

CONSOLIDATED PRACTICE DIRECTIVES

ISSUED BY THE JUDGE-PRESIDENT
OF THE HIGH COURT OF NAMIBIA



Issued at Windhoek on this 2nd day of March 2009

THE JUDGE-PRESIDENT

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(First consolidated set of practice directives published and operational on 2 March 2009)

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PART I: INTERPRETATION

Definitions

1. In these practice directives any word or expression to which a meaning has been given in the Namibian Constitution, the High Court Act, 1990 (Act No. 16 of 1990) and the Rules of Court made thereunder, and any other Act bears that meaning, and unless the context otherwise indicates -

“CPD” means these Consolidated Practice Directives; and

“RCR” means restitution of conjugal rights.

PART II: DIVORCE PROCEEDINGS

Marriage certificate

- 2(1) Legal practitioners who receive instructions in divorce matters must –
- (a) file a certified copy of the marriage certificate at the Office of the Registrar simultaneously with the notice of set down in divorce matters; and
 - (b) present the original marriage certificate or duplicate copy thereof in court on the date of the trial of the matter.

Service of process in divorce proceedings on adulterous third party

- 3(1) Where an alleged adulterous third party is resident in Namibia and his or her address is known, service of the summons must be effected on that person.
- (2) Where such third party is resident outside Namibia and his or her address is known, notice of the proceedings by registered post will be sufficient.
- (3) (a) Where it is not possible to determine the whereabouts of such third party in or outside Namibia, the Court may dispense with service of summons in terms of subparagraph (1) or notice of proceedings in terms of subparagraph (2), if it is shown that reasonable steps taken to ascertain the whereabouts of the Third Party were unsuccessful.
- (b) The evidence referred to in subparagraph 3(a) must be placed before the Court.
- (c) In considering the evidence referred to in subparagraph (b), a Judge must not take an undue formalistic approach in satisfying himself or herself that reasonable steps were taken.

Restitution Order

- 4(1) A restitution order must be served not less than 14 days prior to the first restitution date.
- (2) Where the Court makes an order to extend the return date of a restitution order (rule *nisi*) it must extend the date to a fixed date which falls on a Second Motion Court day.
- (3) If the restitution order has been properly served, but the rule *nisi* cannot be confirmed on the return date, application may be made to extend the rule to a subsequent Second Motion Court day.

- (4) If no service has been effected, application must be made on or before the return date of the rule *nisi* for new dates.
- (5) If the plaintiff's legal representative has withdrawn and there is no appearance by or on behalf of the plaintiff on the return date, or extended return date of a restitution order -
 - (a) the Court must *mero moto* extend the return date; and
 - (b) the Registrar must address a letter to the plaintiff, to be sent by registered post to his or her last known address.
- (6) If there is no appearance by or on behalf of the plaintiff on the extended return date referred to in subparagraph 5(a), the rule *nisi* must be discharged.
- (7) If on a return date or extended return date of a rule *nisi* a matter is removed from the roll for any reason, no further steps can be taken in that matter unless the Court, on good cause shown, reinstates the rule *nisi*.
- (8) Where the Court reinstates a rule *nisi*, it may -
 - (a) grant new dates; or
 - (b) extend the rule, if it is satisfied that the rule has been served.

PART III: MATTERS FALLING WITHIN MAGISTRATE'S COURT JURISDICTION

Increased civil jurisdiction of magistrates' courts

5. Where the High Court makes an order as to costs in an action instituted in that Court after 16 January 1998, the scale of costs the Court may allow is the scale allowed by magistrates' courts if the matter falls within the jurisdiction of magistrates' courts in terms of the Magistrates' Courts Amendment Act, 1997 (Act No. 9 of 1997).

PART IV: LABOUR COURT

Dress code and mode of addressing Judge presiding in Labour Court

6. The dress code for Judges and legal practitioners and the mode of addressing Judges in the Labour Court are the same as those applicable to civil proceedings in the High Court.

Enrolment of Labour Court opposed matter

7. An opposed matter to be heard in the Labour Court may be enrolled after the Registrar has allocated a date for the hearing of such matter.

Appeal under the Labour Act

- 8(1) Paragraph 29(4) and (5) apply with necessary modifications by context to appeals under any provision of the Labour Act, 2007 (Act No. 11 of 2007): provided that such appeals are heard at 09H00 on Fridays.

Application for review under the Labour Act

9. Part VI applies with necessary modifications by context to a review under any provision of the Labour Act, 2007 (Act No. 11 of 2007).

Application other than urgent application

10. Paragraph 29(5) applies with necessary modifications by context to an application made to the Labour Court.

Hearing of Labour Court Case

- 11(1) An opposed as well as unopposed Labour Court case is heard on Fridays at 10h00 and must therefore be set down as such.
- (2) No Labour Court case is set down on the First Motion Court Roll.

Opposed interlocutory matter

- 12.** If in terms of the Labour Court Rules, an application is made in accordance with the High Court Rules-
- (a) such application must be heard by the duty Judge after the First Motion Court, if the application is an unopposed interlocutory application;
 - (b) the duty Judge must, if the application is opposed, determine dates for filing of answering and replying affidavits by the parties; and
 - (c) the Registrar may, upon application by a party and after consultation with the Judge-President, set the application down for hearing and in that event paragraph 20 applies.

PART V: NUMBERING OF COURT DOCUMENT IN RESPECT OF CASE

Action proceedings (liquid or illiquid), application, provisional sentence and Labour Court application

- 13(1) When a summons, application, provisional sentence summons or labour court application is filed for the purpose of issuing any of those processes, a court file must be opened.
- (2) The particulars of the litigants must be entered in the relevant registers and a permanent case number must be given to the case and that number must be placed in the right upper-hand corner of the file.
- (3) The case number given to each case must also appear on other relevant documents.
- (4) A case number must be in one of the following illustrative forms -
 - (a) I 1/2007: in the case of action proceedings
 - (b) A 1/2007: in the case of an application case
 - (c) PS 1/2007: in the case of a provisional sentence case
 - (d) LC 1/2007: in the case of a Labour Court application
- (5) Any document filed subsequent to Application for a trial date has been made and/or a matter has been set down for hearing shall bear at the right top corner in bold print the next date of appearance and a reference to the particular roll on which it has been set down as stated hereinafter:
 - (a) 1st Term Roll;
 - (b) 2nd Term Roll;
 - (c) 3rd Term Roll;
 - (d) Interlocutory Roll;
 - (e) First Motion Court;
 - (f) Second Motion Court.

[Para. (13)(5) inserted by 3rd Amendment dated 1 April 2010]

Criminal appeal, civil appeal, criminal review, admiralty case and Labour Court appeal

- 14(1)** In a criminal appeal, civil appeal, criminal review, admiralty case and Labour Court appeal, a permanent number must be given for each case at the time of commencement of proceedings.
- (2) A case number must be in one of the following illustrative forms:
- (a) CA No. 1/2007: criminal and civil appeals
 - (b) CR No. 1/2007: criminal review
 - (c) AC No. 1/2007: Admiralty Court case
 - (d) LCA No. 1/2007: Labour Court appeal

Substituted service proceedings

- 15(1)** If a plaintiff applies for substituted service in terms of Rule 4(2) and 5(2) of the Rules of Court and no other process of Court has been issued and no other file number has been given by the Registrar therefor -
- (a) a file with the number as set out in paragraph 14(1) must be opened, namely “A”; and
 - (b) in that event no power of attorney, intendit or other document is required.
- (2) If an order for substituted service has been granted in respect of an application mentioned in subparagraph (1) on a file bearing the letter “A” and the plaintiff wishes to proceed by having other process issued, a new file bearing a letter “I” number must be opened by the Registrar.
- (3) Subparagraphs (1) and (2) do not apply to a matter where -
- (a) a process has commenced;
 - (b) a file bearing the letter “I” has already been opened; and
 - (c) an order for substituted service is sought.

PART VI: HIGH COURT ROLL

Civil cases: floating roll

16(1) Not more than 312 civil cases may be enrolled on the floating roll, at the rate of not more than 24 cases per week.

(2)

[Para. (16)(2) repealed by 4th Amendment dated 20 May 2011]

(3) The procedure of enrolment of cases is the following -

(a) a legal practitioner or a litigant representing himself or herself intending to enroll a civil case on the floating civil roll must complete a *pro forma* form provided to him or her by the Registrar, requesting a specific number of days for the hearing of each case;

(b)

[Para. (16)(3)(b) repealed by 4th Amendment dated 20 May 2011]

(c)

[Para. (16)(3)(c) repealed by 4th Amendment dated 20 May 2011]

(4)

[Para. (16)(4) repealed by 4th Amendment dated 20 May 2011]

(5)

[Para. (16)(5) repealed by 4th Amendment dated 20 May 2011]

(6)

[Para. (16)(6) repealed by 4th Amendment dated 20 May 2011]

(7)

[Para. (16)(7) repealed by 4th Amendment dated 20 May 2011]

(8) The Registrar may not grant to any legal practitioner, acting for and on behalf of a litigant, or a litigant representing himself or herself a date for the hearing of an opposed action or application (except an urgent application) unless the legal practitioner or litigant applying for a hearing date annexes to the Notice of Application for a Trial Date a document setting out a

summary of not more than 100 words the legal and factual issues to be determined in the case.

(a) Notwithstanding any other provision to the contrary herein contained, the summary referred to herein before shall, in the event of actions, also make reference to-

- (i) the date on which the Rule 37 conference was held; and
- (ii) the date of signature by all parties concerned of the Minutes in terms of

Rule 37

[Para. (16)(8)(a) inserted by 3rd Amendment dated 1 April 2010]

(b) The summary shall clearly in bold printed Capital letters state at the top of the first page, the nature of the hearing date applied for, whereby the nature shall be classified as one of the following:

- (i) Civil Floating Roll
- (ii) Fixed Roll
- (iii) Civil Opposed Motion
- (iv) Opposed Constitutional / Human Rights
- (v) Opposed Labour
- (vi) Exception
- (vii) Special Plea
- (viii) Divorce Floating Roll
- (ix) Divorce – Application for Rescission

[Para. (16)(8)(a) inserted by 3rd Amendment dated 1 April 2010]

(9) The annexure referred to in subparagraph (8) must be as near as possible to Annexure “A” to this CPD.

Divorce cases: floating roll

17

[Para. (17)(3)(a) inserted by 3rd Amendment dated 1 April 2010, Para. (17)(3)(b) inserted by 3rd Amendment dated 1 April 2010, Para. (17)(3)(c) inserted by 3rd Amendment dated 1 April 2010, Para. (17)(3)(d) inserted by 3rd Amendment dated 1 April 2010, Para. (17)(7) inserted by 3rd Amendment dated 1 April 2010, Para. (17) repealed by 4th Amendment dated 20 May 2011]

Civil cases: fixed roll

18(1) A civil case may not be placed on the fixed roll unless -

- (a) it is anticipated that such a case will run for more than four days; and
 - (b) the Judge-President is satisfied that good reason exists for setting down the case on the fixed roll.
- (2) Only one case is set down on the fixed roll per week to be heard from Monday to Friday, unless the Judge-President directs otherwise.
- (3) The procedure in paragraph 16(3), (4) and 5 applies with necessary modifications by context to this paragraph: provided that a separate Judge is assigned to hear a civil case on the fixed roll.

Civil cases (partly heard cases and floating roll cases that could not be heard)

- 19(1) A partly-heard civil case, which is not finalised within the time allocated for it, may be placed on the roll of a succeeding term for it to be heard on a date and time arranged with the Registrar before the adjournment of proceedings.
- (2) Where a civil case set down on the floating roll in terms of paragraph 16 is not heard because the floating roll cases (which take precedence over set down cases) are not concluded and it is not possible for the Judge-President to assign another Judge to hear such case -
- (a) the case is set down for hearing during the following term by arrangement with the Registrar; and in that event,
 - (b) the legal representative or the litigant representing himself or herself need, not attend the Registrar's meeting or comply with paragraph 16(3), (4) and (5).

Opposed motion

- 20(1) An opposed motion is heard on Mondays.
- (2) Every legal practitioner must comply with the time periods with regard to the filing of heads of argument prescribed in subparagraph (3).
- (3) Heads of argument of the applicant in opposed motion proceedings must, together with a list of authorities, be filed not later than 15 court days before the date of the hearing of the application, and the respondent must do likewise not later than 10 court days before the date of the hearing of the application.
- (3A) The applicant in opposed election applications, brought in terms of the Electoral Act, 1992 (Act No 24 of 1992), as amended, shall file heads of argument, together with a list of authorities, within three days from date of service of the replying affidavit upon him or her in terms of Rule 6(5)(e), and the respondent shall likewise file heads of argument within three days from date of service of

the applicant's heads of argument upon him or her: provided that for the purpose of this subparagraph the computation of the *dies* shall include Saturdays and Sundays and shall exclude the first day, but shall include the last day, unless the last day shall happen to fall on a Saturday or Sunday, in which case the first court day immediately following that Saturday or Sunday.

[Para. (3)A inserted by 2nd Amendment dated 3 February 2010]

- (4) Supplementary heads of argument are discouraged, but if it becomes necessary to file such heads of argument, they must be brief and concise, and must be filed not later than five court days before the date of the hearing of the application.
- (4)A Supplementary heads of argument in opposed election applications, brought in terms of the Electoral Act, 1992 (Act No 24 of 1992), as amended, are discouraged, but if it becomes necessary to file such heads of argument, they must be brief and concise, and shall be filed not later than two court days before the date of the hearing of the application.

[Para. (4)A inserted by 2nd Amendment dated 3 February 2010]

- (5) The Court may, on good cause shown, accept heads of arguments filed out of the time limits prescribed in subparagraph (3).
- (6) If the applicant's legal practitioner files heads of argument within the periods specified in subparagraph (3) and the respondent's legal practitioner fails to do likewise, the presiding Judge may in his or her discretion, hear the application without the heads of argument of the respondent's legal practitioner and make such order as to costs as the Judge deems appropriate in the circumstances.
- (7) Subparagraph (6) applies with the necessary modifications by context where it is the legal practitioner of the applicant who has failed to file heads of argument within the period specified in subparagraph (3).
- (8) Where the legal practitioners of both parties fail to file heads of argument in terms of subparagraph (3), the presiding Judge may, in his or her discretion, strike the application from the roll or hear it without heads of argument.
- (9)
 - (a) In an opposed motion the legal practitioner of the applicant or the applicant representing himself or herself must paginate, index and bind all the papers, including the affidavits that form part of the application, simultaneously with the filing of the applicant's heads of argument.
 - (b) If the applicant's legal practitioner or the applicant representing himself or herself fails to comply with paragraph (a) the presiding Judge may strike the application from the roll or hear it and make an appropriate order as to costs.

Service of summons in Motion Court proceedings and application for default judgment before Registrar

21. If a period of six months has lapsed after service of summons, no order may be made in any Motion Court or by the Registrar in terms of Rule 31(5) of the Rules of Court, unless a notice of set down has been served.

Sessions of Motion Court

- 22(1) The First Motion Court and Second Motion Court are held on separate dates.

- (2) The First Motion Court is held at 10h00 on Fridays and the Second Motion Court at 10h00 on Mondays.

- (a) Both the First and the Second Motion Court in the Northern Local Division of the High Court of Namibia are held, every fortnight, during one combined session on Mondays at 10h00.

[Sub-Para. (2)(a) inserted by 6th Amendment dated 20 February 2012]

- (3) (a) For the orderly conduct of the business of the First and Second Motion Courts, a party or its legal practitioner of record must complete in print on the form attached hereto as Annexure "B", when checking the files for the First and Second Motion Court, the particulars requested on the form.

- (b) The party or its legal practitioner of record should ensure that the form, once completed, is placed on top of all the papers in the court file. Previous forms must be placed in date sequence at the back of the file.

- (c) The presiding judge shall not hear the matter unless the return has been filed, and the matter shall be struck from the roll with a possible order as to costs.

[Sub-Para. (3) inserted by 1ST Amendment dated 27 October 2009]

- (4) Matters shall be called in first and second motion court in the order of seniority of the legal practitioners appearing; and all matters in respect of which a practitioner holds a brief or instruction on that day must be called consecutively and finalised before the next matter is called.

[Sub-Para. (4) inserted by 7TH Amendment dated 23 September 2013]

- (5) A legal practitioner seeking an order of the court in first or second motion court is required:

- (a) To furnish the court with a proposed draft order by –
 - (i) filing such proposed order of record before noon on the court day but one preceding the day on which the same is to be heard; or
 - (ii) handing it up to the presiding judge when the matter is called; and

- (b) In the event of the order made by the presiding judge differing from the proposed order so filed or handed up, to furnish the court with a draft order that reflects the order made by the presiding judge for him or her to approve and issue by-
 - (i) filing it with the registrar before noon on the day following the day on which the court made the order; and
 - (ii) forwarding the draft order electronically in ms-word format to both assistant registrars who assisted the court when the order was so made at the email addresses appearing on the day roll, which draft order is to reach the aforementioned assistant registrars before noon on the day following the day on which the court made the order.

[Sub-Para. (5) inserted by 8TH Amendment dated 11 October 2013]

First Motion Court

- 23.** All Motion Court matters, except divorce proceedings, must be placed on the First Motion Court Roll not later than 12h00 on the preceding Wednesday in terms of the relevant High Court Rule.

- 23A** In the Northern Local Division of the High Court, all First Motion Court matters, except divorce proceedings, must be placed on the First Motion Court Roll not later than 12h00 on the preceding Wednesday in terms of the relevant High Court Rule.

[Para. 23A inserted by 6th Amendment dated 20 February 2012]

Second Motion Court

- 24(1)** All unopposed divorce matters are dealt with on Mondays in the Second Motion Court and are to be set down at least 24 hours prior to checking of files for purpose of second motion court, provided that set down shall not be done later than 12h00 on the preceding Wednesday, and checking shall not be allowed after 12h00 on the preceding Thursday.

- (a) In the Northern Local Division, all unopposed divorce matters are dealt with on Mondays in the Second Motion Court and are to be set down at least 24 hours prior to checking of files for purpose of second motion court, provided that set down shall not be done later than 12h00 on the preceding Tuesday, and checking shall not be allowed after 12h00 on the preceding Wednesday.

[Sub-Para. 24(1)(a) inserted by 6th Amendment dated 20 February 2012]

- (2) Notwithstanding the procedure in subparagraph (1), if an opposed divorce case, which has been set down on the floating roll in terms of paragraph 17 becomes settled during the previous week prior to the sitting of the unopposed Second Motion Court, that case may be set down for hearing in the Divorce Court and in that event notices of set down and withdrawal of defence and any other related process may be accepted.
- (3) Return dates of restitution of conjugal rights orders, extended return dates and orders for new dates may also be heard in the Second Motion Court in addition to unopposed divorce matters where evidence is presented to obtain an RCR order.

Duty Judge

- 25(1)** Subject to paragraph 17, a duty Judge commences duty at 12h00 every Wednesday and remains on duty until 12h00 the following Wednesday.
- (2) The duty Judge conducts motion courts and hears urgent and interlocutory applications.

Interlocutory matter

- 26(1)** Except where the Rules of Court otherwise provide, there shall be not less than five days between the date of service, or delivery of notice, of an interlocutory application and the date of set down, provided that and without derogating from the aforesaid, in the event of a date determined by the Registrar in terms of sub-paragraph 3(c) hereinafter, a notice of set down shall be delivered within 3 days.

c

- (2) (a) An opposed interlocutory application, an opposed summary judgment application, an

opposed Rule 43 application and an opposed application in a Provisional sentence matter are heard by the duty Judge at 10h00 on Tuesday: provided that the Registrar must not enroll more than three interlocutory matters for the same day.

- (b) The presiding Judge must not postpone any interlocutory matter at the request of a party or all the parties. If a matter cannot be heard, it must be removed from the roll.
- (3) (a) Where any of the applications referred to in subparagraph (2), other than an urgent application, becomes opposed, the duty Judge presiding in the Motion Court must let such matter stand down to the end of the Motion Court roll and in that event the legal practitioner of the applicant/plaintiff and of the respondent/defendant may argue the matter without heads of argument.
- (b) Where the duty Judge postpones the matter to 10h00 the following Tuesday for hearing, while that Judge is still on duty, heads of argument of parties must be filed on or before 12 noon on the Monday preceding the Tuesday;
- (c) If the matter is not heard on the Tuesday referred to in subparagraph (b), the hearing of the application may be postponed to a date determined by the Registrar, and in that event the parties must file heads of argument, on or before 12 noon on the Friday preceding the date of set down, if they had not done that previously.

[Para. (26)(3)(c) substituted by 6th Amendment dated 20 February 2012]

- (i) In the event of a date determined by the registrar in terms of paragraph 26(3)(c) hereinbefore, a Notice of Set Down containing the set down date and time shall be filed within 3 court days from the date on which the registrar determined the set down date.

[Para. (26)(3)(c)(i) inserted by 6th Amendment dated 20 February 2012]

- (d) Notwithstanding anything to the contrary contained in subparagraphs (a) and (b), the duty Judge may, in his or her discretion, hear the application on any other court day.

Urgent application

- 27(1)** All urgent applications are heard by the duty Judge at 09h00 on a court day, unless counsel has certified in the certificate of urgency that the urgency of the matter is such that it be heard at any time and on any other day.
- (2) If the duty Judge dismisses the urgent application for lack of urgency or refuses to condone non-compliance with the Rules of Court, and the applicant wishes to continue to prosecute the application on the merits, the application must be set down in the normal course as an opposed motion, and in that event -

- (a) paragraph 20 and the Rules of Court apply; and
 - (b) the application is heard on a Monday during the following term.
- (3) (a) If the duty Judge condones non-compliance with the Rules of Court and issues a rule *nisi*, the return date must be a First Motion Court date:
- (b) If on the return date, the rule *nisi* is to be confirmed or discharged by agreement between the parties, the presiding Judge may confirm or discharge the rule *nisi* in the Motion Court.
 - (c) If the rule *nisi* is opposed and the return date is not anticipated in terms of Rule 6(8) of the Rules of Court, the return date must be extended to a Monday during the following term in compliance with the Rules of Court and in that event, the parties must comply with paragraph 20 regarding the filing of heads of argument.
 - (d) If all the affidavits are filed in an opposed application for which the parties require hearing on an urgent basis, the parties may, after prior notice has been given, approach the Registrar on a Wednesday to obtain a date for the hearing of that opposed urgent application and in that event the Registrar may, after consulting the Judge-President, provide a date for the hearing of such application and the dates for filing of heads of argument.
 - (e) If such application is not set down at least three days before the hearing date, that hearing date lapses and in that event the application must be set down in terms of paragraph (c).

Applications Under Sections 25 And 51 Of The Act 29 Of 2004, As Amended ('The POCA')

- 27A** (1) At the time of lodging an application under sections 25 or 51 of Act 29 of 2004 ('the POCA') the applicant must in writing inform the registrar whether the application is brought as one of urgency or without urgency as contemplated by s.91(2) of the POCA. Unless such written confirmation is received, the Registrar will not arrange for the hearing of the application.
- (2) If the application is one of urgency, the applicant must comply with Rule 6(12) of the Rules of Court read with paragraph 27 of the Consolidated Practice Directives.
- (3) In the event of the application not being one of urgency, the applicant's attention is drawn to s. 91(3) of the POCA as to reliance on hearsay evidence in particular.

Interpleader application

28(1) An interpleader application in terms of Rule 58 of the Rules of Court is set down to be heard by the duty judge at 10h00 on Fridays after first motion court in open court.

[Para. (28)(1) substituted by 3rd Amendment dated 1 April 2010]

(2) The Registrar may set down an interpleader application for hearing after consultation with the Judge-President.

(3) Where the Court has ordered that the issue between the claimants be stated by way of stated case, or otherwise be tried in terms of Rule 58(6) of the Rules of Court, the matter is regarded as an opposed motion and in that event the relevant provisions of the CPD regarding set down and filing of heads of argument apply.

Appeals

29(1) Every civil appeal is heard at 09h00 on a Monday.

(2) A criminal appeal prosecuted by a prisoner represented by an *amicus curiae* counsel is heard at 09h00 on Mondays.

[Para. (29)(2) substituted by 3rd Amendment dated 1 April 2010]

(3) A criminal appeal prosecuted personally by a prisoner is heard at 09h00 on a Friday at the High Court Building located at the Windhoek Central Prison.

[Para. (29)(3) substituted by 3rd Amendment dated 1 April 2010]

(4) An appeal may only be enrolled after the appellant or his or her legal representative has checked the record of the magistrate's court proceedings and is satisfied that the record is correct.

(5) After the appellant who is legally represented or his or her legal practitioner has informed the Registrar that the record is correct, the following procedure is followed by the Registrar to enrol the appeal -

(a) the parties are called on at least five days' notice to attend at the Registrar's office on a Wednesday for allocation of a date for set down of the appeal;

(b) after consultation with the parties or their legal representatives the Registrar may allocate a date for hearing of the appeal;

- (c) the appeal must be set down to be heard within three days of the date so allocated: otherwise the allocated date shall lapse;
 - (d) if the appeal is set down on the allocated date, the appellant must provide a copy of the record to every respondent within three days of the date of set down and heads of argument must be filed and delivered by the appellant and the respondent within 15 and 10 days, respectively.
- (6) Paragraph 8 applies to Labour Court appeals.

Exception

30(1) Unless otherwise directed by the Judge President, exceptions are set down on the opposed motion roll to be heard on Mondays..

[Para. (30)(1) substituted by 3rd Amendment dated 1 April 2010]

(2) Paragraph 20 applies to exceptions.

Pagination and indexing of papers

31(1) Notwithstanding anything to the contrary herein, a civil matter may not be heard unless and only if all the papers filed of record in that matter are paginated, indexed and properly bound at least three days before the hearing.

(2) A legal practitioner or a litigant representing himself or herself is responsible for setting down such matter and must see to it that the requirements in subparagraph (1) are complied with.

(3) Failure to comply with the requirements in subparagraph (1) may result in the matter not being heard and in an appropriate order as to costs being made.

Where set down matter not proceeding

32(1) The attention of parties or their legal representatives is drawn to Rule 39(3) of the Rules of Court.

Review application

33(1) The attention of legal practitioners is drawn to the requirement that the record in the matter must be made available by the Registrar to the applicant with regard to an application for review in terms of Rule 53(3) of the Rules of Court. However, if the original record is not dispatched to the Registrar, he or she is unable to comply with this requirement.

- (2) Delivering a copy of the record is not sufficient to enable the Registrar to comply with the requirement in subparagraph (1).
- (3) The Registrar is not in a position to comply with the requirement in subparagraph (1) unless the original record is filed with him or her.

PART VI-A: JUDICIAL CASE MANAGEMENT

[Part VI-A inserted by 4th Amendment dated 20 May 2011]

Opposed Motions

33.A To give effect to Rule 6(5)(i)

Not later than 4 court days from the date on which all affidavits have been filed, the applicant must by notice to all respondents, notify the registrar that all affidavits have been filed. Should the applicant fail to do so, the respondent must, not later than 4 court days after the last date on which the applicant should have filed such notice, by notice to the applicant and all other respondents, if any, notify the registrar that all affidavits have been filed.

[Par. 33.1 inserted by 4th Amendment dated 20 May 2011]

Actions

33.B(1) To give effect to Rule 37(1)(b)

Not later than 4 court days after close of pleadings, the plaintiff must, on notice to the defendant, notify the registrar that pleadings have closed and in such notice call upon the registrar to allocate the case to a managing judge.

(a) Should the plaintiff fail to do so, the defendant must by notice to the plaintiff and all other defendants, if any, not later than 4 court days after the last date on which the plaintiff should have filed such notice, notify the registrar that pleadings have closed and call upon the registrar to allocate the case to a managing judge.

(2) To give effect to Rule 37(18)

The minute of any pre-trial conference held by the parties before coming into operation of the case management rules must be filed by the parties with the Court immediately upon the parties being informed by the registrar of the identity of the managing judge.

[Par. 33.2 inserted by 4th Amendment dated 20 May 2011]

Communication with Managing Judge and Miscellaneous

33.C Individual docket allocation

(1) With immediate effect, all civil cases where pleadings closed are assigned to individual judges (individual docket allocation) for management until trial or disposal otherwise. As soon as a file is assigned to the managing judge, the registrar shall give notice to the parties of the name of the managing judge, the name of the judge's clerk, the registry assistant and the following contact details: email address of the judge's clerk, fax and telephone number for communicating with the judge (never direct details of the judge).

(2) As soon as the parties have received the registrar's notice, they must each file a return (in prescribed form as per "C" hereto) providing the name of the instructing legal practitioner who has the responsibility for the conduct of the matter and provide the following particulars: e-mail address; direct landline and cell-phone number; the telephone and cell phone number(s), e-mail address and contact person (in case of corporation) of the client - required by the Court for communication in the event a practitioner ceases to act for a party.

[Reference to "Annexure "A" is substituted with "Annexure "C" 6TH Amendment dated 20 February 2012]

(3) All pleadings to be filed in the matter, including correspondence intended for the Court must bear the judge's name. All contact and communication with the judge shall be via the assistant or the registrar as the case may be.

[Par. 33.3 inserted by 4th Amendment dated 20 May 2011]

Filing of Documents, Pleadings and Notices after Individual docket allocation

33.D(1) All applications for trial dates (including applications in respect of interlocutories and appeals), should be filed with the Trial & Appeal Office, Room 21, High Court Building, Windhoek;

(2) All documents, pleadings and notices (which includes correspondence) in cases where individual docket allocation has taken place, should be filed with the Trial & Appeal Office, Room 21, High Court Building, Windhoek;

(3) All heads of argument, should be filed with the Trial & Appeal Office, Room 21, High Court Building, Windhoek;

(4) All documents, pleadings and notices (which includes correspondence) in cases where a matter has been set down on the interlocutory roll, should be filed with the Trial & Appeal Office, Room 21, High Court Building, Windhoek.

- (5) Correspondence and/or Notices pertaining to postponements, withdrawal of action and removal from roll, should be delivered to the Trial & Appeal Office, Room 21, High Court Building, Windhoek;
- (6) Correspondence directed to the managing judge in respect of specific issues raised by such a judge during any case management meeting or the hearing, should be delivered to the responsible Judges' Clerk;
- (7) Requests for the recusal of a specific judge (immediately after notice of docket allocation has been made), properly motivated, is to be made with the Chief Registrar.
- (8) Any pleading, notice, correspondence and/or document filed after closed of pleadings should be filed at Room 21, High Court Building.

[Par. 33.4 inserted by 4th Amendment dated 20 May 2011]

Docket Allocation of Urgent Applications

- 33.E(1)** Any urgent application lodged with the registrar will be docket allocated to the applicable duty judge.
- 33.E(2)** Any interlocutory application being lodged with the registrar as an urgent application in an existing matter, which has previously been docket allocated to a specific judge, will be heard by the docket judge allocated to the existing matter, irrespective whether such judge is on duty or not.
- 33.E(3)** In the event of an interlocutory application being lodged with the registrar as an urgent application in an existing matter, which has previously been docket allocated to a specific judge, the docket judge will be responsible to hear the urgent application, provided that in the event of the docket judge, due to absence or a reason to the satisfaction of the Hon. Judge President not being available on date and time indicated in the application, then and in that event the duty judge will hear the interlocutory application.
- 33.E(4)** Any urgent application referred to in paragraph 33.E(3) hereinbefore which, for the one or other reason, cannot be finalized by the docket judge, or the duty judge in the event of unavailability of the docket judge, which requires being postponed to another date before it may be heard, must be postponed by the judge who hears the matter

on the date and time indicated in the application to a suitable date on which he or she will hear it.

- 33.E(5)** If a judge on an acting appointment of 3 months or less hears an urgent application which similarly requires postponement, such judge will be the managing judge in respect of such matter and he or she must endeavour to finalize the matter before the expiry of his or her acting term. Should any difficulties arise in that judge finalizing the matter, the Judge-President's directions must be sought by addressing a letter to the registrar.

[Para.33E inserted by 5th Amendment dated 10 October 2011]

[Para.33E substituted by 6th Amendment dated 20 February 2012]

**PART VI – B: TRANSFER OF CASES FROM ONE DIVISION TO ANOTHER: SEC. 4A
(5) OF THE HIGH COURT ACT (AS AMENDED)**

[Part VI-B inserted by 6th Amendment dated 20 February 2012]

33F (1) In respect of a civil proceeding where pleadings had closed and the parties wish to obtain dates for it to be heard, and the same can more conveniently or more fitly be heard in the division other than the one where the same was brought, any party wishing to have the same transferred to another division may make application, supported by affidavit, requesting that such cause, proceeding or matter be transferred to the division where it may more conveniently or more fitly be heard.

33F (2) The application must be set down for hearing on any published date on which the Judge President holds case management conferences, or in the event the Judge President is unavailable, on any such date of the judge designated by the judge president for the purpose, on 7 days' notice to all interested parties.”

[Para.33F inserted by 6th Amendment dated 20 February 2012, enforceable from 1 March 2012]

PART VII: CRIMINAL ROLL

Criminal trials

34. Criminal trials in the High Court are conducted on dates and times arranged with the Registrar:
- (a) as set down by the Court in terms of paragraph 35(10); or
 - (b) to which the Court adjourns the proceedings.

Setting down of criminal cases and pre-trial hearings

- 35(1) Subject to subparagraph (2), the Prosecutor-General sets down criminal cases for first appearance in the High Court on a date arranged with the Registrar.
- (2) The first appearance in any criminal case will be for conducting a pretrial hearing or for the Court to make a direction in terms of subparagraphs (6), (7) and (8).
- (3) The Court conducts the pre-trial hearing to curtail duration of the trial by timeously enquiring into and giving directions concerning the following matters:
- (a) the delivery to the accused of the indictment and any further particulars thereto;
 - (b) the discovery of the police docket's contents by the prosecution;
 - (c) the appointment of a legal representative by or for the accused and whether such legal representative, if not instructed by the Director: Legal Aid, has been placed in adequate funds to represent the accused during the trial;
 - (d) the notification of the trial date to the accused and requesting his or her presence and, if he or she is younger than eighteen years of age, that of his or her parent or guardian at the trial;
 - (e) the plea that the accused intends to tender at the trial;
 - (f) the limitation of disputes likely to arise during the trial;
 - (g) the admissions the accused intends to make at the trial;
 - (h) the number and availability of witnesses for the prosecution and defence;

- (i) the need for, and availability of, interpreters;
 - (j) the estimated duration of the trial;
 - (k) the need for any direction under sections 77(1) or 78(2) of the Criminal Procedure Act, 1977 [Act 51 of 1977] (hereinafter referred to as the “CPA”;
and
 - (l) the enquiry into any other matter that, in the opinion of the presiding Judge, may curtail the duration of the trial.
- (4) If an accused is presented by a legal practitioner-
- (a) The prosecution may deliver to the accused and the Registrar not later than 10 days before a pre-trial hearing a pre-trial memorandum containing in sequential order each factual allegation that it wishes the accused to consider for purpose of making an admission at the trial and the presiding judge may refer to such memorandum during the pre-trial hearing when he or she enquires whether the accused intends to make any admissions at the trial;
 - (b) the accused may deliver to the prosecution and the Registrar not later than ten days before a pre-trial hearing at a pre-trial memorandum containing in sequential order factual allegations he or she makes in his or her defence and which he or she wishes the prosecution to consider for purpose of indicating whether it intends to take issue therewith at the trial and the accused may refer to such memorandum when he or she considers the extent of corroboration required to establish such an allegation at the trial.
- (5) If, in the opinion of the Court, the parties have not dealt with all the matters referred to in subparagraph (3) in a satisfactory manner at the first or at any subsequent pre-trial hearing, it must, if possible, postpone the pre-trial hearing to the earliest subsequent pre-trial date until the following have been recorded:
- (a) that the indictment and, if requested, any further particulars thereto have been delivered to the accused;
 - (b) that the contents of police dockets have been discovered by the prosecution to the accused;
 - (c) whether a legal representative has been engaged by or on behalf of the accused, and, if so, the name of that legal representative and whether the

said legal representative has been placed in adequate funds to represent the accused during the trial, if such legal representative has not been instructed by the Director: Legal Aid;

- (d) whether the prosecution and the accused have agreed a trial date and the accused has been informed of such date; and
 - (e) whether the accused is prepared to record-
 - (i) the plea he or she intends to tender at the trial and, if guilty, whether the basis on which the accused intends to tender such plea, will be acceptable to the prosecution;
 - (ii) the admissions, if any, he or she intends to make; and
 - (iii) if applicable, the basis of his or her defence and the particulars thereof;
 - (f) the number of witnesses the accused intends to call and, if he or she is in custody, whether he or she requires assistance in securing the presence of those witnesses at the trial and, if so, the names and physical addresses of those witnesses;
 - (g) the language in which the witnesses are likely to testify and, if any language other than English is likely to be used, whether an interpreter is available for the purpose;
 - (h) whether the prosecution and the accused have agreed on the period to be set aside for the trial and whether an adequate number of days have been set aside for.
- (6) Where the accused indicates in the course of a pre-trial hearing that he or she intends to plead guilty to one or more or all of the charges preferred against him or her, the prosecution may indicate to the Court whether or not the plea of guilty on the basis as tendered by the accused is accepted by it, and, if so accepted, the Court may direct that the case be disposed of either on the pre-trial hearing roll or on a date or dates allocated for that purpose;
- (7) If at any time before the trial date, the accused wishes to plead guilty on any or all of the charges, he or she must forthwith inform the Prosecutor - General of his or her intention to do so and on the basis on which the plea is tendered, in which event either the accused or the Prosecutor-General may, upon no less than 10 days' notice

to the other, set the case down for hearing on the first available date for criminal pre-trial hearings to be dealt with as if the accused has given such indication during a pre-trial hearing in terms of subparagraph (6).

- (8) If it appears to the Prosecutor-General that due to-
- (a) the age of a child witness;
 - (b) the deteriorating physical or mental health of a witness;
 - (c) the availability of a witness when he or she is not ordinarily resident in Namibia and the material nature of the evidence to be given by him or her; or
 - (d) the contemptuous nature of the offence and the public's interest in the administration of justice or for any other good cause in the public interest or in the interest of the security of the State, the hearing of a criminal case should be expedited, he or she may, with a leave of the Judge-President, set the case down on the first available pre-trial date or, if not possible, on any other appropriate date.
- (9) The Court may direct that the matter be placed on the roll for trial if-
- (a) the accused and the prosecution agree that the case can be disposed of more expeditiously by dealing with it in that manner;
 - (b) upon the application of either the prosecution or the accused at the pre-trial hearing, the Court is satisfied that, regard being had to the limited nature of the facts in issue, the availability of witnesses and the expected duration of the trial, the case can be disposed of more expeditiously by dealing with it in that manner; or
 - (c) it is a matter referred to in sub paragraphs (6), (7) or (8) hereof.
- (10) The Court must set down the matter for trial on dates arranged with the Registrar-
- (a) and confirmed by the Court on completion of the criminal pre-trial hearing referred to hereinbefore;
 - (b) as directed by the Court in terms of subparagraphs (6) or (7); or
 - (c) with the leave of the Judge-President, in respect of matters set out in paragraph (8).

- (11) If, at any time before the trial date, either the State or the accused intends to apply for the postponement of the trial, he or she must forthwith notify all other parties in the case and set the application for a postponement down on the first available date for criminal pre-trial hearings or on the trial date, whichever is the earlier.

Application by the State for leave to appeal

- 36(1)** When the State applies for leave to appeal in terms of section 310 of the CPA all required and necessary-
- (a) the documents must be filed with the Registrar; and
 - (b) the Registrar must provide the judge assigned to deal with the application with the documents refer to in subparagraph (1), including the record of the proceedings, notice of application, proof of service thereof, and submission by every respondent.
- (2) There is no hearing in chambers or in open court in the respect of an application for leave to appeal. The assigned judge must make a decision in chambers on the documents filed of record.
- (3) Notwithstanding the requirement that proof of service on every respondent of the documents mentioned in sub paragraph (1)(b) must be provided, the assigned Judge may, in his or her discretion and if such finding will not prejudice the respondent, even in the absence of such proof of service, refuse the application for leave to appeal if he or she decides that no reasonable success on appeal exists.
- (4) The decision taken by the Judge must be delivered to the Registrar, who must in turn inform every applicant and every respondent of the decision.

PART VIII: FOREIGN AUTHORITY

Citation of foreign authority

37. Subject to Article 140(1) of the Namibian Constitution, where counsel in his or her heads of argument relies on foreign authority in support of a proposition of law -

- (a) such counsel must certify that he or she is unable, after diligent search, to find Namibian authority on the proposition of law under consideration; and
- (b) whether or not Namibian authority is available on the point, counsel must certify that he or she has satisfied himself or herself that there is no Namibian law, including the Namibian Constitution, that precludes the acceptance by the Court of the proposition of law that the foreign authority is said to establish.

PART IX: WITHDRAWAL OF COUNSEL

Prescribed period within which to withdraw

38(1) A counsel who represents a client in a case in the High Court and who wishes to withdraw from the case because he or she has not been put in sufficient funds to represent the client during the scheduled period for the hearing of the case, may withdraw -

(a) not later than two months before the date on which the case has been set down for hearing; or

(b) if the period between the date on which a date of set down is obtained or the date on which the legal practitioner is, for the first time, informed of the first mentioned date and the date of set down is less than two months, not later than one week after he or she obtained the date of set down or is informed of the date of set down; and

(c) forthwith:

(i) inform the client of such withdrawal;

(ii) inform the client of the date on which the matter has been set down for hearing:

(iii) advise the client that he or she may, if he or she so wishes, immediately obtain the services of another counsel to represent him or her in the case on the date of set down and that, if he or she does not have the financial means to engage the services of counsel, he or she may apply to the Director: Legal Aid, Ministry of Justice, Windhoek, for legal aid; and

(iv) advise the client, that if he or she fails to obtain the services of another counsel, he or she may represent himself or herself, which he or she is entitled to do.

(2) A counsel who has not withdrawn within the period specified in subparagraph (1) -

(a) is deemed to have agreed to appear on behalf of the client during the period for which the case is set down for hearing, irrespective of whether there has been payment of his or her fees and costs; and

(b) must not, without the leave of the Court, on good cause shown, withdraw from the case on the ground that he or she has not been put in sufficient funds to represent the client during that period.

PART X: TERM ROLL

Civil, criminal and labour cases

- 39(1) A term roll showing civil, criminal and labour cases to be heard during each week of the following term may be furnished to the Law Society and the Prosecutor-General as soon as there has been full compliance with the CPD regarding set down cases.
- (2) The roll appears on the High Court website: <http://www.superiorcourts.org.na>; and a hard copy is available at the front desk at the Registrar's Office.

PART XI: MISCELLANEOUS

Repeal of practice directions and practice directives

40. All practice directions and practice directives issued by the Judge-President prior to the coming into operation of the CPD are hereby repealed.

Registrar's notes

41. The Registrar may provide notes in which he or she explains how his office implements certain practice directives, so long as the notes are not inconsistent with the CPD.

Short title and commencement

41. These practice directives are called Consolidated Practice Directives and they come into operation on the date of issue.
-

PART XII: ANNEXURES

ANNEXURE "A"

(Paragraph 16(8))

**NATURE OF
HEARING
APPLIED FOR:**

CASE NO.:

PLAINTIFF / APPLICANT:

DEFENDANT / RESPONDENT:

SUMMARY OF FACTS AND LEGAL ISSUES

Counsel for Plaintiff / Applicant:

Counsel for Defendant / Plaintiff:

Instructed Counsel for Plaintiff / Applicant:

Instructed Counsel for Defendant / Respondent:

Date of Rule 37 Conference / Date of Order ito Rule 37(3):

Date of signature of minutes of Rule 37 conference:

Nature of Proceedings Action / Application

.....
.....
.....

EXAMPLE

Summary of facts and Legal Issues

"Plaintiff instituted action against Defendant for payment in the amount of N\$150, 000.00. Plaintiff alleges that the amount of N\$150, 000.00 is due and payable as a result of the fact that the Plaintiff complied with his obligations in terms of a written agreement entered into between the parties, in terms of which plaintiff had to do certain building work on defendant's property. Defendant raised a special plea of prescription, and on the merits, relies on the *exceptio non adimpleti contractus*."

[Annexure "A" substituted by 3rd Amendment dated 1 April 2010]

FIRST AND SECOND MOTION COURT RETURN

NEXT MOTION COURT DATE: _____

Applicant/Plaintiff: Case NR.:

Respondent/Defendant:

Please provide the following information:

- 1) Was the matter previously postponed, or the Rule previously extended? If so, provide the reason(s).

.....

- 2) Will the matter be postponed or the Rule extended again? If so, state the reasons.

.....

- 3) What relief, if any will be applied for?

.....

- i) Will the matter be opposed or not?
- ii) Are the Papers in order?

- 4) Is it necessary for the presiding judge to read the papers?

[Annexure "B" inserted by 1ST Amendment dated 27 October 2009]

ASSIGNED JUDGE: _____

REGISTRAR'S MEETING DATE: _____

TRIAL DATE, (if available): _____

IN THE HIGH COURT OF NAMIBIA

(_____ DIVISION)

CASE NO: _____

In the matter between:

_____ PLAINTIFF / APPLICANT

And

_____ DEFENDANT / RESPONDENT

RETURN BY PRACTITIONER ON DOCKET ALLOCATED FILE

INSTRUCTING PRACTITIONER on behalf of PLAINTIFF / DEFENDANT

_____ (*name & surname*)

E-mail Address: _____

Direct Land Line: _____

Cell Phone Number: _____

Fax Number: _____

E-MAIL ADDRESS AND CONTACT PERSON (IN CASE OF CORPORATION) OF THE CLIENT:

NAME: _____

E-MAIL ADDRESS: _____

[Annexure "C" inserted by 4TH Amendment dated 20 May 2011]