



CONSOLIDATED PRACTICE NOTES

WESTERN CAPE HIGH COURT CAPE TOWN

By direction of the Judge President,
the following Consolidated Practice Notes are operative
with effect from 1 July 2012.

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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 All existing Court Notices, Practice Notes and Old Cape Rules currently in force in this Division are hereby repealed and replaced with these Consolidated Practice Notes (*Practice Notes*).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 final Rule 37(8) Conference.

A. COURT TERMS AND TIMES OF SITTING

3. There shall be four terms in the year during such periods as the Judge President may determine from year to year.¹
4. Subject to the discretion of any individual judge to order differently, all the courts of this Division will ordinarily commence at 10h00.²

¹ Compare Old Cape Rule 3(1).

² CN 1

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.³
6. **Admissions**⁴
 - (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.⁵
 - (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.
7. All other matters shall be heard on any other day during term unless otherwise directed by the Judge President;⁶ provided that no new opposed matters are to be set down for hearing

³ CN 2.1

⁴ PN 24.

⁵ CN 21

⁶ CN 2.2

in the last week of any term without leave of the Judge President.⁷

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.⁸ In this regard, the convenience of counsel shall not be regarded as an exceptional circumstance.⁹
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;

⁷ CN 8.6 (modified)

⁸ CN 8.7

⁹ CN 6.1 & 6.2

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.¹⁰

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;¹¹
 - (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 size¹²
 - (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

¹⁰ Cf Old Cape Rule 3(7).

¹¹ CN 3(3) (as modified)

¹² CN 3(1), 3(4).

such documents.¹³ 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.¹⁴
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.¹⁵

¹³ CN 4 (as modified)

¹⁴ CN 4

¹⁵ PN 11

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.¹⁶
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.¹⁷
16. One of the judges will hear all unopposed matters as well as opposed Rule 43 applications in Third Division.¹⁸
17. The other duty judge, presiding in what is known as the '*Fast Lane*' Court, will deal with the following matters:¹⁹
 - (1) all unopposed urgent applications brought under Rule 6(12) not on the ordinary Third Division roll;
 - (2) all opposed matters (and 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;

¹⁶ CN 12.1

¹⁷ CN 12.5.

¹⁸ CN 12.2, 12.6

¹⁹ PN 1

- (4) all chamber book applications;²⁰
- (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.²¹
- 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.²²
- 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.²³

²⁰ See Practice Note 37 below.

²¹ CN 29.

²² CN 22, 31.

²³ New.

- (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;²⁴
 - (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.²⁵
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).²⁶
 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.²⁷
 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 New. See Erasmus *Superior Court Practice* D5-12, 14.

²⁵ New.

²⁶ CN 12.4 (modified).

²⁷ PN 16

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.²⁸

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;²⁹

(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.³⁰

(3) the original or a copy of the marriage certificate of the parties shall be handed in at the hearing;³¹

(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.³²

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,

²⁸ New.

²⁹ New.

³⁰ New.

³¹ CN 24.

³² CN 24.

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).³³

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.³⁴
- (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.³⁵
- (3) In all return days an affidavit must be filed by the applicant's attorney of record, setting out in what respects there has 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).³⁶
- (4) Where an order of court has been published in the *Gazette* or a newspaper, the full sheet with the heading and the date

³³ New.

³⁴ PN 10.

³⁵ CN 18

³⁶ New.

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.³⁷ 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.³⁸

- (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”**.³⁹

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.⁴⁰

³⁷ PN 2, CN 3(6)

³⁸ New. Cf Erasmus *Superior Court Practice* D4-7.

³⁹ PN 14.

⁴⁰ CN 14; PN 3.

- (2) Where a matter has previously been postponed, an affidavit must be filed motivating an application for any further postponement.⁴¹

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 out of community of property), who shall be joined as a respondent.⁴²
- (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.⁴³
- (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.

⁴¹ New.

⁴² CN 15

⁴³ CN 16

- (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.⁴⁴
- (4) The provisions of paras (1) to (3) above shall apply equally to all applications for ***Voluntary Surrender***.⁴⁵

⁴⁴ PN 5.

⁴⁵ See PN 5, as amended, and as published in 2000 (4) SA 135.

- (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.⁴⁶
- (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.⁴⁷

32. Removal of Restrictions from Title Deeds⁴⁸

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 2005⁴⁹

- (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 section 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

⁴⁶ CN 17

⁴⁷ New.

⁴⁸ PN 17

⁴⁹ PN 25

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 must be filed when a credit provider applies for judgment.

34. **Urgent Applications** ⁵⁰

- (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.) ⁵¹
- (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.

⁵⁰ CN 11

⁵¹ New. See Erasmus *Superior Court Practice* D5-1.

35. **'Anton Piller' Orders**⁵²

- (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

⁵² PN 18

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.
- (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 Matters**⁵³

- (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

⁵³ New.

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 Applications**⁵⁴

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);

⁵⁴ CN 26.

- (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;
- (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 (old Cape Rule 34(4)(a));

- (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;⁵⁵
- (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.

⁵⁵ PN 23

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.⁵⁶
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.⁵⁷
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 Management**⁵⁸
- (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.⁵⁹
- (2) At a pre-trial conference the parties must genuinely endeavour to achieve the objects of Rule 37 (by defining

⁵⁶ Cf Old Cape Rule 34(1).

⁵⁷ CN 3(5), CN 28(i) (modified).

⁵⁸ 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.

⁵⁹ New.

triable issues and curtailing proceedings) and the minute must show this.⁶⁰

- (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.⁶¹
- (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

⁶⁰ New.

⁶¹ New.

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.⁶²

- (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)⁶³ –
- (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.⁶⁴
 - (f) when and by which case managing judge the matter has been released as '*trial ready*'.
- (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

⁶² PN 9

⁶³ Fax No 021 423 4977; E-mail: ASheldont@justice.gov.za; mmatthews@justice.gov.za

⁶⁴ PN 19

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.⁶⁵

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.⁶⁶
- (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.⁶⁷

⁶⁵ CN 5.1

⁶⁶ CN 8.1

⁶⁷ CN 8.2, 8.3

- (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).⁶⁸
- (4) Failure to comply with the provisions of this notice may result in the matter not being heard on the allocated day.⁶⁹

44. **Opposed Motions**⁷⁰

- (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.

⁶⁸ CN 8.4

⁶⁹ CN 8.5

⁷⁰ CN 13, as modified.

- (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 appeal⁷¹

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 to the judge against whose judgment and/or order the application is directed.
- (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.

⁷¹ PN 7

- (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 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 afore-

said, the judge may take such steps as he/she deems necessary to deal with the application.

46. **Full Bench Appeals**

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.

- (1) 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).
- (2) At the same time as the application for a date for the hearing 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.

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.

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 timeous 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.⁷²

⁷² CN 9

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.
- (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.
- (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.

- (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 Matters**⁷³

- (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;
 - (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.

⁷³ CN 10

- (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 Matters⁷⁴

- (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;

⁷⁴ PN 26.

- (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;
 - (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.

G. FILMING AND RECORDING OF COURT PROCEEDINGS

53.1 DISCRETION

Filming and recording of court proceedings shall be allowed at the sole discretion of the presiding judge. In instances where more than one judge is sitting, filming and recording of court proceedings shall be at the discretion of the presiding judge in consultation with his/her fellow sitting judge(s). Filming and recording shall be permitted on such terms and conditions as the presiding judge, in all instances, may impose.

53.2 APPLICATION FOR FILMING AND RECORDING

53.2.1 Any media organisation that wishes to be permitted to film or record the proceedings shall, in the first instance, ascertain from the parties in the proceedings which it is desired to be filmed or recorded if it, he or she has an objection to the proposed filming and recording/filming or recording.

53.2.2 Any party to the proceedings which it is desired to be filmed or recorded shall, within twelve (12) hours of being requested to do so, record its objection in writing to the media organisation which is desirous to have the proceedings filmed or recorded; provided that if no objection is raised within the said period of twelve (12) hours, such a party will be deemed not to have an objection to the proposed filming and recording. Any party who wishes to object to the proposed filming or recording of the proceedings must raise its objection in writing.

- 53.2.3 Should any one of the parties to the proceedings which it is desired to be filmed or recorded, either by reason of infirmity, disability or level of literacy or any other reason, be unable to respond to a request for filming or filming and recording as contemplated in paragraph 38.2.2, such fact shall be brought to the attention of the presiding judge. In that event, it shall be the prerogative of the presiding judge to ascertain from such a party whether he or she objects to the proposed filming or recording of the proceedings, having due regard to public interest, in the proceedings or any potential prejudice such party is likely to suffer.
- 53.2.4 Any party who desires to have the proceedings filmed or recorded must notify the registrar of the presiding judge of its intention to record or film such proceedings at least twenty four (24) hours before the commencement of the hearing simultaneously indicating if any party to the proceedings has any objection to the proposed filming or recording.
- 53.2.5 On receipt of a notice contemplated in paragraph 38.2.4 above, the presiding judge shall consider such request. In considering a request to have the proceedings filmed or recorded, the presiding judge shall take into account the public interest in the proceedings desired to be recorded or filmed including any prejudice any party to such proceedings is likely to suffer as a result of such recording or filming.
- 53.2.6 It is generally undesirable that the viva voce testimony of any witness to the proceedings be recorded or filmed. The decision to grant or refuse such permission shall be made by the presiding judge hearing a request to that effect, due regard had to the public interest in the matter.

53.3 CONDITIONS

Filming and recording of court proceedings shall be permitted on such terms and conditions as the presiding judge, in all instances, may impose. The following conditions, which in themselves are not exhaustive, shall apply in all instances where filming and recording of court proceedings is allowed:

EQUIPMENT LIMITATIONS

- 53.3.1 Video: one camera only may be used at a time and the location of the camera is not to change while the court is in session.
- 53.3.2 Audio: the media may install their own audio recording system provided this is unobtrusive and does not interfere with the proceedings. Individual journalists may bring tape recorders into the court room for the purposes of recording the proceedings but changing of cassettes is not permitted while the court is in session.
- 53.3.3 Still Cameras: Only one photographer allowed and the location of the camera is not to change and no changing of lenses or film is permitted while the court is in session.
- 53.3.4 All camera, video and audio equipment must in position at least fifteen (15) minutes before the start of the proceedings and may be moved or removed only when the court is not in session. Cameras, cables and the like are not to interfere with the free movement within the court.
- 53.3.5 Lighting: no movie light, flash attachments or artificial lighting devices are permitted during court proceedings.
- 53.3.6 Operating signals: no visible or audible light or signal may be used on any equipment.

POOLING ARRANGEMENTS

- 53.3.7 It is generally undesirable for more than one media representative to conduct each of the audio, video and still photography activities.
- 53.3.8 This media representative is to be determined by the media themselves and is to operate an open and impartial distribution scheme, in terms of which the footage, sound or photographs would have to be distributed in a 'clean' form, that is, with no visible logos etc, to any other media organization requesting same and would also be archived in such a manner that it remains freely available to other media.
- 53.3.9 Failing an agreed impartial distribution scheme, the presiding judge shall give directions as to the appropriate manner for conducting audio, video and/or still photography activities.

RULES REGARDING BEHAVIOUR OF MEDIA REPRESENTATIVES

- 53.3.10 Conduct must be consistent with the decorum and dignity of the court.
- 53.3.11 No identifying names, marks, logos or symbols should be used on any equipment or clothing worn by media representatives.
- 53.3.12 All representatives (including camera crew) must be appropriately dressed.
- 53.3.13 Equipment must be positioned and operated to minimize any distraction while court is in session.
- 53.3.14 Equipment must not be placed in or removed from the court room.
- 53.3.15 No film, videotape, cassette tape or lens may be changed.

53.4 UNDESIRABLE PRACTICES

Subject to the discretion of the presiding judge, it is undesirable that there be:

- 53.4.1 audio recordings or close-up photography of bench discussions;
- 53.4.2 audio recordings or close-up photography of communications between legal representatives or between clients and their legal representatives;
- 53.4.3 close-up photographs or filming of judges, lawyers or parties in court;
- 53.4.4 recordings (whether video or audio) being used for commercial or political advertising purposes thereafter;
- 53.4.5 use of sound bytes without the prior consent of the presiding judge. (This does not apply to extracts from judgments or orders)

53.5 WITHDRAWAL OF LEAVE OR CHANGE OF CONDITIONS

The court may, on good cause in any particular case, withdraw the leave to film and/or record court proceedings or change any condition imposed by the presiding judge or as listed in paragraph 38.3 above.

53.6 FAILURE TO COMPLY WITH CONDITIONS

Once leave to record or film court proceedings is granted, failure to comply with any condition imposed by the presiding judge and/or any of the conditions listed in paragraph 38.3 and 38.4 may lead to contempt of court proceedings.

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)