

CONSOLIDATED PRACTICE NOTES WESTERN CAPE HIGH COURT, CAPE TOWN¹

By direction of the Judge President the following Consolidated Practice Notes are operative with effect from 1 May 2009.

INTRODUCTION

1. All existing Court Notices, Practice Notes and Old Cape Rules currently in force in this Division are hereby repealed and replaced with these Consolidated Practice Notes (*Practice Notes*).

2. In these Practice Notes, unless the context otherwise indicates—

- (a) 'day' means court day;
- (b) 'Judge President' includes the Deputy Judge President or Acting Judge President, as the case may be;
- (c) 'rules' means the Uniform Rules of Court and any word or expression defined in the rules bears the same meaning herein.
- (d) 'case managing judge' means the judge presiding at the Rule 37(8) Conference.²

A. COURT TERMS AND TIMES OF SITTING³

3. There shall be four terms in the year during such periods as the Judge President may determine from year to year.⁴

4. Subject to the discretion of any individual judge to order differently, all the courts of this Division will ordinarily commence at 10h00.⁵

5. Subject to Practice Note 6 below, Fridays during term are reserved for the hearing of appeals, reviews, other matters to be heard by more than one judge and such other matters as the Judge President may permit to be enrolled.⁶

6. Admissions⁷

- (1) During term all applications for admission and enrolment as an advocate, attorney, notary and conveyancer will be heard by two judges on the first Friday of every month, unless the Judge President, on prior request and for good reason, orders otherwise.⁸
- (2) The presiding judge will deliver a short address at the commencement of proceedings.
- (3) In order to minimise disruptions and to enhance the dignity of the occasion, all persons attending the proceedings (including practitioners appearing for applicants) will be requested to remain in court until the roll has been completed.
- (4) Whenever the number of applications set down for a particular day justify doing so, the roll will be split and will be dealt with separately during a morning and afternoon session.

¹ Now the Western Cape Division of the High Court, Cape Town—see ss 6(1)(i) and 50(1)(m) of the Superior Courts Act 10 of 2013, which came into operation on 23 August 2013. See also the rules of the Western Cape Division of the High Court in the Main Volume, Part C3.

² Paragraph (d) added with effect from 12 October 2011.

³ In terms of s 8(6) of the Superior Courts Act 10 of 2013 the Chief Justice has, on 28 February 2014, issued a directive in the *Government Gazette* setting out uniform court terms for the Superior Courts (the term 'Superior Court' is defined in s 1 of the Superior Courts Act 10 of 2013 as meaning 'the Constitutional Court, the Supreme Court of Appeal, the High Court and any court of a status similar to the High Court'). The directive is reproduced in Part D above.

⁴ Compare Old Cape Rule 3(1).

⁵ CN 1.

⁶ CN 2.1.

⁷ PN 24.

⁸ CN 21.

7. All other matters shall be heard on any other day during term unless otherwise directed by the Judge President;¹ provided that no new opposed matters are to be set down for hearing in the last week of any term without leave of the Judge President.²

8. Once the hearing of any matter has commenced and the presiding judge is available, such matter shall, save in exceptional circumstances, continue until it is concluded; provided that matters that are not completed during the second last week of any term shall not automatically continue during the last week of term without the leave of the presiding judge.³ In this regard, the convenience of counsel shall not be regarded as an exceptional circumstance.⁴

9. During **court recesses**—

- (1) all unopposed matters (except divorce actions) shall be heard on TUESDAYS in Third Division;
- (2) all unopposed divorce actions, as well as applications in terms of Rule 43 (opposed and unopposed), shall be heard on WEDNESDAYS in the Third Division;
- (3) all Notices of Set Down for matters in Third Division shall be filed before 12h00 on the preceding FRIDAY;
- (4) urgent and/or opposed matters shall be heard at such times as the senior duty judge may determine;
- (5) in special circumstances, any other matters may be heard on such dates as the Judge President may direct;

provided that during the period between Christmas and New Year no court shall sit, save where circumstances otherwise require.

10. Circuit courts shall be held on the dates and at the venues determined by the Judge President from time to time.⁵

B. DOCUMENTS AND PLEADINGS

11. All documents filed with the Registrar—

- (1) shall be typed and printed in black ink on white paper of A4 size in double spacing on one side of the paper only with a font size not less than 12 point; provided that the court may, in its discretion, relax these requirements where a litigant appears in person or where circumstances require;⁶
- (2) shall have a margin of at least 35mm, which serves as a binding space and shall not be used for notes, signature, initials, stamps, etc; provided that where a document which is to be used as an exhibit, is not of A4 size or does not have a margin of 35mm or more, it should, where possible, be gummed to paper of A4 size⁷
- (3) shall bear in the left-hand lower corner of the first page of such document the name, telephone number and (where available) the e-mail address of the legal representative filing such documents.⁸ Where a litigant acts in person, the relevant details of such litigant shall likewise appear.

12. The Registrar's office may refuse to accept any document which does not comply with these requirements.⁹

¹ CN 2.2.

² CN 8.6 (modified).

³ CN 8.7.

⁴ CN 6.1 & 6.2.

⁵ Cf Old Cape Rule 3(7).

⁶ CN 3(3) (as modified).

⁷ CN 3(1), 3(4).

⁸ CN 4 (as modified).

⁹ CN 4.

13. Whenever due to urgency it is not possible timeously to file an original document with the Registrar or to hand it in from the Bar, a copy thereof (including a facsimile copy) may be filed or handed in provided that —

- (1) such a copy shall be clear, clean, fully legible, on paper of good quality and of A4 standard size;
- (2) the original document shall be placed in the relevant file as soon thereafter as possible.¹

C. MOTION COURT AND 'FAST LANE'

14. The Judge President will allocate two duty judges to Motion Court (*Third Division*) each week of the year, starting at 17h00 on each Friday, including court recesses.²

15. Enquiries as to which judge is on duty after court hours each day and during weekends must be directed only to the registrar on duty.³

16. One of the judges will hear all unopposed matters as well as opposed Rule 43 applications in Third Division.⁴

17. The other duty judge, presiding in what is known as the '*Fast Lane*' Court, will deal with the following matters:⁵

- (1) all unopposed urgent applications brought under Rule 6(12) not on the ordinary Third Division roll;
- (2) all matters becoming opposed on the Third Division roll;
- (3) all matters which, even if unopposed, are in the opinion of the senior duty judge such as to warrant a hearing in a separate court, either by reason of the complexity of the matter or the volume of papers;
- (4) all chamber book applications;⁶
- (5) all matters referred to the '*Fast Lane*' Court by the Judge President.

18. In all matters to be heard in the Third Division a notice of set down must be filed with the Registrar by no later than noon on the day but one prior to the date of hearing.⁷

19. Save where the court is prepared to condone the defect, matters in which the set-down has preceded the expiry of the *dies induciae* may be struck from the roll with an appropriate order as to costs.⁸

20. In all **opposed matters** in Third Division (including Fast Lane) —

- (1) the applicant's attorney must file a practice note when setting the matter down, indicating —
 - (a) whether or not the matter is likely to proceed on the allocated date;
 - (b) where applicable, the grounds of urgency;
 - (c) if the matter is to be postponed, the reason(s) for the postponement;
 - (d) full details, including contact numbers, of the legal representatives of all the parties.⁹
- (2) where the matter is likely to proceed on the allocated date, the papers in the court file must be collated, indexed and paginated before the matter is set down;¹⁰

¹ PN 11.

² CN 12.1.

³ CN 12.5.

⁴ CN 12.2, 12.6.

⁵ PN 1.

⁶ See Practice Note 37 below.

⁷ CN 29.

⁸ CN 22, 31.

⁹ New.

¹⁰ New. See Erasmus *Superior Court Practice* D5-12, 14.

(3) where it is anticipated that argument is likely to last for more than half a day, the parties must approach the Judge President for directions regarding the hearing of the matter.¹

21. The judge hearing opposed matters in Third Division (including Fast Lane) may, after hearing the legal representative(s), make an order but need not furnish reasons therefor unless reasons are requested in terms of Rule 49(1)(c).²

22. Whenever reasons for a court's order are required (whether in terms of Rule 49(1)(c) or otherwise), the legal representative concerned shall deliver such application or request for reasons to the judge from whom the reasons are required.³

23. The papers in the court file must likewise be collated, indexed and paginated —

- (1) in all return days; and
- (2) in all matters where the papers exceed 50 pages, whether the matters are opposed or unopposed.

24. It is the responsibility of the applicant's (or plaintiff's) attorney in all matters to ensure that the court file is in order when filing the notice of set down.⁴

25. Matrimonial Matters

In all divorce actions —

- (1) there shall be personal service of the summons on the defendant unless service other than personal service has been authorised;⁵
- (2) where more than six months have elapsed between the date of service of the summons and the date of set-down, notice of set-down shall be given to the defendant, unless the court in the exercise of its discretion dispenses with this requirement.⁶
- (3) the original or a copy of the marriage certificate of the parties shall be handed in at the hearing;⁷
- (4) failure to comply with the requirements set out above may result in the matter being postponed or struck from the roll with an appropriate order as to costs.⁸

26. Save where the court in its discretion and on good cause shown dispenses therewith, all applications in terms of section 21(1) of the Matrimonial Property Act 88 of 1984, and all applications under section 88 of the Deeds Registries Act, 47 of 1937, shall, in addition to the requirements of those Acts, also follow the guidelines laid down in *Ex parte Lourens et uxor* 1986 (2) SA 291 (C).⁹

27. Service and Publication of Orders

- (1) Whenever a rule *nisi* or a provisional order has to be served (whether by delivery and/or publication and/or posting), such service shall be effected not later than 10 days prior to the return date of the said *rule nisi* or provisional order.¹⁰

¹ New.

² CN 12.4 (modified).

³ PN 16.

⁴ New.

⁵ New.

⁶ New.

⁷ CN 24.

⁸ CN 24.

⁹ New.

¹⁰ PN 10.

- (2) Whenever an order of court has to be published in a newspaper or in any other publication, such order shall be published only in the language of the relevant newspaper or publication, irrespective of the language in which the order is issued, unless an order is specifically made that the order of court be published in another language. Where, however, a newspaper or publication is published in more than one language, priority shall be given to the language in which the order of court is issued.¹
- (3) In all return days an affidavit must be filed by the applicant's attorney of record, setting out in what respects there has and/or has not been compliance with the court order and attaching the relevant supporting documents (eg court order, sheriff's return and/or other proof of service, publication or posting).²
- (4) Where an order of court has been published in the *Gazette* or a newspaper, the full sheet with the heading and the date of a *Gazette* or newspaper containing the relevant publication should be attached to the affidavit referred to in the preceding paragraph. This page must be folded to A4 size in such a way as to show the order and the date of publication.³ Alternatively, and if only a cutting of the order is filed, the date and newspaper in which it was published shall be proved by way of the affidavit referred to in the preceding paragraph, which shall explain *inter alia* why the full page is not filed.⁴
- (5) These directions shall apply *mutatis mutandis* where service is effected by way of edictal citation or substituted service.

28. Default Judgments*

Applications for default judgment in terms of Rule of Court 31 (5) must be made substantially in accordance with **Form "A"** in the Schedule hereto and all such applications must be accompanied by a draft order substantially in accordance with **Form "B"**.⁵

29. Postponements

- (1) As soon as possible after applicants' legal representatives become aware that a matter on the Third Division roll is to be postponed or removed from the roll, they shall without delay notify the registrar of the duty judge concerned.⁶
- (2) Where a matter has previously been postponed, an affidavit must be filed motivating an application for any further postponement.⁷

30. Notice of Applications for Sequestration / Liquidation

- (1) Save where the court in its discretion and on good cause shown dispenses therewith, notice of intention to apply for a provisional order of sequestration shall be given to the debtor and, if married, to the debtor's spouse (whether married in our [sic] out of community of property), who shall be joined as a respondent.⁸
- (2) Save as provided in sub-paragraph (3) below, notice of intention to apply for a provisional order of liquidation shall be given to the company concerned prior to the filing of the application.⁹

¹ CN 18.3.

² New.

³ PN 2, CN 3(6).

⁴ New. Cf Erasmus *Superior Court Practice* D4-7.

* In *Gundwana v Steko Development and Others* 2011 (3) SA 608 (CC) it has been declared that it is unconstitutional for the registrar to declare immovable property specially executable when ordering default judgment under rule 31(5)(b) to the extent that this permits the sale in execution of the home of a person. See further the notes to rule 31(5)(b) *sv* 'The registrar may' and the notes to rule 31(5)(b)(vi) *sv* 'Require the matter to be set down for hearing in open court' in Part B of the Main Volume.

⁵ PN 14.

⁶ CN 14; PN 3.

⁷ New.

⁸ CN 15.

⁹ CN 16.

- (3) The court may in its discretion dispense with the requirements of the preceding sub-paragraph where the court is satisfied that it would be in the interests of the company or of the creditors to do so, or that the company has knowledge that such application is to be made.
- (4) In the case of so-called 'friendly sequestrations' or, in the case of applications for winding-up, where the applicant is the company itself or an insider, notice of the provisional order shall also be given to creditors with claims in excess of R5 000, unless the court orders otherwise. (With regard to 'friendly sequestrations' in general, the attention of practitioners is drawn to the judgment in *Craggs v Dedekind and three similar matters* 1996 (1) SA 935 (C).)

31. Reports by the Master and other Government Officials

- (1) In all applications requiring a Master's report (including those brought as matters of urgency) the attorney of record for the applicant shall first lodge his/her application with the Registrar who will in the normal course issue an appropriate case number.
- (2) Thereafter a copy of all the papers filed of record shall be submitted to the Master under cover of a letter requesting a report and the Registrar's case number should appear from the documents thus served upon the Master.
- (3) The onus will thereafter be on the attorney to lodge the Master's report in the appropriate court file and shall not enrol the matter until he or she has done so.¹
- (4) The provisions of paras (1) to (3) above shall apply equally to all applications for *Voluntary Surrender*²
- (5) Applications for the court's sanction where it is required under the Companies Act should first be submitted to the Registrar of Companies for a report, and such report is to be included in the papers placed before the court.³
- (6) The procedure set out in the preceding sub-paragraph shall, subject to the provisions of section 97(1) of the Deeds Registries Act, 47 of 1937, apply *mutatis mutandis* in all cases requiring a report by the Registrar of Deeds.⁴

32. Removal of Restrictions from Title Deeds⁵

In applications for the removal of restrictions from title deeds imposed in terms of a Town Planning Scheme, the order to be issued should, as far as possible, follow the form as approved in *Ex parte Kilian; Ex parte Wiehahn* 1963 (2) SA 576 (T).

33. National Credit Act 34 of 2005⁶

- (1) In any proceedings instituted in terms of the National Credit Act 34 of 2005 (the Act) 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 papers, must contain sufficient allegations or averments to enable the court to be satisfied that the procedures required by those sections, read with s 130(1) and (2) of the Act, as may be applicable to the claim had been complied with before the institution of the proceedings. (The attention of practitioners are drawn to the judgment in *Rossouw and Another v Firstrand Bank Ltd* 2010 (6) SA 439 (SCA), in particular at paras 33-37.)
- (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.

¹ PN 5.

² See PN 5, as amended, and as published in 2000 (4) SA 135.

³ CN 17.

⁴ New.

⁵ PN 17.

⁶ PN 25.

34. Urgent Applications¹

- (1) When an application is alleged to be of extreme urgency, the applicant's legal representative shall approach the Registrar to arrange a hearing as soon as possible in consultation with the duty judge.
- (2) Practitioners are expected to adhere as far as possible to the basic requirement of Rule 6(5)(a) that Form 2(a) be used in applications, including applications with an element of urgency. (In this regard, the attention of practitioners is drawn to the judgment in *Gallagher v Norman's Transport Lines* 1992 (3) SA 500 (W) at 502D–504C.)²
- (3) Opposed matters which are not of extreme urgency but which are nevertheless too urgent to await a hearing in the ordinary course on the continuous roll, will be granted some preference. For convenience these matters are called 'semi-urgent' matters.

35. 'Anton Piller' Orders³

- (1) In all applications brought *ex parte* for an order to allow the entry and search of premises (an 'Anton Piller' order), a draft order substantially in accordance with **Form "C"** in the Schedule hereto (varied or amplified to the extent necessary in particular circumstances) is to be attached.
- (2) When service of the order is effected, it shall be accompanied by a copy of the notice to respondent substantially in accordance with **Form "D"** in the Schedule hereto (varied or amplified to the extent necessary in particular circumstances), and the attention of the person served is to be pertinently directed to such notice and order, and no further steps in pursuance of the order shall be taken until the notice and order have been read or read to and understood by the said person and he has availed himself of his rights thereunder should he wish to do so. Where necessary, the services of an interpreter are to be called for.
- (3) The 'supervising attorney' referred to in the notice and draft order should be an attorney whom the court considers suitable in the circumstances and who is not a member or an employee of the firm acting for the applicant. The application shall include information as to the identity and experience of the proposed supervising attorney.
- (4) Where the premises concerned are likely to be occupied by an unaccompanied woman and the supervising attorney is a man, at least one of the persons attending on the service of the notice and order should be a woman.
- (5) The order and the accompanying notice are to be served by the sheriff and the contents explained by the supervising attorney in whose presence and under whose supervision the provisions of the order are to be carried out. The supervising attorney shall ensure that no items are removed from the premises until a list of items to be removed has been prepared, and a copy thereof has been supplied to the applicant's attorney and the person served with the order, if present, and such person has been afforded a reasonable opportunity to check such list. The supervising attorney shall not permit the premises to be subjected to a search for items not appearing on the schedule of listed items referred to in paragraph 2 of the order.

¹ CN 11.

² New. See Erasmus *Superior Court Practice* D5-1.

³ PN 18.

- (6) The supervising attorney shall file with the registrar, by no later than noon on the day but one preceding the return day of the order, a concise report describing the manner in which the order was complied with. The supervising attorney shall ensure that a copy of his/her report is delivered to applicant's attorney and to respondent (or his/her attorney, if represented).

36. Hague Convention Matters¹

- (1) All applications brought pursuant to the provisions of the Hague Convention on the Civil Aspects of International Child Abduction 1980 will ordinarily be treated as urgent, subject to the right of any party to argue that it should not be so treated in any given case.
- (2) It will be the responsibility of the applicant's legal representatives to ensure that the court file is clearly endorsed so as to indicate that it is a '*Hague Convention*' matter. Where an applicant is not represented, the Registrar should assist litigants insofar as is possible.
- (3) The relevant court file must be placed before the duty judge at the earliest opportunity.
- (4) Should the matter not be disposed of by the judge in the urgent court during the course of that particular week, the judge that dealt with the matter or another judge designated by the Judge President will ordinarily be seized with the matter and will continue to manage the case procedurally, with due regard to the urgency thereof, until it is ripe for hearing, the aim being to ensure finalisation within a maximum of 6 weeks from date of issue of the application.

37. Chamber Book Applications²

Applications may be brought through the Chamber Book in the following matters: —

- (1) to authorise the issue of process on Saturdays, Sundays, public holidays and outside the times specified in Rule 3;
- (2) for directions as to the set down of applications referred to in Rule 6(11);
- (3) for judgment on confession as provided for in Rule 31(1);
- (4) for judgment following acceptance of an offer or tender and failure to pay or perform within the period specified in Rule 34(7);
- (5) for an order for payment of unpaid costs following acceptance of an offer or tender made in terms of Rule 34(9);
- (6) for an order as to the conditions for the conduct of an examination as provided for in Rule 36(3);
- (7) for an order to resolve a dispute as contemplated in Rule 36(7);
- (8) for an order for the transcription of a record (see Rule 39(19));
- (9) for an order by consent of the parties for the transfer of a trial to the magistrate's court, subject to the proviso in Rule 39(22);
- (10) for leave, in an *in forma pauperis* matter, to withdraw, settle or compromise the proceedings or to discontinue assistance therein and for the giving of directions as to the appointment of a substitute(s) (see Rule 40(5));
- (11) for directions for service in applications involving the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (*PIE*) 19 of 1998;

¹ New.

² CN 26.

- (12) for an order on a case submitted by the taxing master (including an award as to costs) in terms of Rule 48(2);
- (13) for an order by consent of the parties for the promotion of a matter on the roll, such matter to be decided by the Judge President or, in his or her absence, by the senior duty judge;
- (14) for an order by consent of the parties removing a matter to another division of the High Court or to a circuit court or for the removal of a matter from the circuit court to the court sitting in Cape Town or for the removal of a matter to the Divorce Court;
- (15) for an order for the substitution of a *curator ad litem*;
- (16) for an order referring any matter concerning the welfare, custody or maintenance of minors to the Family Advocate for investigation and report;
- (17) for the grant of an interdict (or the amendment or the setting aside thereof) by consent of the parties pursuant to the provisions of the Prevention of Family Violence Act, 1993;
- (18) applications by minors for leave to marry or to enter into apprenticeships or other contracts where the court's sanction is sought;
- (19) applications to compel the filing of opposing papers where a notice of opposition has been filed, but no further steps have been taken by the respondent, failing which the matter may be enrolled on the unopposed roll;¹
- (20) for any order which is required to be brought in Chambers by reason of the provisions of any Act or law or these Practice Notes.

D. TRIALS AND OTHER OPPOSED MATTERS

38. Upon the close of pleadings, the plaintiff's attorney, or if he or she fails to do so, any party, may apply for a trial date by entering the relevant particulars as required by the Registrar in a register kept for that purpose.²

39. Before applying for a date of set-down, the attorney in question shall collate, number consecutively and suitably secure all pages of the pleadings and documents in the court file. A complete index thereof, together with a questionnaire substantially in accordance with Form "E" in the Schedule hereto, shall also be prepared and delivered.³

40. The Registrar will not allocate a trial date in any trial matters until such time as the provisions of Practice Note 39 above have been complied with.

41. Pre-Trial Procedure and Case Management⁴

- (1) In order to ensure that it is effective, a pre-trial conference should be held after discovery and after the parties have exchanged documents and further particulars.⁵
- (2) At a pre-trial conference the parties must genuinely endeavour to achieve the objects of Rule 37 (by defining triable issues and curtailing proceedings) and the minute must show this.⁶

¹ PN 23.

² Cf Old Cape Rule 34(1).

³ CN 3(5), CN 28(i) (modified).

⁴ PN 8, 9, 15. This largely repeats the existing practice, but forms the subject of further discussions. A new pre-trial procedure will hopefully be implemented in the near future.

⁵ New.

⁶ New.

- (3) A document which purports to be a pre-trial minute but which does not achieve the objects of Rule 37 (e.g. if it is a mere recordal or paraphrase of the agenda items for discussions at a Rule 37 conference), shall not be accepted as a proper pre-trial minute. Proper compliance with Rule 37(4) is required to ensure a meaningful conference.¹
- (4) Where any party is of the view that the matter is ready for trial, but no notice of a trial date as contemplated by Rule 37(1) has as yet been received, or that for any other reason a conference as contemplated by Rule 37(8) before a judge in Chambers needs to be convened, such party may apply through the Chamber Book, on notice to all other parties, for an order that such a conference be convened; provided that no such conference will be convened unless the party requesting the conference has complied with the provisions of Practice Note 39 above.

42. Allocation of Opposed Matters

- (1) Where a matter set down for hearing on the continuous roll is placed before the Judge President for allocation to a judge, and the provisions of Rule 62(4) have not been complied with, or the signed minute referred to in Rule 37(1)(a) has not been filed, the Judge President may refuse to allocate such matter to any judge and may order that the matter be struck from the roll for the date for which it has been set down, and he/she may make such other order or orders as to him/her seems appropriate, including any order as to costs.²
- (2) Before 09h30 on the day before a matter on the continuous or opposed motion roll is set down to commence, the plaintiff's / applicant's counsel (or in the event of the plaintiff's/ applicant's counsel not being available, his/her instructing attorney) shall advise the secretary to the Judge President in writing (including facsimile and/or e-mail)³—
- (a) whether or not the matter has been settled;
 - (b) if not settled, what the prospects are of the matter being settled;
 - (c) of the likely duration of the matter;
 - (d) the names and telephone numbers of counsel on both sides; and
 - (e) a brief description of the issues involved;⁴
 - (f) when and by which case managing judge the matter has been released as 'trial ready'.⁵
- (3) As soon as possible after counsel becomes aware that in a particular matter on the continuous or motion roll witnesses and/or counsel from out of town will be testifying or appearing, this information shall be conveyed by counsel to the secretary to the Judge President.
- (4) If an opposed matter is settled, or is to be withdrawn or postponed, or if any issue raised will not be pursued, the attorney of record shall, without delay, notify the Registrar in terms of Rule 41(3) and, where applicable, shall immediately delete the entry on the continuous roll.⁶

¹ New.

² PN 9.

³ Fax No 021 423 4977; E-mail: A.Sheldon@justice.gov.za; mmatthews@justice.gov.za.

⁴ PN 19.

⁵ Paragraph (f) substituted on 23 April 2013. In terms of a Court Notice dated 23 April 2013 issued by the Judge President all Practice Notices submitted in terms of Consolidated Practice Note 42 as from 1 May 2013 must comply with this requirement.

⁶ CN 5.1.

43. Early Allocation of Opposed Matters

- (1) If any matter on the continuous roll requires early allocation, the legal representatives for the plaintiff, excipient or applicant (as the case may be), shall after compliance with the provisions of Rule 62(4), deliver to the secretary of the Judge President, not less than ONE WEEK before the date of hearing, the relevant court file, together with a notice to that effect, setting out the case number, the names of the parties and their legal representatives, and the date of hearing.¹
- (2) The notice shall otherwise comply with the provisions of Practice Note 42(2) above and shall include a list enumerating those parts of the record or the heads of argument, if applicable, which, in the opinion of the parties' legal representatives, are not relevant for the determination of the matter.²
- (3) Matters will be deemed to require early allocation, as contemplated above—
 - (a) where the papers (including annexures) in the matter exceed 200 pages; or
 - (b) where the issues are such that the judge allocated to hear the matter would, in order to prepare for the hearing, reasonably need to receive the papers earlier than he or she would normally do so (that is, the day before the hearing).³
- (4) Failure to comply with the provisions of this notice may result in the matter not being heard on the allocated day.⁴

44. Opposed Motions⁵

- (1) The Registrar shall keep an Opposed Motion Roll, separate from the continuous roll for trials.
- (2) The applicant or respondent in an opposed motion shall apply to the Registrar for a date of set-down on the Opposed Motion Roll in terms of Rule 6(5)(f) after complying with the requirements of Practice Note 39 above.
- (3) The Registrar shall allocate the first available date of set-down and shall give notice to all parties of such date, which date shall not be less than 25 days from the date of such notice.
- (4) The applicant's legal representative shall, together with the applicant's heads of argument, file a short note setting out the name and number of the matter, the names of counsel involved (if known) and, in brief, the nature of the matter and its estimated duration. If an applicant is not represented, this sub-paragraph shall be complied with by respondent's legal representative.

E. APPEALS & HEADS OF ARGUMENT**45. Leave to appeal⁶**

Whenever an application for leave to appeal to the Supreme Court of Appeal or to the Full Court of this Division is lodged with the Registrar, the following procedure will apply, both to civil and criminal matters:

- (1) Counsel or the attorney for the applicant for leave to appeal shall simultaneously therewith deliver a copy of such application together with the relevant court file to the judge against whose judgment and/or order the application is directed.

¹ CN 8.1.

² CN 8.2, 8.3.

³ CN 8.4.

⁴ CN 8.5.

⁵ CN 13, as modified.

⁶ PN 7 (modified).

- (2) Counsel or the attorney for the applicant for leave to appeal shall, after consultation with counsel or the attorney for the respondent, and not later than 10 days after the lodging of the application, approach the judge in chambers in order to arrange for a convenient time and date for the hearing of the application.
- (3) Whenever counsel or the attorney for the applicant fails to take the steps provided in para (2) above, the attorney for the respondent may not later than 15 days after the lodging of the application and on 48 hours notice to the attorney for the applicant approach the judge to arrange a time and date for the hearing of the application.
- (4) An unrepresented party who lodges an application for leave to appeal shall simultaneously therewith deliver to the Registrar an additional copy of the application which is endorsed for delivery by the Registrar, together with the relevant court file, to the judge against whose judgment/order the application is directed.
- (5) Whenever a party in a civil matter is unrepresented, the provision of paragraphs (2) and (3) shall be complied with as if such party was his/her own legal representative save, however, that the unrepresented party and/or the legal representative of any other party shall approach the Registrar who will in turn approach the judge in order to arrange for a convenient time and date for the hearing of the application.
- (6) Whenever the applicant for leave to appeal in a criminal matter is unrepresented, the Director of Public Prosecutions or his/her representative shall not later than 15 days after the filing of the application approach the Registrar who will in turn approach the judge in order to arrange for a convenient time and date for the hearing of the application. The Registrar shall give the applicant written notice of the date fixed, which notice shall be posted to the applicant not less than 10 (ten) days before the hearing.
- (7) Where counsel and/or the attorney for a party or the party, as the case may be, fails to comply with the provisions aforesaid, the judge may take such steps as he/she deems necessary to deal with the application.

46. Full Bench Appeals

- (1) Full Bench appeals will ordinarily be heard during the first week of the FIRST term and the first week of the THIRD term of every year; or on such other dates as the Judge President may determine from time to time.
- (2) The roll for appeals will close on 15 September each year (for appeals to be heard during the FIRST term of the following year) and on 15 March (for appeals to be heard during the THIRD term) respectively, by which dates appellants must have complied with the provisions of Rule 49(6)(a) and Rule 49(7)(a).
- (3) At the same time as the application for a date of an appeal in terms of Rule 49(6)(a) and delivery of the record in terms of Rule 49(7)(a) the appellant must deliver a Practice Note indicating-
 - (a) the nature of the appeal succinctly stated (for example 'negligence in MVA case'; 'appeal against conviction and sentence on a charge of murder'; 'interpretation of a contract / will / Act 00 of 0000'; etc');
 - (b) the date of the judgment appealed against and the name of the judge;
 - (c) the date when leave to appeal was granted;
 - (d) the length of the record;
 - (e) an estimate of the duration of the argument (if more than one day is required for argument, the reasons for the request);
 - (f) the portions or pages of the record that are in a language other than English;
 - (g) the name(s) of counsel involved in the appeal (if known).
- (4) The Registrar shall give the parties written notice in terms of Rule 49(7)(c) of the dates assigned for the hearing of appeals and of the dates by when heads of argument are to be delivered so as to allow all parties' heads of argument to be filed before the end of the term preceding the hearing of the appeal.

- (5) The heads of argument of each party must be accompanied by a Practice Note indicating-
- (a) the name and number of the matter;
 - (b) the issues on appeal succinctly stated;
 - (c) a summary of the argument, not exceeding 100 words;
 - (d) a list reflecting those parts of the record, if any, the party regards as irrelevant to the appeal and to which they do not intend to refer.

[Practice Note 46 withdrawn and replaced wef 1 July 2012.]

47. Civil Appeals from the magistrates' court

Heads of argument in all civil appeals from the Magistrates' courts shall be delivered in accordance with the provisions of Rule 50(9), as modified by Practice Note 46 above and Practice Note 49 below; provided that where the record on appeal exceeds 400 pages, the appellant must arrange with the Registrar for the early allocation of the matter for hearing and for earlier delivery of heads of argument.

[Practice Note 47 withdrawn and replaced wef 1 July 2012.]

48. Criminal Appeals from Magistrates' Courts

Heads of argument in all criminal appeals from the Magistrates' courts shall be delivered in accordance with the provisions of Rule 51(4). Pursuant to this rule the Judge President of this Division has determined as follows:

- (1) The appellant's heads of argument and list of authorities together with two copies thereof shall be delivered not less than 15 days before the date on which the appeal is set down for hearing and the respondent's not less than 10 days before such date.
- (2) Delivery by the appellant of heads of argument in terms of Rule 51(4), read with Rule 1, shall include service on the Director of Public Prosecutions of such heads of argument in accordance with the time-periods provided for in para (2) above.

- (3) Not less than 30 days prior to the date on which a criminal appeal from the Magistrates' court is set down for hearing, the attorney of record or advocate for the appellant (or the appellant) shall confirm in writing to the Director of Public Prosecutions that the appeal is to proceed on the date allocated in the notice of set-down for the hearing thereof. Failing timely receipt by the Director of Public Prosecutions of such confirmation, the appeal will not be heard on the allocated date and will be struck from the roll.¹

49. Appeals Generally

- (1) Failure on the part of an appellant to comply with the provisions of Rules 49(15), 49A(3) and (5), 50(9) and 51(4) as read with Practice Note 48(1) above may result in the appeal being struck from the roll or dismissed. Failure on the part of a respondent to comply with any of the said provisions will result in the court making such order thereon as it deems fit, unless in each such instance condonation of such failure is sought on good cause shown on written application, and is granted. In the case of a civil appeal, the court may make such order or orders as to costs as may to it appear appropriate.

[Para (1) deleted and replaced wef 1 July 2012.]

- (2) 'Heads of Argument' shall mean, in addition to or in lieu of the '*concise and succinct statement of the main points (without elaboration) which he intends to argue on appeal*' as provided for in Rules 49(15), 49A(3), 50(9) and 51(4), full heads of argument with, where appropriate, references to the record and to the authorities relied upon, together with a list of such authorities. When delivering the heads of argument, each party must deliver a practice note as contemplated by Practice Note 46(5) above.²

[Para (2) deleted and replaced wef 1 July 2012.]

- (3) 'Deliver' in Practice Notes 46, 47 and 48 above shall include the handing in of heads of argument at the office of the Registrar (Room 24 in the case of criminal appeals and Room 5 in the case of all civil appeals) and the entering of the required particulars in the register for heads of argument by the person handling the same.

[Para (3) deleted and replaced wef 1 July 2012.]

- (4) The Judge President may, in any particular instance when he/she deems it expedient to do so, determine earlier dates than those provided for in this Notice.

50. Heads of Argument in Other Matters³

- (1) In all matters (except trials and civil or criminal appeals) which have been set down for hearing or argument on a specific date by the Registrar, heads of argument as defined in Practice Note 49(2) above and clearly indicating the names of the parties, the number of the case and the date upon which it is set down on the roll shall be delivered by counsel as follows, viz.

(a) by the delivery of an appropriate number of copies of the heads of argument of plaintiff, applicant, or excipient (as the case may be) to Room 5 of the office of the Registrar and by the entry of the required information in the register of heads of argument by the person who files same not less than 10 days before the date upon which the matter is to be heard;

¹ CN 9.

² *Author's Note*: Heads of argument are important for the proper administration of justice. In *S v Ntuli* 2003 (4) SA 258 (W), referred to with approval in *Feni v Gxothiwe* 2014 (1) SA 594 (ECG) at 596C–D, Marcus AJ stated (at 265B–D):

'Heads of argument serve a critical purpose. They ought to articulate the best argument available to the appellant. They ought to engage fairly with the evidence and to advance submissions in relation thereto. They ought to deal with the case law. Where this is not done and the work is left to the Judges, justice cannot be seen to be done. Accordingly, it is essential that those who have the privilege of appearing in the Superior Courts do their duty scrupulously in this regard.'

³ CN 10.

- (b) by like delivery of the heads of argument of defendant or respondent (as the case may be) in like manner not less than 5 days before the said date;
 - (c) by exchange between the parties' attorneys of a copy of each party's heads of argument on the dates on which same are filed in Room No 24 by Counsel;
- (2) The Judge President may in any particular instance determine earlier or later dates than those prescribed in these directions.
- (3) Failure on the part of a plaintiff, applicant, excipient or appellant (as the case may be) to comply with the provisions of these directions may result in the matter being struck from the roll or dismissed. Failure on the part of defendant or respondent (as the case may be) to comply with the said provisions will result in the court making such order as it deems fit, unless in each case condonation of such failure is sought on good cause shown by way of written application and is granted; and the court may make such order or orders as to costs as may to it appear appropriate.

F. CRIMINAL MATTERS

51. Pre-trial Conference in Criminal Matters¹

- (1) The provisions of this rule shall apply to all criminal trials to be heard in the High Court from the beginning of the Second Term, 2008.
- (2) All criminal trials shall be preceded by a pre-trial conference conducted in terms of this rule.
- (3) The notification of the trial date shall be accompanied by a notice of the date upon which the pre-trial conference is to be conducted in terms of this rule.
- (4) The pre-trial conference shall be conducted under the control of the presiding judge.
- (5) The pre-trial conference shall in all cases be attended by:
- (a) the accused;
 - (b) the legal representative of the accused;
 - (c) a representative of the DPP.
- (6) The purpose of the pre-trial conference is to consider, and, where appropriate, to address matters such as:
- (a) the legal representation of the accused;
 - (b) admissions sought by the DPP and the accused;
 - (c) the consideration of plea agreements;
 - (d) the compliance by the parties of their pre-trial obligations in terms of the Act and the rules;
 - (e) the state of readiness for trial of the respective parties.
- (7) All parties may seek directives from the presiding judge in regard to the implementation of any pre-trial procedures.
- (8) The DPP shall be responsible for the preparation of a minute of the conference, to be filed as soon as possible after the conclusion of the conference.
- (9) The procedure set forth in this Practice Note is intended as a pilot project to avoid unnecessary delays in criminal trials. Amendments to the procedure may be considered on an ongoing basis in the light of the experience gained by all participants in the course of the application of this rule in practice.

52. Pro Deo / Legal Aid counsel in Third Division

- (1) Practitioners acting at the request of the court or upon legal aid instructions in High Court criminal trials will be allowed to retain their briefs to appear in respect of *unopposed* matters in Third Division on the same day; provided that they shall —
- (a) notify in advance the registrars of the respective judges presiding in their criminal trial and in Third Division of the fact;

¹ PN 26.

- (b) appear in Third Division at 10h00 when their matters will receive precedence; and
 - (c) report back to the registrar of the judge presiding in the criminal trial as soon as their unopposed matters have been disposed of.
- (2) Save as set out above, such practitioners will *not* be allowed, without the prior consent of the judge presiding in the criminal trial, to retain any clashing briefs for appearances in any other courts while the criminal trial is running.

SCHEDULE-FORMS

- A. Default Judgment (PN 28)
- B. Default Judgment - Draft Order (PN 28)
- C. *Anton Piller* Order (PN 35(1))
- D. *Anton Piller* Notice (PN 35(2))
- E. Rule 37 Questionnaire (PN 39)

FORM "A"

APPLICATION FOR JUDGMENT BY DEFAULT (RULE 31(5))

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No.....

In the matter between:

Plaintiff

And

Defendant

- (a) The summons has been duly served on the defendant on.....
- (b) The time for entering appearance to defend having expired on.....
- (c) The defendant has not entered an appearance to defend.

The plaintiff hereby applies for judgment by default against the defendant as claimed in the summons, in accordance with the attached draft, as follows:

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

DATED THIS DAY OF 20..

PLAINTIFF/PLAINTIFF'S ATTORNEY

ATTORNEY & TELEPHONE NUMBER

FORM "B"

JUDGMENT BY DEFAULT (RULE 31(5))

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No.:.....

In the matter between:

Plaintiff

And

Defendant

After having read the summons and other documents filed of record, judgment by default is granted in favour of the plaintiff for:

1. Payment of the sum of R.....
2. Interest on the said sum at the rate of% per annum as from to date of payment.
3. Costs in the sum of R200.00 (plus the Sheriff's fees) or R650.00 (plus the Sheriff's fees) or taxed costs. (Delete which are not applicable).

REGISTRAR

Any other directions in terms of Rule 31(5)(b)(iii) - (vi) inclusive

REGISTRAR

ATTORNEY & TELEPHONE NUMBER

FORM "C"

EX PARTE: APPLICANT

IN RE: APPLICANT vs RESPONDENT

ORDER

1. Respondent is called upon to show cause before this court at 10.00 on why an order in the following terms should not be made:
 - (a) that the listed items in the possession of the sheriff pursuant to the execution of this order should not be retained by him pending the directions of the court; and
 - (b) why the costs of this application, including the costs of the supervising attorney, should not stand over for determination in the action referred to in paragraph 7 below.
2. Respondent or the person on whom service is effected in terms of paragraph 9(a) below is ordered to allow the sheriff, AB ("the supervising attorney") together with CD, applicant's attorney and EF, being (their capacity stated) accompanying them to immediately enter the following premises namely, and any vehicles on such premises, for the purpose of searching for, and delivering into the possession of the sheriff all the documents and articles which are listed in the schedule set out at the foot of this order ("the listed items") or which any of the aforementioned persons believes to be listed items.
3. Respondent or the person on whom service is effected in terms of paragraph 9(a) below is further ordered to permit the said persons to remain on the premises until the search has been completed, and if necessary to re-enter the premises on the same or following day in order to complete the search.
4. The supervising attorney shall, together with the sheriff, make a list of all items removed by the sheriff in terms of this order. A copy of this list shall be handed by the supervising attorney to applicant's attorney and to the respondent or the person referred to in paragraph 3 above, if present, and a copy shall be retained by the sheriff.
5. In the event that any of the listed items exists only in computer readable form, respondent or the person referred to in paragraph 3 above is ordered to forthwith provide the sheriff with effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out; a print-out of these items is to be given to the sheriff or displayed on the computer screen so that it may be read and copied by him.
6. All listed items or copies thereof taken into possession by the sheriff pursuant to this order, shall be retained by him until the court orders otherwise. Save as provided hereinafter, no person shall be entitled to inspect any of the items taken into possession by the sheriff nor shall any copies be made of such items. Provided that pending the return day and for the sole purpose of satisfying himself that the inventory correctly reflects the items seized, respondent or his attorney, shall be entitled to inspect the items in the sheriff's possession.
7. Applicant is directed to institute an action against respondent in which the listed items are concerned within 10 days of the date of this order, and if he fails, without good reason being shown on the return day to have instituted such action by that date, the sheriff shall be obliged to return all the listed items immediately to respondent, and in such event the court, in its discretion, shall make such order as it deems meet. This order shall under no circumstances constitute against applicant for damages (or other relief) sustained or claimed in consequence of these proceedings.
8. On the return day there shall be placed before the court the report of the supervising attorney with proof that a copy thereof has been served on applicant's attorney and on

respondent (or his attorney) and an affidavit of the applicant's attorney that the said action has been instituted, and if not the reason why this has not been done.

9. (a) Service of this order together with the notice to respondent shall be effected by the sheriff on the respondent or the person in charge of the premises and the contents thereof explained by the supervising attorney before the provisions of paragraph 2 of this order are carried out.
- (b) In addition to the service referred to in sub-paragraph (a) above, service of this order together with the notice of motion and supporting affidavits and accompanying notice to respondent shall be effected by the sheriff in accordance with the Rule of court by not later than 48 hours after the supervising attorney has directed that the search has been completed.
- (c) The provisions of paragraphs 2, 3 and 5 of this order may only be carried out in the presence and under the supervision of the supervising attorney.

FORM "D"

EX PARTE: (APPLICANT)

IN RE: (APPLICANT) vs (RESPONDENT)

NOTICE TO RESPONDENT

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 the order. You are also required to hand over any of the specified articles on the premises or under your control to the sheriff.
2. When these documents are handed to you, you are entitled, if you are an employee of respondent or in charge of the premises, to contact respondent immediately and you or respondent are entitled to contact an attorney and have him come to the premises to advise you. The attorney must be called and must arrive without delay, and the supervising attorney must inform you as to how long the search can be delayed so as to have the attorney present. Until the attorney, if called, arrives or until the time has passed for him to arrive, you need not comply with any part of this order, except that you must allow the supervising attorney, the sheriff and the other persons named in the order to enter the premises and to take such steps as, in the opinion of the supervising attorney, are reasonably necessary to prevent any prejudice to the further execution of this order.
3. You are further entitled to have the supervising attorney explain to you what this notice and order mean.
4. If you disobey this order you will be guilty of an offence, that is, contempt of court.
5. If the order being served upon you was granted in your absence and without notice to you, you are entitled—
 - (a) in terms of Rule 6(8) to anticipate the return day of the order upon delivery of not less than 24 hours' written notice; and/or
 - (b) in terms of Rule 6(12)(c) by similar notice to set down the matter for reconsideration of the order.¹

¹New. See *Sun World International Inc v Unifruco Ltd* 1998 (3) SA 151 (C) at 161J-162C.

FORM "E"

RULE 37 QUESTIONNAIRE

NOTE 1: This questionnaire must be completed on behalf of each of the parties to the action by the Attorney who on behalf of his/hcr client is responsible for the running of the action or where a party is unrepresented, by such party personally.

NOTE 2: The completed questionnaire must be file [sic] with the Registrar and a copy thereof must be delivered to all other parties not later than THREE MONTHS after the entry date.

CASE NO: _____/20_____

TITLE OF ACTION:

_____(1st) Plaintiff
_____(2nd) Plaintiff

and

_____(1st) Defendant
_____(2nd) Defendant

NATURE OF THE ACTION: _____

PARTY FILING THIS FORM: _____

NAME OF ATTORNEY COMPLETING THIS QUESTIONNAIRE: _____

CONTACT TELEPHONE NUMBER: _____

NAME/S OF COUNSEL REPRESENTING YOUR CLIENT: _____

1. DISCOVERY

- (a) Have discovery and inspection been completed? _____
- (b) If not, what is outstanding? _____

2. PARTICULARS FOR TRIAL

- (a) (i) Are any replies to Requests for Particulars for Trial in respect of your pleadings outstanding?

- (ii) If so, when will the Particulars be delivered?

- (b) (i) Have you received all the Particulars that you require?

- (ii) If not, have you requested them?

3. AMENDMENTS

- (a) (i) Do you at present intend to amend your pleadings?

(ii) If so, when?

(b) Can you make any additional admissions?

(c) (i) Are you intending to join any further parties?

(ii) If so, whom and when?

4. ISSUES

(a) What are the important issues in the action?

(b) (i) Are any of them capable of resolution by agreement?

(ii) If so, have steps been taken to seek the required agreement?

(c) (i) Are any of the issues in the action suitable for trial as preliminary or separate question in terms of Uniform Rule 33(4)?

(ii) If so, what issues are they?

5. EXPERT EVIDENCE

(a) On what topics/issues may you wish to call expert evidence?

(b) (i) How many experts do you expect to call?

(ii) Can you at this stage indicate —

(aa) their names? and/or

(bb) the nature of their expertise? and/or

(cc) the topics/issues upon which each will testify?

(c) By what date can you deliver their written reports to all the other parties?

(d) (i) Is there scope for agreement between any of the parties' experts?

(ii) Would a meeting of such experts be useful? If not, why not?

6. TRIAL

(a) What is your present estimate of the length of the trial?

(b) What is the earliest date that you believe that you can be ready for trial?

7. INDEXING OF PLEADINGS

Has there been compliance with the provisions of Court Notice 3(5)?

8. SETTLEMENT OF THE PARTIES' DISPUTES

Is there any way in which the Court can assist the parties to fully or partially resolve their dispute without the need for a trial/full trial?

Does any party request that a conference be held before a judge in chambers, as contemplated by Rule 37(8)?

9. ALTERNATIVE DISPUTE RESOLUTION

(a) Have the parties considered mediation or another alternative dispute resolution procedure?

(b) If not, could such consideration be worthwhile?

DATE:

SIGNATURE OF ATTORNEY

INDEX

**TO THE CIRCUIT COURT PRACTICE
IN FORCE IN THE CAPE OF GOOD HOPE
PROVINCIAL DIVISION**

1. Circuit local divisions
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3. Circuit court sittings
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 - rule 1—definitions
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CIRCUIT COURT PRACTICE
in force in the Cape of Good Hope
Provincial Division¹
as at 23rd October, 1984

1 Circuit Local Division

(Section 7 of Act 59 of 1959)

(1) The Judge President of a provincial division may by notice in the *Gazette* divide the area under the jurisdiction of that division into circuit districts, and may from time to time by like notice alter the boundaries of any such district.

(2) In each such district there shall be held at least twice in every year and at such times and places as may be determined by the Judge President concerned, a court which shall be presided over by a judge of the division in which that district is situated.

(3) Any such court shall be known as the circuit local division for the district in question and shall for all purposes be deemed to be a local division.

2 Circuit Court Districts

(Published in GN 578 dated 22 August 1980)

It is hereby notified for general information that, in terms of section 7(1) of the Supreme Court Act, 1959 (Act 59 of 1959), the area of jurisdiction of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa is hereby divided into circuit districts, each comprising the area of the magisterial districts as set out hereunder, and that Government Notice 556 of 1976 is hereby withdrawn:

- (a) Cape Circuit Local Division for the Districts of Stellenbosch, Somerset West, Strand, Paarl and Wellington;
- (b) Southern Circuit Local Division for the Districts of Caledon, Hermanus, Robertson, Montagu, Swellendam, Bredasdorp, Heidelberg and Riversdale;
- (c) Eastern Circuit Local Division for the Districts of Ladismith, Calitzdorp, Oudtshoorn, Mossel Bay, George, Knysna, Uniondale, Willowmore and Joubertina;
- (d) Northern Circuit Local Division for the Districts of Worcester, Tulbagh, Ceres, Laingsburg, Sutherland, Beaufort West, Prince Albert, Fraserburg and Williston;
- (e) Western Circuit Local Division for the Districts of Malmesbury, Piketberg, Clanwilliam, Vredendal, Vanrhynsdorp, Calvinia, Namaqualand, Hopefield and Vredenburg.

3 Circuit Court Sittings

Circuits of the Supreme Court shall in future occur on a fixed cycle as set out below. The civil roll shall commence on the day mentioned and the

¹The name of the Cape of Good Hope Provincial Division has been changed to the Western Cape Division of the High Court - see ss 6(1)(i) and 50(1)(m) of the Superior Courts Act 10 of 2013, which came into operation on 23 August 2013.

criminal roll shall follow thereafter (except the Cape Circuit Local Division sitting at Stellenbosch/Paarl which is only a criminal circuit and the Northern Circuit Local Division sitting at Worcester, which is only a civil circuit). If a particular Monday is a public holiday, the civil roll shall commence on the following day, Tuesday:

FEBRUARY

Last full week — Stellenbosch/Paarl (criminal work only)

MARCH

First Monday — Worcester (civil work only)

First Tuesday — Swellendam

Second Tuesday — Oudtshoorn

Next succeeding Monday — George/Mossel Bay/Knysna

APRIL

First two weeks — Recess

First Tuesday after recess — Beaufort West

Second Tuesday after recess — Vredendal/Vanrhynsdorp

MAY

First Monday — Worcester (civil work only)

First Tuesday — Swellendam

Second Tuesday — Oudtshoorn

Next succeeding Monday — George/Mossel Bay/Knysna

AUGUST

First Monday — Worcester (civil work only)

First Tuesday — Swellendam

Second Tuesday — Oudtshoorn

Next succeeding Monday — George/Mossel Bay/Knysna

SEPTEMBER

First full week — Vredendal/Vanrhynsdorp

Second Tuesday — Stellenbosch/Paarl (criminal work only)

Third Tuesday — Beaufort West

OCTOBER

First two weeks — Recess

First Monday after recess — Worcester (civil work only)

First Tuesday after recess — Swellendam

Second Tuesday after recess — Oudtshoorn

Next succeeding Monday — George/Mossel Bay/Knysna

4 *Circuit Court rules relating to Civil proceedings*
(Published in GN R1055 dated 15 July 1970)

Rule 1—Definitions

In these rules any word or expression to which a meaning has been assigned in the uniform rules shall bear that meaning and unless the context otherwise indicates—'Act' shall mean the Supreme Court Act, 1959 (Act 59 of 1959):

'circuit court' shall mean any court re-referred to in section 7 of the Act, held within the area of jurisdiction of the provincial or local divisions;
'seat of the circuit court' shall mean 'any place determined in terms of section 7(2) of the Act; and
'Uniform rules' shall mean the rules of court promulgated by Government Notice R48, dated 12 January 1965.

Rule 2—Application of Supreme Court rules to circuit courts

- (1) Subject to the provisions of these rules of court, including the Uniform Rules, and practice in force in relation to civil proceedings before a provincial or local division, shall, in so far as they are appropriate and can be applied, *mutatis mutandis* apply to all civil proceedings before any circuit court.
- (2) Whenever a circuit court gives any judgment which, had it been given by a court of the provincial or local division, could have been set aside by a court of the said division, such judgment may be set aside by a court of the provincial or local division.
- (3) The pleadings in any civil proceedings before a circuit court may be signed by an attorney or advocate alone or, if no attorney or advocate is acting, by the party concerned in person.
- (4) Subrule (3) and Rules 5, 6, and 7 shall not apply to matters coming before the Port Elizabeth or East London circuit local divisions, which divisions shall, in accordance with subrule (1), be, as far as practicable and *mutatis mutandis*, regulated by the rules and practice of the Eastern Cape Division, and any function assigned in accordance with such rules and practice to the registrar may be performed by the circuit registrar, the assistant registrar at Port Elizabeth or the clerk of the Magistrate's court for the District of East London, as the case may be.

Rule 3—Issue of process

- (1) Any summons calling upon any person to appear as a defendant in any civil proceedings before a circuit court or a subpoena calling upon any person to appear as a witness in such proceedings may at any time, whether or not the date for the holding of such court has been appointed, be issued by the registrar or by the clerk of the Magistrate's court for the district in which the defendant resides or in which the cause of action arose. If the summons or subpoena is issued before the said date has been appointed, the person issuing the summons or subpoena shall as soon as possible notify the defendant or witness, as the case may be, of the date and place appointed for the holding of such court.

- (2) The clerk of the judge who conducts the circuit court shall act as registrar of such court and in the absence of the registrar the clerk of the magistrate's court of the magisterial district where the circuit court is held, shall act as registrar of such circuit court.

Rule 4—Arrest

- (1) Any process of a circuit court whereby any person is arrested or held to bail in order to ensure his appearance in civil proceedings to answer any claim and to abide the judgment of such court thereon, or any warrant for the attachment of any property, in respect of any action which has been or is intended to be brought before such court, may be issued by a judge or the magistrate for the magisterial district in which the circuit court concerned is held.
- (2) When any person has been arrested, or any property has been attached in terms of any process of any circuit court, the person so arrested, or any person having any interest in the property so attached, may at any time, if the circuit court concerned is not sitting, apply to any judge of the division in which the circuit district is situated for his release or the release of such property and such judge may make such order as he may deem fit.

Rule 5—Summons

- (1) Any summons, other than a summons for provisional sentence, calling upon any person to appear as a defendant in any civil proceedings before a circuit court shall be a combined summons and as near as may be in accordance with Form 10 in the First Schedule to the uniform rules.
- (2) A summons for provisional sentence shall be as near as may be in accordance with Form 3 in the First Schedule to the uniform rules.
- (3) Any summons signed by an attorney acting for the plaintiff shall bear the address of an attorney practising within the township in which is situated the office of the clerk of the magistrate's court to whom the summons is made returnable, or, if no attorney is acting and the summons is signed by the plaintiff, it shall bear an address within such township at which the plaintiff will accept service of all subsequent documents in the suit.
- (4) A defendant against whom a provisional sentence has been granted by a circuit court and who is entitled and wishes to enter into the principal case may, subject to the provisions of Rule 8(11) of the uniform rules, give notice to the registrar of the provincial or local division in which the circuit district is situated of his intention to do so and thereafter the case shall be deemed to be pending in a court of the provincial or local division.

Rule 6—Notice of intention to defend

- (1) Subject to the provisions of section 27 of the Act, a defendant in any civil circuit court shall be allowed to deliver, either personally or through his attorney, a notice of intention to defend—
 - (a) within 10 days of such service if he resides within 80 kilometres from the office of the clerk of the magistrate's court to whom the summons is made returnable; or

- (b) within 21 days of such service if he resides more than 80 kilometres from such office.
- (2) The provisions of Rule 5(3) shall *mutatis mutandis* apply to a notice of intention to defend.

Rule 7—Further pleading

The circuit court may before or at hearing of any civil proceedings, upon good cause shown, allow any pleading forthwith to be recorded although such pleading has not been delivered within the prescribed time.

Rule 8—Circuit court records

- (1) All process, pleadings and documents in any civil proceedings to be adjudicated upon by a circuit court and in the custody of the clerk of a magistrate's court other than the magistrate's court at the seat of the circuit court shall be transmitted by such clerk of the court to the clerk of the magistrate's court at such seat so that such process, pleadings and documents shall reach the latter clerk of the court not later than the day before the day appointed for the holding of the circuit court.
- (2) The clerk of the magistrate's court at the seat of the circuit court shall on arrival of the registrar of the circuit court deliver to him all circuit court records in his custody whereupon all such records shall form part of the records of such circuit court.
- (3) Upon the termination of a sitting of a circuit court, the registrar of such court shall deliver all records relating to civil proceedings, the further hearing of which has been postponed until the sitting of the next circuit court, to the clerk of the magistrate's court at the seat of such circuit court for custody.

5 *Circuit court rules relating to criminal proceedings*
(Published in GN R 48 dated 12 January, 1965)

Supreme Court Rule 55

- (1) The process of a circuit court for any district for summoning any person either as an accused or as a witness in any criminal case before such court, may be sued out at any time, whether the date for holding such court shall have been appointed or not. It may be issued by the registrar of the Provincial Division or of the circuit court or when the latter is not in the place where the court is to be held then by the clerk of the magistrate's court of the district or by the clerk to any judge in that court: Provided that the process for summoning any person required by the Attorney-General or his deputy as a witness in a criminal case in such court need not be endorsed or formally sued out by or on behalf of the Attorney-General.
- (2) The process of the circuit court for any district for arresting and holding to bail any person in order to compel his appearance before such court shall be issued by the magistrate for such district, or by any judge.
- (3) All process of the circuit court shall be dated on the day on which it is issued, shall be signed by the officer issuing it, shall be endorsed by the person suing out the same and shall be directed to the deputy-sheriff.

- (4) The registrar of every circuit court, on the closing of the same, cause to be transmitted to the sheriff a list of all warrants of execution in criminal cases which have been issued by him.
- (5) In all cases wherein process is required for the execution of any sentence, judgment, or order of any circuit court in a criminal case, after the records thereof have been deposited in the office of the registrar of the Provincial Division, the process of that division for the execution of any such sentence, judgment or order may be issued to the party requiring the execution of the same.
- (6) When a circuit court imposes upon any party whatsoever a fine for contempt of court, for default of appearance or otherwise, and such fine is not duly paid, the registrar of the circuit court shall furnish to the deputy-sheriff the particulars of such fine, and deliver to him a warrant in respect thereof.
- (7) The registrar of every circuit court shall immediately upon the closing of the court in each circuit town, make out and transmit to the registrar of the Provincial Division a return showing all the fines which have, during the sitting of the court in that town, been imposed by the said court, specifying therein the names of the parties, the amount of the fine, the date when imposed, and the date when a warrant was delivered to the deputy-sheriff for its levy, the extent, if any, to which the fine was remitted, and whether it was paid without issue of a warrant.
- (8) Whenever a circuit court district comprises more than one magisterial district, the clerk of the magistrate's court of each such magisterial district shall, within the limits of the district, perform the duties devolving on clerks of magistrates under these rules.

Supreme Court Rule 56

- (1) Any process or document referred to in Rules 54 and 55 may be served by a member of a police force referred to in sub-section (4) of section 144 and section 329 of Act 51 of 1977.
- (2) The provisions of subrules (16)–(19) and (21) of Rule 39 shall apply *mutatis mutandis* to all proceedings in criminal cases.

Supreme Court Rule 39

- (16) A record shall be made of—
 - (a) any judgment or ruling given by the court,
 - (b) any evidence given in court,
 - (c) any objections made to any evidence received or tendered,
 - (d) the proceedings of the court generally (including any inspection *in loco* and any matter demonstrated by any witness in court); and
 - (e) any other portion of the proceedings which the court may specifically order to be recorded.
- (17) Such record shall be kept by such means as to the court seems appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.
- (18) The shorthand notes so taken or any mechanical record shall be certified by the person taking the same to be correct and shall be filed with

the registrar. It shall not be necessary to transcribe them unless the court or a judge so directs or a party appealing so requires. If and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing them and the transcript, the shorthand notes and the mechanical record shall be filed with the registrar. The transcript of the shorthand notes or mechanical record certified as correct shall be deemed to be correct unless the court otherwise orders.

(19) Any party to any matter in which a record has been made in shorthand or by mechanical means may apply in writing through the registrar to a judge to have the record transcribed if an order to that effect has not already been made. Such party shall be entitled to a copy of any transcript ordered to be made upon payment of the prescribed fees.

(21) Every stenographer employed to take down a record and every person employed to make a mechanical record of any proceedings shall be deemed to be an officer of the court and shall, before entering on his duties, take the following oath:

I, A.B., do swear that I shall faithfully, and to the best of my ability, record in shorthand, or cause to be recorded by mechanical means, as directed by the judge, the proceedings in any case in which I may be employed as an officer of the court, and that I shall similarly, when required to do so, transcribe the same or, as far as I am able, any shorthand notes, or mechanical record, made by any other stenographer or person employed to make such mechanical record.

6 *Removal of proceedings from one Division to another*
(Section 9 of Act 59 of 1959)

(1) If any civil cause, proceeding or matter has been instituted in any provincial or local division, and it is made to appear to the court concerned that the same may be more conveniently or more fitly heard or determined in another division, the court may, upon application by any party thereto and after hearing all other parties thereto, order such cause, proceeding or matter to be removed to that other division.

(2) An order for removal under subsection (1) shall be transmitted to the registrar of the division to which the removal is ordered, and upon the receipt of such order that division may hear and determine the cause, proceeding or matter in question and shall in that event apply the practice governing the division in which it was instituted and the law according to which that division would but for the removal have heard and determined such cause, proceeding or matter.

(Note: The Provincial Division cannot order the *removal* of a case pending in a local or circuit division to be heard in the Provincial Division itself (see *Herring v Van der Walt* 1913 CPD 747) or vice versa (see *Brown v Brown* 1931 NPD p 125). While a circuit court is not sitting the Provincial Division has jurisdiction to deal with the *postponement* of a case which is pending in that circuit court. However, only the

*In the copy of the rules which was provided to the authors no rule 5(20) appears.

court before which a trial has actually commenced would ordinarily have jurisdiction to grant adjournments of such a trial (see *Wait v Attorney-General* 1967 (3) SA p 535).

7 *Disposal of records and execution of judgments of circuit courts*
(Section 8 of Act 59 of 1959)

(1) Within thirty days after the termination of the sittings of any circuit local division, the registrar thereof shall, subject to any directions of the presiding judge, transmit all records in connection with the proceedings in that division to the registrar of the provincial division concerned to be filed of record as records of that division.

(2) Any judgment, order, decree or sentence of a circuit local division, may, subject to any applicable rules for the time being in force, be carried into execution by means of process of that division or of the provincial division concerned.