



HIGH COURT OF NAMIBIA

REGISTRAR'S NOTES ISSUED IN TERMS OF PD 65

INCORPORATING

JUDGE PRESIDENT'S PRACTICE NOTES

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REFERRAL TO ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR office

1. (1) Each division of the High Court must have a designated office which will be responsible for the administration of Alternative Dispute Resolution in terms of Rules 38 and 39, hereinafter referred to as the ADR office.

(2) The ADR office may share facilities and/or resources with any other office within the registry.

(3) The ADR office must at least once every fortnight cause an updated court-connected mediation diary to be published on the Court's official website.

(4) Each mediation registered with the ADR office must bear its own unique sequential ADR number.

Mediation Diary

2. (1) The ADR office is responsible for compiling and maintaining a court-connected mediation diary.

(2) All court-accredited mediators must provide the ADR with available dates for court-connected mediation, which dates should reach the ADR office at least 6 months in advance.

(3) Court-accredited mediators provide private mediation in terms of Rule 38 and is responsible for keeping their own private mediation diaries.

(4) Court-connected mediation must be held at a court facility, unless for good reason the Judge President directs otherwise.

(5) Court-accredited private mediation is held at a place chosen by the court-accredited mediator.

Referral for Mediation in terms of Rule 38(1)

3. (1) Any reference made in the Rules of Court or the Practice Directions to mediation means mediation done in terms of Rules 38 and 39.

(2) Any reference in the Rules of Court or the Practice Directions to a mediator means court-accredited mediator.

(3) If during court proceedings, the court is approached to refer a matter for mediation in terms of Rule 38 read with Rule 39, which request may be for either court-accredited private mediation or court-connected mediation, hereinafter referred to as the initial mediation referral proceedings, the Court must postpone the matter so to be referred for a period of not more than two weeks to enable the parties to identify

the mediator and make a reservation. The order made during the initial mediation referral proceedings is hereinafter referred to as the initial mediation referral order.¹

(4) A matter may only be referred for court-connected mediation if each of the parties is represented by a legal practitioner.²

(5) Each party attending court-connected mediation must be represented by a legal practitioner during the court-connected mediation and no more than one legal practitioner per party is allowed during the court-accredited mediation, provided that such party may elect to use either his or her instructing legal practitioner or his or her instructed legal practitioner.³

(6) The initial mediation referral order must clearly state

(a) whether the matter will be referred for court-accredited private mediation or court-connected mediation;

(b) the identity of the legal practitioner who will accompany each of the parties;

(c) if the matter will be referred for court-connected mediation and any one or more of the parties will require the services of an interpreter, the interpretation language(s) so required and if the matter will be referred for court-accredited private mediation, the order must state that if any one or more of the parties will require the services of an interpreter, such party will be responsible to arrange and pay his or her own interpreter; and

(d) the next court appearance date and time, hereinafter referred to as the mediation referral proceedings.⁴

(7) The registrar assisting the Court, must immediately after the initial mediation referral proceedings hand a copy of the initial mediation referral order to the ADR office.

(8) The ADR office must upon receipt of the initial mediation referral order enter the particulars of the case in a separate mediation register, assign a sequential mediation number to the matter, and open a separate mediation file bearing the mediation case number, the names of the parties, whether the matter is referred for court-accredited private mediation or court-connected mediation, the names of the legal practitioners who will accompany the parties during the mediation and in the event of court-connected mediation the languages in which interpretation services will be required.

(9) If the matter is to be referred for court-accredited private mediation

¹ Judge President's Practice Note 1/2014

² Judge President's Practice Note 1/2014

³ Judge President's Practice Note 1/2014

⁴ Judge President's Practice Note 1/2014

(a) the parties must contact the court-accredited mediator of their choice for availability and determine the date, time and place of the mediation session. Contact details of all court-accredited mediators may be obtained on the official website of the High Court, <http://www.ejustice.moj.na>;

(b) the court-accredited mediator must provide the parties with written proof of the reservation, which proof should state the identity of the court-accredited mediator and the date, time and place of the scheduled mediation session.

(10) If the matter is to be referred for court-connected mediation

(a) the parties must at an agreed time approach the ADR office to reserve a court-connected mediation session; and

(b) the ADR office must provide the parties with written proof of the reservation, which proof should state the identity of the mediator and the date, time and place of the scheduled court-connected mediation session.

(c) If the parties are unable to agree upon the identity of the court-connected mediator or a specific court-connected mediation session the ADR office must select the first three available court-connected mediation sessions, which sessions should not be earlier than two days after the next court appearance and no later than one month after such court appearance and reserve the matter for all three different sessions and provide the parties with written proof of the reservations.

(11) During the mediation referral proceedings, the parties must hand to the Court written proof of the reservation and the Court must then make an order⁵ in terms of Rule 38(1), hereinafter referred to as mediation referral order.⁶

(12) The managing judge must after hearing the parties include the following in the mediation referral order:

(a) whether the mediation is referred for court-accredited private mediation or court-connected mediation;

(b) the name of the mediator who will be responsible for the mediation;

(c) the time, date and place of the mediation session;

(d) the time when or within which the mediation report compiled by the mediator is to be submitted to the court, provided that such date may not be later than two months after the referral order;

⁵ Example 1

⁶ Judge President's Practice Note 1/2014

(e) the time when or within which the letters referred to in Rule 39(3), hereinafter referred to as the mediation briefs are to be exchanged and filed with the ADR office;

(f) attached as annexure⁷ to the referral the agreement which must be signed by all parties prior to the commencement of the mediation proceedings, which agreement will serve as the agreement on which the mediation proceedings will be conducted;

(g) if the mediation is court-connected, the language(s) in which interpretation service is required;

(h) the names of the parties, with full settlement authority as provided for in Rule 39(5) read with Rule 39(6) and the names of their respective legal practitioners who will be attending the mediation proceedings; and

(i) the date and time of the next status hearing, which date must be as soon as possible after the date or period within which the mediation report is to be filed.⁸

(13) The registrar assisting the Court, must immediately after the mediation referral proceedings hand a copy of the mediation referral order to the ADR office.

(14) The ADR office must upon receipt of the mediation referral order confirm any court-connected mediation reservation in the court-connected mediation diary and cancel any unconfirmed court-connected mediation reservations.

(15) The ADR office must deliver the mediation file to the mediator appointed, who must make himself or herself available on the date, time and place indicated in the order.

(16) The mediation file must when handed to the court-accredited mediator contain the following:

(a) Initial mediation referral order

(b) Mediation referral order

(c) All mediation briefs

Mediation Brief issued in terms of Rule 39(1)

4. (1) The letters referred to in Rule 39(1)(a) and (b) are hereinafter referred to as mediation briefs⁹.

⁷ Example 2

⁸ Judge President's Practice Note 1/2014

⁹ Example 3

(2) The content, excluding the heading, of a mediation brief may not be longer than 3 pages, typed in a 12 point font, 1.5 line spacing.

(3) The format of the mediation brief must be as closely as possible to the format in Examples 1 and 2, hereinafter.

(4) Mediation briefs must be filed with the ADR office, no later than five court days before the scheduled mediation session.

Mediation Report

5. (1) Subject to the provisions of Rule 38(4), the mediation report must state whether the mediation proceedings failed or whether it resulted in a settlement agreement.

(2) The mediation report must contain:

- (a) any evidence of child abuse not previously reported;
- (b) the mediator's believe that a child is in need of protection;
- (c) a party is in danger of bodily harm.

(3) The mediation report may not disclose any information about:

- (a) the mediation proceedings; or
- (b) if mediation failed, the reason for failure,

provided that the mediation report must disclose failure of the mediation as a result of non compliance with Rule 39(5) read with Rule 39(6).

(4) The mediation report may include recommendations, which recommendation may include but are not limited to –

- (a) on good cause shown requesting an extension of time for mediation;
- (b) a request for referral to another mediator with specific expertise.

Status Hearing

6 (1) The mediation report must be available to the managing judge at the status hearing referred to in the referral order

(2) If a matter is settled as a result of mediation or if mediation failed, either one of the parties may set the matter down for a status hearing before the managing judge at an earlier date than the date referred to in the referral order, provided that the set down must be for a judicial case management time slot of the managing judge.

(3) In addition to anything else ordered during the status hearing, the managing judge must include the following:

- (a) An order declaring the mediation process concluded; or

(b) An order extending the time allowed for court-accredited mediation, in which event the order must give in as far as it may apply comply with the provisions for a referral order.¹⁰

Mediation fees

7. (1) A Court accredited mediator rendering service in court-connected mediation who is not in the employ of the Public Service or holds an appointment as Judge or Magistrate is entitled to a gratification fee as determined by the Rules of Court and in the absence thereof to a fee equal to those determined by the Office of the Prime Minister and payable in respect of a Chairperson of institutions, boards etc.

(2) A Court accredited mediator rendering service as a private mediator in terms of Rule 38 read with Rule 39 is entitled to payment of his or her agreed fee, contained in the mediation agreement.

(3) Mediation fees are only due and payable, once the mediation report has been filed.

Mediation Records

8. (1) The mediator must simultaneously with filing of the mediation report file the original mediation file with the ADR office;

(2) Upon adjournment of the status hearing, the registrar assisting the court at the status hearing, must provide the ADR office with a copy of the mediation report and a copy of the status hearing order and the ADR office must file both documents on the mediation file.

(3) The ADR office must update the mediation register, by recording the date of finalization of the mediation and whether or not the mediation was successful.

(4) All mediation files must for safe keeping be kept with the Registrar of the High Court.

(5) Once a mediation file is returned by the mediator, the contents of such file are confidential and may not be disclosed to any person, including the parties and or their legal practitioners.

(6) Mediation files must be destroyed one year after the managing judge declared the mediation finalized.

¹⁰ Judge President's Practice Note 1/2014

UNITS IN THE CIVIL AND LABOUR STINT OF THE HIGH COURT OF NAMIBIA, MAIN DIVISION¹¹

General

9.(1) From 16 July 2015 the civil and labour stint of the Main Division of the High Court of Namibia will consist of 3 distinct units, namely the Actions Unit, which will exclude matrimonial actions, the Civil Motions and Reviews Unit and the Matrimonial and Labour Unit.

(2) The duties of the Action Unit will include

- (a) Urgent applications in actions brought during office hours
- (b) Judicial Case Management in respect of all civil actions, excluding matrimonial matters;
- (c) All Hearings in actions, including interlocutories in actions;
- (d) Second Motion Court, default judgments

(3) The duties of the Civil Motions and Reviews will include

- (a) Urgent applications in all civil applications and reviews brought during office hours;
- (b) Judicial Case Management in respect of all civil applications and reviews
- (c) All hearing in civil applications and reviews, including interlocutories in civil applications and reviews
- (d) Civil Appeals
- (e) Some Interpleaders
- (f) First Motion Court, civil
- (g) Second Motion Court, applications in terms of rule 108

(4) The duties of the Matrimonial and Labour Unit will include

- (a) Urgent applications in all matrimonial matters and labour applications or reviews brought during office hours;
- (b) Judicial Case Management in respect of all matrimonial matters and labour applications or reviews
- (c) All hearing in matrimonial matters and labour applications or reviews, including interlocutories in matrimonial matters and labour applications or reviews
- (d) Labour Appeals
- (e) Some Interpleaders
- (f) First Motion Court, labour
- (g) Undefended Matrimonial Court

¹¹ Judge President's Practice Note 1/2015

(5) Cases not yet assigned to a managing judge and which are to be assigned in terms of the rules of court, will be assigned to a judge within the applicable unit.

(6) Cases already under judicial case management will be re-assigned to a judge within the applicable unit, unless the current managing judge in consultation with the Judge President directs otherwise.

Residual Court Roll: Second Motion Court

10. (1) The Second Motion Court Roll will be divided in two different rolls to be dealt with by two different judges in two separate court rooms.

(2) A judge from the Action unit will be responsible for the Second Motion Court Roll containing those matters where application for default judgment is made.

(3) A judge from the Civil Motion Unit will be responsible for the Second Motion Court Roll containing Rule 108 applications.

Residual Court Roll: First Motion Court

11 (1) The First Motion Court Roll will be divided in two different rolls to be dealt with by two different judges in two separate court rooms.

(10) A judge from the Matrimonial and Labour unit will be responsible for the First Motion Court Roll, Labour Court.

(11) A judge from the Civil Motion and Review unit will be responsible for the First Motion Court Roll, High Court.

Responsible Judges

12. (1) Until further notification the following judges will be responsible for the different units –

- (a) Action Unit, Justice Miller, Acting;
- (b) Civil Motion and Review Unit, Justice Parker, Acting
- (c) Matrimonial and Labour Unit, Justice Geier

Transitional Provisions: Matters on Judicial Case Management Roll

13. (1) Any matter on the Judicial Case Management Roll which do not require a hearing date must be dealt with in the ordinary course of business;

(2) If the next appearance on the Judicial Case Management Roll is to be on a date after 15 July 2015, the Court Order must include the following:

- (a) a transfer order to the responsible judge;
- (b) postponement order to a judicial case management slot of the responsible judge after 15 July 2015;

(3) The Secretary or Research Assistant of the judge who made the order must provide the Chief Registrar or the responsible assistant with the file who will be responsible for re-allocation and update of registers, after which the secretary or research assistant must hand the file to the new managing judge

Transitional Provisions: Matters on the roll for purpose of obtaining a hearing date

14. (1) Any matter on Judicial Case Management Roll for the purpose of obtaining a hearing date must be postponed to the next judicial case management slot of the judge responsible for the unit which will apply the matter before court;

(2) The Court Order must include the following:

- (a) a transfer order to the responsible judge;
- (b) postponement order to the next judicial case management slot of the responsible judge, provided there is at least one day between the current appearance next appearance before the new managing judge.

(3) The Secretary or Research Assistant of the judge who made the order must provide the Chief Registrar or the responsible assistant with the file who will be responsible for re-allocation and update of registers, after which the secretary or research assistant must hand the file to the new managing judge

Transitional Provisions: Matters set down for hearing on a date after 15 July 2015

15. (1) The Chief Registrar must be provided with all files set down on a date after 15 July 2015, and will upon receipt of those files allocate the file to the a managing judge in the responsible unit

(2) No matter may be removed from the roll due to the introduction of the units.

PROCEDURES TO BE FOLLOWED WHEN MAKING AN APPLICATION IN TERMS OF RULE 108¹²

- 16** Rule 108(l)(b) provides that the registrar may not issue a writ of execution against the immovable property of an execution debtor or other person, unless the property has, on application made to the court, by the execution creditor been declared specially executable.
- 17** Rule 1 defines “*application*” as ‘*an application on notice of motion as contemplated in Part 8*’. The first rule under Part 8 of the rules of Court is rule 65(l) which provides that every application must be brought on notice of motion supported by affidavit as the facts on which the applicant relies.
- 18** It follows that a person who wants an immovable property declared executable must bring an application on a notice of motion¹³. The notice of motion must be supported by an affidavit¹⁴. In the affidavit the applicant must at the least:
- (a) Allege and provide proof that a return has been made and from that return it appears that the execution debtor or other person has insufficient movable property to satisfy the writ.
 - (b) Allege and provide proof that he or she has given notice (the notice must be on Form 24) to the execution debtor or other person that an application will be made to court to declare the immovable property executable.
 - (c) Allege and provide proof that the notice mentioned in paragraph (b) was personally served on the judgment debtor or if the immovable property is leased on the lessee.
- 19** Rule 108(4) provides that the execution creditor must make the application to declare the immovable property executable not later than 30 days from the date on which the *nulla bona* return is filled with the registrar.
- 20** Once the application is ready the applicant must in term of the Practice Direction 58(3)(b) check the file and complete Annexure 9 and only thereafter may the matter be set down in terms of Practice Direction 58 (a) for hearing.

¹² Judge President’s Practice Note 1/2016

¹³ Example 4

¹⁴ Example 5

EXAMPLES

Example 1: Court Connected Mediation Referral Order

CASE NUMBER:

**IN THE HIGH COURT OF NAMIBIA, DIVISION
HELD AT ON MONDAY, THE OF 20.....
BEFORE THE HONOURABLE JUSTICE**

In the matter between:

.....

PLAINTIFF

And

.....

DEFENDANT

Having heard, Counsel for the Plaintiff and, Counsel for the Defendant and having read the papers filed of record:

IT IS ORDERED THAT:

1. The matter is hereby referred for court-accredited mediation settlement conference as contemplated by Rule 38 as read with Rule 39 of the Rules of Court and Practice Directive 19 by, subject to this order and Annexure "A" hereto.
2. The mediation shall be held at, on at
3. Plaintiff(s) shall deliver the mediation brief as contemplated by Rule 39 (1) (a) (i), (ii), (iii) and (iv) by on/before on
4. The Defendant(s) shall deliver their mediation brief as contemplated by Rule 39 (1) (b) (i), (ii) and (iii) on/before on
5. The mediation briefs referred to in order 3 and 4 above may not exceed 3 pages in 12 point Arial font typed in 1.5 line spacing, excluding the heading.
6. Both parties must be personally present at the mediation.

7. Each party must during the mediation be represented by one legal practitioner only, provided that a party may elect his instructing or instructed Counsel.
8. For the purposes of order 7 the Plaintiff(s) will at the mediation be presented by his/her/their legal practitioner
9. For the purposes of order 7 the Defendants will at the settlement proceedings be presented by his/her/their legal practitioner
10. For the purpose of the mediation, the Plaintiffs will require the services of an interpreter from to English and *vice versa*.
11. The mediation must be concluded and the mediator must submit his report to the ADR office on/before on
12. The matter is postponed to at for a status hearing to record the outcome of the mediation and to make the required orders.

BY ORDER OF COURT

REGISTRAR

Example 2: Annexure “A” to Court Connected Mediation Referral Order

ANNEXURE “A”

1. The Mediator is a neutral facilitator who will assist the Parties to reach their own settlement. The Mediator will not make decisions about “right” or “wrong” or dictate to the Parties what they should do.
2. The Mediator does not act as a legal practitioner.
3. The mediator must not offer legal advice, or provide legal counsel to any of the parties, but the Mediator may express a prima facie view about the law and how it might affect aspects of discussion, mediation efforts, and agreements.
4. The Mediator must not favor any party’s interest and may not provide legal advice that is beneficial to one party and detrimental to the other party, provided that this provision does not exclude the mediator from offering a neutral assessment of the strengths or weaknesses of the parties’ respective cases and provided further that such assessment is communicated to a party in private caucus and may not be communicated to the other party.
5. Each Party must be represented by his or her own legal practitioner, to be properly advised regarding rights and obligations and to receive legal counsel.
6. For mediation to be effective both parties are required to ensure open and honest communication.
7. Accordingly, written and oral communications, negotiations and statements made in the course of mediation will be deemed as being privileged settlement discussions and proposals, absolutely confidential and without prejudice as contemplated in Rule 39(9).
8. In as much as it may be necessary for purposes of the mediation process it may be necessary for the mediator to have a private session (“caucus”) with one or more of the parties.
9. Communications during mediation are privileged, unless such privilege or confidentiality is waived by the party in question or constitutes an instruction to the mediator to convey a proposal to the other party.
10. To that extent the Mediator must not reveal information discussed during the mediation without permission of both parties.
11. Communications during caucus are similarly privileged, unless such privilege or confidentiality is

waived by the party in question or constitutes an instruction to the mediator to convey a proposal to the other party.

12. Notwithstanding any provision contained in 9, 10 and 11 above mediator must in his/her report:

12.1 any evidence of child abuse not previously revealed;

12.2 the mediator's belief that a child is in need of protection;

12.3 a party is in danger of bodily harm.

13. Neither party may at any time before, during, or after mediation, call the Mediator as a witness in any legal or administrative proceeding concerning this dispute.

14. In as much as a party may have any right to call the mediator as a witness that right is deemed to have been waived by such a party.

15. No party may subpoena or demand the production of any records, notes, work product or the like of the mediator in any legal or administrative proceedings concerning this dispute.

16. In as much as a party may have any right to demand such documents or materials, that right is deemed to have been waived.

17. If, at any time, either party either subpoenas the mediator or demands from the mediator the production of any documents or materials the mediator shall be entitled to apply to court to quash the subpoena or demand and any party who issued the subpoena or demand for documents or materials shall be required to reimburse the Mediator for whatever costs and expenses he or she incurs in such motion, including attorney own client costs, plus the mediator's usual professional hourly fee for all time that it has taken off the mediator to have such subpoena set aside.

18. The only exception to paragraphs 9 to 17 above is that any written (or otherwise created) agreement made and signed or acknowledged by the parties as a result of mediation may be used in any relevant proceeding, unless the parties have agreed in writing not to do so.

19. In as much as full disclosure of all relevant and pertinent issues are essential to a successful mediation process, each party shall provide to the other all information and documentation that will assist them during the mediation process.

20. Although intended that both parties must continue with mediation until a settlement agreement is reached, either or both parties may withdraw from the mediation process at any time.
 21. If one or both parties decide to withdraw from mediation, best efforts will be made by the parties to discuss the decision in the presence of both parties and the mediator.
 22. If the mediator determines that it is not possible to resolve the issues through mediation, the process will be terminated by the mediator when such has been conveyed to the parties and confirmed in the mediator's report.
 23. Any court accredited mediator rendering services in any court-connected mediation and who is not employed by the Public Service or holds the appointment as Judge or Magistrate, is entitled to such fee as determined by the Rules of Court or in the absence thereof, a fee equivalent to those determined by the Office of the Prime Minister payable for a Chairperson of Institutions, Boards etc, which amounts to N\$2650 per day.
 24. If an agreement is reached between the parties through mediation, counsel for the parties will prepare the formal court documents necessary to implement the agreement reached in mediation and cause such document to be filed with the ADR office.
 25. No party may record any of the mediation proceedings except as is relative to the final agreement or resolution.
 26. The Mediator is considered a third party beneficiary, entitled to enforce any provisions hereof beneficial to him/her, including the protections, stated and implied, and fees as stated herein.
 27. Only a party with full settlement authority as contemplated in Rule 39(5) read with Rule 39(6) may attend the mediation proceedings and sign any agreement consequent upon this mediation.
-

Example 3: Mediation Brief



HIGH COURT OF NAMIBIA

..... **DIVISION**

MEDIATOR	
COURT-ACCREDITED PRIVATE / COURT-CONNECTED	
MEDIATION DATE	

MEDIATION NO: ADR...../20.....

IN THE MEDIATION BETWEEN:

..... **PLAINTIFF**

Represented by

AND

..... **DEFENDANT**

Represented by

TO:

LEGAL PRACTITIONER FOR PLAINTIFF / DEFENDANT

(Address)

AND TO: REGISTRAR OF THE HIGH COURT

Main / Northern Local Division

ADR Office

(Address)

PLAINTIFF'S / DEFENDANT'S MEDIATION BRIEF

PLAINTIFF'S MEDIATION BRIEF *(delete if this is the defendant's mediation brief)*

- 1 Brief Summary of evidence**

- 2 Brief summary of legal principles, if any**

- 3 Brief explanation of why, in the opinion of the Plaintiff, the relief claimed would succeed at the trial**

- 4 An itemization of the damages and other relief the plaintiff believes can be established at the trial**

- 5 A brief summary of the evidence and legal principles supporting the damages or other relief**

- 6 Concise settlement proposal**

DEFENDANT'S MEDIATION BRIEF *(delete if this is the plaintiff's mediation brief)*

- 1 Points in the Plaintiff's brief to which the defendant agrees**

- 2 Points in the Plaintiff's brief to which the defendant disagrees**

- 3 Concise settlement proposal**

Signed and dated at on this day of 20.....

Signature:

Name & Surname:

PLAINTIFF / DEFENDANT

Signature:

Name & Surname:

**LEGAL PRACTITIONER REPRESENTING
PLAINTIFF / DEFENDANT DURING MEDIATION**

Example 4: Notice of Motion in Rule 108 Application

CASE NUMBER:

**IN THE HIGH COURT OF NAMIBIA, DIVISION
HELD AT ON MONDAY, THE ... OF 20.....
BEFORE THE HONOURABLE JUSTICE**

In the matter between:

APPLICANT/JUDGMENT CREDITOR

And

RESPONDENT/JUDGEMENT DEBTOR

NOTICE OF MOTION

KINDLY TAKE NOTICE THAT application will be made on ____ at _____ in the forenoon or as soon thereafter as counsel may be heard, for an order in terms of 108(2) as follows:

1. Declaring the following property executable:

CERTAIN: _____

SITUATE: _____

Registration Division

MEASURING: _____

HELD BY: Deed of Transfer No: _____

2. Cost of execution on a scale between attorney and client;
3. Further and/or alternative relief.

TAKE NOTICE THAT the affidavit of _____ will be used in support of this application.

Dated at **WINDHOEK** this the _____ day of _____

Example 5: Affidavit in Support of Rule 108 Application

CASE NUMBER:

IN THE HIGH COURT OF NAMIBIA, DIVISION
HELD AT ON MONDAY, THE OF 20.....
BEFORE THE HONOURABLE JUSTICE

In the matter between:

APPLICANT/JUDGMENT CREDITOR

And

RESPONDENT/JUDGEMENT DEBTOR

AFFIDAVIT IN SUPPORT OF RULE 108 (2)(a) APPLICATION

I, the undersigned,

do hereby make oath and say:

1. ...
- 2 On ...May 2017 the Deputy Sherriff for the District of Gobabis furnish the applicant with a *Nulla Bona* return indicating that the judgment debt has insufficient movable property to satisfy the writ. A copy of the writ and the *Nulla Bona* return are annexed to this affidavit and marked as Annexure A1 and A2.
- 3 On ... June 2017 the Notice in terms of Rule 108(2)(a) was served personally on the on the respondent / judgment debtor. A copy of that Notice and a copy of the return of service are annexed to this affidavit marked as Annexure B1 and B2.

DEPONENT

I hereby declare that the deponent has sworn to and signed this statement in my presence at on the day of 20 and he/she declared as follows: that the facts herein contained fall within his/her personal knowledge and that he/she understands the contents hereof; that he/she has no objection to taking the oath; that he/she regards the oath as binding on his/her conscience and has declared as follows:

“I swear that the contents of this sworn affidavit are true and correct, so help me God.”

COMMISSIONER OF OATHS

FULL NAMES:

CAPACITY:

ADDRESS:

JUDGE PRESIDENT'S PRACTICE NOTE 1/2014

1 Mediation done in terms of Rule 238 and 239 read with PD 19 must be done by a court-accredited mediator.

2 If during court proceedings, the court is approached to refer a matter for mediation in terms of Rule 238 read with Rule 239, which request may be for either court-accredited private mediation or court-connected mediation, hereinafter referred to as the initial mediation referral proceedings, the Court must postpone the matter so to be referred for a period of not more than two weeks to enable the parties to identify the mediator and make a reservation. The order made during the initial mediation referral proceedings is hereinafter referred to as the initial mediation referral order.

3 A matter may only be referred for court-connected mediation if each of the parties is represented by a legal practitioner.

4 Each party attending court-connected mediation must be represented by a legal practitioner during the court-connected mediation and no more than one legal practitioner per party is allowed during the court-accredited mediation, provided that such party may elect to use either his or her instructing legal practitioner or his or her instructed legal practitioner.

5 The initial mediation referral order must clearly state

(a) whether the matter will be referred for court-accredited private mediation or court-connected mediation;

(b) the identity of the legal practitioner who will accompany each of the parties;

(c) if the matter will be referred for court-connected mediation and any one or more of the parties will require the services of an interpreter, the interpretation language(s) so required and if the matter will be referred for court-accredited private mediation, the order must state that if any one or more of the parties will require the services of an interpreter, such party will be responsible to arrange and pay his or her own interpreter; and

(d) the next court appearance date and time, hereinafter referred to as the mediation referral proceedings.

6 During the mediation referral proceedings, the parties must hand to the Court written proof of the reservation and the Court must then make an order in terms of Rule 238(1), hereinafter referred to as mediation referral order.

7 The managing judge must after hearing the parties include the following in the mediation referral order:

- (a) whether the mediation is referred for court-accredited private mediation or court-connected mediation;
- (b) the name of the mediator who will be responsible for the mediation;
- (c) the time, date and place of the mediation session;
- (d) the time when or within which the mediation report compiled by the mediator is to be submitted to the court, provided that such date may not be later than two months after the referral order;
- (e) the time when or within which the letters referred to in Rule 39(3), hereinafter referred to as the mediation briefs are to be exchanged and filed with the ADR office;
- (f) attached as annexure to the referral the agreement which must be signed by all parties prior to the commencement of the mediation proceedings, which agreement will serve as the agreement on which the mediation proceedings will be conducted;
- (g) if the mediation is court-connected, the language(s) in which interpretation service is required;
- (h) the names of the parties, with full settlement authority as provided for in Rule 39(5) read with Rule 39(6) and the names of their respective legal practitioners who will be attending the mediation proceedings; and
- (i) the date and time of the next status hearing, which date must be as soon as possible after the date or period within which the mediation report is to be filed .

8 In addition to anything else ordered during the status hearing, the managing judge must include the following:

- (a) An order declaring the mediation process concluded; or
- (b) An order extending the time allowed for court-accredited mediation, in which event the order must give in as far as it may apply comply with the provisions for a referral order.

9 This Practice Note comes into force on the date of issue.

SIGNED AND ISSUED AT WINDHOEK ON THIS 23RD DAY OF MAY 2014

JUDGE PRESIDENT

JUDGE PRESIDENT'S PRACTICE NOTES 1/2015

- (a) From 16 July 2015 the civil and labour stint of the Main Division of the High Court of Namibia will consist of 3 distinct units, namely:
- a. Actions, excluding matrimonial;
 - b. Civil Motions and Reviews; and
 - c. Matrimonial and Labour.
- (b) Each Unit will consist of as many judges of the High Court as the Judge President deems fit, one or more research assistants and 2 or more private secretaries.
- (c) The duties in respect of each unit will be as follows:
- a. Actions, excluding matrimonial
 - i. Urgent applications in actions brought during office hours
 - ii. Judicial Case Management in respect of all civil actions, excluding matrimonial matters;
 - iii. All Hearings in actions, including interlocutories in actions;
 - iv. Second Motion Court, default judgments
 - b. Civil Motions and Reviews
 - i. Urgent applications in all civil applications and reviews brought during office hours;
 - ii. Judicial Case Management in respect of all civil applications and reviews
 - iii. All hearing in civil applications and reviews, including interlocutories in civil applications and reviews
 - iv. Civil Appeals
 - v. Some Interpleaders
 - vi. First Motion Court, civil
 - vii. Second Motion Court, applications in terms of rule 108
 - c. Matrimonial and Labour
 - i. Urgent applications in all matrimonial matters and labour applications or reviews brought during office hours;
 - ii. Judicial Case Management in respect of all matrimonial matters and labour applications or reviews
 - iii. All hearing in matrimonial matters and labour applications or reviews, including interlocutories in matrimonial matters and labour applications or reviews
 - iv. Labour Appeals
 - v. Some Interpleaders

- vi. First Motion Court, labour
- vii. Undefended Matrimonial Court

(d) The Registrar will issue transitional arrangements in the form of Registrar's Notes

(e) Nothing in this Practice Note will restrict any judge to the functions and duties assigned to the unit where he or she is allocated to.

(f) All cases set down for hearing or Judicial Case Management will remain set down and this arrangement may not be used as reason to change any set down date.

SIGNED AND ISSUED AT WINDHOEK ON THIS 5TH DAY OF JUNE 2015

JUDGE PRESIDENT

JUDGE PRESIDENT'S PRACTICE NOTES 1/2016

PROCEDURES TO BE FOLLOWED WHEN MAKING AN APPLICATION IN TERMS OF RULE 108

1. Rule 108(l)(b) provides that the registrar may not issue a writ of execution against the immovable property of an execution debtor or other person, unless the property has, on application made to the court, by the execution creditor been declared specially executable.
2. Rule 1 defines “*application*” as ‘*an application on notice of motion as contemplated in Part 8*’. The first rule under Part 8 of the rules of Court is rule 65(l) which provides that every application must be brought on notice of motion supported by affidavit as the facts on which the applicant relies.
3. It follows that a person who wants an immovable property declared executable must bring an application on a notice of motion. The notice of motion must be supported by an affidavit. In the affidavit the applicant must at the least:
 - a) Allege and provide proof that a return has been made and from that return it appears that the execution debtor or other person has insufficient movable property to satisfy the writ.
 - b) Allege and provide proof that he or she has given notice (the notice must be on Form 24) to the execution debtor or other person that an application will be made to court to declare the immovable property executable.
 - c) Allege and provide proof that the notice mentioned in paragraph (b) was personally served on the judgment debtor or if the immovable property is leased on the lessee.
4. Rule 108(4) provides that the execution creditor must make the application to declare the immovable property executable not later than 30 days from the date on which the *nulla bona* return is filled with the registrar.
5. Once the application is ready for the applicant must in term of the Practice Direction 58(3)(b) check the file and complete Annexure 9 only thereafter may the matter be set down Practice Direction 58 (a) for hearing.

An example of the application is attached

DATED AND SIGNED AT WINDHOEK ON THIS 27TH DAY OF JULY 2017

JUDGE PRESIDENT