

CHAPTER 9 MOTION COURT

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9.0 ALLOCATION OF COURTS

1. During Court Term:

1.1 Unopposed Motion Court

Three courts will sit on each day of the week.

1.2 Opposed Motion Court

Four courts will sit on each day of the week.

1.3 Urgent Motion Court

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

1.4 Special Motion Court

One court will sit on each day of the week.

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

2. During Court Recess:

2.1 Unopposed Motion Court

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

2.2 Opposed Motion Court

No opposed matters will be heard during court recess.

2.3 Urgent Motion Court

One court will sit each day of the week.

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

9.1 DEFINITIONS

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

“deliver” - shall mean serve copies on all parties and file the original with the Registrar;

9.2 INDEX

1. Before an application is made to the Registrar for the allocation of a date for the hearing of any application, the applicant must deliver a consolidated index of all documentation before the Court for the determination of the application. In addition, each volume of the application papers must be separately indexed.
2. The indices should briefly describe each affidavit and annexure as a separate item.
3. All orders of court throughout the matter must be collated in chronological order and affixed to the left inner cover of the court file, the most recent court order being uppermost.
4. This practice is equally applicable to opposed and unopposed applications.

9.3 BINDING OF PAPERS

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

9.4 PAGINATION

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

9.5 PREPARATION OF PAPERS

1. The original application, the original return of service and other original documents comprising the application must be contained in the court file. Certified copies of documents may be used save that when a matter is heard counsel appearing in the matter will be required to have the original documents on hand and to provide these to the judge upon request.
2. If a document or documents attached to the founding or replying affidavit are -
 - 2.1 in manuscript; and
 - 2.2 not readily legible,the applicant shall ensure that typed and legible copies of the document or documents are provided.
3. The respondent bears the obligation referred to in the previous subparagraph in respect of documents attached to the answering affidavit.
4. The relevant application is to be placed on top of all other papers in the court file. The papers which are irrelevant to the issue which is the subject matter of the application are to be separated from those that are not.

9.6 DRAFT ORDERS

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

9.7 BRIEFING OF COUNSEL

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

9.8 OPPOSED MOTIONS

9.8.1 Practice Notes

1. The heads of argument of each party must be accompanied by a practice note (see para 9.8.2).
2. The practice note shall set out –
 - 2.1 the names of the parties and the case number;
 - 2.2 the names, telephone numbers (including cell-phone numbers) and email addresses of all counsel and attorneys in the application (if known);
 - 2.3 the nature of the application and relief sought;
 - 2.4 a succinct summary of the main issues to be determined in the application. Each main issue should be stated separately;
 - 2.5 a summary of the contentions in respect of the main issues and the authorities relied on;
 - 2.6 an estimate of the probable duration of the motion;
 - 2.7 whether matter is urgent and, if so, motivation for the urgency;
 - 2.8 whether the papers need to be read and, if so, which parts are relevant for the determination of the application; and
 - 2.9 where counsel is briefed in more than one opposed application, the names and case numbers of the other applications in which counsel appears.
3. A practice note must also be filed on each occasion that the application appears on the opposed roll.
4. Where an opposed application is postponed or is reinstated for hearing, a new practice note must be delivered not later than 13h00, fifteen (15) days preceding the first day of the week in which the matter will be heard. An additional copy of the practice note must be hand-delivered or sent by email to the clerk of the senior judge presiding in the motion court during such week.

- 5 If a practice note is not delivered as required in terms of this paragraph, or does not contain the prescribed information, the application shall not be allocated for hearing.

9.8.2 Enrolment

1. A party to an opposed motion may apply to the Registrar to allocate a date for the hearing of that application in terms of Rule 6(5)(f) of the Uniform Rules of Court only if -
 - (a) the papers have been properly secured, indexed and paginated; and
 - (b) heads of argument accompanied by a practice note from each party has been delivered.
2. The procedure to enrol an opposed application commences when a consolidated index is delivered.
 - (a) The applicant shall deliver a consolidated index within ten (10) days from the service of the applicant's replying affidavit or last affidavit that can permissibly be filed.
 - (b) Should the applicant not timeously deliver the consolidated index, the respondent may do so.
 - (c) The consolidated index must prominently indicate on the front page the date when and in what manner it was served on the opposing party.
3.
 - (a) The applicant shall deliver heads of argument and a practice note within fifteen (15) days from the date of service of the consolidated index; and
 - (b) the respondent shall deliver heads of argument and a practice note within fifteen (15) days from the date of receipt of the applicant's heads of argument.
 - (c) If the applicant fails to deliver the heads of argument and practice note within the prescribed period, the respondent shall deliver its heads of argument and practice note.
 - (d) The Registrar must record on the court file the dates of filing of the parties' heads of argument and practice notes.
 - (e) The heads of argument and practice notes may be served in accordance with Rule 4A of the Uniform Rules but filing with the Registrar shall not be effected by way of facsimile or electronic mail.
4. Where a party fails to deliver heads of argument and/or a practice note within the stipulated period, the complying party may enrol the application for hearing provided that -

- (a) a letter is served upon the defaulting party in accordance with Rule 4A of the uniform rules requiring it to deliver the heads of argument and/or practice note; and
 - (b) a letter is sent to the Deputy Judge President (or in his absence the senior motion court judge) requesting that a directive be issued to compel the defaulting party to deliver the heads of argument and/or practice note. The letter must be hand-delivered or sent by email to the relevant judge's clerk, and also served on the defaulting party in accordance with Rule 4A of the uniform rules.
- 5. The failure to timeously serve and file heads of argument shall not constitute a ground for postponement of an application.
- 6. Additional or supplementary heads of argument may only be filed by a party with the leave of the Court.
- 7. When preparing heads of argument practitioners are reminded of the dicta in *Catheram Car Sales & Coachworks Limited v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938 (SCA) at 955B-G and *Ensign-Bickford (SA) (Pty) Ltd and Others v AE&CI Explosives & Chemicals Ltd* 1999 (1) SA 70 (SCA) 84H-85B.
- 8. The heads of argument shall include a list of the authorities to be quoted in support of the argument. Copies of the authorities or any statutory enactment relied upon shall accompany the heads of argument in a separate volume.
- 9. The heads of argument of the applicant shall be accompanied by a chronology table, duly cross-referenced, without argument. If the respondent disputes the correctness of the chronology table in a material respect, the respondent's heads of argument shall be accompanied by the respondent's version of the chronology table.
- 10. The Registrar will make available a secure location ('the location') under the supervision of a person ('the supervisor') where a register of matters enrolled on the opposed motion roll will be kept.
- 11. In the location the Registrar shall make available suitable space where the files of each opposed motion court week will be kept. A designated room will be indicated as the location.

12. The Registrar will prepare and at all times have available in the location a blank register for each court week. The blank register will be in accordance with Annexure 'A' attached hereto.
13. Any person seeking to enrol a matter on the opposed motion court roll shall take the file, ready for hearing, properly paginated and indexed, together with the heads of argument and practice notes and, where applicable, the letters referred to in paragraph 4 above and proof that same have been served, to the location, enter the particulars as set out hereunder and leave the file in the location.
14. The person enrolling the matter shall do so by entering in the next available space, for a particular date, on the register, the case number, the parties' names, the nature of the application, the name of the parties' attorneys, the name of the person enrolling the matter and his or her contact details. The person shall file in the court file a notice of set down stamped by the supervisor.
15. The supervisor shall keep the respective files for each motion court week separately. The files shall be kept in the order that they appear on the register.
16. No more than fifty (50) applications may be enrolled for any court week.
17. Once a matter is enrolled, -
 - 18.1 no party may, without the leave of the Court, file any further documents other than a notice of removal, a notice of withdrawal, a notice of postponement or an official document or report.
 - 18.2 the Registrar shall afford access to the court file and permit the filing of documents where an application is required to be brought in terms of ss 4 and 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No 19 of 1998 (PIE).
18. When a matter is removed from the Roll by notice, the supervisor shall stamp the notice of removal, file the notice in the file and return the file to the general office for filing. The supervisor shall also delete the entry pertaining to that matter from the register and sign his or her name next to the deletion with the date of the deletion. Other than this no entry may be removed from the register of opposed motions and no file may be removed from the secure

location for any purpose other than to take the files to the senior judge in the opposed motion court.

19. It shall be the responsibility of the Registrar to prepare a court roll from the register for the opposed motions for each week.
20. Where an opposed application is to be set down for hearing during the first or second week of any term, the parties shall comply with the requirements set out in paragraphs 1, 2, 3, 4 and 14 by not later than the first day of the last week of the preceding term.
21. The files in all opposed applications that are to be heard during the first and second weeks of any term shall be delivered by the Registrar to the senior judge or judges concerned, for allocation on the first day of the last week of the preceding term.
22. Save for applications that are of an urgent nature, no opposed applications must be set down for hearing during the last week of term.
23. If an application is not to proceed on the date allocated, the parties must immediately notify the Registrar.

9.8.3 Hearing of opposed matters

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

9.9 UNOPPOSED MOTIONS

9.9.1 Definitions

1. For purposes of this directive 'unopposed motions' shall include –
 - 1.1 all motions and applications in which the respondent has failed to deliver and answering affidavit and has not given notice of an intention only to raise a question of law (Rule 6(5)(d)(iii) or a point *in limine*; and
 - 1.2 opposed summary judgments, Rule 43 and interlocutory applications in which the duration of argument, including the delivery of an *ex tempore* judgment, will not exceed 45 minutes.

9.9.2 Enrolment

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

Provisional Enrolment

2. For purposes of provisional enrolment, the Registrar will prepare and at all times have available a blank register for each court day. The blank register will be in accordance with Annexures 'B' and 'C' attached hereto. The register will be kept available at a location designated by the Registrar.
3. A person seeking to enrol a matter shall do so by entering on the register for the appropriate day, in the next available space on the register under the appropriate heading, the case number, the parties' names, the nature of the application, the name of the applicants' attorneys, the name of the person enrolling the matter and his or her contact details.
 - 4.1 Before the Court grants a rule *nisi* or postpones a matter, it shall be the responsibility of the applicant or his attorney to provisionally enrol the matter as required in paragraph 3 above.
 - 4.2 When a rule *nisi* or postponement is granted, it shall be the responsibility of the applicant or his attorney to finally enrol the matter in accordance with paragraph 10 below.
 - 4.3 An application to anticipate a return day in terms of Rule 6(8) must be enrolled for hearing in the urgent court.
5. Subject to what is stated in paragraph 21 below, no more than 180 applications may be provisionally enrolled on any court day.
6. No entry may be removed from the provisional register.
7. When the register for a particular day is full, the Registrar shall remove and keep the register in a safe place until the day after the date to which the register applies.

Final Enrolment

8. Only matters that have been provisionally enrolled for a particular date may be finally enrolled for that date.

9. Unopposed motions may only be finally enrolled when the papers are ready, paginated and indexed where applicable, and the matter is ripe for hearing.
10. Unopposed motions may not be finally enrolled later than noon three clear court days preceding the day on which the matter is to be heard. This requirement will be strictly enforced. Where an unopposed motion is not finally enrolled as required in terms of this subsection, the matter shall not be entertained and a new date for the hearing thereof must be obtained from the Registrar.
11. For the purpose of final enrolment, the Registrar shall make available a secure location ('the location') under supervision of a person designated by the Registrar ('the supervisor'). The supervisor shall at the location oversee the final enrolment process.
12. In the location, the Registrar shall make available suitable space where the files for each motion court day can be stored.
13. A matter is finally enrolled by handing over the court file, ready for hearing, to the supervisor in the manner prescribed in this directive.
14. The person finally enrolling a matter shall enter on the cover of the court file the relevant date and the number from the register where it was enrolled provisionally.
15. When the court file is handed to the supervisor, both the supervisor and the person finally enrolling the matter must sign next to the date and number entered on the cover of the court file as proof of final enrolment.
16. The court file of a matter finally enrolled shall be left with the supervisor in the secure location.
17. The supervisor shall keep the respective files for each motion court day separately. The files shall be kept in the order in which they have been received for final enrolment.
18. Once a matter is finally enrolled, no party may, without the leave of the Court, file any further documents other than a notice of removal, a notice of withdrawal, a notice of postponement, a notice granting leave to defend to a defendant in a summary judgment application, a practice note and an official document or report.

19. It shall be the responsibility of the Registrar to prepare a motion court roll from the files of matters that have been finally enrolled and have been kept, ready for hearing, in the secure location. No matter that has not been enrolled provisionally for that day may be on the motion court roll for a particular day. No matter that has not been finally enrolled as set out herein may appear on the motion court roll for a particular day.
20. The unopposed motions finally enrolled for each day shall be distributed evenly among the motion courts.
21. No more than sixty applications may be finally enrolled before any one court. This shall include no more than one opposed Rule 43 and either one opposed summary judgment or interlocutory application.
22. Any matters on the Roll in excess of the numbers mentioned in paragraph 21 above will be postponed *sine die*.
23. The court postponing matters under paragraph 22 above may, in its discretion and after hearing the official concerned, order the supervisor or the Registrar who has prepared the Roll to pay the costs of the postponement.

9.9.3 Closure of the Unopposed Motion Court Roll

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

9.9.4 Enrolment of applications after notice of intention to oppose

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

9.9.5 Errors on the unopposed roll

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

9.9.6 Calling of the Roll of unopposed matters

1. Prior to the calling of the Roll the secretary of the presiding judge will invite counsel and legal practitioners to call matters which are to be removed from the Roll or postponed.
2. Opposed and unopposed summary judgment, Rule 43 and opposed interlocutory applications which are not to be removed or postponed will stand down to the end of the Roll.
3. The Roll will then be called page by page and counsel will deal with their matters in order of seniority. If not all matters have been dealt with, counsel and legal representatives will be entitled to call their matters in order of seniority.
4. Thereafter, opposed interlocutory and summary judgment applications will be dealt with.
5. Finally, Rule 43 applications will be dealt with.
6. 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.
7. It is emphasised that the courts of the most senior judges take precedence over the courts of more junior judges. The unopposed courts will be numbered in the order of seniority of the judges in those courts, with the first unopposed court being that of the most senior judge.
8. Judges may arrange the calling of matters in their specific courts other than provided herein.

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

- 9.10.1 Interlocutory applications do not include opposed exceptions and opposed interim or interlocutory interdicts. These applications are to be enrolled for hearing on the opposed Roll.
- 9.10.2 Every opposed interlocutory application shall be accompanied by a practice note. A practice note must be filed by counsel for each party by not later than 13h00 on the court day preceding the hearing of the application.
- 9.10.3 The practice note shall set out -
 - 9.10.3.1 the name of the parties, the case number and its number on the Roll (if known);
 - 9.10.3.2 the name, telephone number (including cell-phone number) and email address of counsel for each party;
 - 9.10.3.3 the nature of the motion;
 - 9.10.3.4 the issues that fall for determination and counsels' contentions in respect of those issues. Reference to the authorities and legislation relied upon for those contentions should be set out.
- 9.10.4 The supervisor will be obliged to allow the parties to comply with the provisions of paragraph 9.10.2 above.

9.11 SPECIAL MOTIONS (APPLICATIONS OF LONG DURATION)

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.
2. The consent of the Deputy Judge President for the enrolment of the matter is sought in writing, a copy of which must simultaneously be made available to the other party or parties to the opposed motion and must contain –
 - 2.1 names of the parties and case number;
 - 2.2 attorneys of record (also the reference person) and counsel for the respective parties (including telephone and fax numbers);
 - 2.3 a short exposition of the nature and complexity of the matter;
 - 2.4 the estimated duration thereof. A letter from the opposing party's attorney must be attached confirming the duration or if the duration is in dispute, a separate estimate;
 - 2.5 an assurance that the matter is ripe for hearing and that all the necessary affidavits have been exchanged (or, in exceptional cases, an indication of the date by when they will have been exchanged);
 - 2.6 an assurance that the papers have been properly indexed and paginated;
 - 2.7 the total number of pages that the application consists of;
 - 2.8 suggestions as to when the application can be heard. The other party or parties to the opposed motion who wish to make representations in respect thereof may do so in writing;
 - 2.9 proposals for the filing of heads of argument by the parties.
3. The Deputy Judge President will determine the date of the hearing of the aforesaid opposed motion and furnish such directives as he deems fit in respect thereof.

4. The opposed motion must forthwith be enrolled for hearing in terms of the determination of the Deputy Judge President.

9.12 SUMMARY JUDGMENTS

1. The plaintiff must paginate and index the application before it is served and filed.
2. If the defendant files an opposing affidavit in terms of Rule 32(3)(b), such affidavit and annexures must be paginated and an updated index must be served and filed by the defendant at the time the opposing affidavit is delivered.
3. No opposed summary judgment application will be heard unless the plaintiff ensures that all the relevant papers (*ie* the summons, notice of intention to defend, application for summary judgment and any affidavits filed) are indexed and paginated and a practice note is filed. The practice note must briefly outline the issues and refer to the relevant legislation and case law.
4. Where a summary judgment application is opposed, -
 - 4.1 the defendant shall, simultaneously with the delivery of any opposing affidavit, deliver heads of argument in which it is demonstrated why summary judgment cannot be granted; and -
 - 4.2 the plaintiff shall deliver short heads of argument by no later than 13h00 on the court day preceding the hearing of the application for summary judgment directly to the Registrar of the Judge on whose roll the matter appears.
5. If the defendant fails to deliver heads of argument as required, the plaintiff will be entitled to proceed with the application provided that it has complied with the provisions of 4.2 above. In such event the Court may direct that the defendant's heads of argument be delivered within a specified time and that the wasted costs, if any, be borne by the defendant or its legal representative.
6. If the plaintiff fails to deliver heads of argument as required, the application may not proceed. In such circumstances the Court may direct that the costs occasioned in postponing the application be borne by the plaintiff or its legal representative.
7. The parties will be entitled to file, and the supervisor will be obliged to receive and put on the file, opposing affidavits, indices, practice notes and heads of argument in spite of a summary judgment application having been finally enrolled.

9.13 RULE 43 APPLICATIONS

1. Every Rule 43 application set down for hearing shall be accompanied by a practice note. The practice note shall be delivered by counsel for each party by no later than 13h00 two court days preceding the hearing of the application.
2. That practice note must set out the following information:
 - 2.1 The name, telephone number (including cell-phone number) and email address of the counsel for each party;
 - 2.2 A comparative table detailing the relief sought by each party in respect of maintenance and/or the regime to regulate care and contact with minor children, clearly distinguishing –
 - 2.2.1 items of relief which are agreed or common cause;
 - 2.2.2 items of relief that are in dispute;
 - 2.2.3 items of relief sought by the applicant that are in competition with items of counter relief sought by the respondent.
 - 2.3 The information shall be set out so that the competing propositions are immediately in juxtaposition to facilitate proper and swift comparison, and to enable the judge to identify exactly what is controversial.
3. The supervisor will be obliged to allow the parties to comply with the provisions of paragraph 1 above.

9.14 DEFAULT CASES - NOTICES OF SET DOWN

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

- 7 In an application for **summary judgment** the notice of set down must indicate -
 - 7.1 the date of delivery of the notice of intention to defend;
 - 7.2 indicate the date on which the application for summary judgment was delivered;
 - 7.3 if applicable, a statement that no opposing affidavit was filed;
 - 7.4 the precise relief sought.

- 8 In an application for **provisional sentence**, the notice of set down must -
 - 8.1 indicate the date of service of the provisional sentence summons;
 - 8.2 contain a statement that no opposing affidavit was filed;
 - 8.3 indicate the precise relief sought.

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

ANNEXURE TO 9.14

EXAMPLE OF NOTICES OF SET DOWN

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

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

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

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

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

DATED at _____

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

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

9.16 SETTLEMENT

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

9.17 STRIKING FROM THE ROLL

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

9.18 POSTPONEMENTS

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

9.19 SERVICE

1. Service is proved by filing in the court file the original return of service which establishes the service. In the absence of an acceptable explanation, a return of service will generally not be accepted from the bar.
2. Where publication in the *Government Gazette* or newspaper of a court order, notice or other document has to be proved, the full page of the *Government Gazette* or newspaper containing the relevant order, notice or other document must be filed. The court order, notice or other document must be clearly highlighted. In the absence of an acceptable explanation, proof of publication will generally not be accepted from the bar.
- 4.1 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.
- 4.2 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.
5. Where service is effected at a *domicilium citandi et executandi*, the original document wherein the *domicilium* is chosen must be in the court file.
6. In actions or applications for the incarceration (*ie* 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.
7. When service of any document by registered post is prescribed or authorised (in any action or application), such service is proved by the production of an affidavit by the person who procured the dispatch of such document, in which he/she –
 - 7.1 indicates the date of dispatch together with the name and address of the addressee;
 - 7.2 describes the document so dispatched; and

7.3 indicates, if that be the case, that the item in question has not been returned to the sender by the Post Office as being undelivered, and annexes the documentary proof of posting of a registered article issued by the Post Office.

9.20 STALE SERVICE

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

9.21 SETTLEMENT AGREEMENTS

1. Where the parties to an application have entered into a settlement agreement, a judge will only make such settlement agreement an order of court if –
 - 1.1 counsel representing all the parties to the application are present in court and confirm the signature of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court,

or
 - 1.2 proof to the satisfaction of the presiding judge is provided as to the identity of the person who signed the settlement agreement and that the parties thereto want the settlement made an order of court.

2. Where the parties to an application have settled the application on the terms set out in a draft order, a judge will only make such draft order an order of court if –
 - 2.1 counsel representing all the parties to the application are present in court and confirm that the draft order correctly reflects the terms agreed upon;

or
 - 2.2 proof to the satisfaction of the presiding judge is provided that the draft order correctly reflects the terms agreed upon.

9.22 DUPLICATE FILES

1. A duplicate court file may only be used if leave of the court which is to hear the application is first obtained. In order to obtain such leave, the following procedure shall apply.
 - 1.1 The duplicate file and the application papers, duly indexed and paginated, must be presented to the Court.
 - 1.2 An affidavit must be filed by the attorney of the party seeking to use a duplicate file in which the following is set out -
 - 1.2.1 the reasons why a duplicate file is required to be used;
 - 1.2.2 the attempts made by the attorney to locate the original file;
 - 1.2.3 a full and comprehensive history of the application, including details of all previous court orders granted in relation to the application.
 - 1.3 Copies of all previous court orders granted in relation to the application must be presented to the Court. The court orders must be duly certified by the Registrar and affixed to the left inside cover of the duplicate court file.
 - 1.4 The provisions of this paragraph shall also apply to Chapters 6, 7 and 8 of the Practice Manual.

9.23 URGENT APPLICATIONS

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 16h00 and terminates on the Friday of the next week at 16h00.
2. The normal time for the bringing of an urgent application is at 10h00 on Tuesday of the motion court week.
3.
 - 3.1 If the urgent application cannot be brought at 10h00 on the Tuesday of the motion court week, it may be brought on any other day of the motion court week at 10h00. The applicant must, in the founding affidavit, set out facts to justify the bringing of the application at a time other than 10h00 on the Tuesday.
 - 3.2 If the urgent application cannot be brought at 10h00 on any day during the motion court week, it may be brought at 11h30 or 14h00 on any day during the motion court week. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on Tuesday and other than 10h00 of the relevant court day.
 - 3.3 If the application cannot be brought at 10h00 on the Tuesday or at 10h00 on any other court day or at 11h30 or 14h00 on any court day it may be brought at any time during the court day. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on the Tuesday and other than at 10h00, 11h30 or 14h00 on any other court day.
 - 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.
 - 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 costs order may be made.

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

5. 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 form of Form 2(a) of the First Schedule of the rules of court and therefore must provide a reasonable time, place and method for the respondent to give notice of intention to oppose the application and must further provide a reasonable time within which the respondent may file an answering affidavit. The date and time selected by the applicant for the enrolment of the application must enable the applicant to file a replying affidavit if necessary.
 - 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.
 - 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 hours, excluding the hour between 13h00 and 14h00.

6. 6.1 If the facts and circumstances set out in the applicant's affidavits do not –
 - 8.1.1 constitute sufficient urgency for the application to be brought as an urgent application; and/or
 - 8.1.2 justify the abrogation or curtailment of the time periods referred to in Rule 6(5); and/or
 - 8.1.3 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 costs order against the applicant the Court will make no order on the application.

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

7. 7.1 For the purposes of urgent applications ordinary court hours are 10h00 to 11h15; 11h30 to 13h00 and 14h00 to 16h00 of a court day. If a party wishes to bring an urgent application out of ordinary court hours the presiding judge's clerk must be telephoned at his/her office or on cell-phone number: 082 573 5233). The following information must be conveyed to the judge's clerk:
 - 7.1.1 The identity of the parties;
 - 7.1.2 Whether or not service has been or will be effected;
 - 7.1.3 Whether or not the application is or is anticipated to be opposed;
 - 7.1.4 The type of application;
 - 7.1.5 The nature of the relief sought;
 - 7.1.6 Why it is not possible for the application to be heard during ordinary court hours; and
 - 7.1.7 When it is anticipated the application will be ripe for hearing.
- 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.
- 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.
- 7.4 The judge designated for the hearing of urgent applications is not to be contacted directly.
- 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 –

- 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 IAfrica on the Friday before 16h00;
- 7.5.2 the security officer on duty at the main entrance of the High Court to arrange for the admission of the parties to the court and for the parties to be directed to the court in which the court dealing with urgent matters is sitting.
8. 8.1 When an urgent application is brought for the Tuesday at 10h00 the applicant must ensure that the relevant papers are filed with the Registrar by the preceding Thursday at 12h00.
- 8.2 The Registrar's office must ensure that the court files of all urgent applications set down for the Tuesday at 10h00 are brought to the clerk of the judge hearing the urgent applications by 10h00 on the preceding Friday.
- 8.3 Where, because of the nature of the urgency, it is not practicable to comply with the provisions of 8.1 above, or where an urgent application is brought for a time other than Tuesday at 10h00, the Registrar's office shall ensure that the court file is brought to the clerk of the senior judge hearing urgent applications as soon as possible.
- 8.4 The clerk of the judge hearing the urgent applications will prepare a roll in respect of the urgent applications to be heard on the Tuesday at 10h00 and shall also prepare a roll in respect of the urgent applications to be heard on the other days of the week. The clerk will publish the rolls in the foyer of the High Court by no later than 09h00 on the day of the hearing.
9. 9.1 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.
- 9.2 Annexure A is an example of the appropriate format of a notice of motion to be utilised in an urgent application.
10. 10.1 On the Friday of each week at 16h00 the Registrar shall send to the clerk of the judge designated for the hearing of urgent applications for the week, commencing at 16h00 on the Friday –

- 10.1.1 the cell-phone number provided for the judge's clerk;
 - 10.1.2 fifteen consecutively numbered court files (these files are to be utilised in the event of an urgent application being brought without a court file having been opened by the Registrar of the Court);
 - 10.1.3 an official stamp of the Registrar of the High Court.
- 10.2 On Friday of each week, before 16h00, the clerk of the judge who is to take over the urgent court must obtain from IAfrica the telephone number of the stenographer on urgent court duty for the urgent court week.
- 10.3 On the first court day after any of the files referred to in 10.1.2 above have been utilised, the judge's clerk shall inform the Registrar of the names of the parties and the allocated case number.
- 10.4 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.

**ANNEXURE A (PARA 9.22)
EXAMPLE OF NOTICE OF MOTION – URGENT APPLICATIONS**

NOTICE OF MOTION – URGENT APPLICATION

A. BE PLEASED TO TAKE NOTICE –

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

B. AND FURTHER TAKE NOTICE -

1. that on the _____ at 10h00 the applicant will apply for the following order:
 - a. .
 - b. .
 - c. .
2. that if you intend opposing the application which will be heard on the _____ you must –

- a. state that intention in a notice delivered to applicant's attorney at the under-mentioned address and to the Registrar of the above Court not later than _____; and
 - b. in that notice appoint an address where further documents in this matter can be delivered and be situate within fifteen kilometres of _____; and
 - c. deliver your opposing affidavits not later than _____, at the said address of applicant's attorney and to the Registrar _____.
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19/08/2015