issued by the Post Office.

## **9.20 STALE SERVICE**

1. Where any unopposed application is made six months or longer after the date on which the application or summons was served, a notice of set down must be served on the defendant or respondent.
2. The notice of set down must set out:
  - 2.1 the date and time at which the relief will be sought;
  - 2.2 the nature of the relief that will be sought.
3. The notice of set down must be served at least five days before the date on which the relief will be sought.

## **9.21 SETTLEMENT AGREEMENTS**

1. Where the parties to an application have entered into a settlement agreement, a Judge will only make such settlement agreement an order of court if:
  - 1.1 counsel representing all the parties to the application are present in court and confirm the signature of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court;
  - or
  - 1.2 proof to the satisfaction of the presiding Judge is provided as to the identity of the person who signed the settlement agreement and that the parties thereto want the settlement made an order of court.
2. Where the parties to an application have settled the application on the terms set out in a draft order, a Judge will only make such draft order an order of court if:
  - 2.1 counsel representing all the parties to the application are present in court and confirm that the draft order correctly reflects the terms agreed upon;
  - or
  - 2.2 proof to the satisfaction of the presiding Judge is provided that the draft order correctly reflects the terms agreed upon.

## **9.22 DUPLICATE FILES**

1. A duplicate court file may only be used if leave of the court which is to hear the application is first obtained. In order to obtain such leave, the following procedure shall apply.
  - 1.1 The duplicate file and the application papers, duly indexed and paginated, must be presented to the Court.
  - 1.2 An affidavit must be filed by the attorney of the party seeking to use a duplicate file in which the following is set out:
    - 1.2.1 the reasons why a duplicate file is required to be used;
    - 1.2.2 the attempts made by the attorney to locate the original file;
    - 1.2.3 a full and comprehensive history of the application, including details of all previous court orders granted in relation to the application.
  - 1.3 Copies of all previous court orders granted in relation to the application must be presented to the Court. The court orders must be duly certified by the Registrar and affixed to the left inside cover of the duplicate court file. A duplicate file will not be accepted unless this is complied with.
  - 1.4 The provisions of this chapter shall also apply to Chapters 6, 7 and 8 of the Practice Manual.

### 9.23 URGENT APPLICATIONS

1. Two Judges are designated for the hearing of urgent applications for each week of the year. For this purpose the week commences on Friday at 16h00 and terminates on the Friday of the next week at 16h00. The senior Judge will allocate the matters.
2. The normal time for the bringing of an urgent application is at 10h00 on Tuesday of the motion court week.
3. If the urgent application cannot be brought at 10h00 on the Tuesday of the motion court week, it may be brought on any other day of the motion court week at 10h00. The applicant must, in the founding affidavit, set out facts to justify the bringing of the application at a time other than 10h00 on the Tuesday.
4. If the urgent application cannot be brought at 10h00 on any day during the motion court week, it may be brought at 11h30 or 14h00 on any day during the motion court week. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on Tuesday and other than 10h00 of the relevant court day.
5. If the application cannot be brought at 10h00 on the Tuesday or at 10h00 on any other court day or at 11h30 or 14h00 on any court day it may be brought at any time during the court day. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on the Tuesday and other than at 10h00, 11h30 or 14h00 on any other court day.
6. The aforementioned requirements are in addition to the applicant's obligation to set out explicitly the circumstances which render the matter urgent. In this regard it is emphasised that while an application may be urgent, it may not be sufficiently urgent to be heard at the time selected by the applicant.
7. The aforementioned practices will be strictly enforced by the presiding Judge. If an application is enrolled on a day or at a time that is not justified, the application will not be enrolled and an appropriate punitive cost order may be made.
8. The first paragraph of relief sought in the applicant's notice of motion must be for the enrolment of the application as an urgent application and for dispensing with the forms and service provided for in the rules of court, to the extent necessary.
9. Unless the circumstances are such that no notice of the application is given to the respondent, or unless the urgency is so great that it is impossible to comply therewith, the notice of motion must follow the form of Form 2(a) of the First Schedule of the rules of court and therefore must provide a reasonable time, place and method for the respondent to give notice of intention to oppose the application and must further provide a reasonable time within which the respondent may file an answering affidavit. The date and time selected by the applicant for the enrolment of the application must enable the applicant to file a replying affidavit if necessary.
10. Deviation from the time periods prescribed by the rules of court must be strictly commensurate with the urgency of the matter as set out in the founding papers.
11. In cases of extreme urgency, the reasonable time afforded to the respondent to give notice of intention to oppose is usually not less than 2 hours, excluding the hour between 13h00 and 14h00.
12. If the facts and circumstances set out in the applicant's affidavits do not:
  - 12.1 constitute sufficient urgency for the application to be brought as an urgent application; and/or
  - 12.2 justify the abrogation or curtailment of the time periods referred to in Rule 6(5); and/or

- 12.3 justify the failure to serve the application as required in Rule 4, the Court will decline to grant an order for the enrolment of the application as an urgent application and/or for the dispensing of the forms and services provided for in the rule. Save for a possible adverse costs order against the applicant the Court will make no order on the application.
13. The aforementioned requirements will be strictly enforced by the presiding Judge.
14. For the purposes of urgent applications ordinary court hours are 10h00 to 11h15; 11h30 to 13h00 and 14h00 to 16h00 of a court day. If a party wishes to bring an urgent application out of ordinary court hours the presiding Judge's clerk must be telephoned at his/her office or on cell-phone number: 082 573 5233). The following information must be conveyed to the Judge's clerk:
- 14.1 The identity of the parties;
  - 14.2 Whether or not service has been or will be effected;
  - 14.3 Whether or not the application is or is anticipated to be opposed;
  - 14.4 The type of application;
  - 14.5 The nature of the relief sought;
  - 14.6 Why it is not possible for the application to be heard during ordinary court hours; and
  - 14.7 When it is anticipated the application will be ripe for hearing.
15. The Judge's clerk will communicate with the Judge and thereafter advise the party when and where the application will be heard or what directions the Judge has given in regard to the application.
16. When an urgent application is brought out of ordinary court hours, the applicant must ensure that the order of the court can be typed so that it can be signed by the presiding Judge's clerk.
17. The Judge designated for the hearing of urgent applications is not to be contacted directly.
18. If the Judge designated for the hearing of urgent applications directs that the application be heard in court after ordinary court hours the Judge's clerk shall telephone:
- 18.1 the court stenographer on urgent application duty to arrange the stenographer's attendance in court at the arranged time. The stenographer's telephone number is obtained from their supervisor on the Friday before 16h00; and
  - 18.2 the security officer on duty at the main entrance of the High Court to arrange for the admission of the parties to the court and for the parties to be directed to the court in which the court dealing with urgent matters is sitting.
19. When an urgent application is brought for the Tuesday at 10h00 the applicant must ensure that the relevant papers are filed with the Registrar by the preceding Thursday at 12h00.
20. The Registrar's office must ensure that the court files of all urgent applications set down for the Tuesday at 10h00 are brought to the clerk of the Judge hearing the urgent applications by 10h00 on the preceding Friday.
21. Where, because of the nature of the urgency, it is not practicable to comply with the provisions of 8.1 above, or where an urgent application is brought for a time other than Tuesday at 10h00, the Registrar's office shall ensure that the court file is brought to the clerk of the senior Judge hearing urgent applications as soon as possible.
22. The clerk of the Judge hearing the urgent applications will prepare a roll in respect of the urgent applications to be heard on the Tuesday at 10h00 and shall also prepare a roll in respect of the urgent applications to be heard on the other days of the week. The clerk will publish the rolls in the foyer of the High Court by no later than 09h00 on the day of the hearing.

23. Save in exceptional circumstances the applicant should not frame the relief sought in the form of a rule *nisi* which has in whole or in part interim effect. Where applicable, the urgent relief should be sought pending the determination of the application.
24. Annexure A is an example of the appropriate format of a notice of motion to be utilised in an urgent application.
25. On the Friday of each week at 16h00 the Registrar shall send to the clerk of the Judge designated for the hearing of urgent applications for the week, commencing at 16h00 on the Friday:
  - 25.1 the cell-phone number provided for the Judge's clerk;
  - 25.2 fifteen consecutively numbered court files (these files are to be utilised in the event of an urgent application being brought without a court file having been opened by the Registrar of the Court); and
  - 25.3 an official stamp of the Registrar of the High Court.
  - 25.4 On Friday of each week, before 16h00, the clerk of the Judge who is to take over the urgent court must obtain from the stenographers' supervisor the telephone number of the stenographer on urgent court duty for the urgent court week.
  - 25.5 On the first court day after any of the files referred to in 10.1.2 above have been utilised, the Judge's clerk shall inform the Registrar of the names of the parties and the allocated case number.
  - 25.6 On the Friday morning at the conclusion of the week during which the designated Judge heard the urgent applications, the Judge's clerk must return the cellular telephone, the unused numbered files and the aforesaid stamp to the Registrar.
26. If the Judge, to whom an urgent matter is allocated, is of the view that the matter is not of sufficient urgency, that it should be heard that week, but that it is sufficiently urgent that it should not be heard in the ordinary opposed motion court, the following should occur:
  - 26.1 the Judge shall immediately inform the parties of such view;
  - 26.2 the party/ies shall be entitled to immediately approach the Deputy Judge President for an expedited date to be allocated for the matter to be heard in the special motion court, or such other motion court as the Deputy Judge President may deem meet.
27. Urgent applications in terms of Section 18 of the Superior Courts Act 10 of 2013, for leave to execute on a Judgment pending an appeal should be referred to the Judge who heard the main application. Such Judge should endeavour to hear such application as a matter of urgency, at 09h30, in the week in which the matter is referred to him by the Judge hearing urgent applications.



**EXAMPLE OF NOTICE OF MOTION – URGENT APPLICATIONS**

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NOTICE OF MOTION – URGENT APPLICATION

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A. BE PLEASED TO TAKE NOTICE –

1. that on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ at 10h00 or so soon thereafter as Counsel may be heard, application will be made to the above Honourable Court for the following orders:
  - a. Enrolling this application as an urgent application and \_\_\_\_\_ with the forms and notices as may be necessary;
  - b. Pending the final decision of this application, the third respondent (the Master) is interdicted from confirming a distribution account in the Estate of the Late \_\_\_\_\_;
2. that if you intend opposing the application which will be heard on \_\_\_\_\_, you must notify applicant's attorney.

B. AND FURTHER TAKE NOTICE -

1. that on the \_\_\_\_\_ at 10h00 the applicant will apply for the following order:
  - a. .
  - b. .
  - c. .
2. that if you intend opposing the application which will be heard on the \_\_\_\_\_ you must –
  - a. state that intention in a notice delivered to applicant's attorney at the under-mentioned address and to the Registrar of the above Court not later than \_\_\_\_\_; and
  - b. in that notice appoint an address where further documents in this matter can be delivered and be situate within fifteen kilometres of \_\_\_\_\_; and
  - c. deliver your opposing affidavits not later than \_\_\_\_\_, at the said address of applicant's attorney and to the Registrar \_\_\_\_\_.

**ANNEXURE 9.23.2 (PARA 9.8.2)**

REGISTER OF OPPOSED MOTION APPLICATIONS ENROLLED FOR \_\_\_\_\_ 20\_\_

	CASE NR	APPLICANT	RESPONDENT	NATURE OF APPLICATION	APPLICANT'S ATTORNEY	NAME OF PERSON ENROLLING CASE	TEL NR	DATE	HEADS OF ARGUMENT	APPLICANT RESPONDENT YES NO YES NO
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11- 50										

Counsel for each party in a motion which appears on the opposed roll is to file a practice note not later than 13:00, 15 days preceding the first day of the week in which the matter will be heard.

**ANNEXURE 9.23.3 (PARA 9.9.2)**

**REGISTER OF UNOPPOSED MOTION APPLICATIONS ENROLLED FOR \_\_\_\_\_ 20\_\_\_\_  
APPLICATIONS WHICH INCLUDE SUMMARY JUDGMENT APPLICATIONS**

	CASE NO	APPLICANT	RESPONDENT	NATURE OF APPLICATION	APPLICANT'S ATTORNEY	NAME OF PERSON ENROLLING CASE	TEL NO
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11 - 180							

**ANNEXURE 9.23.4 (PARA 9.9.2)**

**REGISTER OF UNOPPOSED MOTION APPLICATIONS ENROLLED FOR \_\_\_\_\_ 20\_\_**

**RULE 43 APPLICATIONS**

	CASE NO	APPLICANT	RESPONDENT	NATURE OF APPLICATION	APPLICANT'S ATTORNEY	NAME OF PERSON ENROLLING CASE	TELEPHONE NUMBER
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

## **CHAPTER 10      PARTICULAR APPLICATIONS**

- 10.1 Anton Piller type orders
- 10.2 Admission of advocates
- 10.3 Cancellation of sale in execution
- 10.4 Change to the matrimonial regime
- 10.5 Request for Permission to Film or Record Judicial Proceedings
- 10.6 Curator bonis
- 10.7 Curator ad litem
- 10.8 Enquiries in terms of Section 417 of the Companies Act 61 of 1973
- 10.9 Eviction in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998
- 10.10 Provisional sentence
- 10.11 Liquidation
- 10.12 Sequestration
- 10.13 Rehabilitation
- 10.14 Removal or amendment of restrictions on land use
- 10.15 The Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1996
- 10.16 Application for Confirmation of Surrogacy Agreements in terms of Section 295 of the Children's Act
- 10.17 Foreclosure and execution when property is or appears to be the defendant's primary home

## 10.1 ANTON PILLER TYPE ORDERS

1. These practises apply when an order which is sought ex parte involves a search for a movable object or the attachment thereof in order to preserve evidence as is meant in *Shoba v Officer Commanding* 1995 (4) SA 1 (A) or if the item is not identified in the papers, ie if identification is dependent upon a pointing out which is still to be made.
2. Such an application must stand on its own and not form part of an application in which other relief is claimed. Duplication of costs is to be minimised by incorporating evidence in one application by reference in any other application.
3. When the applicant wishes the matter to be heard in camera:
  - 3.1 the applicant may, without being obliged to do so, prove the reason why such a hearing is necessary in a separate affidavit. If a separate affidavit is employed and a hearing in camera is refused without a party or the Judge having placed reliance on the contents of the application itself, the applicant may withdraw and remove the Anton Piller application;
  - 3.2 a certificate from counsel in support of a hearing in camera is not necessary; and
  - 3.3 all steps must be taken as if the application is being set down on the motion court roll by use of the ordinary forms and in the ordinary manner except that the notice of set down and application are handed to the clerk of the senior Judge on motion court duty for purposes of safekeeping and maintaining secrecy all in accordance with the directions of the senior Judge.
4. A notice which accords with annexure A hereto must be handed to the person on whom the order is to be served prior to any execution of the order.
  - 5.1 Annexure B represents a model order which applies to relief along Anton Piller lines. It may be adapted according to circumstances but the Judge's attention must be drawn to deviations.
  - 5.2 Deviations from annexure B must be limited to what is necessary and must heed the following guidelines:
    - 5.2.1 Undertakings to the court must be stated to counteract injustice and avoidable inconvenience to the respondent.
    - 5.2.2 The order must be justifiable in terms of South African law.
    - 5.2.3 It must be borne in mind that it is of the essence of an Anton Piller type order that it results in some immediate interference with the respondent without any prior notice (even if a rule nisi pattern of order were to be used). Immediate operation must be limited to

what can be fully justified by urgency or other need for breach of the audi alteram partem principle.

- 5.2.4 Relief which cannot be so justified must be dealt with in a separate part of the notice of motion (and where necessary of the court order) so that the respondent has a proper opportunity to oppose such relief. Immediate preserving of evidence does not imply a need to allow the making of copies or other early discovery without the other party having a chance to be heard.

THE ORDER TO BE GRANTED (ANNEXURES A AND B) APPEAR AT 16.29 BELOW

## **10.2 ADMISSION OF ADVOCATES**

1. An application for admission as an advocate must, in addition to the information required by section 3(1) of the Admissions of Advocates Act 74 of 1964 and Rule 3A of the Rules of the Supreme Court allege that:
  - 1.1 the applicant is not arraigned on a criminal charge and has not been convicted of a criminal offence;
  - 1.2 the applicant's estate has not been sequestrated and that no sequestration proceedings are pending;
  - 1.3 the applicant was not found guilty in misconduct proceedings while in a previous profession or employment and that when any previous profession was relinquished or employment was terminated, no misconduct proceedings were pending;
  - 1.4 the applicant is unaware of any fact which may detrimentally affect the adjudication of the application; and
  - 1.5 the applicant attaches to the founding affidavit in support of his or her application a recent and appropriate certificate of good standing.
2. If the applicant is unable to make any of the allegations aforementioned, full details of the circumstances which preclude the allegation being made must be furnished.
3. The registrar is to ensure that the court files containing the admission applications are handed to the clerks of the Judges hearing the application at least two days before the hearing of the applications.
4. Applications for admissions are heard before two Judges.



### 10.3 CANCELLATION OF SALE IN EXECUTION

THIS DIRECTIVE MUST BE READ IN CONJUNCTION WITH THE AMENDED RULE 46<sup>6</sup> A COPY OF THE GOVERNMENT GAZETTE DEALING WITH THIS AMENDMENT IS ATTACHED HERETO AT PAGE 130 to 154.

ALL REQUIREMENTS SET OUT IN THIS PRACTICE MANUAL MUST STILL BE COMPLIED WITH IF THEY ARE IN ADDITION TO AND NOT IN CONFLICT WITH THE AMENDED RULES.

1. If an application in terms of Rule 46(11) is unopposed it is dealt with by the Judge before whom it comes in chambers. If the application is opposed the application will be heard in open court.
2. The notice of motion must inter alia be served on the purchaser against whom relief is sought. The notice of motion must inform the purchaser of the time within which, and the manner in which the applicant and the registrar must be informed of the purchaser's intention to oppose the relief sought if any.
3. If no intention to oppose the relief sought is filed, the applicant must depose to an affidavit stating that fact. The affidavit must be placed in the court file before the application comes before the Judge.
4. It is required that the fate of deposits paid pursuant to a sale be dealt with in the reports submitted by the sheriff. Reports submitted to a Judge requiring cancellation of a sale shall set out the amount of any deposit paid by the purchaser and held by the sheriff and how it is proposed to deal with the deposit after completion of any subsequent sale envisaged in Rule 46(11).<sup>7</sup>
5. In terms of Rule 46(11)(a)(iii), the sheriff shall inform the judgment debtor of the cancellation.
6. In terms of Rule 46(11)(b), the aggrieved creditor may apply to recover from the purchaser, any loss sustained as a result of the purchaser's default. Judgment on such application shall be given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before a Judge for such purpose.

THE ORDER TO BE GRANTED APPEARS AT 16.30 BELOW

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<sup>6</sup> GG NO 41257 OF 17 NOVEMBER 2017

<sup>7</sup> As per Practice Directive 6 of 2011, see Additional Directives.

#### **10.4 CHANGE TO THE MATRIMONIAL REGIME**

1. The application is commenced by publication in the Government Gazette of a notice substantially in the form of Annexure A hereto.
2. The report of the Registrar of Deeds must be obtained before such advertisement is placed.
3. At least 3 weeks before the hearing date a copy of the notice referred to in para 1 must be forwarded to each creditor by registered post and must be accompanied by a letter, a copy of which must be placed before the court, which states:
  - 3.1 on which date and time and to which court application will be made;
  - 3.2 the full names of the spouses, their identity numbers and their residential addresses and places of employment in the preceding 12 months;
  - 3.4 the effect of the proposed order;
  - 3.5 that a creditor whose interests will be prejudicially affected by the change of marital regime, may appear at the hearing to oppose the granting of the order.
4. The name, address, amount owing to, and the cause of action of each contingent and other creditor must be set out in the application. Proof of compliance with para 1, 2 and 3 must be proved at the hearing of the application by the filing of a supplementary affidavit.

#### **ANNEXURE 10.4.1**

Take notice that on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at 10h00 or so soon thereafter as the matter can be heard, the abovementioned applicants will apply to the Gauteng Local Division of the High Court, Johannesburg (address) for an order in the following terms:

1. The applicants are given leave to change the matrimonial property system which applies to their marriage, by the execution and registration of a notarial contract, a draft whereof is attached to the first applicant's supporting affidavit and is marked ". . ." and which contract, after registration thereof, will regulate their property system;
2. The Registrar of Deeds is authorised to register the notarial contract;
3. This order –
  - 3.1 will lapse if the notarial contract is not registered by the Registrar of Deeds within two months of the date of the granting of this order; and
  - 3.2 will not prejudice the rights of any creditor of the applicants as at date of registration of the contract.

## **10.5 REQUESTS FOR PERMISSION TO FILM OR RECORD JUDICIAL PROCEEDINGS**

Requests for permission to film or record judicial proceedings are received from time to time. In order to standardise the procedure, the guidelines set forth hereunder are provided.

1. It is hereby emphasised that no person may film or electronically record judicial proceedings without the prior permission of the presiding Judge. The granting and the terms of any such permission is within the discretion of the presiding Judge. The permission may be withdrawn and the terms thereof altered at any time by the presiding Judge.
2. Any party who wishes to film or electronically record judicial proceedings must request permission from the presiding Judge (through his or her secretary) at the earliest and at least 24 hours beforehand. The secretary will then establish from the presiding Judge whether permission is given and, if so, on what terms.
3. It is a healthy practice for the party wishing to film or record proceedings to obtain and furnish the Judge with comments of known interested and affected parties at the time when the request is made.
4. The presiding Judge may, before granting or refusing permission or setting terms, ascertain whether there are any objections from interested and affected parties.
5. The following terms for permission to film or record judicial proceedings serve as guidelines only, which the presiding Judge in his or her discretions may or may not follow:
  - 5.1 Equipment limitations:
    - 5.1.1 Video: The media may install two small man-operated cameras, both on tripods and together with the necessary microphones, in the court; no film, video tape or lenses may be changed whilst the court is in session.
    - 5.1.2 Audio: The media may install their own audio recording system provided this is not obstructive and does not interfere with the proceedings. Individual journalists may bring tape recorders into the court room for the purposes of recording the proceedings but changing of cassettes is not permitted while the court is in session.
    - 5.1.3 Still cameras: Only one photographer will be allowed; the location of the camera may not be changed. No changing of lenses or film is permitted while the court is in session.
    - 5.1.4 Lighting: No movie lights, flash attachments or artificial lighting devices are permitted for filming court proceedings.
    - 5.1.5 Operating signals: no visible or audible light or signal may be used on any equipment.
    - 5.1.6 Only two video camera operators and one still camera operator may be present in court during the proceedings.
    - 5.1.7 All camera, video and audio equipment must be placed in a fixed, unobstructive position in the court and must be in position at least 15 minutes before the start of the proceedings. The equipment must be operated to minimise any distraction whilst the

- court is in session, and may be moved or removed only when the court is not in session. Cameras, cables and the like must not interfere with the free movement inside the court.
- 5.1.8 Any problems which may arise during the recording of proceedings must be attended to during adjournments only.
- 5.2 Use of recordings:
- 5.2.1 Recordings may be used only in the form of edited highlights packages for delayed broadcasting in news bulletins and in programs relating to current affairs or matters of public interest.
- 5.2.2 The highlights packages must present a balanced and fair reflection of the proceedings.
- 5.2.3 The media must focus its recordings primarily on counsel arguing the matter, and/or on the Judge/s presiding.
- 5.3 Pooling Arrangements:
- 5.3.1 Only one media organisation may conduct the video, sound and still photography activities.
- 5.3.2 The media organisation must be selected by the media themselves. It must operate an open and impartial distribution scheme. The footage, sound or photographs must be distributed in a 'clean' form, that is with no visible logos etc., relating to any media organization, and must be archived in a manner which makes it freely available to other media.
- 5.3.3 If no agreement amongst media organisations can be reached on these arrangements, no audio, video or still photography coverage may take place.
- 5.3.4 All constraints imposed by the Broadcasting Act No 4 of 1999 and by the code of conduct of the Broadcasting Complaints Commission of South Africa will apply.
- Practice Manual 98 January 2010
- 5.4 Behaviour of media representatives:
- 5.4.1 The conduct of all media representatives must be consistent with the decorum and dignity of the court.
- 5.4.2 No identifying names, marks, logos or symbols may be used on any equipment or clothing worn by media representatives.
- 5.4.3 All media representatives (including camera crew) must be appropriately dressed.
- 5.5 Further directions:
- 5.5.1 The Court may give further directions as it deems appropriate, including directions that portions of the proceedings may not be recorded, or that already recorded portions of the proceedings may not be publicized or distributed, and must be deleted.
- 5.5.2 The Court may at any stage suspend the filming or recording process if it regards the process to be disruptive of the proceedings.
- 5.6 There is an absolute bar on:
- 5.6.1 Recording (whether video or audio) of bench discussions;
- 5.6.2 Audio recording or close-up photography of matters of a private, confidential or privileged nature which may ensue between counsel, the attorneys and the parties.
- 5.6.3 Close-up photography of Judges, lawyers or litigants in court;

- 5.6.4 Recording (whether video or audio) which intrudes upon the privacy of the Judges, litigants, legal representatives and members of the public present at the proceedings.
- 5.6.5 The use of recordings (whether video or audio) for commercial or political advertising purposes;
- 5.6.6 The use of sound-bites without the prior consent of the presiding Judge. This does not apply to extracts from judgments or orders.

6. The following court decisions are relevant to the filming, electronic recording and broadcasting of judicial proceedings:

- *SA Broadcasting Corporation Ltd v Thatcher* [2005] 4 All SA 353 (C); and
- *SA Broadcasting Corporation Ltd v National Director of Public Prosecutions* 2007 (1) SA 523 (CC).

7. Failure to comply with this practice directive and with the terms of any permission to film or electronically record judicial proceedings may lead to contempt of court charges.

## **10.6 CURATOR BONIS**

1. At the first hearing of the application for the appointment of a curator bonis, the only relief granted is the appointment of a curator ad litem. All other relief is postponed sine die pending receipt of the curator ad litem's and the master's report.
2. The application is re-enrolled after the aforementioned reports have come to hand.
3. Save in exceptional circumstances, which must be established on affidavit, an application for the appointment of a curator bonis will not be heard if the aforementioned reports have not been filed in the court file.
4. The consent of both the curator ad litem and the proposed curator bonis must be annexed to the application.

## 10.7 CURATOR AD LITEM

1. Where the appointment of a curator ad litem is sought to assist a litigant in the institution or conduct of litigation, the applicant must establish the experience of the proposed curator ad litem in the type of litigation which the litigant wishes to institute or conduct.
2. A consent to act by the proposed curator ad litem must be annexed to the application.
3. In order to preclude giving notice of the application to the prospective defendant, the applicant should seek that the costs of the application be reserved for determination in the contemplated trial.
4. The order sought should only permit the proposed curator to settle the action with the approval of a Judge.
5. Where the curator ad litem requires the approval of the court to settle the action, the curator ad litem and plaintiff's counsel may approach the deputy Judge president for the allocation of a Judge in chambers to approve the settlement.
6. Where an application is made for the appointment of a curator ad litem under rule 57(1) as a precursor to a declaration of unsound mind and the appointment of curator bonis for the patient, the order for the appointment of the curator ad litem should, in material respects, follow the DRAFT ORDER REPRODUCED AT 16.28 BELOW.
7. In preparing the report the curator ad litem must have regard, inter alia, to the provisions of Rule 57(5) and to the judgments in and to the judgments in *Ex parte Campher* 1951 (3) SA 248 (C) at 252; *Ex parte Glendale Sugar Millers (Pty) Ltd* 1973 (2) SA 653 (N) at 659-660; *Steyn v Steyn* 1972 (4) SA 151 (NC) at 152; and *Modiba obo Ruca; In re: Ruca v Road Accident Fund* (12610/2013; 73012/13) [2014] ZAGPPHC 1071 (27 January 2014).



## 10.8 ENQUIRIES IN TERMS OF SECTION 417 OF THE COMPANIES ACT 61 OF 1973

- 1.1 Our courts have over the years not varied from the comments noted some 40 years ago in the English case of *Re Rolls Razor Ltd* [1969] 3 ALL ER 1386 in relation to the purpose of a section 417 enquiry:

‘The process ... is needed because of the difficulty in which the liquidator in an insolvent company is necessarily placed. He usually comes as a stranger to the affairs of the company which has sunk to its financial doom. In that process, it may well be that some of those concerned in the management of the company, and others as well, have been guilty of some misconduct or impropriety which is of relevance to the liquidation. Even those who were wholly innocent of any wrongdoing may have motives for concealing what was done. In any case there are almost certain to be many transactions which are difficult to discover or to understand merely from the books and papers of the company. Accordingly the Legislator has provided this extra-ordinary process so as to enable the requisite information to be obtained.’

- 1.2 The request that the enquiry be held in secret should be fully motivated. Secrecy will not be ordered as a matter of course. Any such request must be viewed against the purpose of section 417 as consistently noted by the courts. In summary, the purpose of the section is (i) to assist officers of the Court in performing their duty to creditors, the Master and the Court (*Lynn v Kruger* 1995 (2) SA 940 (N) at 944F); (ii) to determine the most advantageous course to adopt in relation to the winding-up of the insolvent company (*Western Bank Ltd v Thorne* 1973 (3) SA 661 (C) at 666F); (iii) to help the liquidator in the primary goal of identifying assets and liabilities, recover impeachable transactions and administer the insolvent estate to the advantage of creditors (*Merchant Shippers SA (Pty) Ltd v Millman* 1986 (1) SA 413 © at 417D-E); and (iv) to provide the liquidator with information about its affairs, claims and liabilities which the company's officers fail or refuse to make available (*Ferreira v Levin*; *Vryenhoek v Powell* 1996 (1) SA 984 (CC)).
- 1.3 Where application is made to examine a particular witness, it must be shown that there is a justification for the examination of the witness – that the witness sought to be examined is able to give information that would assist the liquidator in the administration of the insolvent estate. The application, or in the case of the Master, the motivation, must establish a case for the examination of the witness against the objectives of the enquiry. A willing and cooperative witness may be summoned to an enquiry if there is a justification for having him/her examined in relation to any transaction or business dealing that is being investigated in the administration of the winding-up. The information sought is fundamental to the winding-up of the company. The case for the examination of former officers and directors of the company, who owe a fiduciary duty, is a lot stronger than against third parties. (*Ackerman J in the Bernstein case* (1996 (2) SA 751 (CC)). A clear case of abuse must be established before a court can set aside a subpoena for the examination of a witness. The court has the power under section 173 of the Constitution to prevent an abuse of its process in the form of a frivolous or vexatious insolvency enquiry.

- 1.4 Since the amendment of section 417 which has given the power to the Master to hold the enquiry, any application to the Court under this section must indicate whether the Master himself or herself has instituted an enquiry and why it is necessary to apply to Court for this purpose.

## **10.9 EVICTION IN TERMS OF THE PREVENTION OF ILLEGAL EVICTIONS AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998**

1. The application for eviction must be a separate application. The procedure to be adopted (except in urgent applications) is as follows:
  - 1.1 The notice of motion must follow Form 2(a).
  - 1.2 The notice of motion must allow not less than five days from date of service of the application for delivery of a notice of intention to oppose.
  - 1.3 The notice of motion must give a date when the application will be heard, in the absence of a notice of intention to oppose.
2. After the eviction application has been served and no notice of intention to oppose has been delivered or if a notice of intention to oppose has been delivered at a stage when a date for the hearing of the application has been determined, the applicant may bring an ex parte interlocutory application authorising a section 4(2) notice and for directions on service. The eviction application must be in the court file when the ex parte application is brought.
3. When determining a date for the hearing of an eviction application, sufficient time must be allowed for bringing the ex parte application, for serving the section 4(2) notice and for the 14 day notice period to expire. Practitioners must ensure that sufficient time is provided between the date of the Section 4(2) Notice and the date of hearing of the main eviction application.
4. If the eviction application is postponed in open court on a day of which notice in terms of section 4(2) was duly given, and if the postponement is to a specific date, it will not be necessary to serve another section 4(2) notice in respect of the latter date.
5. A number of pro forma orders are attached hereto for the guidance of practitioners. The orders must be adapted to meet the exigencies of each case.
6. Judges and practitioners are referred to the judgment in *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Others CCT108/16* delivered on 08 June 2017. The Constitutional Court held that even where tenants have consented to an eviction, it is still necessary for the court to have oversight and balance the interests of the owner and the tenants. The court held at paragraph 82 that:

*“For this purpose it is necessary for this Court to join the City to the proceedings, mero motu (of one’s own accord), in order to ensure that all the relevant parties are before the High Court.<sup>8</sup> On the information before this Court, it would appear that the main and possibly only outstanding consideration for a just and equitable order is the resolution of the problem of potential homelessness*

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<sup>8</sup> *Shorts Retreat* above n 53 at para 12.

*that would result from the eviction. The City has a duty to respond appropriately and expeditiously. The order below is along the lines of that which was made in Shorts Retreat.*<sup>9</sup>

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<sup>9</sup> Id at para 1.

**SPECIMEN ORDERS**

**I ORDER FOR SUBSTITUTED SERVICE**

IT IS ORDERED:

1. That the applicant be permitted and directed to serve  
The notice of motion and the founding papers in the main application, and also this Order and the section 4(2) notice,

On the respondents occupying the premises/building on the property known as.....in the following manner:-

- 1.1 The sheriff must serve the documents:
  - 1.1.1 assign numbers to each living unit within the premises/building on the property that appears to be occupied; and
  - 1.1.2 establish the name or names of the principal occupier or occupiers of each living unit (as identified in 1.1.1 above) who are prepared to identify themselves.
2. The sheriff must serve the documents:
  - 2.1 by affixing a copy thereof to the front door of the building on the property; and
  - 2.2 by serving copies thereof on each principal occupier who has been identified as described in 1.1.2 above, in the manner set forth in rule 4(1) of the Uniform Rules of the Court, or
  - 2.3 in instances where the sheriff is unable to establish the name or names of the occupier or occupiers of a living unit, or where there is nobody present at that living unit at the time of service, by affixing copies thereof to the principal door of the living unit, alternatively by sliding copies thereof under the door of the living unit.
3. The sheriff must in his return of service, set forth in respect of each living unit that appears to be occupied
  - 3.1 the number assigned to that living unit;
  - 3.2 the name or names of the principal occupier or occupiers of that living unit, if established in terms of 1.1.2 above; and
  - 3.3 the manner of service of the documents in respect of that living unit.
4. The costs of this Application will be costs in the cause/are reserved for consideration at the hearing of the main application.

## **II ORDER FOR THE AUTHORISATION OF A SECTION 4 (2) NOTICE**

It is ordered:

1. That the form and contents of the draft notice in terms of s 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 which is annexed to the founding affidavit and marked'.....', be hereby authorized.
2. That the applicant is directed to serve the notice together with a copy of this order on the respondents in accordance with the provisions of rule 4(1) of the Uniform Rules of Court.
3. That the costs of this application will be costs in the cause.

NOTE: A different order for service may be given if service under the Uniform Rules is not feasible.

**III NOTICE IN TERM OF SECTION 4(2) OF THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT, NO 19 OF 1998**

TAKE NOTICE THAT ..... (hereinafter referred to as 'the applicant') has instituted proceedings against you in terms of Section 4(1) of Act 19 of 1998 for property eviction and the eviction of all persons occupying under or through you, from the property/premises known as

TAKE NOTICE FURTHER THAT an order for your eviction and the eviction of all persons occupying under or through you from the abovementioned property/premises will be sought on .....the ..... at 10h00 in the High Court, Witwatersrand Local Division, Von Brandis Square, Pritchard Street, Johannesburg.

TAKE NOTICE FURTHER THAT the applicant applies for your eviction on the grounds that the applicant is the owner of the said property/premises and that you occupy the said property/premises without his/her consent and against his/her will. [*Your lease to occupy the property/premises has been cancelled.*] Your occupation of the property/premises is therefore regarded as unlawful.

TAKE NOTICE FURTHER THAT you are entitled to be present at the hearing of the matter in order to defend the case and if so desired, to apply to the Legal Aid Board or to a Law Clinic or other institutions for legal aid.

THIS NOTICE is given to you on the authority of the High Court (Witwatersrand Local Division), in terms of the Order of Court served herewith.

DATED at .....on this .....day of .....

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Applicant/Applicants' attorney

NOTE: The grounds for the eviction should be given in greater detail than a mere statement that the applicant is the owner of the property/premises and that the respondent is in unlawful occupation thereof.

#### **10.10 PROVISIONAL SENTENCE**

1. Proof of presentation of a negotiable instrument is unnecessary unless presentation is disputed or the court requires proof thereof.



## 10.11 LIQUIDATION

1. The applicant should seek a final winding-up order in the notice of motion. The Judge hearing the matter must be satisfied that the certificate of security has been timeously obtained, i.e., no less than ten (10) days prior to the date on which the application was launched.
2. The Court may nonetheless, in the exercise of its discretion, grant a provisional order and direct that service and publication of the provisional order be affected.
3. A copy of the provisional order referred to in paragraph 2 must be served on:
  - 3.1 every trade union referred to in subsection (2);
  - 3.2 the employees of the company by affixing a copy of the application to any notice board to which the employees have access inside the debtor's premises, or if there is no access to the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the debtor conducted any business at the time of the presentation of the application;
  - 3.3 the South African Revenue Service; and
  - 3.4 the company, unless the application was made by the company.
4. The provisional order referred to in para 2 may include:
  - 4.1 service of the order on the company or close corporation at its registered office;
  - 4.2 publication of the order in the government gazette;
  - 4.3 publication of the order in a newspaper circulating in the area where the company or close corporation carries on business;
  - 4.4 service on all known creditors. This will only be ordered where the applicant has ready access to the identity and address of the creditors. Depending on the information that the applicant has as to the creditor's address such service can be ordered to be effected by e-mail, facsimile transmission or pre-paid registered post.
5. If a provisional order of liquidation is granted, proof of compliance with the service ordered must be provided on the return date. Such proof is provided by filling an affidavit setting out the manner in which the ordered service was complied with. The presiding Judge will only accept the affidavit of service from the bar in exceptional circumstances made out in an affidavit.

6. If an extension of the return date of a provisional order of liquidation is sought, the party seeking such an extension must deliver an affidavit motivating such an extension. Without limiting the generality of the foregoing, full details are required of the following:
  - 6.1 If the provisional order of liquidation has not been served, the attempts made to effect such service;
  - 6.2 If the provisional order of liquidation relates to the winding up of an insolvent company, whether there has been compliance with the provisions of s 357 of the Companies Act 61 of 1973.
  - 6.3 Whether a provisional liquidator has been appointed by the Master.
7. Where a company or a close corporation seeks its own winding-up, it is not necessary for the application or for any provisional order that may be granted to be served on the company or close corporation.
8. Where the applicant seeking a winding-up order is a shareholder of a company or member of a close corporation, he shall serve the application on all interested parties, such as a co-shareholder or joint member. Failing such service the applicant should indicate in the founding affidavit why such service is not necessary.

## 10.12 SEQUESTRATION

1. In an application for sequestration, unless leave to proceed by way of substituted service has been granted, personal service of the application must be effected on the respondent.
2. Unless the court directs otherwise in terms of section 11(2) of Act 24 of 1936 (the Act), the provisional order of sequestration must be served on the respondent personally. In addition, there must be service as required in terms of s 11(2A) of the Act.
3. A provisional order of sequestration may not be served at the offices of the Sheriff or Deputy Sheriff.
4. If an extension of a provisional order of sequestration is sought, the party seeking such an extension must deliver an affidavit motivating such an extension. Without limiting the generality of the foregoing, full details are required of the following:
  - 4.1 If the sequestration order has not been served, the attempts made to effect such service;
  - 4.2 Whether and to what extent there has been compliance with the provisions of s 17(1) of the Act.
  - 4.3 Whether a provisional trustee has been appointed by the Master in accordance with s 18 of the Act.
  - 4.4 Whether there has been an attachment of property as required in terms of s 19 of the Act.
5. If the applicant fails to establish that the application is not a so-called 'friendly' sequestration the following will apply:
  - 5.1 Sufficient proof of the existence of the debt which gives rise to the application must be provided. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.
  - 5.2 The respondent's assets must be valued by a sworn appraiser on the basis of what the assets will probably realise on a forced sale. Mere opinions, devoid of reasoning as to what the assets will probably realise, will not be regarded as compliance herewith. The valuation must be made on oath and the appraiser must be qualified as an expert witness in the normal manner.
  - 5.3 Where the applicant seeks to establish advantage to creditors by relying on the residue between immovable property valued as aforesaid and the amount outstanding on a mortgage bond registered over the immovable property, proof of the amount outstanding on the mortgage bond at the time of the launching of the application is required. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.

- 5.4 Where the applicant seeks to establish advantage to creditors by relying on a sum of money paid into an attorney's trust account to establish benefit for creditors, an affidavit by the attorney must be attached to the application in which he confirms that the money has been paid into his trust account and will be retained there until the appointment of a trustee.
- 5.5 In establishing advantage to creditors the following sequestration and administration costs will be assumed in an uncomplicated application:
- 5.5.1 Cost of application R17 100 (R15 0000 + VAT)  
Cost of application if correspondent utilised R22 800 (R20 000 + VAT) (if the applicant's attorney of record has agreed to limit fees proof thereof must be provided).
- 5.5.2 The aforementioned costs are assumed to increase by R2280 (R2000 + VAT) for every postponement of if the application or if the provisional order has to be furnished to all known creditors, the aforementioned costs are assumed to increase to R2280 (R2000 + VAT).
- 5.5.3 The cost of administration, subject to a minimum of R2 500 are:
- 5.5.3.1 1% plus VAT on cash or money in a financial institution;
- 5.5.3.2 3% plus VAT on immovable property and shares; and
- 5.5.3.3 10% plus VAT on movable property including book debt
- 5.5.4 Other administration costs include sheriff fees (Schedule 3 of Act 24 of 1936) and the cost of security.
- 5.5.5 The aforementioned costs do not include the costs of the realisation of the asset. The cost must be established unless evidence to the contrary is placed before the court, it will be assumed that the cost of the realisation of immovable property is 6% of the selling price plus advertising charges.
- 5.6 Regard being had to the costs set out in para 5.5, the applicant must in the application set out a calculation indicating the probable dividend to concurrent creditors, which should be in excess of 20 cents/rand
- 5.7 Where the application is brought as an urgent application with the purpose of staying a sale in execution, notice of the application must be given to the Judgement creditor. In addition the applicant must set out facts to enable the court to determine that the assets which are to be sold at the sale in execution will realise more, if sold privately.
- 5.8 Notwithstanding para 4 above, a court will be reluctant to grant an extension of a return date in a 'friendly' sequestration.

6. In voluntary surrender applications, caution must be exercised by Judges. This procedure has been abused. Judges should scrutinise the affidavits in relation to the reasons for insolvency, the value of the assets, the valuations provided by sworn valuers (who have been found to manipulate the value of the assets in order to arrive at a dividend of +20 cents/R).

### **10.13 REHABILITATION**

1. An application for rehabilitation will not be read by the presiding Judge, if the master's report is not in the court file. The presiding Judge will only accept the master's report from the bar in exceptional circumstances made out in an affidavit.
2. If the applicant avers that a contribution paid by a creditor has been repaid to the creditor, adequate proof thereof must be provided.
3. The applicant, as is required by section 126 of Act 24 of 1936, must state what dividend was paid by the creditors. It is not acceptable to attempt to comply with this requirement by attaching the distribution account which the presiding Judge is expected to analyse and interpret.
4. As the date of the hearing of an application for rehabilitation has been advertised, any postponement of the application will be to a specific date.

## 10.14 REMOVAL OR AMENDMENT OF RESTRICTIONS ON LAND USE

1. Although a court has the common law power to remove restrictive title deed conditions it will only do so where all the parties who have the right to object have consented. However it is established law that proof of consent is inferred from failure to object after the issue of a rule nisi provided it is served in the manner and on the persons directed by the court. See *Ex parte Gold 1956 (2) SA 642 (T) at 649E*
2. However the court must be satisfied that there is real consent and that the holder of the right in question has timeous knowledge of the application. See *Ex Parte Glenrand (Pty) Ltd 1983 (3) SA 203 (W) at 206E to 207A*. There should also be service on all affected persons concerned.
3. Persons whose real rights are directly affected should be given personal notice unless it is impossible or reasonably impractical to do so. It is to be borne in mind that the effect of a removal may amount to an expropriation of a real right under Section 25 of the Constitution. Ultimately a court must be satisfied that there has been effective service on affected persons.
4. Although service under Rule 4(2) of the Rules of Court may be accepted by way of exception to the ordinary methods of service full and cogent reasons must be advanced in support of a request under the sub-rule. The fact that it might be difficult or costly to ascertain particulars of the persons concerned, and to effect service on them, is not the most important consideration. Inconvenience is an insufficient basis. The nature and extent of the curtailment of the rights of affected persons and the need to ensure that they are made aware of the application, is of greater importance. It follows that the court might distinguish between persons directly or indirectly affected by such applications, and differentiated service might be authorised. It might also require service on ratepayer organisations. See generally *Ex parte Optimal Property Solutions CC 2003 (2) SA 136 (C)*.
5. When the application is presented to court:
  - 5.1 it must be proved that the application together with a request to report was in good time served upon the Registrar of Deeds, any Township Board which is involved and, if possible, a local authority which is able to comment upon:
    - 5.1.1 the correctness of the facts;
    - 5.1.2 the identity of persons who may have a legal interest or whose refusal of consent could be adequate reason to refuse the application; and
    - 5.1.3 about the best method of notifying interested parties.
  - 5.2 a plan or map must be attached (if necessary extending beyond the township within which the property is situated) which will assist the court to ascertain which owners or users (of roads or of rights) have sufficient interest to make notice appropriate;

- 5.3 proof must be given of the problems encountered or expected which render normal service on interested parties or direct notice on them [perhaps in terms of Court rule 4(2)] impractical;
- 5.4 The effect of granting the order must be explained since persons affected may by their mere objection put an end to the application, the order should be so worded as to inform affected persons that they are free to make their objection, either by written notice to the Registrar or on the return day, without fear that they will be mulcted in costs.



## **10.15 THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION ACT 72 OF 1996**

### **Introduction**

1. There is a worldwide increase of incidents of cross-border abduction of children. The criminal part of that phenomenon is regulated by criminal law and intergovernmental treaties in that field of law.
2. The response of the international community to the civil aspects of the phenomenon (which is commonly inter-parental or familial) was the adoption of the Hague Convention on Civil Aspects of International Child Abduction. South Africa is a signatory to the convention and has adopted the convention as part of its national law. In order to respond to its obligations under the convention, the South African parliament passed Act 72 of 1996 (The Hague Convention on Civil Aspects of International Child Abduction Act 72 of 1996) which is for the sake of brevity simply herein referred to as The Hague Convention.
3. Our courts, like other courts in countries that have adopted the convention, have an important role to play under The Hague Convention. Cases under the convention normally come to court by way of applications, often in the urgent court, for the return of the abducted child to the country of origin, often another member country to the convention.
4. The objective of this portion of the Practice Manual is to expedite the handling of all applications under The Hague Convention. In case of uncertainty legal practitioners should not hesitate to approach the office of the Deputy Judge President with any difficulties regarding the practical aspects of implementing this portion of the Manual.

### **Directive**

5. The Judge President or Deputy Judge President shall designate from time to time a Judge who shall be responsible for Hague Convention matters.
6. A Judge designated in terms of paragraph 5 above is not the only one who hears The Hague Convention matters. Such Judge shall fulfil the role of gathering relevant information on these matters and shall also perform the liaison function with judicial officers and Central Authorities in other jurisdictions as and when the need may arise.
7. Once a file for a matter under The Hague Convention has been opened, the file must, upon issue, be clearly marked as a Hague Convention matter. The primary duty to mark the file is on the practitioner acting on behalf of the applicant. If the applicant is not represented the Registrar must assist litigants as far as is possible.
8. As a matter of course matters under the Hague Convention are to be dealt with as urgent in nature.

9. After its issue the matter is to follow the following route:
- 9.1 The court file is to be taken to the Deputy Judge President, who is to allocate a Judge to case manage the matter and ultimately hear it when it is ripe for hearing, irrespective of the court in which that Judge is doing duty when the matter becomes ripe for hearing.
  - 9.2 The Judge to whom the application has been allocated shall determine the date and time for hearing of the application in collaboration with the Deputy Judge President or the most senior Judge on duty and the clerk of that Judge shall advise the parties of such date.
  - 9.3 Should any reason have arisen during the course of managing the case, for that Judge not to hear the case, the Judge concerned will approach the Deputy Judge President forthwith for allocation of another Judge to urgently hear the matter.

#### **10.16 APPLICATION FOR CONFIRMATION OF SURROGACY AGREEMENTS IN TERMS OF SECTION 295 OF THE CHILDREN'S ACT**

1. The identity of the parties to court proceedings with regard to a surrogate motherhood agreement may not be published without the written consent of the parties concerned.
2. A party who seeks to bring an application in terms of the section must first have the application issued by the Registrar in the ordinary course;
3. The court file with all its contents must, however, be brought to the office of the Deputy Judge President (DJP) immediately after issue;
4. The office of the Deputy Judge President will upon receipt of the court file and the application, allocate the matter for hearing to a particular Judge, who shall give further directives as to how the matter is to be heard;
5. The applicant's attorneys must specifically refer the office of the DJP and the court hearing the application to the provisions of section 295 of the Act when the court file is delivered to the office of the DJP and when the application is heard;
6. The parties must comply in all respects with such further directives and requirements as may be stipulated by the Judge to whom the file has been allocated.
7. The affidavit must set out:
  - 7.1 all factors set out in the Act with documentary proof where applicable;
  - 7.2 whether there have been any previous applications for surrogacy, the divisions in which the application was brought, whether such application was granted or refused (if it was refused, the reasons for the refusal should be set out);
  - 7.3 a report by a clinical psychologist in respect of the commissioning parents and a separate report in respect of the surrogate mother and her partner;
  - 7.4 a medical report regarding the surrogate mother;
  - 7.5 details and proof of payment of any compensation for services rendered, either to the surrogate mother herself or to the intermediary, the donor, the clinic or any third party involved in the process;
  - 7.6 all agreements between the surrogate and any intermediary or any other person who is involved in the process;
  - 7.7 full particulars if any agency was involved, any payment to such agency, as well as an affidavit by that agency;
  - 7.8 whether any of the commissioning parents have been charged with or convicted of a violent crime or a crime of a sexual nature.

8. The Judge must be satisfied:

- 8.1 That the best interests of the child to be born will be served;
  - 8.2 There has been full compliance with all the provisions of the Act;
  - 8.3 That sufficient information is provided for it to decide whether the applicants are *“in all respects suitable persons to accept the parenthood of the child that is to be conceived”*;
  - 8.4 That there is no payment in relation to the surrogacy other than as provided for in s301;
  - 8.5 Regarding the financial position of the commissioning parents, their financial position, what support systems, if any, they have in place, what their living conditions are, and how the child will be taken care of. Expert assessment reports from social workers should be obtained;
  - 8.6 That a police clearance is obtained in order to demonstrate the suitability of the adoptive parents;
  - 8.7 That all parties including their spouses or partners are sufficiently mature to understand the consequences, particularly where the respective parties may be friends or have known each other prior to the application; and
  - 8.8 If the respective parties already have children that the children will be properly sensitised to the events that will unfold.
9. If the Judge considers it necessary, he/she may interview all the relevant parties and their spouses or partners.
10. See generally: *Confirmation of Three Surrogate Motherhood Agreements 2011 (6) SA 22 (GSJ)* and *Ex Parte WH and Others 2011 (6) SA 514 (GNP)*

## 10.17 FORECLOSURE (AND EXECUTION WHEN PROPERTY IS, OR APPEARS TO BE, THE DEFENDANT'S PRIMARY HOME)

This chapter is applicable to all applications for foreclosure. (The word 'defendant' includes the word 'respondent' and vice versa. The word 'debtor' includes the word 'consumer' and refers to a 'judgment debtor').

THIS DIRECTIVE MUST BE READ IN CONJUNCTION WITH THE AMENDED RULE 46 A (WHICH AMENDMENT CAME INTO OPERATION ON 22 DECEMBER 2017)<sup>10</sup> A COPY OF THE GOVERNMENT GAZETTE DEALING WITH THIS AMENDMENT IS ATTACHED HERETO AT PAGE 130 to 154.

ALL REQUIREMENTS SET OUT IN THIS PRACTICE MANUAL MUST STILL BE COMPLIED WITH IF THEY ARE IN ADDITION TO AND NOT IN CONFLICT WITH THE AMENDED RULES.

The directives that follow are based on the judgments in the following matters:

Hand<sup>11</sup> and Swissborough,<sup>12</sup> Gordon,<sup>13</sup> Studdard,<sup>14</sup> Janse van Rensburg,<sup>15</sup> Bekker,<sup>16</sup> Wilkinson,<sup>17</sup> Saunderson,<sup>18</sup> Jessa,<sup>19</sup> Dawood,<sup>20</sup> Mortinson,<sup>21</sup> Folscher,<sup>22</sup> Sebola,<sup>23</sup> Petersen,<sup>24</sup> Ntsane,<sup>25</sup> Maleke,<sup>26</sup> Powell<sup>27</sup>, Rossouw<sup>28</sup>, Brown<sup>29</sup>, Mkhize<sup>30</sup>, Van Vuuren<sup>31</sup>, Balkind<sup>32</sup> Binneman<sup>33</sup>, Shaik<sup>34</sup>, Mokhonoana,<sup>35</sup> Owens,<sup>36</sup> Gundwana,<sup>37</sup> Jaftha,<sup>38</sup> Lekuku,<sup>39</sup> Mokweni,<sup>40</sup> Vincent de Paul<sup>41</sup> and Nkata.<sup>42</sup>

<sup>10</sup> GG NO 41257 OF 17 NOVEMBER 2017

<sup>11</sup> *Standard Bank of South Africa Ltd v Hand* 2012 (3) SA 319 (GSJ) para 5.

<sup>12</sup> *Swissborough Diamond Mines v Government of the Republic of South Africa* 1999 (2) SA 279 (T).

<sup>13</sup> *Standard Bank of South Africa Ltd v Gordon & Others* [2011] JOL 27838 (GSJ).

<sup>14</sup> *ABSA Bank Ltd v Studdard & Another* [2012] JOL 28604 (GSJ).

<sup>15</sup> *ABSA Bank Ltd v Janse van Rensburg & Another, ABSA Bank Ltd v Maree & Another* 2013 (5) SA 173 (WCC).

<sup>16</sup> *Standard Bank of South Africa Ltd v Bekker & Another* 2011 (6) SA 111 (WCC).

<sup>17</sup> *Volkskas Bank Ltd v Wilkinson and Three Similar Cases* 1992 (2) SA 388 (C).

<sup>18</sup> *Standard Bank of South Africa Ltd v Saunderson & Others* 2006 (2) SA 264 (SCA).

<sup>19</sup> *Nedbank Ltd v Jessa & Another* 2012 (6) SA 166 (WCC).

<sup>20</sup> *Standard Bank of South Africa Ltd v Dawood* 2012 (6) 151 (WCC).

<sup>21</sup> *Nedbank Ltd v Mortinson* 2005 (6) SA 462 (W).

<sup>22</sup> *Firststrand Bank of South Africa Ltd v Folscher & Another* 2011 (4) SA 314 (GNP).

<sup>23</sup> *Sebola & Another v Standard Bank of South Africa Ltd & Another* 2012 (5) SA 142 (CC).

<sup>24</sup> *ABSA Bank Ltd v Petersen* 2013 (1) SA 481 (WCC).

<sup>25</sup> *ABSA Bank Ltd v Ntsane & Another* 2007 (3) SA 554 (T).

<sup>26</sup> *Firststrand Bank Ltd v Maleke; Firststrand Bank Ltd v Motingoe & Another; Peoples Mortgage Ltd v Mofokeng & Another; Firststrand Bank Ltd v Mudlaudzi* 2010 (1) SA 143 (GSJ).

<sup>27</sup> *Firststrand Bank Ltd v Powell, Firststrand Bank Ltd v Nsele & Another, Firststrand Bank Ltd v Herbst & Another* (2011/9130, 2011/20765, 2011/31969) [2012] ZAGPJHC 20 (6 March 2012).

<sup>28</sup> *Rossouw & Another v Firststrand Bank Ltd* 2010 (6) SA 439 (SCA).

<sup>29</sup> *ABSA Bank Ltd v Brown & Another; ABSA Bank Ltd v Van Deventer & Another* [2012] JOL 28445 (ECP).

<sup>30</sup> *ABSA Bank Ltd v Mkhize & Another, ABSA Bank Ltd v Chetty, ABSA Bank Ltd v Mlapha* 2012 (5) SA 574 (KZN).

<sup>31</sup> *Standard Bank of South Africa Ltd v Van Vuuren & Several Other Matters* (2012/32847) [2013] ZAGPJHC 16 (26 February 2013).

<sup>32</sup> *Balkind v ABSA Bank, In re ABSA Bank Ltd v Ilifu Trading 172 CC & Others* 2013 (2) SA 486 (ECG).

<sup>33</sup> *Nedbank Ltd v Binneman & Twelve Similar Cases* 2012 (5) SA 569 (WCC).

<sup>34</sup> *ABSA Bank Ltd v Shaik* (2009/8065) [2009] ZAGPH 58 (1 January 2009).

<sup>35</sup> *Nedbank Ltd v Mokhonoana* 2010 (5) SA 551 (GNP).

<sup>36</sup> *Firststrand Bank Limited t/a Honda Finance v Owens* 2013 (2) SA 325 (SCA).

<sup>37</sup> *Gundwana v Steko Development & Others* 2011 (3) SA 608 (CC).

<sup>38</sup> *Jaftha v Schoeman & Others; Van Rooyen v Stoltz & Others* 2005 (2) SA 140 (CC).

Without derogating from the requirements regarding applications contained in the Rules Regulating the Conduct of the Proceedings of the Several Provisional and Local Divisions of the High Court of South Africa ('Rule' or 'the Rules') or Chapter 9 of the Practice Manual of the South Gauteng High Court ('Practice Manual'), in every matter where a judgment is sought for execution against immovable property, which might be the defendant's primary residence or home, an affidavit is required. A *PRO FORMA* AFFIDAVIT DEALING WITH THE REQUIREMENTS IS ATTACHED HERETO. SUCH AFFIDAVIT SHALL ALSO DEAL WITH ALL THE ITEMS REFERRED TO IN AMENDED RULE 46A. ... ALL REQUIREMENTS SET OUT IN THIS PRACTICE MANUAL MUST STILL BE COMPLIED WITH IF THEY ARE IN ADDITION TO AND NOT IN CONFLICT WITH THE AMENDED RULES. The affidavit shall be attached to the Notice of Set Down.

1. An order declaring property specially executable shall only be granted by the Court if the application has been served on the respondent PERSONALLY, alternatively in a manner as authorised by the Court. If efforts to serve personally proves impossible, the Court may authorise service at the place of employment of the respondent, or on a Saturday, or on a person over the age of 16 at the *domicilium citandi*, or in any other way which may bring the matter to the attention of the respondent; Furthermore, all email and/or other correspondence which may be relevant to the respondent being aware of the date of hearing should also be attached. If the property is not the primary residence ( for example of served on a tenant, and the respondent no longer resides there) personal service is not required.
2. Where action proceedings have been instituted and the provisions of Rule 31(5) are applicable, the Registrar shall refer the application for the money judgment and the declaration that the property is executable, to open court. The Registrar may not grant the money judgment separately, if the debt is related to a mortgage bond over an immoveable property.
3. Note: When arrears are low, and/or the period of non-payment is a few weeks/months, the court may, in its discretion, postpone the matter with an order that it may not be set down before the expiry of 6 months and that notice of set down should again be served. At the adjourned date, an affidavit should be filed, setting out what efforts the Bank has made to effect settlement and/or prevent foreclosure.

**See 16.31**

- [1] NB: Default judgment should not be granted for the amount and the order for execution only postponed as this will defeat the object of postponing the matter i.e. to allow the consumer to take advice and seek to make arrangements to bring the arrears up to date or purge the default. (*FRB v Various Debtors 2016 (6) SA 400 (GJ)* para 46 and *Petersen* para 7. See *Ntsane*. Also see *Maleke* and *Lekuku*.) The creditor should not seek and the court (not registrar) should not give any money judgment (either for the accelerated total balance or otherwise) unrelated to an order declaring the property executable; if a money judgment is given and then executed against movables, that precludes the debtor from reinstating the bond by paying the arrears: NCA s.129(4)(b).
- [2] The ideal objective of the court's enquiry under R46A (infra) must be to establish a payment plan for the arrears, thereby attaining the reinstatement of the arrears, and so nullify the accelerated total balance.(Rule 46A (2)(a)(ii)

<sup>39</sup> *Absa Bank Limited v Lekuku* (32700/2013) [2014] ZAGPJHC 244 (14 October 2014).

<sup>40</sup> *Standard Bank of South Africa Limited v Mokweni & Another* (Case No 44125/2013) (17 March 2015).

<sup>41</sup> *De Paul Albert v Standard Bank* (21841/14) [2015] ZAGPPHC 727 (11 September 2015).

<sup>42</sup> *Nkata v FRB 2016 (4) SA 257 (CC)*.

4. A certificate of balance may be handed in at the hearing (*Rossouw* para 48).
5. If there is a failure to comply with the provisions of s 129 of the NCA, the following order pursuant to s 130(4)(b) of the NCA may be issued: (see *Mkhize*)

Order:

- 5.1. The application is postponed sine die.
- 5.2. In terms of section 130(4)(b) of the National Credit Act ('the NCA'), the order set out in paragraph 3.3 below is made.
- 5.3. Prior to re-enrolling the application, the applicant must serve on the respondent personally through the Sheriff the following documents:
  - 5.3.1. A revised section 129 notice in terms of the NCA ('the 129 notice') in which the current arrears are stated and distinguished from the previous 129 notice appearing as an Annexure in the application by a heading stating that the notice is a revised notice reflecting the respondent's current arrears;
  - 5.3.2. A copy of the application together with all of the annexures;
  - 5.3.3. A notice of re-enrolment which must state:
    - 5.3.3.1. that the application which was set down for hearing on (date) was postponed sine die by the court;
    - 5.3.3.2. the respondent's rights in terms of the NCA, and in particular those contemplated in section 129(1)(a) of the NCA, are unaffected by the fact that the application has already been instituted and a further note that the respondent is invited to respond to the revised notice within ten days of service of the documents referred to herein on the respondent;
    - 5.3.3.3. the respondent is given ten days from the date of service of those documents referred to above, to explore those non-litigious ways of purging the respondent's default as set out in the revised section 129 notice;
    - 5.3.3.4. in the event of the respondent failing to respond to the revised section 129 notice within ten days of service of those documents referred to above on the respondent, then application will be made for an order in terms of the notice

of motion which appears in the application which was set down for hearing on (date);

- 5.4. In the circumstances set out in paragraph 6.3 above, application will be made to the Court on (a specified date which date must be more than ten days from date of service of the documents set out above, on the respondent).
- 5.5. The Sheriff in his return of service must specifically state that the revised section 129 notice was served on the respondent together with the notice of re-enrolment and the application.
- 5.6. Costs of the postponement are to be costs in the cause.
6. The affidavit shall contain details of attempts made by the applicant to contact the respondent in order to negotiate terms of settlement to prevent foreclosure.
7. The rights of respondents are contained in Rule 46A(6).
8. The applicant must, in the affidavit, provide the information referred to in Rule 46A (5) and (9)(b);
9. Two draft orders must be attached to the notice of set down.
10. In all matters concerning foreclosure, EVEN WHEN IT IS NOT THE PRIMARY RESIDENCE, the following draft order is required:
  - 10.1 The Respondent is advised that, the provisions of section 129(3)(a) and (4) of the National Credit Act 34 of 2004 ("the NCA") may apply to the judgment granted in favour of the Plaintiff/Applicant.
  - 10.2 The Respondent may prevent the sale of the property referred to in paragraph ...above if he pays to the Applicant all of the arrear amounts owing to the Applicant, together with the Applicant's permitted default charges and reasonable costs of enforcing the agreement up to the time of re-instatement, prior to the property being sold in execution.
  - 10.3 The arrear amounts, enforcement costs and default charges referred to in paragraph 2. above may be obtained from the Applicant.
  - 10.4 The Respondent is advised that the arrear amount is not the full amount of the Judgment debt, but the amount owing by the respondent to the Applicant, without reference to the accelerated amount.
  - 10.5 A copy of this order is to be served personally on the Respondent, as soon as is practicable after the order is granted, but prior to any sale in execution.
  - 10.6 As to what constitutes permitted default charges and reasonable costs of enforcing the agreement up to the time of re-instatement, practitioners are referred to *Nkata* supra paras 123-125. Legal costs of enforcing the agreement only become due and payable on notice to the consumer and when they are reasonable, agreed or taxed.



**ANNEXURE 10.17.1 FORECLOSURE AFFIDAVIT**

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: 123456

In the matter between:

BANK

Applicant

And

CONSUMER

Respondent

---

**AFFIDAVIT PURSUANT TO CHAPTER 10.17 OF THE PRACTICE MANUAL**

---

I, the undersigned,

ATTORNEY

do hereby make oath and say that:

- A. I am an adult attorney, duly admitted as such, and practicing as such in partnership under the name and style of XYZ Attorneys of (address). I am the attorney of record for the Applicant in this matter.
- B. The facts herein contained are within my own personal knowledge and belief and are true and correct.
- C. I have perused the court file under the above case number wherein the applicant seeks, inter alia, execution where the property appears to be the primary home of the respondent.

Compliance with Chapter 10.17 of the Practice Manual of the South Gauteng High Court

- 1. As per Chapter 10.17 of the Practice Manual of the South Gauteng High Court I confirm the following:

- 1.1. I am satisfied that a proper cause of action has been disclosed and that there is not a mere reliance on a security instrument as is evidenced from page\_\_\_\_para\_\_\_\_ (and pages...where the agreement of loan (and other relevant documents appear));
- 1.2. I am satisfied that there is compliance with Rule 18(6) as appears at page\_\_\_\_para \_\_\_\_; alternatively,
- 1.3. I am satisfied that sufficient facts have been disclosed and set out for a proper cause of action as appears at page\_\_\_\_para \_\_\_\_;
2. Original Documents
  - 2.1. I have inspected the original documents pertaining to the matter as well as the security documents on which the matter is based and the copies attached to the summons or application, are true copies of the originals. Alternatively;
  - 2.2. An affidavit from the judgment creditor has been filed setting out the whereabouts of the original documents, which affidavit also sets out the grounds of the deponent's belief that the documents attached are indeed copies of the originals as appears at page\_\_\_\_para \_\_\_\_.  
(Delete paragraph if 2.1 is applicable).
3. I am satisfied that the application or summons contains the statements referred to in Saunderson, Jessa and Dawood:
  - 3.1. The defendant's attention is drawn to s 26(1) of the Constitution of the Republic of South Africa which accords to everyone the right to have access to adequate housing. Should the defendant claim that the order for execution will infringe that right, it is incumbent on the defendant to place information supporting that claim before the Court. This appears at page\_\_\_\_para \_\_\_\_;
  - 3.2. The judgment debtor has been advised that he (or she) is entitled to place information regarding relevant circumstances within the meaning of s 26(3) of the Constitution and rule 46, before the Court hearing the matter. This appears at page\_\_\_\_para \_\_\_\_;
  - 3.3. The judgment debtor has been advised that in terms of Rule 46A of the Rules of the High Courts of South Africa, no writ of execution shall be issued against his or her primary residence (home), unless a court having considered all the relevant circumstances, orders execution against such property. This appears at page\_\_\_\_para\_\_\_\_;
  - 3.4. The judgment debtor has been advised that if he or she objects to his or her home being declared executable, he or she is called upon to place facts and submissions before the court in terms of Rule 46A(6) to enable the court to consider them in terms of rule 46A (8) of the

Rules of Court and that a failure to do so may result in an order declaring his/her home specially executable, consequent upon which his/her home may be sold in execution. This appears at page\_\_\_\_para\_\_\_\_.

4. Pursuant to the requirements set out in Mortinson, Folscher and Lekuku:

- 4.1. The instalments are R\_\_\_\_\_ per month.
- 4.2. The arrears outstanding under the bond when the latter was called up are R\_\_\_\_\_ as appears at page\_\_\_\_para \_\_\_\_;
- 4.3. The last payment of R\_\_\_\_\_ was made on (date) (as appears at page\_\_\_\_para\_\_\_\_;
- 4.4. The debtor's payment record is at page\_\_\_\_ annexure\_\_\_\_ ;
- 4.5. The amount of the arrears outstanding at the date of the application for default judgment is R\_\_\_\_\_. This appears at page\_\_\_\_para\_\_\_\_;
- 4.6. The total amount owing in respect of which execution is sought is R\_\_\_\_\_ and appears at page\_\_\_\_para\_\_\_\_;
- 4.7. The immovable property which is sought to have declared executable was not acquired by means or with the assistance of a State subsidy. This appears at page\_\_\_\_para \_\_\_\_;
- 4.8. The immovable property is occupied/not occupied (delete whichever is not applicable) .This appears at page\_\_\_\_para\_\_\_\_;
- 4.9. The immovable property is utilised for residential purposes/commercial purposes (delete whichever is not applicable). This appears at page\_\_\_\_para \_\_\_\_;
- 4.10. The debt which is sought to be enforced was / was not (delete whichever is not applicable) incurred in order to acquire the immovable property sought to be declared executable. This appears at page\_\_\_\_para \_\_\_\_;
- 4.11. That the mortgaged property is the debtor's primary residence, appears at page\_\_\_\_para \_\_\_\_;
- 4.12. The circumstances under which the debt was incurred are the following (details) and appear at page\_\_\_\_para\_\_\_\_;
- 4.13. The relative financial strengths of the creditor and the debtor, are the following (details) and appear at page\_\_\_\_para \_\_\_\_;

- 4.14. There is no possibility that the debtor's liabilities to the creditor may be liquidated within a reasonable period, without having to execute against the debtor's residence as appears at page\_\_\_\_para \_\_\_\_;
- 4.15. The proportionality of prejudice the creditor might suffer if execution were to be refused, compared to the prejudice the debtor would suffer if execution went ahead with a consequent loss of his home, appears at page\_\_\_\_para \_\_\_\_;
- 4.16. A Notice ("the Notice") in terms of s 129 of the National Credit Act 34 of 2005 ("the NCA") was sent to the debtor prior to the institution of action on (date), and it appears at page\_\_\_\_para \_\_\_\_ (if the Notice was sent by someone other than the deponent, a confirmatory affidavit is required from such person);
- 4.17. The action is founded on an agreement within the meaning of the NCA. The allegation concerning the manner of delivery, which the consumer has chosen for the Notice appears at page\_\_\_\_para\_\_\_\_ and the Notice was delivered in that manner, as appears at page\_\_\_\_para\_\_\_\_;
- 4.18. The domicilium address at which delivery of the Notice took place is \_\_\_\_\_. This appears at page\_\_\_\_ of the affidavit and in the agreement annexure \_\_\_\_\_ at page\_\_\_\_\_.
- 4.19. The debtor's reaction to such Notice was (details) as appears at page\_\_\_\_para \_\_\_\_;
- 4.20. The period of time that elapsed between receipt of such Notice and the institution of action is \_\_\_\_\_ days and appears at page\_\_\_\_para \_\_\_\_;
- 4.21. The property is in fact occupied / not occupied (delete whichever is not applicable) by the debtor or by\_\_\_\_\_ as appears at page\_\_\_\_para \_\_\_\_;
- 4.22. Whether the debtor will / will not (delete whichever is not applicable) lose access to housing as a result of execution being levied against his home, appears at page\_\_\_\_para \_\_\_\_; because\_\_\_\_\_;
- 4.23. The creditor has / has not (delete whichever is not applicable) instituted action with an ulterior motive. This appears at page\_\_\_\_para \_\_\_\_;
- 4.24. The position of the debtor's dependants and other occupants of the house are the following (detail each occupant's relationship to defendant, gender and age of occupants) as appears at page\_\_\_\_para\_\_\_\_\_.

5 Service of the Application

- 5.1 The process was served on the respondent PERSONALLY at (address) as appears at page\_\_\_para\_\_\_ which address is the domicile / residence / work address (delete whichever is not applicable) of the respondent; or
- 5.2 5.4 The following further attempts were made to draw the respondent's attention to the proceedings as appears from the annexures hereto:
- 5.2.1 email correspondence with proof of transmission and, if possible, receipt ;
  - 5.2.2 telephone calls;
  - 5.2.3 other.
- 5.3 Service was effected on (date) by (manner) as appears at page\_\_\_para\_\_\_ as authorised by the court on (date) as appears at page\_\_\_para\_\_\_ ( and Annexure\_\_\_ on page\_\_\_).
6. If the Consumer has chosen for the Notice to be posted – Section 129(1) Notice
- 6.1. The compulsory Notice pursuant to s 129(1) was delivered to the relevant post office. The post office would, in the normal course, have secured delivery of the registered item notification slip, informing the consumer that a registered article was available for collection. This appears at page\_\_\_para\_\_\_;
- 6.2. The post-despatch 'track and trace' printout from the website of the South African Post Office is attached indicating delivery at the consumer's post office situated at \_\_\_\_\_. This appears at page\_\_\_para\_\_\_; or
- 6.3. The post office reflected on the 'track and trace' report, to which the s 129 Notice was sent, is not the same as the post office or town name to which the s 129 Notice was sent, but there is proof (which appears at page\_\_\_para\_\_\_) that the post office reflected on this 'track and trace' report, services the address of the consumer, which appears at page\_\_\_para\_\_\_;
- 6.4. A minimum period of 10 business days of giving the statutory Notice has elapsed before commencement of these legal proceedings. This period is calculated, by having regard to the delivery and service of the process, which took place on (date) as appears at page\_\_\_para\_\_\_. The proceedings were launched on (date);
- 6.5. Alternatively to 6.1-6.4. The Consumer applied for debt review but Notice of termination of the debt review was given to the consumer, the debt counsellor and the National Credit Regulator at least 10 business days after the consumer applied for debt review. The consumer applied

- for debt review on (date) which appears at page\_\_\_para\_\_\_. The Notice of termination was given on \_\_\_\_\_ as appears from page\_\_\_ para\_\_\_ and Annexure\_\_\_ on page\_\_\_\_\_.
- 6.6. The return of service reflects that the documents on which the judgment creditor relies, were attached to the process which was served and appears at page\_\_\_para\_\_\_.
  - 6.7. Clause ... in the agreement at page ... provides for a costs order other than a party and party scale.
  - 6.8. The following attempts were made by the applicant to contact the defendant in order to negotiate terms of settlement to prevent foreclosure (detail attempts and respondent's response thereto) as appears from page ... para ...
7. In terms of Rule 46A(5)(a) to (e), the information required is as follows, as appears at paras.... at page..... :
    - 7.1. The market value of the property is R...; Annexure ‘ “ hereto, page..;
    - 7.2. The local authority valuation of the property is R... Annexure ‘ “ hereto, page...;
    - 7.3. The amounts owing on mortgage bonds is R... Annexure ‘ “hereto, page...;
    - 7.4. The amounts owing to the local authority for rates and other dues is R...; Annexure ‘ hereto, page...;
    - 7.5. The amounts owing to the body corporate for levies is R...; Annexure ‘ hereto, page...;
    - 7.6. The following are other relevant factors which the court may have regard to in terms of Rule 46A(8), which includes any information relevant to the considerations in Rule 46A (9)(a) and (b);
  8. The property is /is not subject to a claim by a preferent creditor/s, being (insert details). In accordance with Rule 46 (5), Service has been effected on the entities referred to in Rule 46(5). The returns of service are annexed hereto as .....” “, “..”, “..”. The relevant entities have been informed that within 10 days of (insert date), they are to stipulate a reserve price or to agree to a sale in writing without reserve, as appears from Annexure “..” hereto.. The applicant has provided proof of such responses to the sheriff as per Annexure “...” hereto
  9. There has been compliance with Rule 46A(3) and (4) as appears from para...page

**WHEREFORE** I pray that it may please this Honourable Court to grant an order in terms of the draft attached to the Notice of set down marked ‘**Draft Order**’.

\_\_\_\_\_  
DEPONENT

**SIGNED** and **SWORN TO** before me, at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 201\_, by the Deponent who has acknowledged that he knows and understands the contents of this Affidavit and he has declared

that he has no objection to taking the oath, and he regards the oath as binding on his conscience and he has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

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COMMISSIONER OF OATHS

FULL NAMES:

ADDRESS:

CAPACITY:

# ANNEXURE TO 10.3 AND 10.17 – GOVERNMENT GAZETTE NOTICE NO.41257 (AMENDMENT TO RULE 46)

18 No. 41257

GOVERNMENT GAZETTE, 17 NOVEMBER 2017

## DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 1272

17 NOVEMBER 2017

### RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

#### AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA

The Rules Board for Courts of Law has under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

#### SCHEDULE

##### GENERAL EXPLANATORY NOTE:

Expressions in square brackets in bold [ ] indicate omissions from existing rule.

Expressions with **solid underline** indicate insertions into existing rule.

##### Definition

1. In this Schedule the "Rules" means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notices Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R.

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1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R. 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R. 516 of 8 May 2009, R. 518 of 8 May 2009, R. 86 of 12 February 2010, R. 87 of 12 February 2010, R. 88 of 12 February 2010, R. 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012, R. 992 of 7 December 2012, R. 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R. 317 of 17 April 2015, R. 781 of 31 August 2015, R. 3 of 19 February 2016, R. 678 of 3 June 2016 and R. 1055 of 29 September 2017.

#### Substitution of rule 46 of the Rules

2. The following rule is hereby substituted for rule 46 of the Rules:

#### "RULE 46 EXECUTION - IMMOVABLE[S] PROPERTY"

- (1)(a) Subject to the provisions of rule 46A, [No] no writ of execution against the immovable property of any judgment debtor shall be issued [until] unless—
- (i) a return **[shall have]** has been made of any process **[which may have been]** issued against the movable property of the judgment debtor from which it appears that the said person has **[not]** insufficient movable property to satisfy the writ; or
  - (ii) such immovable property **[shall have]** has been declared to be specially executable by the court[;] or [, **in the case of a judgment granted in terms of rule 31(5), by the registrar:]** where judgment is granted by the registrar under rule 31(5).

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**[Provided that, where the property sought to be attached is the primary residence of the judgment debtor, no writ shall issue unless the court, having considered all the relevant circumstances, orders execution against such property.]**

(b) A writ of execution against immovable property shall contain—

(i) a full description of the nature, **[and] magisterial district [, situation (including the address)]** and physical address of the immovable property to enable it to be traced and identified by the sheriff; and **[shall]**

(ii) **[be accompanied by]** sufficient information to enable **[him or her]** the sheriff to give effect to subrule (3) hereof.

(2) **[An]** The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated **[or by any sheriff of the district in which the office of the registrar of deeds or other officer charged with the registration of such property is situate]**, upon a writ corresponding substantially with Form 20 of the First Schedule.

(3) (a) **[The mode of attachment of immovable property shall be by]** Notice [in writing] of the attachment, corresponding substantially with Form 20A of the First Schedule, shall be served by the sheriff **[served]** upon the owner **[thereof] of the immovable property[,]** and upon the registrar of deeds or other officer charged with the registration of such **[immovable]** property, and if the property is **[in the occupation of]** occupied by some person other than the owner, also upon such occupier.

(b) Any **[such]** notice **[as aforesaid]** referred to in paragraph(a) shall—

(i) draw attention to the provisions of subrule (8)(a)(iii); and

(ii) be served according to the provisions of rule 4, except that service upon the registrar of deeds or other officer charged with the registration of immovable property may also be effected by the sheriff by means of a registered letter, duly prepaid and posted, addressed to the officer intended to be served.

(4)

(a) When effecting the attachment, the sheriff may enter buildings or structures on the immovable property in order to ascertain the improvements made to the immovable property, as well as the condition of such improvements: Provided that where the sheriff after reasonable attempts is unable to gain access onto the immovable property or into any building or structure on account of the property, building or structure being locked, the sheriff may use a locksmith to gain entry.

**[(a)]**

**(b)** After attachment, any sale in execution shall take place in the district in which the attached immovable property is situated and shall be conducted by the sheriff of such district who first attached the property:

Provided that the sheriff in the first instance and subject to the provisions of paragraph ~~[(b)] (d)~~ of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

~~[(b)]~~

~~(c)~~ Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record ~~[what] the~~ bonds or other encumbrances ~~which~~ are registered against the ~~attached immovable~~ property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(5) ~~Subject to rule 46A and any order made by the court, [No] no~~ immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless—

(a) the execution creditor has caused notice ~~[, in writing,]~~ of the intended sale to be served ~~[by registered post]~~ upon— ~~[the preferent creditor, if his address is known and, if the property is rateable, upon the local authority concerned]~~

(i) ~~preferent creditors;~~

(ii) ~~the local authority, if the property is rated; and~~

(iii) ~~the body corporate, if the property is a sectional title unit;~~

calling upon ~~[them] the aforesaid entities~~ to stipulate within ~~[ten] 10~~ days of a date to be stated, a reasonable reserve price or to agree in writing to a sale without reserve, and has provided proof to the sheriff that ~~[the preferent creditor has] such entities have~~ so stipulated or agreed, or

(b) the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) ~~[of this subrule]~~ within the time stated in such notice.

(6) The sheriff may by notice served upon any person require ~~[him] such person~~ to deliver up to ~~[him] the sheriff~~ forthwith, all documents in ~~[his] such person's~~ possession or control relating to the debtor's title to the said property.

(7)(a) The sheriff conducting the sale shall appoint a day and place for the sale of ~~[such] the attached immovable~~ property, such day being, except by special leave of a magistrate, not less than ~~[one month] 45 days~~ after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.

(b) (i) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the ~~attached immovable~~ property, its ~~improvements, magisterial district and~~

physical address **[situation and street number, if any]**, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale **[, and he or she shall furnish the said sheriff with as many copies of the notice as the latter may require]**.

(ii) The execution creditor must furnish the sheriff with as many copies of the notice of sale as the sheriff may require.

(c) The execution creditor shall—

(i) publish the notice once in a newspaper circulating daily or weekly in the district in which the attached immovable property is situated and in the [Government] Gazette not less than [5] five days and not more than 15 days before the date of the sale; and

(ii) provide the sheriff conducting the sale, by hand, or by facsimile or electronic mail, with one satisfactory photocopy of each of the notices published in the newspaper and the [Government] Gazette, respectively [, or in the case of the Government Gazette, the number of the Government Gazette in which the notice was published].

(d) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall forward **[by registered post]** a copy of the notice of sale referred to in paragraph (b) **[above]** to every **[judgment/]** execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and shall simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.

(e) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall affix—

(i) one copy of the notice on the notice-board of the magistrate's court of the district in which the attached immovable property is situated, or if the said property **[be]** is situated in the district **[in which] where** the court out of which the writ **was** issued is situated, then on the notice-board of such court;[,] and

(ii) one copy at or as near as may be to the place where the said sale is actually to take place.

(8)(a)(i) **[The conditions of sale shall, not] Not less than [20]35 days prior to the date of the sale, [be prepared by] the execution creditor shall prepare the conditions of sale, corresponding substantially with Form 21 of the First Schedule, upon which the attached property is to be sold and [the said conditions of sale shall be submitted] shall submit such conditions to the sheriff conducting the sale, [to settle] for the purposes of settling them.**

(ii) In addition to any other terms, the conditions of sale shall include any conditions ordered by the court.

(iii) Not less than 25 days prior to the date of the sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.



- (iv) Not less than 20 days prior to the date of the sale, the sheriff shall settle the conditions of sale.
- (v) The sale in execution and the conditions of sale shall comply with the provisions of any law relating to auctions, in particular the Consumer Protection Act, 2008 (Act No. 68 of 2008), and the Regulations promulgated thereunder.
- (b) [(ii)](i) The execution creditor shall thereafter supply the said sheriff with [two] three copies of the conditions of sale, one of which shall lie for inspection by interested parties at [his or her] the office of the sheriff for 15 days prior to the date of the sale. [ and the]
- (ii) The sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.
- (c) Not less than 15 days prior to the date of the sale, the sheriff shall serve one copy of the conditions of sale on the judgment debtor.
- (d) [(b)] **[Any interested party may, not less than 10 days prior to the date of the sale,]** Not less than 10 days prior to the date of the sale, any interested party may, subject to rule 46A and any order made by the court under the provisions thereof, and upon [twenty-four] 24 hours' notice to [the execution creditor and the bondholders] all known affected parties apply to the magistrate of the district in which the attached immovable property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an appropriate order as to costs [, as to him may seem meet].
- (9) The execution creditor [may] shall appoint [an attorney] a conveyancer to attend to the transfer of the attached immovable property [when] sold in execution: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.
- (10) Immovable property attached in execution shall be sold by the sheriff by public auction.
- (11)(a) (i) If the purchaser fails to carry out any [of his or her] obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the attached immovable property may [again] be put up for sale again.
- (ii) The report shall be accompanied by a notice corresponding substantially with Form 21A of the First Schedule.
- (iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.

- (b) **[The purchaser shall be responsible for any]** Any loss sustained by reason of **[his or her]** the purchaser's default **[which loss]** may, on the application of any aggrieved creditor whose name appears on the **[said]** sheriff's distribution account, be recovered from **[him or her]** the purchaser under judgment of **[the]** a judge **[pronounced summarily]** given on a written report by the **[said]** sheriff, after **[such purchaser shall have received]** notice in writing **has been** given to the purchaser that **[such]** the report will be laid before **[the]** a judge for **[such]** the aforesaid purpose.
- (c) If **[such]** the purchaser is already in possession of the immovable property, the said sheriff may, on **[10 days']** notice to affected persons apply to a judge for an order **[ejecting him or her]** evicting the purchaser or any person claiming to **[hold under him or her therefrom]** occupy the property through the purchaser or otherwise occupying the property.
- (12) Subject to the provisions of rule 46A and subrule (5) hereof[,]—
- (a) the sale shall be **[without reserve and]** conducted upon the conditions stipulated under subrule (8); and
- (b) the immovable property shall be sold to the highest bidder.
- (13)
- (a) All moneys in respect of the purchase price of the immovable property sold in execution shall be paid to the sheriff and the sheriff shall retain such moneys in his or her trust account until transfer has been given to the purchaser.
- (b) The sheriff conducting the sale shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration **[or]** of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.
- (c) No amount of the purchase money shall be paid out until the provisions of subrule (14) have been complied with.
- (14)
- [(a) The sheriff conducting the sale shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, but upon receipt thereof he or she shall forthwith pay into the deposit account of the magistrate of the district all moneys received in respect of the purchase price and simultaneously inform all other sheriffs appointed in that district of such payment.]**
- (a) After conclusion of the sale, but before preparation by the sheriff of a plan of distribution, the execution creditor or his or her attorney shall provide the sheriff with a certificate of all money paid by the judgment debtor to the execution creditor or his or her attorney after the issue of the writ of execution.

[(b) The said sheriff shall as soon as possible after the sale prepare in order of preference, as hereinafter provided, a plan of distribution of the proceeds and shall forward a copy of such plan to the registrar of the court and to all other sheriffs appointed in that district. Immediately thereafter the said sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for 15 days from a date mentioned at his or her office and at the office of the registrar, and unless such parties shall signify, in writing, their agreement to the plan, such plan shall so lie for inspection.]

(b) (i) Within 10 days after the date of registration of the transfer, the sheriff shall have prepared a plan of distribution of the proceeds in order of preference, and must forward a copy of such plan to the registrar and to all other sheriffs appointed in that district.

(ii) Immediately thereafter the said sheriff shall give notice to all parties who have lodged writs and to the execution debtor that the plan of distribution will lie for inspection at his or her office and the office of the registrar for 15 days from a date mentioned, and unless such parties signify in writing their agreement to the plan, such plan will so lie for inspection.

(c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference:

(i) **[the claims]** Claims of preferent creditors ranking in priority in their legal order of preference; and thereafter

(ii) **[the claims]** Claims of other creditors whose writs have been lodged with the sheriff in the order of preference appearing from sections **[ninety-six]** 96, and **[ninety-nine]** 98A to **[one hundred and three]** 103 (inclusive) of the Insolvency Act, 1936 (Act No. 24 of 1936) **[as amended]**.

(d) **[Any interested person objecting to such plan shall, within five days of the expiry of the period referred to in paragraph (b) of this subrule give notice in writing to the sheriff and all other interested persons of the particulars of his objection and shall bring such objection before a judge for review on 10 days' notice to the sheriff and the said persons.]**

Any interested person objecting to the plan must—

(i) before the expiry of the period referred to in paragraph (b)(ii), give notice in writing to the sheriff and all other interested persons of the particulars of the objection; and

(ii) within 10 days after the expiry of the period referred to in paragraph (b)(ii), bring such objection before a judge for review upon 10 days notice to the sheriff and the said persons.

(e) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as he or she deems **[to him or her seems meet]** appropriate.

(f) If—

- (i) no objection **[be]** is lodged to such plan<sup>[,]</sup>; or
- (ii) the interested parties signify their concurrence therein<sup>[,]</sup>; or
- (iii) the plan is confirmed or amended on review,

the **[magistrate]** sheriff shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser **[and on the request of the sheriff]**, pay out in accordance with the plan of distribution. **[If the address of a payee is not known the amount due to him shall be paid into the Guardian's Fund established under any law relating to the Administration of Estates.]**

(15) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any **[of the]** immovable property offered for sale either for himself or herself or for any other person.

(16) In this rule, the word "days" shall have the same meaning as "court days" as defined in rule 1 of these Rules."

#### Insertion of rule 46A in the Rules

3. The following rule is hereby inserted in the Rules after rule 46:

#### **"46A Execution against residential immovable property**

(1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.

(2)(a) A court considering an application under this rule must—

- (i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and
- (ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.



- (b) A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.
- (c) The registrar shall not issue a writ of execution against the residential immovable property of any judgment debtor unless a court has ordered execution against such property.
- (3) Every notice of application to declare residential immovable property executable shall be—
  - (a) substantially in accordance with Form 2A of Schedule 1;
  - (b) on notice to the judgment debtor and to any other party who may be affected by the sale in execution, including the entities referred to in rule 46(5)(a): Provided that the court may order service on any other party it considers necessary;
  - (c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and
  - (d) served by the sheriff on the judgment debtor personally: Provided that the court may order service in any other manner.
- (4)(a) The applicant shall in the notice of application—
  - (i) state the date on which the application is to be heard;
  - (ii) inform every respondent cited therein that if the respondent intends to oppose the application or make submissions to the court, the respondent must do so on affidavit within 10 days of service of the application and appear in court on the date on which the application is to be heard;
  - (iii) appoint a physical address within 15 kilometres of the office of the registrar at which the applicant will accept service of all documents in these proceedings; and

- (iv) state the applicant's postal, facsimile or electronic mail address where available.
- (b) The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in paragraph (a)(ii).
- (5) Every application shall be supported by the following documents, where applicable, evidencing:
  - (a) the market value of the immovable property;
  - (b) the local authority valuation of the immovable property;
  - (c) the amounts owing on mortgage bonds registered over the immovable property;
  - (d) the amount owing to the local authority as rates and other dues;
  - (e) the amounts owing to a body corporate as levies; and
  - (f) any other factor which may be necessary to enable the court to give effect to subrule (8):Provided that the court may call for any other document which it considers necessary.
- (6)(a) A respondent, upon service of an application referred to in subrule (3), may—
  - (i) oppose the application; or
  - (ii) oppose the application and make submissions which are relevant to the making of an appropriate order by the court; or
  - (iii) without opposing the application, make submissions which are relevant to the making of an appropriate order by the court.
- (b) A respondent referred to in paragraph (a)(i) and (ii) shall—
  - (i) admit or deny the allegations made by the applicant in the applicant's founding affidavit; and

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- (ii) set out the reasons for opposing the application and the grounds on which the application is opposed.
- (c) Every opposition or submission referred to in paragraphs (a) and (b) shall be set out in an affidavit.
- (d) A respondent opposing an application or making submissions shall, within 10 days of service of the application—
- (i) deliver the affidavit referred to in paragraph (c);
  - (ii) appoint a physical address within 15 kilometres of the office of the registrar at which documents may be served upon such respondent; and
  - (iii) state the respondent's postal, facsimile or electronic mail address where available.
- (7) The registrar shall place the matter on the roll for hearing by the court on the date stated in the Notice of Application.
- (8) A court considering an application under this rule may—
- (a) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate;
  - (b) order the furnishing by—
    - (i) a municipality of rates due to it by the judgment debtor; or
    - (ii) a body corporate of levies due to it by the judgment debtor;
  - (c) on good cause shown, condone—
    - (i) failure to provide any document referred to in subrule (5); or
    - (ii) delivery of an affidavit outside the period prescribed in subrule (6)(d);

- (d) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt;
  - (e) set a reserve price;
  - (f) postpone the application on such terms as it may consider appropriate;
  - (g) refuse the application if it has no merit;
  - (h) make an appropriate order as to costs, including a punitive order against a party who delays the finalisation of an application under this rule; or
  - (i) make any other appropriate order.
- (9)(a) In an application under this rule, or upon submissions made by a respondent, the court must consider whether a reserve price is to be set.
- (b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the court shall take into account—
- (i) the market value of the immovable property;
  - (ii) the amounts owing as rates or levies;
  - (iii) the amounts owing on registered mortgage bonds;
  - (iv) any equity which may be realised between the reserve price and the market value of the property;
  - (v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)(a) to (e), whether or not equity may be found in the immovable property, as referred to in subparagraph (iv);
  - (vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation;

- (vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;
  - (viii) any prejudice which any party may suffer if the reserve price is not achieved; and
  - (ix) any other factor which in the opinion of the court is necessary for the protection of the interests of the execution creditor and the judgment debtor.
- (c) If the reserve price is not achieved at a sale in execution, the court must, on a reconsideration of the factors in paragraph (b) and its powers under this rule, order how execution is to proceed.
- (d) Where the reserve price is not achieved at a sale in execution, the sheriff must submit a report to the court, within 5 days of the date of the auction, which report shall contain—
- (i) the date, time and place at which the auction sale was conducted;
  - (ii) the names, identity numbers and contact details of the persons who participated in the auction;
  - (iii) the highest bid or offer made; and
  - (iv) Any other relevant factor which may assist the court in performing its function in paragraph (c).
- (e) The court may, after considering the factors in paragraph (d) and any other relevant factor, order that the property be sold to the person who made the highest offer or bid.”

#### **Substitution of Form 21 of the Rules**

4. The following Form is hereby substituted for Form 21 in the First Schedule of the Rules:

## "FORM 21

## CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

*In re:*

.....

**[Plaintiff]** Execution Creditor

and

.....

**[Defendant]** Judgment Debtor

The immovable property (hereinafter referred to as the "property") which will be put up **[to]** for auction on the ..... day of ..... **[19]** 20....., consists of:

.....

The sale shall be **[subject to]** conducted on the following conditions:

1. The sale shall be conducted in accordance with the provisions of rule 46 of the Uniform Rules of Court and all other applicable law.

**[1.]2.** The property shall be sold by the sheriff of ..... at .....to the highest bidder without reserve/**[with]** subject to a reserve price of.....

**[2.]3.** The sale shall be for rands, and no bid for less than one thousand rands shall be accepted.

**[3.]4.** If any dispute arises about any bid, the property may **[be]** again be put up **[to]** for auction.

**[4.]5(a)** If the **[auctioneer]** sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified.

**(b)** If the **[auctioneer]** sheriff suspects that a bidder is unable to pay either the deposit referred to in condition **[6]** 7 or the balance of the purchase price, **[he]** the sheriff may

refuse to accept the bid of such bidder, or accept it provisionally until the bidder satisfies **[shall have satisfied him]** the sheriff that **[he]** such bidder is **[in a position]** able to pay **[both such amounts]** the deposit and the balance of the purchase price.

(c) On the refusal of a bid under **[such]** circumstances referred to in paragraph (b), the property may immediately **[be again]** be put up **[to]** for auction again.

**[5.]6(a)** The purchaser shall, as soon as possible after the sale[, ] and immediately on being requested by the [.....] sheriff, sign these conditions [, and if he has bought qua qualitate, state the name of his principal].

**(b)** If the purchaser purchases in a representative capacity, the purchaser shall disclose the name of the principal or person on whose behalf the property is being purchased.

**[6.]7(a)** The purchaser shall pay to the sheriff a deposit of **[ten]** 10 per cent of the purchase price in cash or by bank guaranteed cheque on the day of the sale[,].

**(b)** **[the]**The balance shall be paid against transfer **[to]** and shall be secured by a **[bank or building society]** guarantee issued by a financial institution [, to be] approved by **[plaintiff's]** the execution creditor or his or her attorney, **[to]** and shall be furnished to the sheriff within ..... days after the date of sale.

**[(b)** If transfer of the property is not registered within one month after the sale, the purchaser shall be liable for payment of interest to the plaintiff at the rate of ..... per cent p.a. and to the .....bondholder at the rate of ..... per cent p.a. on the respective amounts of the award to the plaintiff and the ..... bondholder in the plan of distribution as from the expiration of one month after the sale to date of transfer.]

**[7.** Inasmuch as the defendant is a member of the ..... Group, no bids will be accepted by or on behalf of a person who is not a member of such Group, unless such person exhibits to the auctioneer at the sale a permit from the Minister of the Interior authorizing him to acquire such property.]

**8. (a)** If the purchaser fails to carry out any [of his] obligation[s] due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the



report of the sheriff after due notice to the purchaser, and the property may again be put up for sale. [; and]

(b) In the event of the circumstances in paragraph (a) occurring, the purchaser shall be responsible for any loss sustained by reason of [his] such default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from [him] the purchaser under judgment of [the] a judge pronounced [summarily] on a written report by the sheriff, after such purchaser [shall have received] has been given notice in writing that such report will be laid before the judge for such purpose.[; and]

(c) [if he] If the purchaser is already in possession of the property, the sheriff may, on [seven days'] notice to affected parties, apply to a judge for an order [ejecting] evicting [him] the purchaser or any person claiming to [hold under him therefrom] occupy the property through the purchaser or otherwise occupying the property.

9[.] (a) The purchaser shall immediately on demand pay **[auctioneer's charges on the day of sale and in addition, transfer dues, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer, upon request by the attorney for the execution creditor.]** the sheriffs' commission calculated as follows:

.....:

(b) The purchaser shall be liable for and pay, within 10 days of being requested to do so by the appointed conveyancer, the following:

(i) All amounts due to the municipality servicing the property, in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that may be due to a municipality; and where applicable

(ii) All levies due to a body corporate in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986) or amounts due to a home owners or other association which renders services to the property.

(iii) The costs of transfer, including conveyance fees, transfer duty and any other amount necessary for the passing of transfer to the purchaser.



10[.](a) The property may be taken possession of **[immediately]** after signature of the conditions of sale, payment of the **[initial]** deposit[,], and upon the balance of the purchase price being secured in terms of condition 7(b). **[and shall after such deposit be at the risk and profit of the purchaser.]**

(b) Should the purchaser receive possession of the property, the purchaser shall be liable for occupational rental at the rate of R.....per month from.....to date of transfer.

**[b]** (c) Upon the purchaser taking (occupation) possession, the property shall be at the risk and profit of the purchaser.

**[c]** (d) The execution creditor and the sheriff give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is not occupied.

11.(a) The purchaser **[may]** shall be entitled to obtain transfer forthwith [if he pays] upon payment of the whole purchase price and [complies] compliance with condition 9, [in which case any claim for interest shall lapse,] [otherwise] alternatively, transfer shall be passed only after the purchaser has complied with the provisions of conditions 7 and 9 hereof.

(b) If the transfer is delayed by the purchaser, the purchaser shall be liable for interest at the rate of .....per cent per annum on the purchase price.

12[.] (a) The sheriff may demand that any **[buildings standing on]** improvements to the property sold shall be immediately insured by the purchaser for [the] their full value, [of the same and the insurance policy handed to him] proof of insurance given to the sheriff and such insurance policy kept in force [as long as the whole price has not been paid:] until transfer is registered.[if he does not do so, the sheriff may effect the insurance at the purchaser's expense.]

(b) Should the purchaser fail to comply with the obligations in paragraph (a), the sheriff may effect the necessary insurance, the cost of which insurance shall be for the purchaser's account.

13.](a) The property is sold as represented by the title deeds and diagram [,] or sectional plan, subject to all servitudes and conditions of establishment, whichever applies to the property.

(b) [the]The sheriff [not holding himself] shall not be liable for any deficiency that may be found to exist in the property [and renouncing all excess]. [The property is also sold subject to all servitudes and conditions specified in the deed of transfer.]

14. The execution creditor shall [be entitled to] appoint [an attorney] the conveyancer to [attend to the] effect transfer of the property to the purchaser[.]; Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.

Dated at ..... this ..... day of ..... [19]  
20.....

Sheriff

I certify hereby that to-day the ..... in my presence the  
hereinbefore-mentioned property was sold for ..... to  
.....  
.....  
.....

I, the undersigned ....., residing at ..... in the  
district of ..... do hereby bind myself as the purchaser of the hereinbefore-  
mentioned property to pay the purchase price and to perform all and singular the  
conditions mentioned above."

#### Insertion of Form 2A in the Rules

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5. The following Form is hereby inserted in the First Schedule of the Rules after Form 2:

“FORM 2A

**NOTICE OF APPLICATION TO DECLARE IMMOVABLE PROPERTY EXECUTABLE  
IN TERMS OF RULE 46A**

In the High Court of South Africa  
(..... Division)

Case No. ....

In the matter between:

.....Applicant

and

.....Respondent

Please take notice that the applicant herein intends to make application to the above Honourable Court on.....at .....or as soon thereafter as the matter may be heard for an order in the following terms:

(a) .....

(b) .....

(c) .....

And take notice that—

(a) the affidavit of .....annexed hereto, together with annexures thereto, will be used in support of the application; and

(b) the applicant appoints the address below as the address at which service of documents in this application will be accepted.

The/any respondent may oppose the application or make relevant submissions to the court. A respondent intending to do so must—

(a) set out such opposition or submissions in an affidavit;

(b) serve a copy of the affidavit on the applicant/attorney and file the original with the registrar of the above court within 10 days of service of this notice of application;

(c) together with service and filing of the affidavit, appoint an address within 15 kilometres of the office of the registrar of the above court where documents may be served on the respondent; and

(d) appear at the above court on .....

A respondent who opposes the application must in addition in such respondent's affidavit—

(a) admit or deny the allegations made by the applicant; and

(b) state the reasons for opposing the application and set out the grounds upon which the opposition is based.

Failure by a respondent to do any of the things mentioned in this notice of application may result in the court granting the orders prayed for above.

DATED at ..... this ..... day of ..... 20.....

.....

Applicant /his or her Attorney

Address: .....

.....

To: The Registrar of the High Court

And to:

.....Respondent

Address: .....

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....."

### Insertion of Form 20A in the Rules

6. The following Form is hereby inserted in the First Schedule of the Rules after Form 20:

"FORM 20A

### NOTICE OF ATTACHMENT IN EXECUTION

In the High Court of South Africa

Case No. ....

In the matter between

..... Execution Creditor

And

..... Judgment Debtor

To: .....

Take notice that I have this day laid under judicial attachment the property in the attached inventory in pursuance of a warrant directed to me by the registrar of the above Honourable Court, whereby I am required to cause to be raised of your property in this district the sum of R..... and R ..... costs recovered against you

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by judgment of this court in this action together with my charges in respect of the said warrant.

Your attention is drawn to the provisions of rule 46(8)(a)(iii) of the Uniform Rules of the above Honourable Court which reads:

“(iii) Not less than 25 days prior to the date of the sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.”

The conditions of sale upon which the attached property is to be sold by public auction will be prepared by the execution creditor.

Dated at..... this ..... day of .....,  
20.....

.....

Sheriff.”

#### **Insertion of Form 21A in the Rules**

7. The following Form is hereby inserted in the First Schedule of the Rules after Form 21:

#### **“FORM 21A**

#### **NOTICE TO CANCEL SALE OF IMMOVABLE PROPERTY IN TERMS OF RULE 46(11)(a)**

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**IN THE HIGH COURT OF SOUTH AFRICA**

(..... Division)

Case No.....

In the matter between:

The Sheriff of .....  
Applicant

and

.....  
Purchaser*In re:*..... Execution  
Creditor

and

..... Judgment  
Debtor

**PLEASE TAKE NOTICE** that the Sheriff of.....intends to request a Judge in chambers, on a date to be allocated by the registrar, to cancel the sale of the immovable property described as ....., sold by public auction on ..... 20.....and to authorise the said property being put up for sale again.

**TAKE NOTICE FURTHER** that the report of the said sheriff, upon which the request to the Judge will be made to cancel the sale, is attached hereto.

**DATED** at..... this ..... day of .....20.....

Sheriff of the High Court

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..... (Area)

.....

(Address)

To: The Registrar of the above Honourable Court

.....

And to:

Purchaser

.....

.....

(Address)"

#### **Commencement**

8. These rules shall come into operation on 22 December 2017.



## CHAPTER 11 LEAVE TO APPEAL IN CIVIL MATTERS

1. An application for leave to appeal must be filed with the registrar in charge of civil appeals. A copy of the application must also be filed with the Judge's Secretary.
2. If the judgment in respect of which leave to appeal is sought was not handed down in typed form when the judgment was delivered, the applicant shall forthwith take the necessary steps to cause the judgment to be transcribed. All the other parties to the application for leave to appeal shall forthwith in writing be informed of the steps taken by the applicant in this regard.
3. If the applicant does not within three days of the service of the application for leave to appeal take the necessary steps to cause the judgment to be transcribed, the respondent's legal representatives may take the necessary steps to ensure that the judgment is transcribed. All the other parties to the application for leave to appeal shall forthwith in writing be informed of the steps taken by the respondent in this regard.
4. If the judgment was handed down in typed form, or after the judgment has been transcribed, it may be placed in the court file and the applicant may apply by letter to the registrar in charge of civil appeals for the allocation of a date for the hearing of the application for leave to appeal. In the event of the parties agreeing thereto, three alternative dates may be set out in the letter, being dates upon which the parties' counsel are available to argue the application for leave to appeal. The applicant must forthwith forward a copy of this letter to all the other parties to the application for leave to appeal.
5. If the applicant does not apply for the allocation of a date for hearing of the application for leave to appeal within a period of 7 days after the judgment has become available, the respondent may so apply. The application is made by directing a letter to the registrar in charge of civil appeals. At the same time the respondent must place a copy of the judgment in the court file. The respondent must forthwith forward a copy of the letter to all the other parties to the application for leave to appeal.
6. Once the registrar in charge of civil appeals is in possession of:
  - 6.1 the application for leave to appeal;
  - 6.2 the judgment; and
  - 6.3 the letter requesting a date for the hearing of the application the aforesaid registrar should immediately submit the relevant court file to the secretary of the Judge who delivered the judgment. The secretary of the Judge will endorse the date and time on which the application for leave to appeal is to be heard, alternatively will contact the parties to arrange an alternate date. The Judge's secretary will thereafter inform the parties' or their representatives and the registrar of the date of hearing and shall retain the file.

7. The registrar in charge of civil appeals shall thereupon enrol the matter accordingly and shall confirm with the Judge's secretary that the application has been enrolled.
8. Applications for leave to appeal are normally enrolled for 09h30. It is anticipated that the application including judgment thereon will be concluded by 10h00. If the parties or any one of them envisage the application taking longer than half an hour to be concluded, a statement to this effect must be made in the letters referred to above. In such a case the presiding Judge may determine another time for the hearing of the application for leave to appeal.
9. If none of the parties to the application for leave to appeal apply to the registrar for the allocation of a date for the hearing of the application for leave to appeal, the registrar in charge of civil appeals will submit the relevant court file to the clerk of the Judge who delivered the judgment. The aforesaid registrar shall indicate the parties' failure to comply with the foregoing and request a date for the hearing of the application for leave to appeal. The clerk of the Judge will endorse the date and time on which the application is to be heard. The Judge's clerk will return the court file to the aforesaid registrar. Thereafter the practice set out in paragraph 7 shall be followed.
10. The convenience of counsel is not conclusive in the determination of a date for the hearing of an application for leave to appeal.
11. An application for leave to appeal against the judgment of an Acting Judge who is no longer acting as such, is to be heard by the Judge who delivered the judgment for as long as such Judge is available. The date for hearing of the application must be arranged with the Acting Judge, through the Leave to Appeal Office, Chambers 901, Tel: (011) 335 0378. The Acting Judge shall determine and advise the parties through the Leave to Appeals Office of the hearing date without undue delay and the parties shall adhere to the date so determined.<sup>43</sup>

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<sup>43</sup> As per Practice Directive 2 of 2010 (as amended), see Additional Directives.

## CHAPTER 12 UNOPPOSED DIVORCE ACTION

1. Prior to the closure of the roll, the legal representative who enrolled the matter must determine that the court file contains all the relevant pleadings, notices and returns of service. The legal representative must further ensure that the court file is properly paginated, indexed and bound. Documents will only be accepted from the bar in exceptional circumstances which must be established on affidavit.
2. The pleadings, notices and returns of service referred to in the previous paragraph must all be originals. If any is not an original, an affidavit must be included in the documents explaining why the original is not in the court file and proving that the copy is a true copy of the original. Where the summons is not the original summons, the affidavit must additionally prove that the original summons was properly signed and stamped when issued. In such a case the presiding Judge will determine if the matter can proceed in the absence of the original pleadings, notices and returns of service.
3. If a copy of a marriage certificate is utilised to prove the marriage, the copy must have been certified as a true copy of the original.
4. Where the party proving the marriage requires return of the original or certified marriage certificate, a copy thereof must be available to be placed in the court file at the hearing.
5. In the event that the parties have concluded an agreement of settlement, the original agreement of settlement must not be placed in the court file. The original agreement must be handed up through the witness proving its conclusion.
6. A divorce roll consists of no more than 50 matters. If a matter is not on the printed roll it will not be enrolled save in exceptional circumstances which must be made out on affidavit.
7. In order to enrol the matter, the form known as the J 118 must be properly completed. The following must appear on a document attached to the J 118:
  - 7.1 The date of service of the summons;
  - 7.2 The *dies induciae* allowed in the summons;
  - 7.3 The date when the *dies induciae* lapsed;
  - 7.4 A statement that no intention to defend was given; and
  - 7.5 Alternatively to 7.1 TO 7.4, the date when the opposing parties claim or plea and if applicable counterclaim was withdrawn.
8. A matter may not be enrolled prior to the expiry of the *dies induciae* even if the *dies induciae* will have expired by the time the matter is heard.

9. Any amendment to the pleadings must be sought in writing. If the amendment is granted the Judge's clerk must note the order on the court file. The notation of the order will, in so far as the amendment may relate to the parties' names and the spelling thereof, draw the attention of the registrar's office thereto and ensure that any court order will correctly reflect the parties' names.
10. Subject to the discretion of the presiding Judge the evidence necessary for the grant of a decree of divorce may be presented on affidavit provided that:
  - 10.1 the affidavit proves that no child was born to or adopted by the parties to the marriage, or, if there was that such child is over the age of 18 years;
  - 10.2 all financial matters between the spouses have been settled in a signed written agreement which is identified in and attached to the affidavit, or if the only order to be sought in regard to financial matters is division of the joint estate or forfeiture of the benefits of the marriage in community of property;
  - 10.3 all the necessary evidence is set out in the affidavit. (In this regard it is emphasised that primary facts and not conclusion of fact are required); and
  - 10.4 the affidavit is attached to the notice of enrolment.

## **CHAPTER 13      JUDGE IN CHAMBERS**

1. Counsel who wishes to see a Judge in chambers should approach the relevant Judge's clerk. If the relevant Judge's clerk is not available, another Judge's clerk may be approached. If no Judge's clerk is available the court usher may be approached.
2. The Judge's clerk or usher will advise counsel if and when the meeting with the Judge will take place.
3. Where counsel seek to see a Judge in chambers, all counsel in the matter must be present. In view hereof it is not advisable for counsel to see a Judge in chambers where one or more of the parties are not represented by counsel.
4. It is not necessary for counsel who appear in a trial allocated to a particular Judge, to see that Judge in chambers prior to the commencement of the trial, other than for the purpose of introducing themselves to the Judge, if they have not already done so.

## CHAPTER 14 JUDGES' CLERKS

1. The duties of Judges' clerks are set out in a manual which is made available to each Judge's clerk on his or her appointment.
2. The Judges' clerks must familiarise themselves with their functions as set out in the practice manual.
3. Court orders must be carefully and correctly noted by the Judges' clerks on the court file. If a draft order is made an order of court, Judges' clerks must staple the draft order onto the inside of the front cover of the court file. If the draft order provides for the postponement of the matter or for the extension of a rule nisi, the date to which the matter is postponed or the extended return date must be noted on the court file.
4. If a Judge has marked a judgment as reportable the Judge's clerk must hand a printed copy and an electronic copy of the judgment to the head librarian. The head librarian will arrange for the reporting of the judgment. The indication on the judgment that it is reportable must be signed in original on the copy of the judgment handed to the head librarian.
5. If a Judge has marked a judgment as being of interest to other Judges, a printed copy thereof bearing such indication signed by the Judge in original must be handed by the Judge's secretary to the head librarian. The head librarian will arrange for the distribution of the judgment to the Judges of the division.
6. The Judges' clerk must hand a copy of every printed and signed judgment of his/her Judge to the head librarian who shall compile and retain an electronic collection of all judgments delivered in the South Gauteng High Court (Johannesburg), once such judgments have been printed and signed by the Judges.
7. When a Judge is sitting in the trial court and a matter has been allocated to the Judge, the relevant Judge's clerk must notify the clerk of the Deputy Judge President by e-mail:
  - 7.1 immediately after the hearing of the matter has been concluded;
  - 7.2 whilst the matter continues, on adjournment each afternoon, that the matter will continue the next morning; and
  - 7.3 the estimated further duration of the matter.

The e-mail must also contain the name of the Judge hearing the matter, the parties' names and the case number.

## **CHAPTER 15            OPENING OF COURT FILES**

1. Papers which commence a proceeding (including an appeal and a rule 43 application) must be accompanied by an 'opening sheet' which will facilitate the registration of the proceedings by the registrar of the court. The 'opening sheet' must follow the format of annexure "15.1 " hereto and must contain the information required thereto.
2. If the parties or any one of them in the proceedings is a natural person, the parties' surnames must precede the parties' given names in the opening sheet and in all subsequent pleadings, affidavits and documents relating to the proceedings.
3. Each proceeding is allocated a distinctive case number by the registrar in all proceedings. Except for appeals, the distinctive number follows the reference to the year in which the proceeding was registered (e.g. 2008/7235). In appeals the procedure is reversed and the distinctive number precedes the reference to the year in which the proceeding was registered (e.g. 2008/7235).
4. An application for leave to appeal retains the case number of the matter in which leave to appeal is sought.

## ANNEXURE 15.1 OPENING SHEET



**THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Registrar's Office - Private Bag X7 – Johannesburg, 2000 – C/O Pritchard and Von Brandis Streets,  
Johannesburg – Tel: 011 335 0000

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### OPENING/SCANNER SHEET

#### APPLICATION FOR A CASE NUMBER IN A MOTION APPLICATION/CIVIL TRIAL ACTION

Type of matter: Motion: ☒  
Trial: ☐

Case number: \_\_\_\_\_

In the matter between:

\_\_\_\_\_ **Plaintiff/Applicant**  
and

\_\_\_\_\_ **Defendant/Respondent**

#### Details of- or on behalf of Plaintiff/Applicant:

Name & Surname: \_\_\_\_\_

Firm (if applicable): \_\_\_\_\_

Physical

Address: \_\_\_\_\_

Postal

Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

Email address: \_\_\_\_\_

Reference: \_\_\_\_\_



## CHAPTER 16      STANDARD ORDER

ALL DRAFT ORDERS MUST CONTAIN THE NAME OF COUNSEL/ATTORNEY WHO MOVES THE APPLICATION

1. To facilitate the printing of the court orders certain standard orders have been devised. Where practical practitioners should seek relief in terms of the standard orders.
2. Any deviation from the standard order must be motivated either in the court papers or by counsel at the hearing of the matter.
3. The standard orders that are annexed hereto are:

- |       |   |
|-------|---|
| 16.1  | Default judgment granted by registrar                 |
| 16.2  | Summary judgment                                      |
| 16.3  | Provisional sentence                                  |
| 16.4  | Default judgment by court                             |
| 16.5  | Absolution from the instance                          |
| 16.6  | Edictal citation                                      |
| 16.7  | Substituted sentence                                  |
| 16.8  | Rule 43   |
| 16.9  | Divorce with settlement agreement                     |
| 16.10 | Divorce without settlement agreement                  |
| 16.11 | Post nuptial registration of a contract               |
| 16.12 | General order for discovery                           |
| 16.13 | Agreement of settlement                               |
| 16.14 | Rule nisi   |
| 16.15 | Restrictive conditions on land                        |
| 16.16 | Unallocated order                                     |
| 16.17 | Provisional sequestration                             |
| 16.18 | Final sequestration                                   |
| 16.19 | Rehabilitation  |
| 16.20 | Surrender   |
| 16.21 | Provisional liquidation                               |
| 16.22 | Final liquidation                                     |
| 16.23 | Discharge of provisional sequestration or liquidation |
| 16.24 | Leave to appeal                                       |
| 16.25 | Order on appeal                                       |

- 16.26 Order in terms of Rule 39(22)
- 16.27 Admission of translator
- 16.28 Curator ad litem
- 16.29 Anton Piller orders
- 16.30 Order for cancellation of sale in execution 46(11)
- 16.31 Postponement of foreclosure where arrears are low/present
- 16.32 Foreclosure in respect of a primary residence
- 16.33 Application in terms of Section 155(7) of the Companies Act no. 71 of 2008

## 16.1 DEFAULT JUDGMENT GRANTED BY THE REGISTRAR

IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG

F

CASE NO:

PH NO:

In the matter between:-

**PLAINTIFF**

and

**DEFENDANT**

HAVING read the documents filed of record and having considered the matter:-

**DEFAULT JUDGMENT** is granted against the \_\_\_\_\_ for:

1. Payment of the sum of .....
2. Interest
- 3.
4. The following property is declared executable:

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## 16.2 SUMMARY JUDGMENT

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**PLAINTIFF**

**and**

**DEFENDANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**SUMMARY JUDGMENT** is granted against the \_\_\_\_\_ for:

1. Payment of the sum of .....
2. Interest on the sum of.....at the rate of.....per annum from.....to date of payment
3. Costs of suit

## BY THE COURT

## REGISTRAR

### 16.3 PROVISIONAL SENTENCE

IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**PLAINTIFF**

and

**DEFENDANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**PROVISIONAL SENTENCE** is granted against the Defendant for:

1. Payment of the sum of .....
2. Interest on the sum of ..... at the rate of ..... per annum from ..... to date of payment
3. Costs of suit
4. The following property is declared executable:

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## 16.4 DEFAULT JUDGMENT BY COURT

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**PLAINTIFF**

**and**

**DEFENDANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**DEFAULT JUDGMENT** is granted against the Defendant for:

1. Payment of the sum of .....
2. Interest on the sum of ..... at the rate of ..... per annum from ..... to date of payment
3. Costs of suit

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## **16.5 ABSOLUTION FROM THE INSTANCE**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**PLAINTIFF**

**and**

**DEFENDANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

### **THE COURT ORDERS THAT:**

1. Absolution from the instance be granted to the Defendant
2. The Plaintiff is ordered to pay the costs of the action

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## 16.6 EDICTAL CITATION

### IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

and

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

#### THE COURT ORDERS THAT:

1. Leave is granted to the applicant to sue the abovementioned respondent by way of edictal citation for the following relief:-
2. The citation must be served on the respondent .....
3. The respondent is to be afforded ..... (days) within which to enter appearance to defend
4. The costs of this application are to be costs in the cause.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**



## 16.7 SUBSTITUTED SERVICE

### IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

and

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

#### THE COURT ORDERS THAT:

1. Leave is granted to the applicant to serve the summons in which the applicant claims:
  - 1.1
  - 1.2by way of substituted service
2. Service of the summons must be effected by .....
3. The respondent is to be afforded .....(days) within which to enter appearance to defend
4. The costs of this application are to be costs in the cause.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

**16.8 RULE 43**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

and

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**THE COURT ORDERS THAT:**

1. .... is ordered to pay maintenance to ..... in the amount of R..... per month.

2. (a) ..... is awarded care and primary residence of the minor children born out of the marriage.

(b) ..... shall be entitled to reasonable contact to the said minor children, which access shall include:-

(i) .....

(ii) .....

(c) ..... is ordered to pay maintenance to ..... in respect of the aforesaid minor children in the amount of R..... per month per child.

3. .... is ordered to make a provisional contribution to ..... legal costs pendent elite in monthly instalments in the amount of R.....
4. The payments referred to above will commence on or before the ..... day of .....200.... and shall thereafter be made on or before the ..... day of each succeeding month.
5. The costs of this application are to be costs in the cause.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## **16.9 DIVORCE WITH SETTLEMENT AGREEMENT**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**PLAINTIFF**

**and**

**DEFENDANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED THAT:-**

1. The marriage between the Plaintiff and Defendant is dissolved.
2. The Deed of Settlement (marked “”) is hereby made an order of Court.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## 16.10 DIVORCE WITHOUT SETTLEMENT AGREEMENT

### IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

**PLAINTIFF**

**DEFENDANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

#### IT IS ORDERED THAT:-

1. The marriage between the Plaintiff and Defendant is dissolved.
2. .... is awarded care and primary residence of the minor children.....
3. The other parent shall be entitled to reasonable contact to the said children which contact shall include:
4. .... is ordered to pay maintenance to ..... in the amount of ..... per month.
5. .... is ordered to pay maintenance in respect of the minor children at the rate of .....
6. The Defendant is ordered to pay the costs of the action.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## **16.11 POST NUPTIAL REGISTRATION OF A CONTRACT**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**FIRST APPLICANT**

and

**SECOND APPLICANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED THAT:-**

1. The applicants are given leave to effect the execution and registration of a notarial contract, a draft whereof is annexed to the application, which contract will after registration thereof regulate their matrimonial property system;
2. The Registrar of Deeds is authorised to register the said notarial contract;
3. This order-
  - 3.1 will lapse if the notarial contract is not registered by the Registrar of Deeds within two months of the date of the granting of this order;
  - 3.2 will not prejudice the rights of any creditor of the applicants as at date of registration of the contract.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

**16.12 GENERAL ORDER FOR DISCOVERY**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. .... shall make discovery of the following documents on affidavit within ..... days from the date of the service of this order;
2. The costs of this application are to be paid by .....

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

### **16.13 AGREEMENT OF SETTLEMENT**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED:-**

1. THAT the Agreement of Settlement marked "X" is made an order of court.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**



## **16.14 RULE NISI**

### **IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

#### **IT IS ORDERED THAT:-**

1. A rule nisi is issued calling upon the respondent to show cause on Tuesday ..... day of (month and year) 10:00 or so soon thereafter as the matter may be heard why an order should not be made in the following terms:-
  - 1.1
  - 1.2
  - 1.3
2. Pending the return day the respondent is interdicted from:
  - 2.1
  - 2.2

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## 16.15 RESTRICTIVE CONDITIONS ON LAND

### IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

and

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

#### IT IS ORDERED THAT:-

1. A rule nisi is issued calling on any interested persons who may choose to do so, to object either by letter received by the Registrar before....., or by personally or through counsel appearing in court on ..... at 10:00 against the granting of the following order:-
  - 1.1
  - 1.2
  - 1.3
2. Any person who has a right which may be affected is entitled to object to the granting of such an order, and may do so without incurring liability for costs. If he opposes by writing a letter to the Registrar, the objector must state the objector's full names, identity number and address and describe the property or right which will be affected by the grant of the order.
3. The order sought will be the following effect:

The papers in this matter are open for inspection without charge at the office of the Registrar, High Court, Von Brandis Square, Prichard Street, Johannesburg, and at the offices of applicant's attorney:-

Messrs.

of

5. Service is to be effected:-

5.1 by personal service on the following persons at the address set out alongside their names-

Mr/s X at .....address;

Ms Y at .....address;

5.2 by the despatch of a copy of the order by prepaid post before ..... to the following persons at the addresses set out alongside their names -

Mr/s A at .....address;

Ms B at.....address

5.3 by service on the following authorities and associations at the addresses set out alongside their names -

The Registrar of Deeds at .....address

The .....Township Board at .....address

The .....Municipality at .....address

6. A copy of the order, in two official languages, is to be exhibited on a prominent part of the public notice board at the office of the ..... for a period of four weeks from .....

7. Copies of the order in two official languages are to be exhibited at conspicuous places at.....

**BY THE COURT**

---

**REGISTRAR**

**16.16 UNALLOCATED ORDER**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED THAT:-**

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## 16.17 PROVISIONAL SEQUESTRATION

### IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

and

**RESPONDENT**

HAVING READ the documents filed of record, heard counsel and having considered the matter:-

#### IT IS ORDERED THAT:-

1. The estate of the respondent is placed under provisional sequestration.
2. The respondent and any other party who wishes to avoid such an order being made final, are called upon to advance the reasons, if any, why the court should not grant a final order of sequestration of the said estate on the ..... day of ..... at 10:00 or as soon thereafter as the matter may be heard.
3. A copy of this order is must forthwith be served –
  - 3.1 on the respondent personally, if any;
  - 3.2 on the employees of the respondent, if any;
  - 3.3 on all trade unions of which the employees of the respondent are members, if any;
  - 3.4 on the Master; and

3.5 on the South African Revenue Service.

4 The costs of this application are costs in the sequestration of the respondent's estate.

**BY THE COURT**

---

**REGISTRAR**

**16.18 FINAL SEQUESTRATION**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED THAT:-**

1. The estate of the respondent is placed under final sequestration.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## **16.19 REHABILITATION**

### **IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the application of:-

**APPLICANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED THAT:-**

The abovementioned applicant be and is hereby rehabilitated.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**



## **16.20 SURRENDER**

### **IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the application of:-

**APPLICANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

#### **IT IS ORDERED THAT:-**

The surrender of the estate of the Applicant is accepted as insolvent and the estate is placed under sequestration in the hands of the Master of the High Court.

**BY THE COURT**

---

**REGISTRAR**

## 16.21 PROVISIONAL LIQUIDATION

### IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

#### **IT IS ORDERED THAT -**

1. the above mentioned respondent is hereby placed under provisional winding up;
2. all persons who have a legitimate interest are called upon to put forward their reasons why this court should not order the final winding up of the respondent on ..... at 10:00 am or so soon thereafter as the matter may be heard;
3. a copy of this order be served on the respondent at its registered office, unless he application was made by it;
4. A copy of the order be published forthwith once in the Government Gazette;
3. A copy of this order be forthwith forwarded to each known creditor by prepaid registered post or by electronically receipted telefax transmission;
4. A copy of the provisional winding-up order must be served on –
  - (a) every trade union referred to in subsection (2);
  - (b) the employees of the respondent by affixing a copy of the application to any notice board to which the employees have access inside the respondent's premises, or if there is no access to

the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the debtor conducted any business at the time of the presentation of the application;

- (c) the South African Revenue Service; and
- (d) the respondent, unless the application was made by it.

**BY THE COURT**

---

**REGISTRAR**

**16.22 FINAL LIQUIDATION**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED THAT:-**

1. That the above mentioned respondent is hereby placed under final winding up.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

**16.23 DISCHARGE OF PROVISIONAL SEQUESTRATION OR LIQUIDATION**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED THAT:-**

1. The order of provisional ..... is set aside.
2. The rule nisi is discharged.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## **16.24 LEAVE TO APPEAL**

### **IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**APPLICANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

#### **IT IS ORDERED THAT:-**

1. Leave to appeal is granted.
2. Leave is granted to appeal to the Supreme Court of Appeal/the Full Court of this division.
3. The costs of this application are costs in the appeal.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## **16.25 ORDER ON APPEAL**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

**CASE NO.:**

**PH NO.:**

**BEFORE THE HONOURABLE JUDGE**

**In the matter between:**

**APPELLANT**

**and**

**RESPONDENT**

HAVING read the documents filed of record, heard counsel and having considered the matter.

IT IS ORDERED THAT

1. The appeal is upheld / dismissed
2. The order of the court a quo is set aside and substituted with the following order:

(Set out order if the appeal is upheld)

3. The respondent / appellant is ordered to pay the costs of the appeal.

BY THE COURT

\_\_\_\_\_  
**REGISTRAR**

**16.26 ORDER IN TERMS OF RULE 39(22)**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

**PLAINTIFF**

**and**

**DEFENDANT**

HAVING read the documents filed of record, heard counsel and having considered the matter:-

**IT IS ORDERED THAT:-**

1. The matter is transferred to the magistrate court for the area in terms of Rule 39 (22).
2. The costs incurred to date are costs in the cause.

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**



**16.27 ADMISSION OF TRANSLATOR**

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

CASE NO:

PH NO:

BEFORE THE HONOURABLE JUDGE

In the ex parte application of:-

**APPLICANT**

HAVING read the documents filed of record, heard counsel and having heard the application:-

**IT IS ORDERED THAT:-**

1. The proper officer places the name of the applicant on the roll of translators for translations from ..... to ..... and from ..... to .....

**BY THE COURT**

\_\_\_\_\_  
**REGISTRAR**

## **16.28 APPOINTMENT OF CURATOR AD LITEM**

### **IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA, JOHANNESBURG**

**CASE NO:**

**PH NO:**

**BEFORE THE HONOURABLE JUDGE**

**In the ex parte application of:-**

**APPLICANT**

**HAVING read the documents filed of record, heard counsel and having heard the application:-**

[1] Adv/Ms/Mr ..... is hereby appointed as curator ad litem to the patient, ....., with the powers as set out below, together with such incidental powers as are necessary properly to perform the said powers.

[2] The curator ad litem is authorised and directed to:

[2.1] attend on and interview the patient, as well as all professionals that have provided reports supporting the application for the appointment of the curator ad litem, all family members and friends of the patient that may be able to provide information relative to the report to be provided by the curator ad litem to the court as set out below, and the proposed curator bonis;

[2.2] prepare and submit to the Master and to this court within three months of this appointment of the curator ad litem, a report of what the curator ad litem has done, in accordance with the requirements of this order.

[3] The report of the curator ad litem must deal fully and appropriately with the following aspects:

[3.1] the age and general health of the patient, including the patient's ability to appreciate financial aspects generally and specifically to make decisions involving the plaintiff's own money, resources and investments;

[3.2] the assets and liabilities of the patient, including the short-, medium -, and long term financial needs of the patient, and the ability of the patient's current and fixed assets to provide in those needs;

[3.3] the current home and care provision that has been made for the short-, medium-, and long term personal needs of the patient;

[3.4] the identity and general disposition of the patient's immediate family and friends and their interaction with the patient;

[3.5] the curator ad litem's opinion as to whether the patient is of unsound mind and should be declared of unsound mind and as such incapable of managing his/her own affairs and, in particular, whether a curator for the person and/or the property of the patient should be appointed, with specific reference to the question whether the assets of the patient would be sufficient to afford such appointment, and whether the appointment should be in respect of all the patient's affairs or only some of them, and if so, which of them;

[3.6] whether or not any curator appointed for the patient should be required to furnish security to the Master for the performance of his/her duties;

[3.7] a proposed order to be issued by the court, including provision for appropriate powers to be conferred upon any curator so appointed, and provision for the payment of the fees and costs of the curator ad litem from the resources of the patient;

[3.8] any other matter which in the opinion of the curator ad litem should be brought to the attention of the court.

[4] The costs of this application are costs in the cause.

## 16.29 ANTON PILLER ORDER

### ANNEXURE A

1. The order being served on you requires you to allow the persons named therein to enter the premises described in this order and to search for, examine and remove or copy the articles specified in this order. You are also required to point out and hand over any such item to the sheriff. Particulars are stated in the order.
2. When this notice is handed to you, you are entitled, if you are an employee of the respondent or in charge of the premises, to contact the respondents or a more senior officer of the respondents. You are entitled to the attendance and advice of such senior person, the respondents or an attorney provided such person arrives without delay and not later than one hour after the handing over of this notice.
3. Until the attorney, the respondents or such other officer arrives or until the time has passed for him or her to arrive, you need not comply with any part of this order, except that you must allow the independent supervising attorney, the sheriff and the other persons named in the order to enter the premises and to take such steps as, in the opinion of that attorney, are reasonably necessary to prevent prejudice to the further execution of the order.
4. You are further entitled to have the sheriff and the independent supervising attorney explain to you what this notice and the court order mean.
5. You may be punished for contempt of court if you, inter alia,
  - 5.1 obstruct the sheriff unlawfully in the execution of this order; or
  - 5.2 wilfully disobey this order; or
  - 5.3 remove or intentionally cause harm to any item about to be attached or removed in terms of this order, until the attachment is set aside by the Court or is lifted on instruction from the applicants.

## ANNEXURE B

### IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO:

In the urgent ex parte in camera application of:

xxxx

First Applicant

xxxx

Second Applicant

in re

xxxx

First Applicant

xxxx

Second Applicant

and

xxxx

First Respondent

xxxx

Second Respondent

#### DRAFT ORDER

On the xxxx

Before: \_\_\_\_\_

Having heard counsel for the applicants and having read the papers filed of record and having been given the following undertakings by the applicants:

#### URGENCY AND SECRECY

1. This application is -
  - 1.1 heard as one of urgency in terms of Rule 6(12), the requirements of the Rules of Court in respect of notice and service being dispensed with and the applicants' departure therefrom are condoned;
  - 1.2 heard in camera;
  - 1.3 not be enrolled on the motion court roll;
  - 1.4 not be made public until the service and execution of the order set out below.

#### UNDERTAKINGS

2. This order will not be executed outside the hours between 08h00 and 18h00 on a weekday.
3. The applicants will prevent the disclosure of any information gained during the execution of this order to any party except in the course of obtaining legal advice or pursuing litigation against the respondents.
4. The applicants will compensate the respondents for any damage caused to the respondents by any person exceeding the terms of this order.
5. The applicants will compensate the respondents for any damage caused to the respondents by reason of the execution of this order should this order subsequently be set aside.

IT IS ORDERED THAT:

1. The first and/or second respondent (referred to jointly as "the respondents") and/or any other adult person in charge or control of the respondents' premises located at xxxxx ("the premises") shall grant to the following persons access to the premises and to such motor vehicle(s), if any, in the respondents' possession or under their control, situated at the premises:

- 1.1 the sheriff or deputy sheriff of this Court for the district of xx ("the sheriff");
- 1.2 attorney xxxxxxx ("the independent supervising attorney"); and
- 1.3 xxxxx, identity number xxxx, and/or xxxx, identity number xxxx of xxxxxx ("the forensic expert(s)");
- 1.4 A representative of the applicant and/or the applicant's attorney, who shall not take part in the search referred to below, but may be called upon by those mentioned in 1.1 to 1.3 above to identify documents falling within the Evidence referred to in 2.1 below.

2. The first and/or second respondent and/or any other adult person in charge or control of the premises must grant access to the premises and to the respondents' vehicle(s) on the premises, if any ("the vehicle(s)"), to the forensic expert(s), and the sheriff, as the case may be (collectively, "the search persons"), solely for the purposes of:

2.1 searching the premises and the vehicles in order to enable any of the search persons to identify and point out to the sheriffs "the Evidence", being:

- 2.1.1 originals or copies of xxxxxx;
- 2.1.2 xxxxxx

2.2 searching the premises and vehicles for purposes of finding and thereafter searching and examining any networks, desktop computers, laptop computers, tablet computers, portable information storage devices, external data storage devices, including external hard drives, flash drives, iPods, shufflers, compact discs (CDs), digital versatile discs (DVDs), stiffy discs, floppy disks, jazz drives, zip drives, data cartridges, memory sticks, mobile phones, SIM cards and electronic devices or media with the capability of storing information and/or data digitally, as well as any data, data storage location or network component (including but not limited to Cloud Hosting, Dropbox, virtual servers or other data hosted locally or internationally) to which the respondent/defendant has access or control over or ownership of by directly, indirectly or remotely connecting thereto (collectively described as "digital devices or media") on the premises or in the vehicle(s), by connecting each of the digital devices or media to forensic computers, for the purpose of identifying it and determining whether it contains the Evidence;

2.3 permitting and allowing the forensic experts to make two disc copies and/or compact disc copies and/or to capture forensic images and/or to make two complete mirror images and/or digital images (for identification purposes) of the hard drives of any digital devices or media located on the premises or in the vehicle(s), or to download or create a data dump of online or hosted data, once it is determined that such digital devices or media contain the Evidence or part thereof;

2.4 permitting and allowing the forensic experts to make print-outs of any of the Evidence located on any such digital devices or media, if copies of the hard drives cannot be made.

3. The first and/or second respondent and/or any other adult person in control of any digital devices or media on the premises or in the vehicle(s), must forthwith disclose to the search persons any passwords

and/or procedures required for effective access to such digital devices or media for the purposes of paragraph 2 hereof.

4. In the event that the first and/or second respondent and/or any other adult person in charge or control of the premises refuses to grant access to the premises and to the respondents' vehicle(s) on the premises, a member of the South African Police Service, assisted, if necessary by a locksmith, may obtain access to the premises and/or vehicle(s) as necessary.

5. Subject to paragraph 13 hereof, the sheriff is authorised to attach any items pointed out by any of the aforesaid persons and any digital devices or media, and any forensic copies of hard drives of any digital devices or media, or print-outs of any such items (collectively, "the identified items").

6. The sheriff shall keep the identified items in his or her custody until the applicants authorise their release to the respondents or this Court directs otherwise.

7. In the event that the forensic experts are unable, for any unforeseen reason, to fulfil their functions in terms of this order, they are authorised to conduct such forensic investigations as contemplated in this order, in the presence of the independent supervising attorney and the sheriff, no later than one day after the identified items have been taken into custody by the sheriff.

8. Until completion of the search authorised in the preceding paragraphs hereof, the respondents may not access any digital devices or media or any area where documents or items of the class mentioned in paragraphs 2.1 hereof may be present, except with the leave of the independent supervising attorney, or to make telephone calls or send any electronic message to obtain the attendance and advice mentioned in the notice which is handed over immediately prior to execution of this order.

9. The sheriff shall, before this application is served or this order is executed -

9.1 hand to the first and/or second respondent, or any other person found in charge or control of the premises, a copy of the notice which is annexed hereto as Annexure A; and

9.2 explain to first respondent, the second respondent or such person paragraphs 2, 3 and 4 thereof; and

9.3 inform the first respondent, the second respondent or such person of the following:

9.3.1 that any interested party may apply to this Court on not less than twenty four (24) hours' notice to the offices of the applicants' attorney for a variation or setting aside of this order, the Court's practices and rules applying unless the Court directs otherwise;

9.3.2 that the respondents or their representative are/is entitled to inspect the items in the sheriff's custody for the purpose of satisfying themselves that the inventory is correct.

10. The first and/or second respondent and/or any other adult person(s) in charge or control of the premises, must disclose to the sheriff the whereabouts of any item falling within the categories of items referred to in paragraphs 2.1 hereof, whether at the premises or elsewhere, to the extent that such whereabouts are known to the respondents or either of them or such person(s).

11. In the event that any item is disclosed to be situated at any other place than the premises or the vehicle(s), the applicants may approach this Court ex parte for leave to permit execution of this order at such other place.

12. The sheriff shall make a detailed inventory of the identified items immediately after taking custody thereof, and shall provide a clear copy of such inventory to the Registrar of this Court, the applicants' attorney, the independent supervising attorney and the respondents.

13. In the event of the respondents raising any contention in law why any of the identified items should not be inspected and/or copied, the respondents shall, within a period of three (3) court days after the identified items have been taken into the custody of the sheriff as provided above, identify on oath the item in respect of which objection is taken to such inspection and/or copying and state on oath the reasons for the objection and serve such affidavit on applicants' attorneys.

14. After the inspection described in the preceding paragraphs hereof, the sheriff shall retain the identified items pending the outcome of this application.

15. The sheriff shall inform the respondents that the execution of this order does not dispose of all the relief sought by the applicants and shall simultaneously serve the notice of motion and explain the nature and exigency thereof.

16. The independent supervising attorney shall monitor and oversee all aspects of the execution of this order and, together with the sheriffs, shall make a list of all items removed by the sheriff in terms of this order, one copy of such list to be handed to the respondents, if present, or to the person(s) upon whom service is effected as referred to above, and one copy of the such list to be retained by the sheriff.

17. The independent supervising attorney accompanying the sheriff, within ten (10) days of the execution of this order, shall cause to be filed an affidavit or affidavits -

17.1 setting out fully the manner in which the order was executed and stating whether, in the independent supervising attorney's opinion, there occurred any abuse or breach of any provisions of this order; and

17.2 attaching the inventory compiled in terms of this order.

18. This order, including paragraph 19.3 shall, upon proper service on the respondents, operate as an interim order with immediate effect.

#### RULE NISI

19. The respondents are called upon to show cause before this Court, on \_\_\_\_\_ at 10h00 or so soon thereafter as the matter may be heard, why an order in the following terms shall not be made final-



19.1 that the identified items in the custody of the sheriff shall be retained by the sheriff pending the further direction of this Court;

19.2 that the applicants are permitted to:

19.2.1 make copies of the identified items in the custody of the sheriff; and

19.2.2 take possession of the two forensic copies of hard drives of any digital devices or media in the custody of the sheriff,

for the purposes of instituting the further proceedings against the respondents foreshadowed in this application;

19.3 that the respondents are interdicted and restrained whether jointly or individually, from xxxxxx.

20. Should the respondents wish to oppose the relief set forth, they shall deliver their answering affidavits, if any, or a notice envisaged in terms of Uniform Rule 6(5)(d)(iii) on or before

\_\_\_\_\_.

#### COSTS

21. The costs of this application are reserved for determination in the further proceedings to be instituted by the applicants, foreshadowed in this application, save that -

21.1 if no such proceedings are instituted within thirty (30) days of the execution of this order, either party may, on no less than 96 hours' notice to the other, apply to this Court for an order determining liability for such costs and determining what must be done about the identified items and any copies thereof;

21.2 any other person affected by the grant or execution of this order may, on no less than 96 hours' notice to the parties hereto, apply to this Court for an order determining liability for the costs of such person and determining what must be done about any of the identified items pertaining to such person or any copy thereof.

BY ORDER OF THE COURT

\_\_\_\_\_

THE REGISTRAR

**16.30 CANCELLATION OF SALE IN EXECUTION (RULE 46(11))**

REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2015/11438

In the matter between:

THE SHERIFF OF JOHANNESBURG EAST

Applicant

and

xxxxxx

Respondent

In re:

ABSA BANK LIMITED

Plaintiff/ Judgment Creditor

and

xxxxxxx

Defendant/ Judgment Debtor

---

ORDER

....., J:

Having read the documents filed of record the following order is made:

1. The sale in execution held on .(DATE), in respect of the property referred to in paragraph 2 below is set aside.
2. The applicant is authorized to again sell in execution the immovable property, known as .....  
“the property”.
3. The deposit paid shall be retained by the applicant, in trust, pending the quantification of loss sustained and the granting of judgment in relation thereto in terms of rule 46(11) (b), provided that if no claim for loss sustained has been lodged within a period of 120 days from the date of cancellation of the sale, such deposit shall be refunded to the purchaser.

BY ORDER OF THE COURT

---

REGISTRAR

## 16.31 POSTPONEMENT OF FORECLOSURE WHERE ARREARS ARE LOW / RECENT

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2015/xxx

In the matter between:

XXX BANK LTD

Applicant

and

xxxxx

Respondent

ORDER

....., J:

Having read the documents filed of record the following order is made:

- 1 The application is postponed sine die and is not to be set down before the expiry of a period of 6 months.
- 2 The notice of set down is to be served on the Respondent personally
- 3 Prior to the date of set down, an affidavit should be filed, setting out what efforts the Bank has made to effect settlement and/or prevent foreclosure.
- 4 The Respondent is advised that the provisions of section 129(3) and (4) of the National Credit Act 34 of 2004 ("the NCA") apply to the judgment granted in favour of the Applicant. The Respondent may prevent the sale of the property, described as Erf ..... if he pays to the Applicant all of the

arrear amounts owing by the Respondent to the Applicant together with all enforcement costs, default charges, prior to the property being sold in execution.

- 5 The arrear amounts and the enforcement costs referred to in paragraph 4 above may be obtained from the Applicant. The Respondent is advised that the arrear amount is not the full amount of the Judgment debt, but the amount owing by the Respondent to the Applicant, without reference to the accelerated amount.

BY ORDER OF THE COURT

---

REGISTRAR

## 16.32 FORECLOSURE IN RESPECT OF A RESIDENCE (NOT ONLY PRIMARY RESIDENCE)

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2015/xxx

In the matter between:

XXX BANK LTD

Applicant

and

xxxxx

Respondent

ORDER

....., J:

Having read the documents filed of record the following order is made:

- 1 The property described as Erf..... ( the property) is declared specially executable.
- 2 The Registrar of this Court is directed to issue a warrant of execution to enable the sheriff to attach the property , in satisfaction of the judgment debt, interest and costs.
- 3 A copy of this order is to be served on the Respondent personally as soon as is practicable after this order is granted.
- 4 The Respondent is advised that the provisions of section 129(3) and (4) of the National Credit Act 34 of 2004 ("the NCA") apply to the judgment granted in favour of the Applicant. The Respondent may prevent the sale of the property, described as Erf ..... if he pays to the Applicant all of the arrear

amounts owing by the Respondent to the Applicant together with all enforcement costs, default charges, prior to the property being sold in execution.

- 5 The arrear amounts and the enforcement costs referred to in paragraph 4 above may be obtained from the Applicant. The Respondent is advised that the arrear amount is not the full amount of the Judgment debt, but the amount owing by the Respondent to the Applicant, without reference to the accelerated amount.

BY ORDER OF THE COURT

---

REGISTRAR

**16.33 APPLICATION IN TERMS OF SECTION 155(7) OF THE COMPANIES ACT NO 71 OF 2008**

(old s 311 of the Companies Act 61 of 1973)

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No:

In the *ex parte* application of:

XXXXXX

Applicant

For an order sanctioning a proposal for an arrangement or a compromise of the applicant's financial obligations to members of a class of creditors envisaged in terms of Section 155 of the Companies Act 71 of 2008 (as amended)

---

**NOTICE OF MOTION**

---

BE PLEASED TO TAKE NOTICE THAT:

The Applicant will make an application to this Honourable Court on Tuesday, \_\_\_\_ October 2017 at 10H00 or so soon thereafter as counsel may be heard for an order in the following terms:

Ordering that the adoption by the Bondholders (comprising a class of creditors of the Applicant) of an arrangement between the Applicant and the Bondholders, submitted by the applicant, and all of its terms, be and is hereby sanctioned and approved in terms of Section 155(7) of the Companies Act 71 of 2008, as amended;

Granting the Applicant such further or other relief as this Honourable Court may deem fit;

The affidavit of XXXX (with all its annexures), attached hereto, will be used in support of this application.

KINDLY PLACE THIS MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

Signed at Johannesburg on September 2017.



## CHAPTER 17      USHERS

1. The standards that are expected of ushers in the performance of their court duties as described in their job description are set out hereunder.
2. While in attendance in court, ushers should be neatly and appropriately dressed. The appropriate dress code is the following:
  - 2.1 Male ushers should be dressed in shoes, socks, dark long trousers, white shirt with buttoned collar, and a sober tie.
  - 2.2 Female ushers should be dressed in shoes, dark skirt or long trousers, and a white, collared blouse.
  - 2.3 All ushers are required to wear a black gown which must be in a proper state of repair. Gowns are issued by the registrar, and each usher is responsible to ensure that the gown remains in his possession, and is properly cared for. If a gown is lost, the usher concerned will be responsible for the cost of replacement. If a gown becomes unduly worn, it must be returned to the registrar, and will be replaced.
3. Ushers must adhere to the duty roster issued by the registrar unless a departure from the roster has been arranged with the chief registrar. A copy of the roster for the week will be circulated to all Judges at the commencement of the working week.
4. The working hours of ushers are from 07h45 am to 4h15 pm, and they should make their transport arrangements accordingly. Working hours may not be altered without prior arrangement with the chief usher and the Judge concerned.
5. An usher will present himself or herself at the chambers of the Judge to whom he or she has been allocated at 09h30 am each day in order to determine what may be required of him or her in order to ensure that the court commences at 10h00 am. The usher will thereafter attend the court concerned. Once the court is ready to convene he or she will report at the chambers of the Judge concerned in sufficient time to enable the court to convene at 10h00 am. If a court is not ready to convene by 10h00 am the usher will immediately report the fact to the Judge concerned.
6. Ushers will remain in court, and will remain alert, throughout the court session.
7. An usher who has been allocated to perform duties in two courts must inform the clerks of both Judges accordingly. If the usher is performing duties in a trial court and in an appeal court, the usher is required to remain in attendance at the trial court, unless specific arrangements to the contrary have been made by the Judges concerned, and conveyed to the usher.

8. If the court session has not been completed by 15h55 pm, the usher may leave the court at that time in order to complete his or her other duties before the end of the working day.
9. Ushers must at all times conduct themselves in a manner which enhances the dignity of the court which they serve. Ushers are also entitled to be treated with due dignity by clerks and Judges alike. Any complaint that an usher might have in that regard should be reported to the chief usher, who will deal with the matter accordingly.

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## ADDITIONAL DIRECTIVES

### PRACTICE DIRECTIVE 2 OF 2010: APPLICATION FOR LEAVE TO APPEAL



#### OFFICE OF THE DEPUTY JUDGE PRESIDENT HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION

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**Our Ref: 04\_02/2010**

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20 September 2010

1. All Judges – South Gauteng High Court, Johannesburg
2. The Chief Registrar – South Gauteng High Court, Johannesburg
3. The Chairman, Johannesburg Society of Advocates
4. The Chief Executive Officer/Director, Law Society of Northern Province
5. The Chairman, Advocates for Transformation
6. The Chairman, National Forum of Advocates
7. The Chairperson, Black Lawyers Association (Gauteng Branch)
8. The Chairperson, National Association of Democratic Lawyers (Gauteng)
9. The Director, National Prosecuting Authority: South Gauteng High Court
10. The Family Advocate, South Gauteng High Court

**PRACTICE DIRECTIVE 2 OF 2010 (As amended)**

**APPLICATION FOR LEAVE TO APPEAL**

1. This Practice Directive 02 of 2010 seeks to address an enquiry often raised with regard to the arrangement of a hearing date for an application for leave to appeal against the judgment of an Acting Judge who is no longer acting as such.
2. As in the case of permanent Judges such an application is to be heard by the Judge who delivered the judgment sought to be appealed against for as long as such a Judge is available.
3. The date for the hearing of an application for leave to appeal against the judgment of an acting Judge (who is no longer acting as such) must be arranged with the acting Judge through the leave to appeal office, Chambers 901, Tel 011 335 0378.
4. The acting Judge shall determine and advise the parties through the leave to appeal office of the hearing date without undue delay; and the parties shall adhere to the date so determined.

\_\_\_\_\_  
**P. M. MOJAPPELO**  
**DEPUTY JUDGE PRESIDENT**

20 September 2010

## PRACTICE DIRECTIVE 4 OF 2011: ENROLMENT OF MATTERS STRUCK FROM THE ROLL



### OFFICE OF THE DEPUTY JUDGE PRESIDENT HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION

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Our Ref: 05.4\_04/11\_bm

Your Ref:

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16 February 2011

#### **PRACTICE DIRECTIVE 4 OF 2011**

#### **RE: ENROLMENT OF MATTERS STRUCK OFF FROM THE ROLL**

1. In terms of a Practice Directive of this office dated 17 November 2007, a matter that was previously struck off from the civil trial roll may not be re-enrolled without the written authority issued by this office. In order to obtain the authority for re-enrolment of such a matter, practitioners filed affidavits to explain the circumstances around the striking off.
2. It appears from the affidavits filed by attorneys with this office and submissions of counsel in court that most matters are struck off from the roll, not because practitioners are in default, but because the Registrar's office fails to remove matters from the roll after proper notices of removal have been served and filed timeously.
3. It is accordingly hereby directed that where a matter was struck off from the roll after a notice of removal was filed with the Registrar, it will no longer be necessary for the parties or their legal representatives to file affidavits with this office as a prerequisite for re-enrolment. The Registrar may in such a case enroll the matter in accordance with Rule 7 of the Transvaal Rules, upon production to such a Registrar of a notice of removal which was filed with the Registrar at least two (2) court days before the matter was struck off from the roll.
4. Practice Directive referred to in paragraph 1 above, is accordingly amended and varied to the extent set out in this.

Yours Faithfully

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**P. M. MOJAPELO**  
**DEPUTY JUDGE PRESIDENT**

**PRACTICE DIRECTIVE 5 OF 2011: APPLICATION FOR CONFIRMATION OF  
SURROGACY AGREEMENTS IN TERMS OF SECTION 295 CHILDREN'S ACT**



**OFFICE OF THE DEPUTY JUDGE PRESIDENT  
HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION**

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**Our Ref: 05.4\_04/11\_bm**

**Your Ref:**

16 February 2011

To: All Judges – South Gauteng High Court, Johannesburg  
The Chief Registrar – South Gauteng High Court, Johannesburg  
The Chairman, Johannesburg Society of Advocates  
The Chief Executive Officer/Director, Law Society of Northern Province  
The Chairman, Advocates for Transformation  
The Chairman, National Forum of Advocates  
The Chairperson, Black Lawyers Association (Gauteng Branch)  
The Chairperson, National Association of Democratic Lawyers (Gauteng)  
The Director, National Prosecuting Authority: South Gauteng High Court  
The Family Advocate, South Gauteng High Court

**PRACTICE DIRECTIVE 5 OF 2011**

**RE: APPLICATION FOR CONFIRMATION OF AGREEMENTS IN TERMS OF SECTION 295  
CHILDREN'S ACT**

1. Please find attached hereto Practice Directive 5 of 2011 dated 16 February 2011.

Yours Faithfully

**P. M. MOJAPELO**  
**DEPUTY JUDGE PRESIDENT**

## **PRACTICE DIRECTIVE 5 OF 2011**

### **RE: APPLICATION FOR CONFIRMATION OF AGREEMENTS IN TERMS OF SECTION 295 OF THE CHILDREN'S ACT**

#### **INTRODUCTION**

- 11 Section 295 of the Children's Act 38 of 2005 provides for a surrogate motherhood agreement to be approved by a court.
- 12 In terms of Section 295:
  - 12.1 the identity of the parties to court proceedings with regard to a surrogate motherhood agreement may not be published without the written consent of the parties concerned; and
  - 12.2 no person may publish any facts that reveal the identity of a person born as a result of surrogate motherhood agreement.
- 13 In light of these provisions, prospective applicants have from time to time sought directives from this office as to whether such applications are to be placed for hearing on the ordinary roll, or whether they are to be placed for hearing in chambers.

#### **DIRECTIVE**

- 14 A directive is accordingly hereby issued that:
  - 14.1 A party who seeks to bring an application in terms of the section must first have the application issued by the Registrar in the ordinary course;
  - 14.2 The court file with all its contents must, however, be brought to this office, immediately after issue;
  - 14.3 This office will upon receipt of the court file and the application, allocate the matter for hearing to a particular Judge, who shall give further directives as to how the matter is to be heard;
  - 14.4 The applicant's attorneys must specifically refer this office and the court hearing the application to the provisions of section 295 of the Act when the court file is delivered to this office and when the application is heard;
  - 14.5 The parties must comply in all respects with such further directives and requirements as may be stipulated by the Judge to whom the file has been allocated.

Yours Faithfully

**P. M. MOJAPELO**  
**DEPUTY JUDGE PRESIDENT**

## PRACTICE DIRECTIVE 6 OF 2011: RULE 46(11)



### OFFICE OF THE DEPUTY JUDGE PRESIDENT HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION

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Our Ref: 05.4\_06/11\_bm

Your Ref:

---

28 March 2011

### PRACTICE DIRECTIVE 6 OF 2011

#### RE: RULE 46(11)

1. In terms of Rule 46(11): "If a purchaser fails to carry out any of his obligations under the conditions of sale the sale may be cancelled by a Judge summarily on a report by the sheriff after due notice to the purchaser, and the property may again be put up for sale, and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from him under judgment of the Judge pronounced summarily on a written report by the sheriff, after such purchaser shall have received notice in writing that such report will be laid before the Judge for such purpose; and if he is already in possession of the property, the sheriff may, on 10 days' notice apply to a Judge for an order ejecting him or any person claiming to hold under him there from."
2. Reports by sheriffs often do not deal with the fate of the deposits paid pursuant to a sale. In future it will be required that the fate of such deposits be dealt with in the reports submitted by a sheriff.
3. Reports submitted to a Judge requiring cancellation of a sale shall set out the amount of any deposit paid by the purchaser and held by the sheriff and how it is proposed to deal with the deposit after completion of any subsequent sale envisaged in Rule 46(11).

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**P. M. MOJAPELO**  
**DEPUTY JUDGE PRESIDENT**

## **CASE MANAGEMENT DIRECTIVE EFFECTIVE FROM FIRST TERM OF 2015 (AMENDED UP TO AUGUST 2015)**

REVISION: 18 August 2015

**CASE MANAGEMENT DIRECTIVE EFFECTIVE FROM FIRST TERM OF 2015 (AMENDED UP TO AUGUST 2015: effective from enrolments for certification from 7 September: trials set down from 5 October 2015)**

### **GAUTENG LOCAL DIVISION ALLOCATION OF TRIAL DATES, CERTIFICATION OF MATTERS INVOLVING EXPERT EVIDENCE AS TRIAL READY, AND SWIFT REMEDIES FOR DELAYS IN LITIGATION: 2015**

1. Henceforth, only trial matters involving expert evidence shall be subject to judicial case-flow management and require certification before being allowed to proceed to trial on the set down date, in accordance with the procedures set out herein.
2. With effect from 5 January 2015, at the time a summons is issued, the plaintiff's attorney shall declare to the registrar which of two classifications must be recorded; ie:
  - 2.1. 'Trial requiring expert evidence' – in respect of which the registrar shall add an "X" to the case number.
  - 2.2. 'Other matter'
- 2A. Matters *which were initially classified under 2.2, but in which*, after the issuing of summons, it becomes apparent that expert evidence will be involved, must be referred to the registrar *for reclassification from 2.2. to 2.1.*
3. With effect from 17 December 2014, parties may apply for and be allocated trial dates as provided for in Transvaal Rule 7; ie upon close of pleadings.
4. Attorneys and counsel, and all unrepresented litigants are required to expedite pre-trial preparation by making full use of the rules of court. To promote that outcome:
  - 4.1. A motion court (The Trials interlocutory Court) dedicated to interlocutory matters in trial matters will sit every Tuesday, including during recesses, except during the period of dies non between 15 December and 15 January.
  - 4.2. This court will, in particular, deal with all instances of non-compliance, in trial matters, with the rules and the practice manual, and practitioners are encouraged especially to use Rule 30A. Ordinary unopposed interlocutory matters not involving non-compliance must not be enrolled in this court.
  - 4.3. Among the matters which this court will deal with will be the failure to deliver timeously any practice note or heads due in the trial matters, a failure to sign a rule 37 minute promptly, a failure to comply timeously with any undertaking given in a rule 37 conference, or the failure to secure an expert timeously for a meeting of experts. The list is not closed.
  - 4.4. In a proper case, penal costs may be awarded where recalcitrance or obfuscation is apparent and is the cause of inappropriately delaying the progress of any matter.
  - 4.5. Matters shall be set down on notice filed before noon on the Thursday before the Tuesday sitting.

- 4.6. Draft orders in duplicate bearing the name of counsel and attorney shall be presented to the court and the registrar shall prepare orders on the same day as they are granted which shall be available for collection from 9h00 the next day.
5. At the time a trial date is applied for, the plaintiff shall file a practice note that the parties are in agreement that the merits of the claim and the quantum of damages be separated or not be separated, and the registrar shall staple that practice note to the inside left cover of the file. The allocation of a date shall be notified to the attorney by fax.
6. If the parties agree to a separation, the merits leg will not be case managed. If there is no agreement to separate, the Judge convening the certification conference shall deal with the issue as set out in paragraph 11.3
7. The plaintiff shall, at any time that the matter is believed to be trial ready, but not later than the Monday, five weeks before the week in which the trial is set down, file an application in the prescribed format set out in paragraph 8 for a judicial pre-trial conference to certify trial readiness (the certification conference). A copy of the application shall at the same time be furnished to all other parties to the action. If no application is timeously made the trial shall not be allowed to proceed on the set down date.
8. An application for a certification conference shall be made by the plaintiff ( at room 004) in the following prescribed format, indexed and paginated, which will enable the designated Judge to read quickly and digest the subject matter in order to be optimally prepared to engage with the legal representatives. By applying for certification the attorney represents that the matter is indeed ready and the engagement with the presiding Judge is feasible because all the material necessary to be ready is available and all the necessary preparation has been completed, notwithstanding later deadlines provided for in the rules.

The peremptory requirements are as follows and the documents shall be placed in this order, on top of the documents in the file.

8.1. A statement by the plaintiff's attorney containing:

- 8.1.1. Confirmation that discovery is complete for all parties, and if not, why not and when will discovery be complete; if any party is dissatisfied with any aspect of the discovery, that issue must be described and explained.
- 8.1.2. A succinct summary of common cause facts about which no further evidence shall be allowed at the trial.
- 8.1.3. A statement of the questions of law and of fact that the trial court must decide. (The specific issues are to be stated, not vague generalities; eg, not 'negligence' but rather 'which vehicle entered the intersection against the red light; not 'causation' but rather 'is the plaintiff's cognitive disability causally linked to the injury to the cerebellum sustained in the collision' etc.)
- 8.1.4. If the parties have not already agreed to separate merits and quantum, whether they have now agreed to do so, and if not, a motivation why it is appropriate not to do so.
- 8.1.5. A list of witnesses who may be called testify, and broadly what issue each witness will address.

8.2. A legible, indexed and paginated set of pleadings together with a spreadsheet of pleadings in which the admitted and disputed allegations are set out. The spreadsheet must, in tabular



format, replicate the particulars of claim, the pleas thereto, and in a third column, comment on the current status of the averments as admitted or denied. Where later admissions alter initial averments, the latter status must be mentioned. Where an entire issue, eg the merits in re negligence is conceded, a replication thereof is not necessary, and a comment that the issue is settled is sufficient.

8.3. A copy of a recent Rule 37 conference, in compliance with Rule 37(7), paginated, signed on behalf of all parties and registered (at Room 128); the minute shall not be prolix, repeat the pleadings, be obscure, evasive, be replete with vacuous answers to requests, or manifest ritualistic compliance with the rule. Non-compliance may imperil the certification of the matter. Ideally the parties should in the recent rule 37 conference agree on what should be stated in the certification application.

8.4. In regard to expert evidence, copies that are legible, paginated, and bound must be presented; if any reports are not to hand, an explanation must be furnished and a timetable given when they shall be available.

8.5. Furthermore:

8.5.1. Expert reports must be drafted in a format designed for lucidity, brevity, and convenient cross-referencing and, to this end, must be in numbered paragraphs, and when referring to other expert reports refer to the numbered paragraphs therein.

8.5.2. Joint minutes must identify exactly what is agreed and what is not agreed, with reasons stated why disagreement cannot be achieved, especially as to whether the disagreement relates to a fact clinically observed or an interpretation of facts.

8.5.3. The attorney responsible for the procurement of the reports shall be responsible for compliance in this regard; failure to adhere hereto may imperil certification.

9. At the time that the application is made for the certification conference, the registrar shall at once allocate the matter to a designated Judge on a fixed date and time on Wednesday or Thursday or Friday, from 9h30, in the fourth week before the week of the set down date, and the plaintiff shall notify every other party thereof within 1 day of the allocation and file proof of such notification. (A tabular schedule recording the necessary information shall be maintained by the registrar in a prescribed form.)

10. The Judge who presides at the conference shall be furnished by the registrar with the trial files on the Friday before the week in which the certification conferences are to be convened.

11. In the certification conference the Judge shall engage the parties' representatives (who must be briefed on the merits and be in a position to address the issues meaningfully) in a manner foreshadowed by the prescriptions of the application for certification and, without limiting the scope of the engagement:

11.1. shall, initially explore a settlement, and if that is not attainable,

11.2. shall deal with the grant or refusal of any amendments sought, and,

11.3. shall identify the exact issues to go to trial, and order a separation in terms of Rule 33(4) if appropriate, and

- 11.4. shall endeavour to promote agreement on limiting the number of witnesses that are necessary to be called, and, thereafter:
- 11.5. may certify the matter trial ready, or
- 11.6. may, subject to paragraph 11.7, refuse certification, in which event the set down date is forfeited; provided that if the matter becomes settled by the date set down for trial, an order by consent may be sought at the roll call, or
- 11.7. may, in exceptional circumstances, if in certain respects compliance in terms of the Rules is not yet due, eg filing of expert reports, as regulated in Rule 36, and it is for that reason the matter is not fully ready, the Judge shall put the parties on such terms as are appropriate to achieve trial readiness in time for the matter to commence on the set down date, and
- 11.8. may, whenever necessary, direct an issue to be addressed in the Interlocutory Court at its next sitting, or
- 11.9. may make such other order appropriate to expedite the progress of preparation.
12. At the conclusion of a certification conference, the Judge shall summarise the decisions made and the Judge may, if deemed necessary, direct the plaintiff to file a minute within five days, which shall be settled by the Judge, and stapled to the inside left cover of the file.
13. On the Monday, before noon, of the week before the week during which trial is set down the plaintiff shall file with the DJP a practice note stating:
  - 13.1. any information about a settlement or prospective settlement,
  - 13.2. the status quo about the trial's readiness to proceed,
  - 13.3. estimated duration,
  - 13.4. the names and email addresses of all counsel and attorneys involved.
  - 13.5. An updated version of the statement referred to in paragraph 8.3 above.
- 13A. A copy of the document/s referred to in para 12 above shall be attached to the practice note.
14. In appropriate cases, the DJP may allocate a trial Judge before the roll call, in which case attendance at the roll call shall be excused, and all further communication shall be with the designated trial Judge, who may convene a further pre-trial conference, if deemed appropriate.
15. Nothing provided for in this directive shall inhibit litigants from applying in terms of Rule 37(8) for judicial case management at any time after issue of summons, whereupon the DJP shall designate a Judge to conduct such process which Judge shall exercise such powers as provided for herein, mutatis mutandis.
16. Practitioners are expected to comply fully with this directive and any relaxation shall require proper motivation. In such cases where the plaintiff is recalcitrant, the defendant may on its initiative take any step that the plaintiff has failed to take.
17. The DJP shall convene a monitoring committee comprising himself, one advocate and one attorney, whose function will be to receive comments of any kind from the legal professions about the system and, insofar appropriate, to adapt the system to achieve the following objectives:

- 17.1. The avoidance of delays, waste of time and of costs.
- 17.2. The avoidance of postponements of trials,
- 17.3. The promotion of early settlement of trials.
- 17.4. The efficient and competent preparation of trials.
- 17.5. The reduction of the duration of trials.

### **Transitional arrangements**

- 18. This procedure prescribed in this directive shall apply to trials set down from Monday 9 March 2015. Trials set down between 26 January and 6 March 2015, if not already certified trial ready, will not require certification in terms of this directive, but the practice note to the DJP stipulated in paragraph 12 must nevertheless be furnished, the first of which practice notes must be filed on Monday 19 January 2015.
- 19. The first applications for certification conferences shall be received by the Registrar from Monday 19 January 2015, between 9h00 – 12h45 ( Note: Certification applications must NOT be filed before this date)
- 20. The First certification conferences will be convened from 11 February 2015, and shall be convened on Wednesdays, Thursdays and Fridays, from 9h00 onwards, at times stipulated in the notice given to the plaintiff by the registrar at the time of application.
- 21. The first sitting of the interlocutory court shall be 27 February 2015, and the first notice may be filed from Monday 19 January 2015. (Note: notices must NOT be filed before this date)
- 22. Trial matters which have already been enrolled on the old case Management system for judicial pre-trial conferences in the first two weeks of the first term, 2015, ie between 26 January and 6 February 2015, shall remain enrolled. Furthermore:
  - 22.1. The matters which are certified ready at those pre-trial conferences shall be entitled to a preferential trial date allocation from 4 June onwards.
  - 22.2. Matters which fail to be certified shall nevertheless, be entitled to apply for a trial date; and in such cases:
    - 22.2.1. A preferential date may be allocated insofar as that can be accommodated, from June 4 onwards, but such matters shall rank after the matters which have been certified ready.
    - 22.2.2. All such matters which fail to be certified shall be subject to the new certification process set out above, and an application for certification must be made by not later than the Monday five weeks before the trial date allocated, as set above in paragraph 7.
- 23. In any other matter, not enrolled for a judicial pre-trial conference between 26 February and 6 March 2015, which has previously failed to be certified ready and has been postponed to date after 4 March 2015:
  - 23.1.1. the plaintiff may apply for a trial date,
  - 23.1.2. a preferential trial date shall be allocated, but shall rank after matters referred to in paragraph 22.1.

23.1.3. the matter shall be subject to the new certification procedure set out herein.

24. In any other matter,
- 24.1. which has not enrolled for a judicial pre-trial conference between 26 February and 6 March 2015, or,
  - 24.2. which has previously failed to be certified ready and has not been postponed to date after 4 March 2015,
  - 24.3. a trial gate may be applied for which shall be allocated on a preferential basis, but shall rank after matters mentioned in paragraph 22.1
25. When applications for trial dates as described in paragraph 22, 23 and 24, are made, the plaintiff attorney must draw the file to demonstrate to the registrar that the matter has been subjected to the old case management process and is eligible for a preferential date.

10 December 2014 (First Issued)

June 2015 (First Amendment)

August 2015 (Second Amendment)

**PRACTICE DIRECTIVE: CIVIL TRIAL ROLL CALL IN THE GAUTENG LOCAL DIVISION (10 FEBRUARY 2016)**



**OFFICE OF THE DEPUTY JUDGE PRESIDENT  
HIGH COURT OF SOUTH AFRICA, GAUTENG LOCAL DIVISION**

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10 February 2016

1. The Chairman, Johannesburg Society of Advocates
2. The Chief Executive Officer / Director, Law Society of Northern Province
3. The Chairman, Johannesburg Attorneys Association
4. The State Attorneys, Johannesburg
5. The Chairman, National Forum of Advocates
6. The Chairman, Advocates for Transformation
7. The Chairman, Black Lawyers Association
8. The Chairperson, National Association of Democratic Lawyers (Gauteng)

**RE: CIVIL TRIAL ROLL CALL IN THE GAUTENG LOCAL DIVISION**

1. The following requirements with regard to the civil trial roll call in the Gauteng Local Division is drawn to the attention of all legal practitioners:

**1.1 Practice Notes:**

1.1.1 Counsel briefed to appear in matters on the civil trial roll whose matter is stood down to be called at roll call on the following day, must file a practice note in terms of Chapter 6.10 of the Practice Manual on each day that the matter is in roll call.

1.1.2 Practice notes must, as a minimum requirement, comply with the specific provisions of the Practice Manual.

**1.2 Pre-Trial Minutes in terms of Rule 37:**

1.2.1 Pre-trial minutes filed for matters enrolled on the civil trial roll may not be older than six months. Parties who held a pre-trial conference more than six months prior to the trial date, must hold a further pre-trial conference and file a fresh pre-trial minute.

2. Kindly circulate these directives to all your members forthwith.

Yours faithfully



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**PM MOJAPELO**  
**DEPUTY JUDGE PRESIDENT**

## NOTICE OF AMENDMENT TO PRACTICE MANUAL - CHAPTER 9.8.2 ENROLLMENT OF OPPOSED MOTION APPLICATIONS (20 JANUARY 2017)



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20 January 2017

1. All Judges – Gauteng Local Division, Johannesburg
2. All Clerks-Secretaries to Judges – Gauteng Local Division, Johannesburg
3. The Chief Registrar – Gauteng Local Division, Johannesburg
4. The Court Manager – Gauteng Local Division, Johannesburg
5. The Chairman, Johannesburg Society of Advocates
6. The Chief Executive Officer/Director, Law Society of the Northern Provinces
7. The Chairman, Advocates for Transformation
8. The Chairman, National Forum of Advocates
9. The Chairperson, Black Lawyers Association (Gauteng Branch)
10. The Chairperson, National Association of Democratic Lawyers (Gauteng)
11. The Director, National Prosecuting Authority, Gauteng Local Division
12. The State Advocates, Director of Public Prosecutions, Johannesburg
13. Office of the State Attorney, Johannesburg

### **RE: NOTICE OF AMENDMENT TO THE PRACTICE MANUAL – CHAPTER 9.8.2 ENROLLMENT OF OPPOSED MOTION APPLICATIONS**


1. Kindly bring the following amendment of the Practice Manual to the attention of your members:

1.1 Paragraph 9.8.2.4 of Chapter 9 is deleted and substituted with the following paragraph:

- "4. Where a party fails to deliver heads of argument and/or a practice note within the stipulated period, the complying party may enroll the application for hearing."

2. This amendment is effective as of 23 January 2017.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'D Mlambo', with a large circular flourish at the beginning.

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D Mlambo  
Judge President of the Gauteng Division of the  
High Courts of South Africa