

PRACTICE DIRECTIVES

Of

**THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

and

**LIMPOPO LOCAL DIVISION,
THOHOYANDOU**

NOTICE

**TO: ALL JUDGES, LIMPOPO DIVISIONS,
ALL REGISTRARS, LIMPOPO DIVISIONS;
DIRECTOR OF PUBLIC PROSECUTIONS, LIMPOPO;
ADVOCATES AND ATTORNEYS.**

1. Section 6(1)(e) of the SUPERIOR COURTS ACT 10 OF 2013 (“the Act”) assented to on 12 August 2013, establishes a Limpopo Division of the High Court of South Africa, with its seat in Polokwane.
2. In order to effectively and efficiently manage the court rolls, the Gauteng Division has over the years issued a number of practice directives which have now being published as a Manual.

The first group of Judges in these new Divisions were based in Gauteng Division and are acquainted with the Gauteng Division Practice Directives.

3. It is therefore logical, as the first set of practice directives of these new courts, to extend the Gauteng Division Practice Manual to apply in these courts. However, because of the difference in the case load, infra-structure and personnel, it is appropriate to commence with an amended version of the Manual, suitable for the existing conditions in the new Divisions.
4. I therefore publish these practice directives as the first set of directives for the Limpopo Division in Polokwane as well as the local seat of the Limpopo Division in Thohoyandou. As stated in the introduction to the Gauteng Division Practice Manual:
“The provisions set out in the practice manual are not rules of court. It does not displace or amend rules of court. It merely tells practitioners how things are done in this court.”
5. It is therefore essential that for the efficient and effective conduct of business in the courts, qualitative and speedy delivery of the administration of Justice

to the public, ALL ADMINISTRATIVE PERSONNEL IN THE COURTS
AS WELL AS PRACTITIONERS MUST SCRUPULOUSLY ADHERE TO
THESE PRACTICE DIRECTIVES.



**E M MAKGOBA
JUDGE PRESIDENT
LIMPOPO DIVISION**

Dated: 12 August 2015

1 - APPLICATION OF THE PRACTICE DIRECTIVES

- 1.1 These practice directives sets out the High Court practice in the Limpopo Division and Local Division of the High Court of South Africa.
- 1.2 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 emphasized that no judge is bound by practice directives. Accordingly, the practice directive 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 directive thus sets out what can be anticipated occurring, in the normal course of events, on any issue dealt within the practice directive.
- 1.3 This practice directive supersedes all previous practice directives and will come into effect on **1 September 2015**.
- 1.4 Amendments to the practice directives can only be made by the Judge President or the Deputy Judge President after consultation with the other judges in the Limpopo Division of the High Court of South Africa.
- 1.5 Reference in these directives to the rules, is a reference to the Uniform Rules of Court published in Government Notice R48 of 12 January 1965, as amended, and the Transvaal Rules.
- 1.6 Reference in these directives to “counsel” includes an advocate and an attorney who appear in court or before a judge in chambers to represent a litigant. Reference in this practice directive to “legal representative” means a litigant’s attorney of record and includes a party appearing in person.

2 - COURT TERMS

- 2.1 The terms of the Limpopo Division and Limpopo Local Division will be published from time to time to coincide with court terms of all the Divisions of the High Court of South Africa as determined by the Office of the Chief Justice.

3 - COURT RECESS

- 3.1 The Judge President determines the allocation of recess duty which the judges of the division must perform during recess. The Judge President or the most senior judge available further directs in which courts the judges who are on duty, sit.
- 3.2 Subject to 3.3 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.
- 3.3 Save for urgent applications no matters at all may be enrolled for hearing from 25 December to 2 January of each year.
- 3.4 Subject to any direction by the Judge President or the Deputy Judge President or the senior judge on duty from time to time during the recess, allocates other matters requiring determination during recess to the judges on duty.
- 3.5 During recess automatic reviews are distributed equally amongst the judges on duty, except that the judge sitting in the urgent court will not be allocated reviews during the entire week.

4 - LEGAL REPRESENTATIVE'S DRESS

- 4.1 Legal representative is required to be properly dressed. If not properly dressed they run the risk of not being “seen” by the presiding judge.
- 4.2 Proper dress for junior counsel comprises:
 - 4.2.1 A black stuff gown.
 - 4.2.2 A plain black long sleeved jacket, which has both a collar and lapels (or sleeved waistcoat, similar to the one worn by English barristers). The jacket must have, for closing, one or two buttons at the waist. The buttons must be black.
 - 4.2.3 A white shirt or blouse closed at the neck.
 - 4.2.4 A white lace jabot or white bands.
 - 4.2.5 Dark pants or skirt.

4.2.6 Black or dark closed shoes.

4.3 Proper dress for senior counsel comprises:

4.3.1 Senior counsel's gown.

4.3.2 Senior counsel's waist coat.

4.3.3 White shirt or blouse closed at the neck.

4.3.4 White lace jabot or white bands.

4.3.5 Dark pants, stripped charcoal pants for senior counsel or black skirt.

4.3.6 Black or dark closed shoes.

4.4 **Legal representatives** must ensure, when appearing in court, that their waist coats or jackets, as the case may be, are buttoned up.

4.5 It is not proper for a **legal representative** to enter court not fully robed as set out in paragraph 3 and 4 *supra*. It follows that a **legal representative** should not robe in court.

4.6 On attending a judge's chambers during the hearing of a case, counsel must be dressed as set out in paragraphs 3 and 4 above. On attending a judge's chambers otherwise than during the hearing of a case, counsel must be properly dressed.

5 - COURT SITTINGS

5.1 Save as set out below, all the courts of the Division will commence sitting at 10:00. The courts adjourn at 11:15 and resume sitting at 11:30. The courts adjourn at 13:00 and resume sitting at 14:00. The courts adjourn for the day at 16:00.

5.2 Counsel must be punctual in their attendance in court at the aforesaid times.

5.3 Notwithstanding paragraph 5.1 above, it should be noted, that:

5.3.1 Applications for leave to appeal are usually enrolled for hearing from 09h30 or 14h00.

5.3.2 The handing down of written reserved judgments may be set down **from** 09h30.

5.3.3 Criminal trials will commence at 9h00.

5.4 The presiding judge may, at his/her discretion, deviate from the times set out above.

6 - CIVIL TRIALS

- 6.1 Briefing of Counsel
- 6.2 Bundles of documents
- 6.3 Case management
- 6.4 Closure of the trial roll
- 6.5 General
- 6.6 Hearing duration
- 6.7 Pagination, indexing, binding and general preparation of papers
- 6.8 Part-heard trials
- 6.9 Preferential trial date
- 6.10 Pre-trial conference
- 6.11 Roll call
- 6.12 Settlement agreements and draft orders

6.1 BRIEFING OF COUNSEL

- 6.1.1 Legal representatives must ensure that counsel are briefed timeously to enable counsel to consult and be prepared to conduct the trial on behalf of the client.
- 6.1.2 The failure to brief counsel timeously will normally be regarded as a valid reason not to allocate a matter to a court for trial.

6.2 BUNDLES OF DOCUMENTS

- 6.2.1 Where a party or the parties to a trial intend utilizing documents in their conduct of the trial such documents must be collated, numbered consecutively and suitably bound.
- 6.2.2 Each bundle must be indexed. The index must briefly describe each document in the bundle as a separate item.
- 6.2.3 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.
- 6.2.4 The documents should not be bound in volumes of more than **100** pages.
- 6.2.5 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.
- 6.2.6 The parties must agree prior to the commencement of the trial upon the evidential status of the documents contained in the bundle. The agreement must be contained in a pre-trial minute. The agreement must also cover the issue as to which documents will be part of the record before the court, in the eventuality of an appeal.
- 6.2.7 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.
- 6.2.8 Legal representatives must, prior to the date of the trial, seek and obtain proper instructions from their clients in order to instruct counsel to properly conduct the trial.
- 6.2.9 The failure by legal representatives to seek and/or obtain proper instructions will normally be regarded as a valid reason not to allocate a matter to a court for trial.

6.3 CASE MANAGEMENT

6.3.1 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 office of the **Deputy** Judge President or the most senior judge available. The letter must set out:

6.3.1.1 The names of the parties to the trial and the case number.

6.3.1.2 The nature of the dispute.

6.3.1.3 An estimate of the probable duration of the trial.

6.3.1.4 The reason why the 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.

6.3.2 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 office of the **Deputy** Judge President or most senior judge available. A copy of the letter must be delivered to all other parties to the trial and proof thereof must be provided.

6.3.3 The Judge President or most senior judge available will advise the parties of the outcome of the request.

6.3.4 In the event of the request for case management being granted, the **Deputy** Judge President or most senior judge available shall appoint a judge to undertake the case management of the trial.

6.3.5 On the appointment of the judge as aforesaid:

6.3.5.1 All interlocutory applications relating to the trial, will, after consultation with the **Deputy** Judge President or the most senior judge available, as far as possible, be heard by that judge.

- 6.3.5.2 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.
- 6.3.5.3 The appointed judge may direct that one or more pre-trial conferences be held before him or in his absence.

6.4 CLOSURE OF THE TRIAL ROLL

- 6.4.1 The trial roll closes **5 days** preceding the allocated **trial** date where after access to the court file will not be permitted.
- 6.4.2 The prohibition of access to the court file continues for the duration of the trial, save with the leave of the trial judge.
- 6.4.3 Notwithstanding the foregoing, attention is drawn to the requirement in respect of pagination, indexing and binding of papers which must occur not less than ten (10) days prior to the date allocated for the calling of the roll call.

6.5 GENERAL

- 6.5.1 **Legal representatives** must ensure that they are available for the entire duration of the trial. The failure to do so will result in **legal representative's** conduct being referred to the relevant society or association of which **legal representative** is a member for disciplinary action.
- 6.5.2 A postponement of a trial will normally not be granted because the **legal representative** is not available for the trial or for the entire duration of the trial.

- 6.5.3 Any matter which may affect the continuous running of the trial to its conclusion must be disclosed at roll call.

6.6 HEARING DURATION

- 6.6.1 A trial is designated:

6.6.1.1 “A special trial” - if it is anticipated that it will last **5 (five)** or more days.

6.6.1.2 “Of long duration” - if it anticipated that it will be for **duration of 3 - 5 days.**

6.6.1.3 **Trials to last more than 3 days to be set down for hearing on a Monday or Tuesday.**

- 6.6.2 If any party to a trial is of the view that a trial qualifies as a special trial, that party shall deliver a written application to the office of the Judge President or the most senior judge available for the allocation of a special trial date. The letter must set out:

6.6.2.1 The names of the parties to the trial and the case number.

6.6.2.2 The nature of the dispute.

6.6.2.3 An estimate of the probable duration of the trial.

6.6.2.4 That a pre-trial conference in terms of rule 37 has been held and a copy of the relevant minute must be annexed to the letter.

- 6.6.3 The **Deputy Judge President** or the most senior judge available shall inform the parties in writing of the date allocated for the trial upon receipt of the letter that complies with 6.6.2 above.

6.6.4 If any party to a trial is of the view that a trial will be of long duration that party shall deliver at least 10 (ten) **but not more than 20 days** before the trial date a letter to the office of the **Deputy** Judge President or the most senior judge available. The letter must set out:

6.6.4.1 The names of the parties to the trial and the case number.

6.6.4.2 The nature of the dispute.

6.6.4.3 An estimate of the probable duration of the trial.

6.6.4.4 That a pre-trial conference has been held and a copy of the relevant minute must be annexed to the letter.

6.6.5 If the letters referred to in paragraphs 6.6.2 and 6.6.4 above are not joint letters by all the parties to the trial, proof that copies of the letters have been forwarded to the other party or parties to the trial, must be provided.

6.6.6 Any party who is in receipt of a letter referred to in paragraphs 6.6.2 and 6.6.4 above and who wishes to make representations in respect thereof may do so by forthwith delivering a letter to the office of the Judge President or the Deputy Judge President or the most senior judge available as the case may be. A copy of this letter must be delivered to all other parties to the trial and proof thereof must be provided.

6.7 **PAGINATION, INDEXING, BINDING AND GENERAL PREPARATION OF PAPERS**

6.7.1 The **plaintiff/defendant** shall, **when applying for a trial date and also** not less than 10 (ten) days prior to the date allocated for the hearing of the trial:

6.7.1.1 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.

- 6.7.1.2 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.
 - 6.7.1.3 Collate, number consecutively and suitably bind all pleadings which were amended after delivery thereof.
 - 6.7.1.4 Collate, number consecutively and suitably bind the pre-trial minute/s and all documents relating thereto.
 - 6.7.1.5 Prepare and attach an index to the pleadings bundle, the notices bundle, 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.
 - 6.7.2 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.
 - 6.7.3 The pleadings, notices and documents should not be bound in volumes of more than 100 pages.
 - 6.7.4 The pleadings bundle must only contain the original pleadings (as amended, if applicable).
 - 6.7.5 If a document or documents attached to the pleadings, or contained in the bundles as referred to in paragraph 6.7.1, is or are:
 - 6.7.5.1 In manuscript, or
 - 6.7.5.2 Not readily legible
- the party filing such document shall ensure that legible typed copies of the documents are provided.

6.8 PART-HEARD TRIALS

- 6.8.1 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.
- 6.8.2 A judge hearing a trial will be most reluctant to postpone a trial which will result in a part-heard trial.
- 6.8.3 Where a trial is part-heard, a date for the continuation thereof must be applied for by delivering a letter to the registrar who shall forward it to the Judge President or most senior judge available. This letter must set out:
- 6.8.3.1 The names of the parties to the action and the case number.
 - 6.8.3.2 The name of the judge before whom the trial became part-heard.
 - 6.8.3.3 The date when the trial became part-heard.
 - 6.8.3.4 An estimate of the probable duration for the completion of the trial.
 - 6.8.3.5 Whether a copy of the record of the part-heard portion of the trial is available.
- 6.8.4 If the letter referred to in the previous paragraph is not a joint letter from 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.
- 6.8.5 A party who is in receipt of a letter referred to in paragraph 6.8.4 above, and who wishes to make representations in respect thereof, may do so forthwith by delivering a letter to the office of the Registrar. A copy of the letter must be delivered to all other parties to the trial and proof thereof must be provided.

6.8.6 The Judge President or the most senior judge available shall through the registrar, inform the parties in writing of the date for the completion of the trial.

6.9 **PREFERENTIAL TRIAL DATE**

6.9.1 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.

6.9.2 A request for a preferential date is made by delivering a letter to the registrar who shall forward it to the office of the Judge President or most senior judge available. The letter must set out:

6.9.2.1 The names of the parties to the trial and the case number.

6.9.2.2 The nature of the dispute.

6.9.2.3 An estimate of the probable duration of the trial.

6.9.2.4 The motivation for the allocation of a preferential date.

6.9.3 If the aforementioned letter is not a joint letter 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.

6.9.4 Any party who is in receipt of a letter referred to in paragraph 6.9.2 above, and who wishes to make representations in respect thereof, may do so forthwith by delivering a letter to the office of the Judge President or most senior judge available.. A copy of the letter must be delivered to the other party or parties to the trial and proof thereof must be provided.

6.9.5 The Judge President or most senior judge available shall inform the parties in writing of the outcome of the request. The party who requested the preferential trial date may then approach the registrar for the allocation of such a preferential trial date.

- 6.9.6 After being informed of a trial date, all the parties to the trial must comply with Transvaal Rule 7(5). The letter from the Judge President or most senior judge available allocating the preferential trial date must be attached to the Notice of Set down delivered in terms of rule 7(5).

6.10 **PRE-TRIAL CONFERENCE**

- 6.10.1 A pre-trial conference as contemplated in rule 37 must be held in every matter which is to proceed to trial.
- 6.10.2 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.
- 6.10.3 In claims for damages, whether delictual or contractual, and matters where expert notices and summaries must be delivered the following will apply:
- 6.10.3.1 Within 10 (ten) days from the date the pleadings are considered to be closed in terms of rule 29 the plaintiff shall deliver a notice as contemplated in rule 37(2)(a) to hold a pre-trial Conference (the 1st pre-trial conference).
- 6.10.3.2 If the plaintiff fails to comply with paragraph (1) above, the defendant shall within 10 (ten) days after the expiration of the said 10 (ten) day period deliver such a notice.
- 6.10.3.3 The purpose of the first pre-trial conference is to facilitate a settlement of the merits and at that pre-trial conference the parties shall do everything in their power to achieve a settlement.
- 6.10.3.4 If the parties settle the merits liability of the matter they shall state whether an appointment of damages applies or not and, if

so, in what percentages. **The issue of causation should also be discussed.**

6.10.3.5 If the parties do not settle the merits of the matter: **and they agree on separation of certain issues, a preferential trial date will only be allocated by the Registrar if:-**

6.10.3.5.1 The pre-trial minute shows plaintiff(s) version supporting the claim and defendant(s) version and defence to the claim:-

- (i) Clearly and concisely, sets out their clients' versions of how the incident giving rise to the action occurred;
- (ii) Facts which are common cause and exactly what are the triable issues;
- (iii) If there are any registered or recorded claims or actions arising out of the same incident and their status;
- (iv) Notices in terms of Rule 36(9)(a) and 36(a)(b), if any, in respect of merits together with joint minutes shall have been served and filed;
- (v) The estimated number of witnesses to be called by each party and
- (vi) The probable estimation of the duration of trial must be agreed upon by the parties;

6.10.3.5.2 The attorneys must prepare and file at court a pre-trial minute within 10 days of the pre-trial conference. Should any party fail to sign minutes of the pre-trial minute served and not object thereto in writing within 10 days after receipt, the minute shall be presumed to reflect what was discussed at the pre-trial conference.

6.10.3.6.1 In matters where the matter is to proceed on merits or liability only and the opponent (s) have

not signed the minutes of the pre-trials conference, the party seeking a preferential trial date shall apply to the office of the DJP and annex the minutes of the ordinary said preferential conference. The opponent must be served or copied with such an application for a preferential or ordinary date.

- 6.10.3.6.2 The court may authorise separation of merits and quantum in accordance with rule 33 if it is convenient and the quantum is not ready to be dealt with.
- 6.10.3.6.3 If the merits and quantum remain separated, any of the parties may apply to the Registrar for the allocation of a preferential/ordinary trial date on the merits only after the court file shall have been indexed and paginated. The minute If the pre-trial conference must be annexed to the application for a preferential/ordinary trial.
- 6.10.3.6.4 If the Registrar is not satisfied that a proper pre-trial minute complying with clause 3.5.1 (above) the court file will be referred to the Deputy Judge President or a Judge designated by him or her to first certify that the matter to be trial ready before a trial date can be allocated.
- 6.10.3.6.5 If the Deputy Judge President (or a judge designated by him/her) he/she will direct that a further pre-trial conference (the 2nd pre-trial conference) will be held before him or her or a judge designated by the Deputy Judge President, who may, after such pre-trial conference, authorise the allocation of a preferential trial date on the merits only.

6.10.4 In matters where the merits and quantum have not been separated or in matters to proceed on quantum only, a trial date shall not be allocated unless;

6.10.4.1 The parties shall have filed a pre-trial conference minute reflecting that they genuinely endeavoured to achieve the objects of Rule 37 i.e. defining triable issues, curtailing the proceedings, filing the relevant experts' reports and joint minutes where they are required.

6.10.4.2 If any of the parties is of the view that the matter is ready for trial such a party should apply by noting the matter in the relevant register kept in the Registrar's office and furnish the Registrar with a court file being properly collated, numbered consecutively and suitably secured all pages of the pleading notices and other documents in the court file, together with the pre-trial minute which shall further deal with matters shown on in annexure E in the schedule hereto.

6.10.4.3 The Registrar shall then distribute the said file to the office of the Deputy Judge President where they will be distributed to various Judges who shall hold a conference as contemplated by Rule 37(8) before a Judge. The Registrar or the secretary of the DJP shall notify the parties about the dates and time of the further pre-trial to be held in the presence of the Judge.

6.10.4.4 The parties may agree to allow advocates 'fees for attendance of any of the stages of the pre-trial procedures in terms of this directive, failing which the court may do so at the trial.

6.10.4.5 The Registrar will only allocate a date of hearing if the Judge has certified a matter trial ready in respect of triable issues in dispute reflected in the minutes of the pre-trial.

6.10.4.6 Each party to the action proceedings should file a practice note at least three (3) days before the allocated date of hearing.

The practice note shall set out:-

1. Name of the legal representatives and contact details;
2. Date of hearing;
3. Duration;
4. Nature of the matter;
5. Issues(s);
6. Any prospects of settlement

6.10.4.7 If it appears at the roll call:-

6.10.4.7.1 that the parties have seriously endeavoured to narrow the issues and explore settlements;

6.10.4.7.2 That there are no outstanding requests for admissions or particularity and no outstanding requests for documents;

6.10.4.7.3 that, where applicable, the experts have met and produced a joint minute;

6.10.4.7.4 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.

6.10.5 Parties have a continuous obligation to seek to narrow issues and to comply with the substantive requirements of Rule 37 and this manual.

6.10.6 If, after allocation of a trial for hearing, it appears to the judge presiding that there has not been proper compliance with rule 37, and this practice directive, 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 may order the pre-trial to be held either in his/her chambers or on record in open court under his/her direction. The presiding judge will then determine the further hearing of the trial.

6.10.7 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 office of the **Deputy** Judge President or most senior judge

available. 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 Judge President or most senior judge available. 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 office of the **Deputy** Judge President or most senior judge available. 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 Judge President or most senior judge available.

6.10.8 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 6.10.7 above shall apply *mutatis mutandis*.

6.10.9 The request for intervention by the registrar as contemplated in rule 37(3)(b), or the Judge President or most senior judge available, as contemplated in rule 37(8), must be made timeously and preferably before the time prescribed for the holding of the conference has expired.

6.11 ROLL CALL

6.11.1 The civil trials set down for each week will be allocated dates for hearing **on a Monday upon which a roll call would be made to allocate matters for a specific date.**

6.11.2 The registrar must not accept late documents for inclusion in any file which is already in the judge's chambers. Any request for late filing of a document must be on affidavit by the attorney, setting out the reasons why the document could not be filed timeously and be submitted, together with the document at the time the matter is heard during the roll call. The judge concerned will decide whether the document will be admitted into the file or not and whether there is no prejudice to the opposing party.

6.11.3 It shall be compulsory for parties whose civil trials are on the list for the

roll call on **Monday**, to attend the roll call and inform the Court during the roll call as to:

6.11.6.1 The expected duration of the trial.

6.11.6.2 The number of witnesses to be called.

6.11.6.3 The pre-trial conference and minutes thereof.

6.11.6.4 The expert witnesses, if any, to testify.

6.11.6.5 Settlement attempts, if any.

6.11.6.6 State of readiness for the trial to proceed.

6.11.4 Only the matters that are ready to proceed to trial will be allocated a date and day(s) of hearing for the week in which they are set down.

6.11.5 Any civil trial which is settled or likely to be settled will not be allocated a date. Once allocated, any settlement may result in the forfeiture of costs if it appears that the parties envisaged settlement and also subject to the discretion of the presiding judge.

6.12 SETTLEMENT AGREEMENTS AND DRAFT ORDERS

6.12.1 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:

6.12.1.1 **Legal representatives** representing all the parties to the trial are present in court and confirm the signature of their respective clients to the settlement and that their clients want the settlement agreement made an order of court; or

6.12.1.2 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.

6.12.2 Where the parties to a civil trial **Legal representatives** representing all the parties to the trial are present in court and confirm that the draft order correctly reflects the terms agreed upon; or

6.12.2.1 Proof to the satisfaction of the presiding judge is provided that the draft order correctly reflects the terms agreed upon.

6.12.3 Where the parties to a trial have settled before the trial date, they will be entitled to remove the matter from the trial roll and enrol it **on a special roll call for 'Draft Orders' that would be arranged by the Registrar.**

7 - CIVIL APPEALS

7.1 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 Judge President, the most senior judge available or the judges to whom the appeal has been allocated for hearing.

7.2 In all civil appeals, the appellant's heads of argument must be delivered not later than 15 (fifteen) days before the appeal is heard and the respondent's heads of argument must be delivered not later than 10 (ten) days before the appeal is heard. Supplementary heads of argument will only be accepted with the leave of the judges presiding.

7.3 If a **legal representative** 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 a **legal representative** for each other party.

7.4 In regard to the content of their heads of argument, **legal representatives** 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.

7.5 Counsels' names and contact details, including cell phone numbers, must appear on the heads of argument.

- 7.6 When allocating a date for the hearing of an appeal, the Judge President or the most senior judge available may direct that the parties deliver heads of argument earlier than provided for in paragraph 7.2 above.
- 7.7 Simultaneously with the filing of their heads of argument counsel shall file a practice note. The practice note shall set out:
- 7.7.1 Each issue that has to be determined in the appeal.
 - 7.7.2 An extremely brief submission in respect of each such issue.
 - 7.7.3 What portion of the record must be read.
- 7.8 Civil appeals court records must be prepared as follows:
- 7.8.1 In all civil appeals the record shall be securely bound in volumes of no more than 100 pages. Each volume shall be consecutively paginated and have a cover sheet reflecting:
 - 7.8.1.1 The case number.
 - 7.8.1.2 The names of the parties.
 - 7.8.1.3 The total number of volumes in the record.
 - 7.8.1.4 The volume number of the particular volume.
 - 7.8.1.5 The court appealed from.
 - 7.8.1.6 The names, addresses and telephone numbers of the parties' legal representatives.
 - 7.8.2 The first volume of the record shall contain an index of the evidence, documents and exhibits. The index must identify each document and exhibit.
 - 7.8.3 Unless it is essential for the determination of the appeal, and the parties agree thereto in writing, the record shall not contain:

- 7.8.3.1 The opening address to the court *a quo*.
- 7.8.3.2 Argument at the conclusion of the application or trial.
- 7.8.3.3 Discovery affidavits and notices in respect thereof.
- 7.8.3.4 Identical duplications of any document contained in the record.
- 7.8.3.5 Documents that were not proved or admitted in the court *a quo*.

7.8.4 If it will facilitate the hearing of the appeal, or if requested by the presiding judge in the appeal, the parties shall prepare a core bundle of documents relevant to the determination of the appeal. This bundle should be prepared in chronological sequence and must be paginated and indexed.

7.8.5 In the event of a party failing to comply with any of the foregoing, the court may make *mero motu*, or on application of any party to the appeal, make a punitive cost order.

7.9 If the appellant decides to abandon or not to proceed with the appeal or the respondent decides not to oppose the appeal any longer, the registrar must be notified thereof immediately.

8 - CRIMINAL MATTERS

- 8.1 Petitions for leave to appeal from the lower court
- 8.2 Criminal Appeals
- 8.3 Automatic review
- 8.4 Bail appeals
- 8.5 Reviews
- 8.6 Criminal Trials

8.1 PETITIONS FOR LEAVE TO APPEAL FROM THE LOWER COURT

Subject to the provisions of and the child Act.

- 8.1.1 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 to appeal is unsuccessful in the lower court, the accused may “by petition apply to the Judge President or most senior judge available of the Court having jurisdiction” for leave to appeal (section 309B and 309C).
- 8.1.2 The petition from the lower court must be lodged by way of petition procedure and not by way of notice of motion to the motion court.
- 8.1.3 The petition to the Judge President or most senior judge available for leave to appeal against the conviction or sentence of the lower court must be lodged by delivering the original and 2 (two) copies to the registrar dealing with petitions who shall in turn distribute them to judges in accordance with the directives given by the Judge President or most senior judge available.

8.2 CRIMINAL APPEALS

- 8.2.1 Criminal appeals are enrolled by **Registrar in consultation with the office of the DIRECTOR OF PUBLIC PROSECUTIONS.**
- 8.2.2 When giving notice of the set down of a criminal appeal, the DPP shall, when 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 registrar may, on the direction of the Judge President or the most senior judge available, where the appeal is against sentence only, specify the dates by which heads of arguments are to be delivered by the respective parties.
- 8.2.3 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.

- 8.2.4 The presiding judge in the criminal appeal, the Judge President or the most senior judge available may direct that the heads of argument be delivered earlier than the dates referred to above.
- 8.2.5 Counsels' names, contact details, including cell phone numbers, must appear on the heads of argument.
- 8.2.6 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 rely on unreported judgments.
- 8.2.7 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.

8.3 **AUTOMATIC REVIEW**

- 8.3.1 Criminal matters that come before the High Court on automatic review during the court term are distributed equally amongst the judges on duty **by the Registrar as directed by the Judge President or the most senior Judge.**
- 8.3.2 Where a particular judge has directed a query to the magistrate who presided in the matter on review and the magistrate has responded thereto, the review may be referred to any other judge who shall deal with the matter. Similarly where a particular judge has referred a review to the Director of Public Prosecutions, and the Director's opinion has been received, the review may be referred to any other judge who shall then deal with, and if possible, dispose of the matter.

- 8.3.3 Save in the case of the greatest urgency a query must be directed to the presiding magistrate before a judge interferes with a conviction or sentence on review. In all cases the opinion of the director of public prosecutions must be obtained before a judge interferes with a conviction or sentence on review.
- 8.3.4 Where a review, in which the judge who refers the matter is considering the release of the accused from prison, is referred to the Director of Public Prosecutions, the judge referring the matter should inform the director of public prosecutions of his consideration and the reason therefore and require a response within a stated period of time.
- 8.3.5 A review judgment is given by 2 (two) judges. If the 2 (two) judges agree, the release of the accused can be achieved by way of telegraphic communication.

8.4 **BAIL APPEALS**

- 8.4.1 Irrespective of the urgency thereof, a bail appeal is not heard in the motion court.
- 8.4.2 As soon as the proceedings in the bail application and the magistrate's judgment have been transcribed, application for the enrolment of the appeal is made to the director of public prosecutions. The registrar in consultation with the director of public prosecutions shall then apply to the Judge President or to the most 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.
- 8.4.3 Bail appeals are heard by a single judge.
- 8.4.4 If the matter is, in the opinion of the Judge President or the most senior judge available, of sufficient urgency to warrant immediate attention, a bail appeal may be heard before or after ordinary court hours.

8.5 REVIEWS

- 8.5.1 Irrespective of the urgency thereof, a review of a magistrate's decision in a criminal matter is not heard in the motion court.
- 8.5.2 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 registrar who will consult the director of public prosecutions. The director of public prosecutions shall then approach the Judge President or the most senior judge on duty, for the allocation of a date and time for hearing of the review. The registrar shall inform all parties of the allocated date and time of the review.
- 8.5.3 When allocating the date and time for the hearing of the review, the Judge President or most senior judge on duty may direct when each party is to deliver heads of argument prior to the hearing of the review.
- 8.5.4 The practices in regard to the binding of the papers, indexing and paginating as set out in the chapter hereof dealing with motion court, apply equally to the reviews.
- 8.5.5 Reviews are usually heard by two judges sitting in the criminal appeal court.

8.6 CRIMINAL TRIALS

- 8.6.1 Criminal trials are enrolled by the registrar in consultation with the Director of Public Prosecutions.
- 8.6.2 **Legal representatives** 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.
- 8.6.3 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.

- 8.6.4 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.
- 8.6.5 Counsel will not be released from his/her obligation to remain in attendance for the duration of the trial.

9 - JUDGE IN CHAMBERS

- 9.1 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.
- 9.2 The judge's clerk or usher will advise counsel if and when the meeting with the judge will take place.
- 9.3 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.
- 9.4 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.

10 - JUDGES' CLERKS

- 10.1 The duties of judges' clerks are set out in a practice directive which is made available to each judge's clerk on his or her appointment.
- 10.2 The judges' clerks must familiarize themselves with their functions as set out in the practice manual.

- 10.3 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.
- 10.4 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.
- 10.5 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.
- 10.6 The judge's 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 Limpopo Division and Local Division.

11 - LEAVE TO APPEAL IN CIVIL MATTERS

- 11.1 An application for leave **in compliance with the uniform rules of court** to appeal must be filed with the **Registrar** in charge of civil appeals.
- 11.2 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 be informed in writing of the steps taken by the applicant in this regard.
- 11.3 If the applicant does not within 7 (seven) 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 representative 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 be informed in writing of the steps taken by the respondent in this regard.

11.4 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. The applicant must forthwith forward a copy of the letter to all the other parties to the application for leave to appeal.

11.5 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 (seven) 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.

11.6 Once the registrar in charge of civil appeals is in possession of:

11.6.1 The application for leave to appeal.

11.6.2 The judgment.

the aforesaid registrar will submit the relevant court file to the clerk of the judge who delivered the judgment. The judge's clerk will endorse the date and time on which the application for leave to appeal is to be heard. The judge's clerk will return the file to the aforesaid registrar.

11.7 The registrar in charge of civil appeals shall thereupon notify the parties of the date and time so determined and shall enrol the matter accordingly. Thereafter the aforesaid registrar shall return the court file with proof of notification of the date and time of the hearing to the secretary of the judge who delivered the judgment and shall confirm that the application has been enrolled.

11.8 Applications for leave to appeal are normally enrolled for 09:30 or 14:00. It is anticipated that the application, including judgment thereon, will be concluded by 10:00 or 14:30. 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.

- 11.9 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 11.7 shall be followed.
- 11.10 The availability of counsel is not conclusive in the determination of a date for the hearing of an application for leave to appeal.
- 11.11 If the judge who delivered the judgment is not available for whatever reason, the file will be submitted to the Judge President or most senior judge available.

12 – MEDIA COVERAGE OF COURT PROCEEDINGS

Applications for media coverage should be directed to the Judge President or the Judge presiding in the said proceedings. The Registrar and the court manager should also be served with a copy of the said application.

- 12.1 In the practice notice reported 2009(3) S.A.1 the Supreme Court of Appeal issued guidelines to standardize the procedure where permission is requested to film or record court proceedings.
- 12.2 The same guidelines will be applicable in the Limpopo Division and the Local Division of the High Court of South Africa, subject to the Judge President's right to add to or alter any of the guidelines.

13 - MOTION COURT

- 13.1 Binding of papers

- 13.2 Calling of the roll of unopposed matters
- 13.3 Hearing of opposed matters
- 13.4 Third motion court matters
- 13.5 Matters not on the roll
- 13.6 Postponements
- 13.7 Practice note
- 13.8 Preparation of papers
- 13.9 Service
- 13.10 Settlement
- 13.11 Settlement agreements and draft orders
- 13.12 Stale service
- 13.13 Striking from the roll
- 13.14 Summary judgments
- 13.15 Urgent applications

13.1 **BINDING OF PAPERS**

- 13.1.1 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.
- 13.1.2 In binding the application, care must be taken to prevent that the method of binding hinders the turning of papers.
- 13.1.3 The documentation should not be bound in volumes of more than 100 pages each.

13.2 **CALLING OF THE ROLL OF UNOPPOSED MATTERS**

- 13.2.1 Prior to the calling of the roll **the Judge** of the presiding judge will invite counsel and legal practitioners to call matters which are to be removed from the roll or postponed.

- 13.2.2 **Opposed** Summary judgment and rule 43 applications which are not to be removed or postponed as well as divorce matters, **may** stand down to the end of the roll.
- 13.2.3 Thereafter the roll **may** be called page by page and counsel will deal with their matters, including divorce matters, in order of seniority.
- 13.2.4 Thereafter, if not all matters have been dealt with, counsel and legal representatives **may** be entitled to call their matters in order of seniority.
- 13.2.5 Thereafter summary judgment applications **may** be dealt with.
- 13.2.6 Finally rule 43 applications will be dealt with.
- 13.2.7 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.
- 13.2.8 It is emphasised that the courts of the most senior judges take precedence over the courts of more junior judges.
- 13.2.9 Judges may arrange the calling of matters in their specific courts other than provided herein.

13.3 HEARING OF OPPOSED MATTERS

Opposed applications should be properly indexed and paginated 10(ten) clear court days before the first day of the week during which the matters are to be heard so that the senior Judge may allocate them and determine if they are ripe for hearing.

- 13.3.1 All matters will be enrolled **on a Tuesday** for the first day of the week in which the matters are to be heard.

- 13.3.2 The senior judge will have all files at least 10 (ten) clear court days before the first day of the week during which the matters are to be heard and will allocate all matters at least 5 (five) court days in advance. Each judge will then prepare his or her own roll for the week which will be distributed to the professions.
- 13.3.3 Judges will, as far as possible, accommodate counsel and legal practitioners to hear matters on specific dates.
- 13.3.4 As soon as a matter becomes settled or the parties agree to postpone, the judge presiding must be informed of that fact immediately.
- 13.3.5 No opposed applications may be postponed to another opposed motion court date. Instead a new date of hearing must be applied for.
- 13.3.6 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. In the event of such an application thereafter becoming opposed (for whatever reasons), the application will not be postponed as a matter of course, but will be referred to the Deputy Judge President or the senior Judge.

The notice of set down of such an application must be served on the respondent's attorney of record.

13.4 **THIRD MOTION COURT MATTERS**

- 13.4.1 An opposed motion which is expected to require a day or more (including the delivery of an *ex tempore* judgment) may not be enrolled for hearing without the consent of the **Deputy** Judge President or the most senior judge available.
- 13.4.2 The consent of the Judge President or most senior judge available 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:

- 13.4.2.1 A short exposition of the nature and complexity of the matter.
 - 13.4.2.2 The estimated duration thereof.
 - 13.4.2.3 An assurance that all the necessary affidavits have been exchanged (or in exceptional cases an indication of the date by when they will have been exchanged).
 - 13.4.2.4 An assurance that the papers have been properly indexed and paginated.
 - 13.4.2.5 Proposals for the filing of heads of argument by the parties.
 - 13.4.2.6 Suggestions as to when the application can be heard.
- 13.4.3 The other party or parties to the opposed motion who wish to make representations in respect thereof may do so in writing.
- 13.4.4 The **Deputy** Judge President or the most senior judge available will determine the date of the hearing of the aforesaid opposed motion and furnish such directives as he deems fit in respect thereof.
- 13.4.5 The opposed motion must forthwith be enrolled for hearing in terms of the determination of the Judge President or the most senior judge available.

13.5 **MATTERS NOT ON THE ROLL**

- 13.5.1 Any matters not 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.
- 13.5.2 Once counsel has determined that a 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.

- 13.5.3 Once the matter is enrolled, the presiding judge will give directions for the hearing of the matter.

13.6 POSTPONEMENTS

13.6.1 A motion, 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.

13.6.2 Where a motion has to be postponed to a specific date (e.g. rehabilitation for which notice has been given) such date, in the absence of urgency, must be to a date at least two weeks hence and confirmed with the registrar.

13.6.3 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.

3.7 PRACTICE NOTE

13.7.1 Counsel for each party in a motion which appears on the opposed roll is to file a practice note not later than 13:00, preceding the first day of the week in which the matter will be heard. **Thursday preceding on Monday the matter has been set down.**

13.7.2 The practice note shall set out:

13.7.2.1 The name of the parties, the case number and its number on the roll (if known).

13.7.2.2 The names and telephone numbers of all counsel in the motion.

13.7.2.3 The nature of the motion.

13.7.2.4 An indication of the issues to be determined in the application.

13.7.2.5 The relief sought at the hearing by the party on whose behalf counsel is completing the practice note.

13.7.2.6 An estimate of the probable duration of the motion.

13.7.2.7 If the matter is urgent and, if so, motivation for the urgency.

13.7.2.8 Whether or not the papers need to be read and, if so, which portion thereof.

13.7.3 A practice note must be filed as set out in 13.7.1 above on each occasion the motion appears on the opposed roll.

13.7.4 When the day on which the practice note is to be filed falls on a public holiday, such documents shall be filed on the preceding court day.

13.8 PREPARATION OF PAPERS

13.8.1 The original application, the original return of service and other original documents comprising the application must be contained in the court file.

13.8.2 If a document or documents attached to the founding or replying affidavit are:

13.8.2.1 In manuscript; and

13.8.2.2 Not readily legible

The applicant shall ensure that typed and legible copies of the document or documents are provided.

13.8.3 The respondent bears the obligation referred to in the previous subparagraph in respect of documents attached to the answering affidavit.

3.9 SERVICE

- 13.9.1 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.
- 13.9.2 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.
- 13.9.3
- 13.9.3.1 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.
- 13.9.3.2 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.
- 13.9.4 Where service is effected at a *domicilium citandi et executandi*, the original document wherein the *domicilium* is chosen must be in the court file.
- 13.9.5 In actions or applications for the incarceration (i e imprisonment) of the defendant or respondent, personal service of the summons or application must be effected on the defendant or respondent. If notice of set down of the matter has to be given to the defendant or respondent, personal service of the notice of set down must be effected on the defendant or respondent.

13.9.6 When service of any document by registered post is prescribed or authorized (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:

13.9.6.1 Indicate the date of dispatch together with the name and address of the addressee.

13.9.6.2 Describes the document so dispatched.

13.9.6.3 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 to which he/she annexes the documentary proof of posting of a registered article issued by the Post Office.

13.10 SETTLEMENT

13.10.1 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.

13.10.2 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.

13.11 SETTLEMENT AGREEMENTS AND DRAFT ORDERS

19.2.1 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:

13.11.1.1 **Legal representatives** 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

13.11.1.2 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.

19.2.2 +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:-

13.15.6.1 **Legal representatives** representing all the parties to the application are present in court and confirm that the draft order correctly reflects the terms agreed upon;

or

13.15.6.2 Proof to the satisfaction of the presiding judge is provided that the draft order correctly reflects the terms agreed upon.

13.12 STALE SERVICE

15.3.1 Where any unopposed application is made 6 (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.

15.3.2 The notice of set down must set out:

13.12.2.1 The date and time at which the relief will be sought.

13.12.2.2 The nature of the relief that will be sought.

- 15.3.3 The notice of set down must be served at least 5 (five) days before the date on which the relief will be sought.

13.13 STRIKING FROM THE ROLL

- 13.13.1 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.
- 13.13.2 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. Such explanation must be on oath.
- 13.13.3 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.
- 13.13.4 The negligence or ignorance of the provisions of the directive by counsel or legal representative will not necessarily constitute an acceptable explanation for the non-appearance.
- 13.13.5 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 directive, the relevant matter may be struck from the roll.

13.14 SUMMARY JUDGMENTS

- 13.14.1 The plaintiff must paginate and index the application before it is served and filed.
- 13.14.2 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.

13.14.3 Due to the fact that the defendant is entitled to file any opposing affidavit in terms of rule 32(3)(b) as late as noon on the court day but one preceding the day on which the application is to be heard, the court will hear the application in spite of the absence of a practice note and/or heads of argument, save in exceptional cases.

13.15 URGENT APPLICATIONS

13.15.1 A judge is designated for the hearing of urgent applications for each week of the year. For this purpose the week commences on Friday at 16:00 and terminates on the Friday of the next week at 16:00.

13.15.2 The normal time for the bringing of an urgent application is at 10:00 on Tuesday of the motion court week.

13.15.3 Exceptions.

13.15.3.1 If the urgent application cannot be brought at 10:00 on the Tuesday of the motion court week, it may be brought on any other day of the motion court week at 10:00. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10:00 on the Tuesday.

13.15.3.2 If the urgent application cannot be brought at 10:00 on any day during the motion court week, it may be brought at 11:30 or 14:00 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 10:00 on the Tuesday and other than 10:00 of the relevant court day.

13.15.3.3 If the application cannot be brought at 10:00 on the Tuesday or at 10:00 on any other court day or at 11:30 or 14:00 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 10:00 on the Tuesday and other than at 10:00, 11:30 or 14:00 on any other court day.

13.15.3.4 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.

13.15.3.5 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.

13.15.4 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 of the forms and service provided for in the rules of court, to the extent necessary.

13.15.5

13.15.5.1 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 format of form 2(a) of the First Schedule to 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.

13.15.5.2 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.

13.15.5.3 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 (two) hours, excluding the hour between 13:00 and 14:00.

13.15.6

13.15.6.1 If the facts and circumstances set out in the applicant's affidavits do not:

13.15.6.1.1 Constitute sufficient urgency for the application to be brought as an urgent application and/or

13.15.6.1.2 justify the abrogation or curtailment of the time periods referred to in rule 6(5) and/or

13.15.6.1.3 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 cost order against the applicant the court will make no order on the application.

13.15.6.2 The aforementioned requirements will be strictly enforced by the presiding judge.

13.15.7

13.15.7.1 For the purposes of urgent applications ordinary court hours are 10:00 to 11:15, 11:30 to 13:00 and 14:00 to 16:00 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 number: **(to provided later)**.

The following information must be conveyed to the judge's clerk:

- 13.15.7.1.1 The identity of the parties.
- 13.15.7.1.2 Whether or not service has been or will be effected.
- 13.15.7.1.3 Whether or not the application is or is anticipated to be opposed.
- 13.15.7.1.4 The type of application.
- 13.15.7.1.5 The nature of the relief sought.
- 13.15.7.1.6 Why it is not possible for the application to be heard during ordinary court hours.
- 13.15.7.1.7 When it is anticipated the application will be ripe for hearing.
- 13.15.7.2 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.
- 13.15.7.3 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.
- 13.15.7.4 The judge designated for the hearing of urgent applications is not to be contacted directly.
- 13.15.7.5 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:
 - 13.15.7.5.1 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 the court stenographers' senior on the Friday before 16:00.

13.15.7.5.2 The security officer on duty at the main entrance of the High Court at telephone number 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.

13.15.7.5.3 The court stenographer on urgent application duty to arrange the interpreter's attendance in court at the arranged time. The interpreter's telephone number is obtained from the principal court interpreter on the Friday before 16:00.

13.15.8

13.15.8.1 When an urgent application is brought for the Tuesday at 10:00 the applicant must ensure that the relevant papers are filed with the registrar by the preceding Thursday at 12:00.

13.15.8.2 The registrar's office must ensure that the court files of all urgent applications set down for the Tuesday at 10:00 are brought to the clerk of the judge hearing the urgent applications by 16:00 on the preceding Thursday.

13.15.8.3 The clerk of the judge hearing urgent applications will prepare a roll in respect of the urgent applications to be heard on the Tuesday at 10:00. The clerk will publish the roll in the foyer of the High Court by no later than 10:00 on the Tuesday.

13.15.8.4 Where an urgent application is brought for any other time than Tuesday at 10:00, the registrar's office shall ensure that the court file is brought to the clerk of the judge hearing urgent applications as soon as possible. The judge's clerk

shall prepare a roll in respect of the urgent applications to be heard on the other days of the week. The clerk will publish the roll in the foyer of the High Court by no later than 09:00 on the day of the hearing.

13.15.9 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.

13.15.10

13.15.10.1 On the Friday of each week at 16:00 the registrar shall send to the clerk of the judge designated for the hearing of urgent applications for the week commencing at 16:00 on the Friday:

13.15.10.1.1 The cellular phone provided for the judge's clerk.

13.15.10.1.2 Fifteen (15) consecutively numbered court files. (These files are to be utilized in the event of an urgent application being brought without a court file having been opened by the registrar of the court).

13.15.10.1.3 An official stamp of the registrar of the High Court.

13.15.10.2 On Friday of each week, before 16:00 the clerk of the judge who is to take over the urgent court, must obtain from the court stenographers' senior the telephone number of the stenographer on urgent court duty for the urgent court week.

13.15.10.3 On Friday of each week, before 16:00 the clerk of the judge who is to take over the urgent court, must obtain from the principal court interpreter the telephone number of the interpreter on urgent court duty for the urgent court week.

13.15.10.4 On the first court day after any of the files referred to in 13.15.10.1.2 above have been utilized, the judge's clerk shall inform the registrar of the names of the parties and the allocated case number(s).

13.15.10.5 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.

14 - OPENING OF COURT FILES

14.1 Each proceeding is allocated a distinctive case number by the registrar. In all proceedings the distinctive number precedes the reference to the year in which the proceeding was registered (e g 100/2011). In appeals the distinctive number is preceded by an "A" (e g A100/2011).

14.2 An application for leave to appeal retains the case number of the matter in which leave to appeal is sought.

14.3 All interlocutory applications, applications related to or flowing from the main action or application and rule 43 applications are brought in the same court file as the main action or application and not under a new case number.

15 - PARTICULAR APPLICATIONS

15.1 Anton Pillar type orders

15.2 Admission of advocates

15.3 Cancellation of sales in execution

15.4 Change of matrimonial regime

15.5 Curator *bonis*

15.6 Curator *ad Litem*

15.7 Eviction where the Prevention of Unlawful Occupation of Land Act 1998 (No 19 of 1998), applies

15.8 Provisional sentence

15.9 Rehabilitation

- 15.10 Removal of amendment of restrictions on land use
- 15.11 Sequestration and Voluntary Surrender of Estates

15.1 ANTON PILLER TYPE ORDERS

- 15.1.1 These practices 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, Temporarily Police Camp, Wagendrift dam and another: Maphanga v Officer Commanding, South African Police Murder and Robbery Unit, Pietermaritzburg, and others* 1995 (4) SA 1 (A) or if the item is not identified in the papers, i e if identification is dependent upon pointing out which is still to be made.
- 15.1.2 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 minimized by incorporating evidence in one application by reference in any other application.
- 15.1.3 When the applicant wishes the matter to be heard in camera:
 - 15.1.3.1 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.
 - 15.1.3.2 A certificate from counsel in support of a hearing in camera is not necessary.
 - 15.1.3.3 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 purpose of safekeeping and

maintaining secrecy all in accordance with the directions of the senior judge.

15.1.4 A Notice which accords with **annexure “A” 15.1** hereto must be handed to the person on whom the order is to be served prior to any execution of the order.

15.1.5

15.1.5.1 **Annexure “B” 15.1** 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.

15.1.5.2 Deviations from **annexure “B” 15.1** must be limited to what is necessary and must heed the following guidelines:

15.1.5.2.1 Unless the procedure is limited in case law, undertakings to the court must be employed to counteract injustice and avoidable inconvenience to the respondent.

15.1.5.2.2 The order must be justifiable in terms of South African law.

15.1.5.2.3 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.

15.1.5.2.4 Relief which cannot be so justified must be dealt with in a separate part of the notice of motion (and where necessary in 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.

15.2 **ADMISSION OF ADVOCATES**

15.2.1 An application for admission as an advocate must, in addition to the information required by section 3(1) of the Admissions of Advocates Act No 74 of 1964 and rule 3A of the Rules of Court allege that:

15.2.1.1 The applicant is not arraigned on a criminal charge and has not been convicted of a criminal offence.

15.2.1.2 The applicant's estate has not been sequestrated and that no sequestration proceedings are pending.

15.2.1.3 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.

15.2.1.4 The applicant is unaware of any fact which may detrimentally affect the adjudication of the application.

15.2.2

15.2.2.1 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.

15.2.2.2 If the applicant is not in possession of a degree certificate evidencing the fact that a LL B degree or similar qualification was awarded to him because of her or his failure to effect payment of the tuition fees to the relevant tertiary education institution, such fact must be fully explained and such

candidate must provide proof to the court of any arrangement she or he has entered into with such institution to effect payment of any outstanding amount.

15.2.3 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.

15.2.4 Applications for admissions are heard before two judges.

15.3 CANCELLATION OF SALE IN EXECUTION

15.3.1 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.

15.3.2 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.

15.3.3 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.

15.4 CHANGE TO THE MATRIMONIAL REGIME

15.4.1 The application is commenced by publication in the *Government Gazette* of a notice substantially in the form of annexure "A" 15.4 hereto.

15.4.2 The report of the registrar of Deeds must be obtained before such advertisement is placed.

15.4.3 At least 3 (three) weeks before the hearing date a copy of the notice referred to in paragraph 15.4.1 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:

- 15.4.3.1 On which date and time and to which court application will be made.
 - 15.4.3.2 The full names of the spouses, their identity numbers and their residential addresses and places of employment in the preceding 12 (twelve) months.
 - 15.4.3.3 The effect of the proposed order.
 - 15.4.3.4 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.
- 15.4.4 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 paragraph 15.4.1, 15.4.2 and 15.4.3 must be proved at the hearing of the application by the filing of a supplementary affidavit.

15.5 **CURATOR *BONIS***

- 15.5.1 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.
- 15.5.2 The application is re-enrolled after the aforementioned reports have come to hand.
- 15.5.3 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.
- 15.5.4 The consent of both the curator *ad litem* and the proposed curator *bonis* must be annexed to the application.

15.6 **CURATOR AD LITEM**

- 15.6.1 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 and also of the curator *bonis* who is proposed should attend to the patient's affairs and person.
- 15.6.2 Consent to act by the proposed curator *ad litem* must be annexed to the application.
- 15.6.3 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.
- 15.6.4 The order sought should only permit the proposed curator to settle the action with the approval of a judge.
- 15.6.5 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.

15.7 **EVICTION IN TERMS OF THE PREVENTION OF ILLEGAL EVICTIONS AND UNLAWFUL OCCUPATION OF LAND ACT, 19 OF 1998.**

- 15.7.1 The application for eviction must be a separate application. The procedure to be adopted (except in urgent applications) is as follows:
 - 15.7.1.1 The notice of motion must follow Form 2(a).
 - 15.7.1.2 The notice of motion must allow not less than 5 (five) days from date of service of the application for delivery of a notice of intention to oppose.

15.7.1.3 The notice of motion must give a date when the application will be heard in the absence of a notice of intention to oppose.

15.7.2 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 authorizing a section 4(2) notice and for directions on service.

15.7.3 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 (fourteen) day notice period to expire.

15.7.4 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.

15.7.5 The local, provincial or national authorities that might be affected by an eviction order must be clearly identified.

15.8 PROVISIONAL SENTENCE

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

15.8.2 The original liquid document upon which provisional sentence is sought must be handed to the court when the provisional sentence is sought.

15.9 REHABILITATION

15.9.1 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.

- 15.9.2 If the applicant avers that a contribution paid by a creditor has been repaid to the creditor, adequate proof thereof must be provided.
- 15.9.3 The applicant, as is required by section 127 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.
- 15.9.4 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.

15.10 REMOVAL OR AMENDMENT OF RESTRICTIONS ON LAND USE

- 15.10.1 Applications dealt with in this section are based upon the premise that the consent of the holder of the right that is sought to be cancelled or the conditions under which it was granted are sought to be amended, does not object to the application, as is discussed in, *inter alia*, *Ex parte Gold* 1956 (2) SA 642 (T) and *Ex parte Glenrand (Pty) Ltd* 1983 (3) SA 203 (W).
- 15.10.2 It follows that the court should be convinced that the holder of the right in question has knowledge of the application. There should accordingly be service on all interested parties concerned. Service under rule 4(2) of the Rules of Court is authorised by way of exception to the ordinary methods of service. Full and cogent reasons should be advanced in support of a request under the sub-rule.
- 15.10.3 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. 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.
- 15.10.4 When the application is presented to court:

- 15.10.4.1 It must be proved that the application together with a request to report was served in good time upon the registrar of Deeds, any Township Board that might be involved and, where applicable, a local authority that is able to comment upon:
 - 15.10.4.1.1 The correctness of the facts relied upon by the applicant.
 - 15.10.4.1.2 The identity of persons who may have a legal interest or whose refusal of consent could constitute adequate reason to refuse the application.
 - 15.10.4.1.3 The optimal method of notifying interested parties.
- 15.10.4.2 A plan or map must be attached as an annexure to the report (if necessary extending beyond the relevant township in which the property is situated) that will assist the court to ascertain which owners or users (of roads or rights) have an interest sufficiently strong to warrant their being given notice of the application.
- 15.10.4.3 If applicable, factors must be recorded that may render ordinary service on interested parties impractical.
- 15.10.4.4 As the mere objection by an affected person to the removal or amendment may put an end to the application, affected persons must be clearly informed that they may raise their objections, either by written notice to the registrar or on the return day, without running the risk of being mulcted in costs.

5.11 SEQUESTRATION AND VOLUNTARY SURRENDER OF ESTATES

- 15.11.1 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.
- 15.11.2 Unless the court directs otherwise in terms of section 11(2) of Act 24 of 1936, the provisional order of sequestration must be served on the respondent personally.
- 15.11.3 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.
- 15.11.4 If the applicant fails to establish that the application is not a so-called “friendly” sequestration the following will apply:
 - 15.11.4.1 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.
 - 15.11.4.2 The respondent’s assets must be valued by a sworn appraiser on the basis of what the assets will probably realize on a forced sale. Mere opinions, devoid of reasoning as to what the assets will probably realize, will not be regarded as compliance herewith. The valuation must be made on oath and the appraiser must be qualified as any other expert witness.
 - 15.11.4.3 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, together with an accurate exposition of the rate of interest charged by the bondholder at the time of signature of the notice of motion. Provision must be made for any interest that will be charged on the balance outstanding of the debt secured by the bond until the date of hearing, to be added to

the amount owing to the bondholder when the matter is heard.

15.11.4.4 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/she confirms that the money has been paid into his trust account and will be retained there until the appointment of a trustee. The source of the funds paid into the attorney's trust account must be clearly disclosed under oath by the person providing the money.

15.11.4.5 In establishing advantage to creditors the following sequestration and administration costs will be assumed in an uncomplicated application:

15.11.4.5.1 Cost of application – R6,000.
Cost of application if correspondent utilized – R8.000 (if the applicant's attorney of record has agreed to limit fees proof thereof must be provided).

15.11.4.5.2 The aforementioned costs are assumed to increase by R700 for every postponement of the application or if the provisional order has to be furnished to all known creditors, the aforementioned costs are assumed to increase by R700.

15.11.4.5.3 The cost of administration, subject to a minimum of R2,500 are:

- 1% plus VAT on cash or money in a financial institution;
- 3% plus VAT on immovable property and shares; and

- 10% plus VAT on movable property including book debts.

15.11.4.5.4 Other administration costs include sheriff fees (Schedule 3 of Act 24 of 1936) and the costs of security.

15.11.4.5.5 The aforementioned costs do not include the costs of the realization 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 realization of immovable property is 6% of the selling price plus advertising charges.

15.11.4.5.6 Regard being had to the costs set out in paragraph 15.11.4.5.5, the applicant must in the application set out a calculation indicating the probable dividend to concurrent creditors, which shall not be less than 20c in the Rand, unless extraordinary circumstances exist.

15.11.4.5.7 If the court hearing an application is doubtful whether the free residue in an insolvent estate will be sufficient to render a dividend of 20c in the Rand to concurrent creditors, it may order any shortfall of such dividend to be supplemented from the applicant's attorney's taxed fees in order to ensure that proven concurrent creditors receive at least 20% of their claims. The court may further order the applicant's attorney to inform all concurrent creditors by registered mail that a dividend of 20% of all proven claims has been guaranteed by such order.

15.11.5 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 judgment 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.

15.11.6 Notwithstanding paragraph 15.11.3 above, a court will be reluctant to grant an extension of a return date in a “friendly” sequestration.

15.11.7 Where applicable, the foregoing also apply to applications for the voluntary surrender of estates.

15.11.8 Every application for the voluntary surrender of an estate must be accompanied by a practice note completed by the attorney presenting the application which is in the form annexed hereto as annexure “A” 15.14.

16 - RESERVED JUDGMENTS

16.1 All enquiries about reserved judgments must be directed to the Judge President or the most senior judge available in writing who will then enquire from the judge involved when the judgment will be delivered.

16.2 If the aforementioned letter is not delivered by all the parties to the litigation, proof that a copy of the letter has been forwarded to the other party or parties, must be provided.

16.3 Legal representatives must no later than 14 (fourteen) days after the beginning of a court term, provide a list of reserved judgments in matters handled by him/her to the Judge President or the most senior judge available.

17 - UNOPPOSED DIVORCE ACTIONS

17.1 Prior to enrolling the matter, the legal representative who enrolls the matter must ensure 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.

- 17.2 The pleadings, notices and returns of services referred to in the previous paragraph must all be originals. If anyone 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.
- 17.3 If a copy of a marriage certificate is used to prove the marriage, the copy must have been certified as a true copy of the original.
- 17.4 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.
- 17.5 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.
- 17.6 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.
- 17.7 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.
- 17.8 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.
- 17.9 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:
- 17.9.1 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.

- 17.9.2 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.
 - 17.9.3 All necessary evidence is set out in the affidavit. (In this regard it is emphasised that primary facts and not conclusions of fact are required).
 - 17.9.4 The affidavit is attached to the notice of enrolment.
- 17.10. If the interests of minor children are involved in any divorce, any settlement agreement entered into by the parties in which the interests of such minors are addressed, or, in the absence of an agreement, any prayers dealing with the interest of minor children must be referred to the Family Advocate prior to the hearing of the matter. Any comment, concern or recommendation expressed by the Family Advocate must be brought to the court's attention together with a comprehensive exposition of the manner in which the parties intend to address such comment, concern or recommendation.

18 - STANDARD ORDERS

- 18.1 To facilitate the printing of court orders certain standard orders have been devised. Where practical, practitioners should seek relief in terms of the standard orders.
- 18.2 Any deviation from the standard order must be motivated either in the court papers or by counsel at the hearing of the matter.
- 18.3 The standard orders that are annexed hereto are:
 - 18.3.1 Absolution from the instance
 - 18.3.2 Admission of Translator
 - 18.3.3 Agreement of Settlement
 - 18.3.4 Default Judgment by Court
 - 18.3.5 Default judgment by registrar
 - 18.3.6 Discharge of Provisional Sequestration
 - 18.3.7 Divorce with Settlement Agreement
 - 18.3.8 Divorce without Settlement Agreement

- 18.3.9 Edictal Citation
- 18.3.10 Final Sequestration
- 18.3.11 General order for Discovery
- 18.3.12 Leave to Appeal
- 18.3.13 Order in terms of rule 39(22)
- 18.3.14 Order on Appeal
- 18.3.15 Post Nuptial Registration of a contract
- 18.3.16 Provisional Sentence 1
- 18.3.17 Provisional Sequestration
- 18.3.18 Rehabilitation
- 18.3.19 Restrictive Conditions on Land
- 18.3.20 Rule 43
- 18.3.21 Rule *Nisi*
- 18.3.22 Substituted Service
- 18.3.23 Summary Judgment granted
- 18.3.24 Summary Judgment refused
- 18.3.25 Surrender
- 18.3.26 Unallocated Order

18.3.1

ABSOLUTION FROM THE INSTANCE

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, having 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

18.3.2

ADMISSION OF TRANSLATOR

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

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

IT IS ORDERED THAT:

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

BY THE COURT

REGISTRAR

18.3.3

AGREEMENT OF SETTLEMENT

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

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

IT IS ORDERED THAT:

The agreement of settlement marked “....” is made an order of court.

BY THE COURT

REGISTRAR

18.3.4 **DEFAULT JUDGMENT BY COURT**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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 JUDGEMENT is granted against the _____ for:

1. Payment of the sum of
2. Interest on the sum ofat the rate of per annum fromto date of payment.
3. The following property is declared especially executable
- .
4. Costs of suit.

BY THE COURT

REGISTRAR

18.3.5

DEFAULT JUDGMENT BY THE REGISTRAR

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

In the matter between:-

PLAINTIFF

and

DEFENDANT

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

DEFAULT JUDGEMENT is granted against the _____ for:

1. Payment of the sum of
2. Interest on the sum of.....at the rate of.....per annum fromto date of payment.
3.

BY THE COURT

REGISTRAR

18.3.6

DISCHARGE OF PROVISIONAL SEQUESTRATION

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

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

IT IS ORDERED THAT:

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

BY THE COURT

REGISTRAR

18.3.7

DIVORCE WITH SETTLEMENT AGREEMENT

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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. 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

18.3.8

DIVORCE WITHOUT SETTLEMENT AGREEMENT

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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. 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 per child .
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

BY THE COURT

REGISTRAR

18.3.9

EDICTAL CITATION

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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. 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 afforded (days) within which to enter appearance to defend.
4. The costs of this application are costs in the cause.

BY THE COURT

REGISTRAR

18.3.10 **FINAL SEQUESTRATION**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

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

IT IS ORDERED THAT:

The estate of the respondent is placed under final sequestration

BY THE COURT

REGISTRAR

18.3.11

GENERAL ORDER FOR DISCOVERY

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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 on affidavit within
.....days from the date of service of this order.
2. The costs of this application are to be paid by
.....

BY THE COURT

REGISTRAR

18.3.12 **LEAVE TO APPEAL**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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

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

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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`s 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

18.3.14 **ORDER ON APPEAL**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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 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

18.3.15

POST NUPTIAL REGISTRATION OF A CONTRACT

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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:-

THE COURT ORDERS THAT:

1. The applicants are given leave to effect the execution and registration of a notarial contract, a draft whereof is annexed as annexure “ “ 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 applicant as at date of registration of the contract.

BY THE COURT

REGISTRAR

18.3.16 **PROVISIONAL SENTENCE**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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 ofat the rate of per annum fromto date of payment.
3. Costs of suit
4. The following property is declared especially executable:

BY THE COURT

REGISTRAR

18.3.17 **PROVISIONAL SEQUESTRATION**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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 theday ofat 10:00 or as soon thereafter as the matter may be heard.

BY THE COURT

REGISTRAR

18.3.18 **REHABILITATION**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

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

IT IS ORDERED THAT:

1. The abovementioned applicant be and is hereby rehabilitated.

BY THE COURT

REGISTRAR

18.3.19

RESTRICTIVE CONDITIONS ON LAND

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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 onat 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 have the following effect:
.....
4. The papers in the matter are open for inspection without charge at the office of the Registrar, High Court, cnr Paul Kruger and Vermeulen Street, Pretoria, and at the offices of the applicant's attorney:-

Messrs.
of

5. Service is to be effected:-
 - 5.1 by the dispatch of a copy of the order by prepaid post beforeto the following persons at the addresses set out alongside their names.....
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 thefor 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

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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. *Pendente lite* the..... is ordered to pay maintenance toin the amount of Rper month.
2. *Pendente lite* the is awarded care and primary residence of the minor children born out of the marriage.
3. *Pendente lite* the shall be entitled to reasonable contact to the said minor children, which access shall include:-
 - (i)
 - (ii)
4. *Pendente lite* the is ordered to pay maintenance to in respect of the aforesaid minor children in the amount of R per month per child.
3. The..... is ordered to make a provisional contribution to legal costs *pendente lite* in monthly instalments in the amount of R

4. The payments referred to above will commence on or before the day of 20.... 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

18.3.21 **RULE NISI**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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 day of (month and year) at 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

18.3.22

SUBSTITUTED SERVICE

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

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

BY THE COURT

REGISTRAR

18.3.24

SUMMARY JUDGMENT REFUSED

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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 JUDGEMENT is:

1. Refused
2. Leave is granted to the defendant to defend the action.
3. Costs will be costs in the cause.

BY THE COURT

REGISTRAR

18.3.25

SURRENDER

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

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

18.3.26

UNALLOCATED ORDER

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

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

IT IS ORDERED THAT:

BY THE COURT

REGISTRAR

19 - USHERS

- 19.1 The standards that are expected of ushers in the performance of their court duties as described in their job description are set out hereunder.
- 19.2 While in attendance in court, ushers should be neatly and appropriately dressed. The appropriate dress code is the following:
 - 19.2.1 Male ushers should be dressed in shoes, socks, dark long trousers, white shirt with buttoned collar, and a sober tie.
 - 19.2.2 Female ushers should be dressed in shoes, dark skirt or long trousers, and a white, collared blouse.
 - 19.2.3 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.
- 19.3 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.
- 19.4 The working hours of ushers are from 08:00 am to 16:15, 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.
- 19.5 An usher will present himself or herself at the chambers of the judge to whom he or she has been allocated at 09:30 am each day in order to determine what may be required of him or her in order to ensure that the court commences at 10:00 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 10:00 am. If a court is not ready to convene by 10:00 the usher will immediately report the fact to the judge concerned.
- 19.6 Ushers will remain in court, and will remain alert, throughout the court session.

- 19.7 An usher who has been allocated to perform duties in two courts must inform the clerk 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.
- 19.8 If the court session has not been completed by 15:55 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.

ANNEXURE "A" 6.15

ANNEXURE TO NOTICE OF SET DOWN FOR TRIALS

This document must be completed in triplicate

**TELEFAX CONFIRMATION IN TERMS OF TRANSVAAL RULE 7(3)
FOR TRIAL DATES ALLOCATED**

DATE OF APPLICATION FOR TRIAL DATE: _____
CASE NO: _____

PLAINTIFF

DEFENDANT

PARTY APPLYING FOR A TRIAL DATE .
ATTORNEY

ADDRESS

REF NO:

LANDLINE NO: _____ **FAX number: _____ COMPULSORY**

PARTY/PARTIES TO WHOM NOTICE IS TO BE GIVEN.
ATTORNEY

ADDRESS

REF NO:

LANDLINE NO: _____ **FAX number: _____ COMPULSORY**

TRIAL DATE ALLOCATED BY REGISTRAR'S OFFICE _____

This fax transmission serves as notification in terms of Transvaal Rule 7(3) to ALL parties of the trial date allocated, no further registered post notification will be sent.

Parties must further satisfy the obligations imposed upon them by Transvaal Rule 7(5) within 7 days of receipt of this fax transmission.

Official Date Stamp

REGISTRAR

ANNEXURE “A” 12

1. The court grants the necessary leave in general terms subject to the provisions set out below.
2. Any party who wishes to film or record proceedings must notify the registrar of its intention at least 24 (twenty four) hours beforehand. The registrar will then establish from the presiding judge whether there is any particular objection to the request.
3. Any party who wishes to object to any filming or recording must raise its objections in writing.
4. The court may on good cause in any particular case withdraw the leave or change the conditions.
5. Equipment limitations:
 - 15.1 Video: one camera only may be used at a time and the location of the camera is not to change while the court is in session.
 - 15.2 Audio: the media may install their own audio-recording system provided this is unobtrusive and does not interfere with the proceedings. Individual journalists may bring tape recorders into the courtroom for the purposes of recording the proceedings but changing of cassettes is not permitted while the court is in session.
 - 15.3 Still cameras: only one photographer allowed and the location of the camera is not to change and no changing of lenses or film is permitted while the court is in session.
 - 15.4 All camera, video and audio equipment must be in position at least 15 minutes before the start of proceedings and may be moved or removed only when the court is not in session. Cameras, cables and the like are not to interfere with the free movement within the court.
 - 15.5 Lighting: no movie lights, flash attachments or artificial lighting devices are permitted during court proceedings.

15.6 Operating signals: no visible or audible light or signal may be used on any equipment.

6. Pooling arrangements:

16.1 Only one media representative may conduct each of the audio-, video and still-photography activities.

16.2 This media representative is to be determined by the media themselves and is to operate an open and impartial distribution scheme, in terms of which the footage, sound or photographs would have to be distributed in a 'clean' form, that is, with no visible logos, etc, to any other media organization requesting same and would also be archived in such a manner that it remains freely available to other media.

16.3 If no agreement can be reached on these arrangements, no expanded media coverage may take place.

7. Rules regarding behaviour of media representatives:

7.1 Conduct must be consistent with the decorum and dignity of the court.

7.2 No identifying names, marks, logos or symbols should be used on any equipment or clothing worn by media representatives.

7.3 All representatives (including camera crew) must be appropriately dressed.

7.4 Equipment must be positioned and operated to minimize any distraction while the court is in session.

7.5 Equipment must not be placed in or removed from the court room.

7.6 No film, video tape, cassette tape or lens may be changed.

8. There is an absolute bar on:

8.1 Audio recordings or close-up photography of bench discussions.

- 8.2 Audio recordings or close-up photography of communication between legal representatives or between clients and their legal representative.
 - 8.3 Close-up photographs or filming of judges, lawyers or parties in court.
 - 8.4 Recordings (whether video or audio) being used for commercial or political advertising purposes thereafter.
 - 8.5 Use of sound bytes without the prior consent of the presiding judge. (This does not apply to extracts from judgments or orders.)
9. Failure to comply with these instructions may lead to contempt of court proceedings.

ANNEXURE “A” 13

MEMORANDUM TO PRACTITIONERS

- [1] Urgent applications must be brought in accordance with rule 6 and the guidelines set out in cases such as *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) at 782A-G, *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) and *Sikwe v SA Mutual Fire & General Insurance* 1977 (3) SA 438 (W) at 440G-441A. The majority of practitioners launch urgent applications without taking account of the rules or the guidelines. Apparently many practitioners feel entitled to select any day of the week and any time of the day (or night) to demand a hearing. The result is that procedures are followed which do not accord remotely with 'the good order which is necessary for the dignified functioning of the Court' – *Luna Meubel Vervaardigers* at 136G-H.
- [2] The purpose of this memorandum is to inform practitioners how rule 6(12) must be applied and the manner in which the urgent court will be managed to ensure that there is an orderly and dignified adjudication of applications in that court. This means ensuring that the papers are filed timeously and ready for adjudication. In general this means that they must be complete when filed by 12:00 on the Thursday ready for roll call at 10:00 the following Tuesday.
- [3] The attention of practitioners is drawn to the following:
- (1) Urgent applications must as far as practicable be in terms of the rules: i.e. the deviation from the rules must be commensurate with the urgency of the case;
 - (2) Urgency mainly involves the abridgment of times prescribed by the rules and secondarily the departure from established filing and sitting times;
 - (3) In ***Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) at 782A-G** the court considered the effect of rule 6(12) (what follows is a translation) –

'It is of importance to state what the effect of this rule is. In the case of an urgent application an applicant is permitted to act by way of notice of motion without taking into account the rules which are usually applicable. The applicant is, in a certain sense, taking into account the circumstances of the case permitted to make his own rules but "as far as practicable" in accordance with the existing rules. Rule 6(12) therefore makes provision for a process subject to rules different from the usual and when an applicant appears before a judge in such a procedural manner he must ask the judge to disregard the rules applicable to ordinary adjudication. He is not obliged to go to the judge first to ask permission to act by means of extraordinary adjudication because rule 6(12) expressly provides that the judge may deal with such a matter when and where he deems fit. If an applicant acts in terms of this rule and informs the respondent that he regards the application as urgent it follows, in my view, that the respondent is obliged, in the sense that he runs the risk of an order against him by default, and entitled to provisionally accept the rules which the applicant has adopted. When the matter comes before the judge he can object, but in the meantime, he dares not disregard the rules which the applicant has made for himself. Even if the rules of court with regard to ordinary adjudication are deemed to determine that an action is instituted when the notice of motion is handed to the registrar in the case of an urgent application the applicant in the absence of the registrar may launch the matter directly to the judge and the judge can disregard the rules of ordinary adjudication in this connection. Rule 6(12)(a) provides that in the case of urgent applications a judge can disregard the "forms and service" prescribed by the rules. Delivery of a notice of motion to the registrar is no "service" but because in the case of an opposed motion the applicable form 2(a) in the first Schedule requires express notice to the registrar and respondent a judge in an urgent case when the registrar is not available can disregard the requirement that form 2(a) be directed to the registrar.'

- (4) Judges sit in the urgent motion court on a weekly basis and matters should be set down bearing that in mind. Whether unopposed or opposed the papers must be filed (bound, indexed and paginated) by 12:00 the previous Thursday, unless the matter is so urgent that relief must be granted sooner. In ***Luna Meubel Vervaardigers*** at 137A-E the ascending order of urgency is set out:

- (1) The question is whether there must be a departure at all from the times prescribed in rule 6(5)(b). Usually this involves a departure

from the time of 7 (now 10) days which must elapse from the date of service of the papers until the stated day for hearing. Once that is so, this requirement may be ignored and the application may be set down for hearing on the first available motion day but regard must still be had to the necessity of filing papers with the registrar by the preceding Thursday so that it can come onto the following week's motion roll which will be prepared by the Motion Court Judge on duty for that week.

- (2) Only if the matter is so urgent that the applicant cannot wait for the next motion day, from the point of view of the obligation to file the papers by the preceding Thursday, can he consider placing it on the roll for the next Tuesday, without having filed papers by the previous Thursday.
- (3) Only if the urgency be such that the applicant dare not wait even for the next Tuesday, may he set the matter down for hearing on the next court day at the normal time of 10:00 am or for the same day if the court has not yet adjourned.
- (4) Once the court has dealt with the causes for that day and has adjourned, only if the applicant cannot possibly wait for the hearing until the next court day at the normal time that the court sits, may he set the matter down forthwith for hearing at any reasonably convenient time, in consultation with the registrar, even that be at night, or during the weekend.

Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the rules under the ordinary practice of the court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter is set down.'

- (5) Normally a respondent has not less than five days after service to give notice of his/her intention to oppose the application (rule 6(5)(b)) and if no notice of intention to oppose is given, a period of not less than ten days must elapse between the date of service and the date of the hearing stipulated in the notice of motion (rule 6(5)(b)). If the respondent gives notice of intention to oppose the respondent has 15 days from the date of service of the notice within which to file the answering affidavit or a notice of his/her intention to raise a question of law (rule 6(5)(d)). Thereafter the applicant has 10 days from the date of service of the answering affidavit to file a replying affidavit (rule 6(5)(e)). After that the applicant may within five days apply for the allocation of a date for the hearing, failing which the respondent may do so (rule 6(5)(f)). It is clear from these times that the respondent is normally given ample time to consider whether to oppose (5 days); to file an answering affidavit (15 days); and to consider the replying affidavit before the matter is enrolled (5 days);
- (6) The rule ensures an orderly flow of applications through the court and their expeditious adjudication. Rule 6(12) allows an applicant who requires relief urgently to have his case decided without the delays necessitated by the ordinary procedure. However the normal times will be abridged and the deviation from rule 6 will be permitted only when the matter is urgent. The degree of abridgement and deviation must be commensurate with the case and must be justified in the founding affidavit. It is also required that the applicant satisfy the court that the circumstances of the case are such that the

applicant will not be afforded substantial redress at a hearing in due course. Rule 6(12)(b) provides that –

‘In every affidavit or petition filed in support of any application under sub-paragraph (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.’

- (7) Too many practitioners are over-optimistic or reckless in their assessment of the requirements set out in rule 6(12)(b) and attempt to use rule 6(12) to jump

the queue to their client's advantage. Many applications are struck off the roll because the court has found them not to be urgent. It is clear that the rule continues to be the most abused rule in the Division;

- (8) In accordance with the ***Republikeinse Publikasies*** judgment an applicant may choose to set the matter down on any Tuesday (or other day, in accordance with the degrees of urgency referred to in ***Luna Meubel Vervaardigers***) but if the applicant does not wish to have the matter heard on that day at the time indicated it is wrongly enrolled and the procedure abused. If an applicant anticipates that the application will be opposed it is essential that the respondent and the applicant be allowed reasonable times for the filing of answering and replying affidavits before the roll closes at 12:00 on Thursday. If these affidavits are not able to be filed in time and the matter cannot be heard at the time indicated in the notice of motion the procedure is abused. In every case the court will decide whether reasonable time has been allowed in the light of the circumstances revealed in the affidavits. If reasonable times have been allowed the respondent will not be allowed to delay the process;
- (9) Where the urgent motion court judge has found that the application is not urgent and strikes it off the roll the applicant is not prevented from re-enrolling the application duly amplified in a later week.

[4] In the light of the foregoing practitioners can expect the following approach in the urgent motion court –

- (1) Strict application of the ***Republikeinse Publikasies*** and ***Luna Meubel Vervaardigers*** judgments: all urgent applications must be enrolled by 12:00 on the previous Thursday for hearing at 10:00 on Tuesday unless they are covered by the other three degrees of ascending urgency referred to in ***Luna Meubel Vervaardigers***;
- (2) Insistence by the urgent court judge that the judge be satisfied that –
 - (i) the abridgement of times and the deviation from the rule is justified by the circumstances of the case; and

- (ii) if the matter is not heard immediately the applicant will not be afforded substantial redress at a hearing in due course;

These matters must be pertinently dealt with in the affidavits filed in support of the application;

- (3) If an application is not filed (bound, indexed and paginated) by 12:00 on the previous Thursday (subject to the remaining degrees of ascending urgency in *Luna Meubel Vervaardigers*) the application will not be heard and will be struck off the roll. The object of timeous filing of the papers is to enable the court to prepare and adjudicate upon the matter expeditiously;
- (4) If the judge is not satisfied that the application must be heard in the week in which it is enrolled for hearing it will be struck from the roll;
- (5) If the application is enrolled for hearing outside normal court hours (i e 10:00 – 16:00) without satisfactory explanation, it will be struck from the roll;
- (6) If an application, whether unopposed or opposed, is not ready to be adjudicated upon at the time indicated in the notice of motion it will be struck off the roll. If this occurs in an opposed application because the affidavits have not been filed timeously before 12:00 the previous Thursday (subject to the application falling under the remaining three degrees of ascending urgency referred to in *Luna Meubel Vervaardigers*) this will mean that the applicant has not complied with the **Republikeinse Publikasies** guidelines. The judge in the urgent motion court will not permit the application to stand down so that further affidavits can be filed;
- (7) If a matter is not ready for hearing in the week in which it is enrolled for hearing, for whatever reason, in the absence of exceptional circumstances, which must appear from an affidavit, it will not be postponed to a later week. It will be struck off the roll;

- (8) If the circumstances of a case are exceptional and the judge postpones the matter to a later week the judge will order –
- (i) that the remaining affidavits be filed (bound, indexed and paginated) by specific times;
 - (ii) that the papers be taken immediately to the judge who will sit in the later court;
 - (iii) that the applicant immediately deliver to the judge who will sit in the later week a letter summarising the issues in the matter and the nature of the urgency.
- (9) The return day of a rule *nisi* will be heard in the ordinary motion court unless the rule *nisi* expressly orders that the return day be heard in the urgent motion court. If parties agree that interim relief be granted and the respondent contends that the final adjudication of the matter is urgent, this must be dealt with in an affidavit so that the judge in the urgent motion court can make the appropriate order;
- (10) No matter involving more than 500 pages will be considered by the judge in the urgent court (subject to the remaining three degrees of ascending urgency) unless the papers are delivered to the judge who will hear the matter at least 48 hours before the time of the hearing in the notice of motion;
- (11) Any semi-urgent application which involves bulky affidavits in excess of 500 pages and/or argument in excess of three hours will be referred to the Deputy Judge President to allocate a date and judge for the hearing. Where practitioners anticipate that a dispute is of such importance that it must be resolved urgently by the court, for whatever reason, they should approach the Deputy Judge President to allocate a date for the hearing and determine dates for the filing of affidavits and heads of argument and the indexing and pagination of the affidavits.

ANNEXURE “A” 15.1

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. . . .
 - 2.1 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 respondent or a more senior officer of the respondent. You are entitled to the attendance and advice of such senior person, the respondent or an attorney, provided such person arrives without delay and not later than an hour after the handing over of this notice.

 - 2.2 Until the attorney, the respondent 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 applicant’s 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.

3. You are further entitled to have the sheriff and the applicant’s attorney explain to you what this notice and the court order mean.

4. You may be punished for contempt of court if you, *inter alia*:
 - 4.1 Obstruct the sheriff unlawfully in the execution of this order.

 - 4.2 Wilfully disobey this order.

 - 4.3 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 applicant.

ANNEXURE “B” 15.1

Having heard counsel for the applicant and having read the papers filed of record, and on the basis that the applicant undertakes to this court that:

1. This order will not be executed outside the hours between 08:00 and 18:00 on a weekday;
2. Applicant 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 respondent;
3. Applicant will compensate the respondent for any damages caused to the respondent by anyone exceeding the terms of this order;
4. Applicant will compensate the respondent for any damage caused to the respondent by reason of the execution of this order should this order subsequently be set aside.

IT IS ORDERED:

1. That the respondent and any other adult person in charge of the premises of the respondent at Lover’s Lane, Pretoria, grant the sheriff of the above honourable court, applicant’s manager (“Mr ABC”), attorney DEF (“applicant’s attorneys”) and a computer operator nominated by applicant access to the said premises for the purpose of :
 - 1.1 Searching the premises for the purpose of enabling any of those persons to identify and point out to the sheriff originals or copies of, or extracts from applicant’s recipes and formulae for the manufacture of GHtoys.
 - 1.2 Examining any item for the purpose of identifying it and deciding whether it is of the nature mentioned in the preceding subparagraph.
 - 1.3 Searching the premises for the purposes of finding any computer disc containing any of the items referred to above.
2. That the respondent forthwith discloses passwords and procedures required for effective access to the computer for the purpose of searching on the computer and

making a disc copy, or, if that is not possible, a print out of computer documents containing information of the nature which would be expected in a document mentioned in paragraph 1.1 above.

3.

3.1 That the respondent permits the sheriff to attach and to remove any document pointed out by a person mentioned in paragraph 1 as being a document covered by paragraph 1.

3.2 That, subject to paragraph 5.3.2 hereof, the sheriff is authorized to attach any document which is pointed out by any of the aforesaid persons and is directed to remove any attached document in respect of which the applicant or the applicant's attorney does not give a different instruction. The sheriff is directed to keep each removed item in his custody until the applicant authorizes its release to the respondent or this court directs otherwise.

4. That until completion of the search authorized in the preceding paragraphs the respondent may not access any computer or any area where documents of the class mentioned in paragraph 1.1 may be present except with the leave of the applicant's attorney or to make telephone calls or send an electronic message to obtain the attendance and advice mentioned in the notice which is handed over immediately prior to execution of this order.

5. The sheriff is directed, before this order and this application is served or executed, to:

5.1 Hand to the respondent or the other person found in charge of the said premises a copy of a notice which accords with annexure "A" 15.1 of the practice directive.

5.2 To explain paragraphs 2, 3 and 4 thereof.

5.3 To inform those persons of the following:

5.3.1 That any interested party may apply to this court on not less than 24 (twenty four) hours' notice to the office of the

applicant's attorney for a variation or setting aside of this order, the court's practices and rules applying unless the court directs otherwise.

5.3.2 That the respondent is entitled to make a copy of any document which the sheriff intends to remove unless the sheriff declares that the time involved makes the procedure impractical and the sheriff either does not remove the relevant item or removes it in a container sealed by him and which the sheriff may not open except to give effect to this order or to any further direction from the court.

5.3.3 That the respondent or his representative is entitled to inspect items in the sheriff's possession for the purpose of satisfying themselves that the inventory is correct.

6. The sheriff is ordered to immediately make a detailed inventory of all items attached and to provide the registrar of this court, the applicant's attorney, and the respondent with a clear copy thereof.

7. That unless a different direction is obtained from the court, applicant and applicant's attorney will, two days after this order is executed, become entitled to inspect any of the removed items in order to assess whether it provides evidence relevant to the present application or to the further legal proceedings envisaged in the application.

8. That the sheriff is ordered to inform the respondent that the execution of this order does not dispose of all the relief sought by the applicant and to simultaneously serve the notice of motion and explain the nature and exigency thereof.

9. The costs of this application are reserved for determination in the further proceedings foreshadowed in this application save that:

9.1 If the applicant does not institute those legal proceedings within 3 (three) weeks of the date of this order, either party may, on not less than 96 hours' notice to the other, apply to this honourable court for an order:

9.1.1 Determining liability for those costs and determining what must be done about removed items and any copies thereof.

9.1.2 Any other party effected by the grant or execution of this order may on no less than 96 hours' notice apply to this honourable court for an order determining liability for the costs of such party and determining what must be done about any item removed from any such party or any copy thereof.

Note: In some situations the following may also be appropriate.

10. The respondent and any other adult person in charge of the premises at which this order is executed are further directed to disclose to the sheriff of the above honourable court the whereabouts of any document or item falling within the categories of documents and items referred to in 1.1 above, whether at the premises at which this order is executed or elsewhere to the extent that the whereabouts are known to such person(s).
11. In the event that any document or item is disclosed to be at premises other than the premises mentioned in paragraph 1 of this order, the applicant may approach this court *ex parte* for leave to permit execution of this order at such other premises.

ANNEXURE “A” 15.4

Take notice that on the _____ day of _____ 20 _____ at 10:00 or so soon thereafter as the matter may be heard, the abovementioned applicants will apply to the Limpopo North Local Division, Thohoyandou (High Court Buildings, Mphephu Drive, Thohoyandou) for and 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.

ANNEXURE “A” 15.14

Applicant/s..... Case No:

Practice Note

- (1) Applicant’s address
- (2) Date advertised for application
- (3) S 4(1): Publication of notice of surrender
 - Date of publication
 - Government Gazette* p
 - Newspaper p
- (4) S 4 (2): Notice to creditors
 - Date of delivery/posting p
 - Affidavit to prove delivery/posting p.....
 - Physical proof delivery/posting p
- (5) S 4 (3): Statement of affairs p
- Date of lodging p
- Master’s certificate p
- Magistrate’s certificate p
- (6) S 6 (1): Proof of insolvency p
- Movable property – description and value p
- Proof of value of movable property p
- Immovable property – description and value p
- Proof of value of immovable property
- Calculation of dividend to creditors p
- Attorney’s fees for application p
- Valuator’s fees p

APPENDICES

The Companies Amendment Act 2011 (Act No 3 of 2011) was assented to by the President on 19 April 2011. This Act amended the Companies Act 2008 (Act No 71 of 2008) (“the 2008 Act”), extensively.

On 26 April 2011 in terms of Proclamation No 32, 2011 published in *Government Gazette* No 34239 the President determined that the 2008 Act shall come into force on 1 May 2011.

The courts are still to interpret and apply the provisions of the 2008 Act. Before that has been done no directives will be included in this manual dealing with Company and Close Corporation matters as a manual is not intended to direct the courts how to deal with new Acts. The manual rather informs practitioners how acts or parts thereof are interpreted or applied by the courts. In due course consideration will be given to the inclusion of chapters in this practice directive dealing with company matters.

The 2008 Act repeals the Companies Act 1973 (Act No 61 of 1973) (“the 1973 Act “), save for the transitional arrangements set out in schedule 5 of the 2008 Act. Section 9 of schedule 5 provides for the continued application of the 1973 Act to winding-up and liquidation applications.

Appendix 1 will therefore deal with applications for the liquidation of companies. Appendix 2 will deal with enquiries in terms of section 417 of the 1973 Act.

The National Credit Act 2005, (No 34 of 2005) is at present receiving much attention from the courts. A full court is to be constituted in the very near future in this division to deal with some provisions of the National Credit Act 2005. The National Credit Act 2005 will be dealt with in Appendix 3. As the case law develops on the National Credit Act the appendix will be updated.

In the judgment in the case of *Elsie Gundwana v Steko Development CC and others*, case CCT 44/10 delivered on 11 April 2011, The Constitutional Court declared “that it is unconstitutional for a registrar of a High Court to declare immovable property specially executable when ordering default judgment under rule 31(5) of the Uniform Rules of Court to the extent that this permits the sale in execution of the house of a person.” Urgent measures were taken by the courts to deal with a substantial number of applications for default judgments which had previously been dealt with by the registrar.

On 24 December 2010 rule 46(1)(a)(ii) of the Uniform Rules of Court were amended to provide that where immovable property of a judgment debtor has been declared specially executable and it is the primary residence of such judgment debtor, no writ of execution against such immovable property shall issue unless the court, having considered all the relevant circumstances, orders execution against such property. It is expected that the courts will develop guidelines for such authorisation.

APPENDIX I - LIQUIDATION

1. The applicant shall seek a final winding-up order in the notice of motion.
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 effected.
3. The service referred to in paragraph 2 may include:
 - 3.1 Service of the order on the company or close corporation at its registered office.
 - 3.2 Publication of the order in the *Government Gazette*.
 - 3.3 Publication of the order in a newspaper circulating in the area where the company or close corporation carries on business.
 - 3.4 Service on all known creditors. This will only be ordered where the applicant has ready access to the identities and addresses of the creditors. Depending on the information that the applicant has as to the creditors' addresses such service can be ordered to be effected by e-mail, facsimile transmission or pre-paid registered post.
4. If a provisional order for liquidation is granted, proof of compliance with the service ordered must be provided on the return date. Such proof is provided by filing an affidavit setting out the manner in which the service ordered was complied with. The presiding judge will only accept the affidavit of service from the bar in exceptional circumstances made out in an affidavit.
5. If an extension of the return date of a provisional order for liquidation is sought, the party seeking such an extension must deliver an affidavit motivating such an extension.
6. 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.
7. 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 or undesirable.

**ANNEXURE "A" – APPENDIX I
STANDARD ORDER FOR FINAL LIQUIDATION**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE 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:

The above mentioned respondent is hereby placed under final winding up.

BY THE COURT

REGISTRAR

**ANNEXURE “B” APPENDIX I
STANDARD ORDER FOR PROVISIONAL LIQUIDATION**

**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION
OR
LIMPOPO LOCAL DIVISION**

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

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

IT IS ORDERED THAT:-

1. The abovementioned 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 at 10:00 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.
4. A copy of this order to be published forthwith once in the *Government Gazette*.
5. A copy of this order be forthwith forwarded to each known creditor by prepaid registered post or by electronically receipted telefax transmission.

BY THE COURT

REGISTRAR

APPENDIX II - ENQUIRIES IN TERMS OF SECTION 417 OF THE 1973 COMPANIES ACT

1. The request that the enquiry be held in secret should be fully motivated. Secrecy will not be ordered as a matter of course.
2. Where application is made to examine a particular witness, it must be shown that the witness in question has refused to furnish the information required of him or her is otherwise unwilling to cooperate with the liquidator; or reasons must be provided why it would be inadvisable or counterproductive to interview the witness prior to a summons being served upon him/her.
3. 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 has instituted an enquiry and why it is necessary to apply to court for this purpose.

APPENDIX III - PROCEEDINGS INSTITUTED IN TERMS OF THE NATIONAL CREDIT ACT 34 OF 2005

1. In any proceedings instituted in terms of the National Credit Act 34 of 2005 in respect of any claim to which the provisions of sections 127, 129 or 131 of the Act apply, the summons or particulars of claim or, in motion proceedings, the founding affidavit, must contain sufficient allegations or averments to enable the court to be satisfied that the procedures required by those sections, read with section 130 (1) and (2) of the Act, as may be applicable to the claim have been complied with before the institution of the proceedings. The attention of practitioners is drawn to paragraphs 33 to 37 of the judgment in *Rossouw and Another v FirstRand Bank Ltd* 2010 (6) SA 439 (SCA).
2. In order to satisfy the court of the matters referred to in section 130(3) of the Act, an affidavit by the credit provider must be filed when judgment is applied for.

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