



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 17 January 2014

No. 5392

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No. 4 Rules of the High Court of Namibia: High Court Act, 1990 1

Government Notice

MINISTRY OF JUSTICE

No. 4

2014

RULES OF THE HIGH COURT OF NAMIBIA: HIGH COURT ACT, 1990

Under section 39 of the High Court Act, 1990 (Act No. 16 of 1990), with the approval of the President of the Republic of Namibia, I have -

- (a) made the rules for the conduct of the proceedings of the High Court of Namibia as set out in the Schedule;
- (b) repealed Government Notices No. 59 of 10 October 1990, No. 60 of 10 October 1999, No. 187 of 12 December 1992, No. 148 of 9 December 1993, No. 81 of 16 April 1996, No. 221 of 14 November 1997, No. 69 of 1 April 1998, No. 189 of 1 August 2000, No. 221 of 16 December 2002, No. 141 of 5 September 2006, No. 6 of 1 February 2008, No. 253 of 22 November 2010 and No. 57 of 13 May 2011; and
- (c) determined that the said rules come into operation on 16 April 2014.

P. T. DAMASEB
JUDGE-PRESIDENT
HIGH COURT OF NAMIBIA

Windhoek, 24 December 2013

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PART 1
INTRODUCTORY PROVISIONS

Definitions and overriding objective

1. (1) In these rules any word or expression to which a meaning has been given in the Act bears that meaning, and unless the context otherwise indicates -

“action” means a proceeding commenced by summons or by writ in terms of rule 7;

“affidavit” means a written statement signed by the deponent thereof under oath or affirmation administered by a Commissioner of Oaths in terms of the Justices of the Peace and Commissioner of Oaths Act, 1963 (Act 16 of 1963);

“alternative dispute resolution” referred to in these rules as ‘ADR’ means conciliation or mediation;

“application” means an application on notice of motion as contemplated in Part 8;

“case management conference” means a conference called by the managing judge in terms of these rules;

“case management day” means at least one day in every week, other than during vacation, on which a managing judge conducts case management in terms of rules 23, 25, 26 and 27 and the dates of each managing judge’s case management days are published by the registrar at least two months in advance of the earliest such date;

“case management meeting” means a meeting in terms of Part 3 or Part 8 called by the parties and attended by their legal practitioners, if they are represented;

“case plan” means the plan for further proceedings submitted by either the parties or their legal practitioners, if represented, before the case planning conference or directed by the managing judge at such conference in terms of rule 23;

“case plan order” means the order made by the managing judge after the case planning conference in terms of rule 23;

“case planning conference” means the initial case management conference called by the managing judge in terms of rule 23;

“cause or matter” includes action, suit or other originating process or application;

“clerk” means the clerk of a managing judge;

“combined summons” means a summons with particulars of claim annexed to it in terms of rule 7;

“court” means the High Court of Namibia or a division thereof;

“court day” means any day which is not a Saturday, Sunday or public holiday and only court days must be included in the computation of any time expressed in days prescribed by these rules, fixed by any order of court or stipulated in any case plan order, case management order or pre-trial order;

“Criminal Procedure Act, 1977” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“day” means a court day;

“deliver” means to serve copies on all parties and file the original with the registrar and the service or filing could be by electronic means;

“directions” mean such prescriptions, instructions or directives given by a managing judge of his or her own initiative in terms of Part 3 or on application by the parties in terms of rule 32;

“docket allocation” refers to the process of the allocation of a docket or file of a case to a managing judge designated in terms of rule 21;

“document” includes a handwritten or typed document, a computer print-out, a pleading, photograph, film, recording of sound, plan, record of a permanent or semi-permanent character and information recorded or stored electronically or by means of any other device;

“Electoral Act, 1992” means the Electoral Act, 1992 (Act No. 24 of 1992);

“e-justice” means the internet-based system for delivering process and maintaining court case files in the court and the letter ‘e’ in the e-justice being reference to the word ‘electronic’ as defined;

“electronic” means technology having electrical, digital, magnetic, wireless, optical, electromagnetical or other intangible form or similar capabilities;

“file” means to file with the registrar;

“flexible radius” in respect of service of any court document, means service within a local authority area where the relevant division of the court is situated in terms of rules 8(3), 14(3), 44(2)(b), 64(8), 65(5), 65(7)(c), 76(5)(a) and 90(2) or wherever it may be necessary;

“Government Attorney” means the government attorney referred to in the Government Attorney Proclamation No. R161 of 1982;

“inactive case” means a case where there is no activity as contemplated in rule 132;

“instructed legal practitioner” means a legal practitioner instructed by another legal practitioner, the Government Attorney, the head of a Law Centre or the Director of Legal Aid appointed in terms of the Legal Aid Act, 1990 (Act No. 29 of 1990) to render advocacy services related to proceedings in any cause or matter in respect of the items listed in Section B of Annexure E, regardless of whether such instructed legal practitioner practises with or without a fidelity fund certificate issued in terms of the Legal Practitioners Act, 1995;

“judicial case management” referred to in these rules as ‘JCM’, means the judicial management of cases for attaining the objectives set out in Part 3;

“judge” means a judge of the court, including a managing judge, sitting in open court or otherwise than in open court;

“Judge-President” means the Judge-President of the court;

“Legal Practitioners Act, 1995” means the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“legal practitioner” means a person who, in terms of the Legal Practitioners Act, 1995 has been admitted and authorised to practise as a legal practitioner or is deemed to have been so admitted and authorised and practises for personal gain or is in the service of a law centre or the State;

“legal year” means a calendar year;

“managing judge” means a judge to whom a docket or a case is allocated to manage the docket or case in terms of these rules;

“managing judge’s motion court” means at least two days in a term on which a managing judge hears any matter required to be heard under these rules on a motion court day or any other matter directed by the managing judge to be so heard;

“master” means the Master of the High Court appointed in terms of section 2 of the Administration of Estates Act, 1965 (Act No. 66 of 1965) and includes a deputy master and an assistant master;

“matrimonial cause” means an action for divorce, annulment of marriage or any interlocutory process related to a matrimonial cause;

“motion court” means a session of the court for the hearing of unopposed matters and in respect of a cause or matter not allocated to a managing judge and set down by a party on a date fixed by the registrar, consisting of a first session and second session;

“party” and any reference to plaintiff, defendant, applicant or respondent or any litigant in terms of these rules includes his or her legal practitioner, as the context may require;

“practice directions” means the directions made by the Judge-President in terms of rule 3 for the orderly conduct of court proceedings;

“pre-trial conference” means the final case management conference held in terms of rule 26 before the hearing or trial;

“presiding judge” means the judge who presides at a trial in terms of rules 98 to 101 or who presides at the hearing of an application under Part 8;

“Prevention of Organized Crime Act, 2004” referred to in these rules as ‘POCA’, means the Prevention of Organized Crime Act, 2004 (Act No. 29 of 2004);

“process” includes any official court document and pleadings;

“Prosecutor-General” means the Prosecutor-General appointed in terms of Article 88(1) of the Namibian Constitution;

“publish”, in relation to the registrar means, to publish by giving notice to the Law Society of Namibia, publication on the court’s website or by any other means which the registrar considers to be appropriate in the circumstances;

“registered user” means an individual in his or her capacity as sheriff or a legal practitioner or a firm of legal practitioners to whom or which has been issued a login password by the registrar for e-justice to electronically generate, deliver and file process and maintain court case files in the court;

“registrar” means the registrar of court appointed in terms of section 30 of the Act and includes a deputy registrar and assistant registrar appointed in terms of the said section;

“residual court roll” means a court roll for the hearing of a matter not dealt with by a managing judge, including urgent applications, interlocutory motions not dealt with by a managing judge, unopposed matrimonial causes or any other cause as may in the Judge President’s discretion be arranged for the expeditious dispatch of the business of the court, the dates and purpose whereof are published by the registrar at the commencement of a legal year;

“service” means the service of a document for which service is required by these rules in any manner referred to in rules 8, 10, 11, 12 and 13;

“service bureau” means the administrative unit established by the registrar to assist an individual who is not a registered user to carry out litigation with the e-justice system at his or her own cost;

“set down” means the set down of a trial or opposed motion in terms of rule 96;

“sheriff” means the sheriff appointed in terms of section 30 of the Act and includes an additional sheriff, a deputy-sheriff and an assistant to a deputy-sheriff appointed in terms of that section;

“status hearing” means an enquiry conducted by the managing judge to determine the position of affairs at a particular time in respect of a case in terms of rule 27;

“Supreme Court” means the Supreme Court of Namibia;

“the Act” means the High Court Act, 1990 (Act No.16 of 1990); and

“third party” means a person referred to in rule 50 against whom a third party claim is pursued.

(2) These are rules for the conduct of proceedings in the court and for giving effect to the provisions of Article 12(1) of the Namibian Constitution and the overriding objective set out in subrule (3) governs the application of these rules.

(3) The overriding objective of these rules is to facilitate the resolution of the real issues in dispute justly and speedily, efficiently and cost effectively as far as practicable by -

- (a) ensuring that the parties are on an equal footing;
- (b) saving costs by, among others, limiting interlocutory proceedings to what is strictly necessary in order to achieve a fair and timely disposal of a cause or matter;
- (c) dealing with a cause or matter in ways which are proportionate to -
 - (i) the amount or value of the monetary claim involved;
 - (ii) the importance of the cause;
 - (iii) the complexity of the issues and the financial position of the parties;
- (d) ensuring that cases are dealt with expeditiously and fairly;
- (e) recognising that judicial time and resources are limited and therefore allotting to each cause an appropriate share of the court’s time and resources, while at the same time taking into account the need to allot resources to other causes; and
- (f) considering the public interest in limiting issues in dispute and in the early settlement of disputes by agreement between the parties in dispute.

(4) The factors that a court may consider in dealing with the issues arising from the application of the overriding objective include -

- (a) the extent to which the parties have complied with any pre-trial requirements or any other mandatory or voluntary pre-trial process;
- (b) the extent to which the parties have used reasonable endeavours to resolve the dispute by agreement or to limit the issues in dispute;

- (c) the degree of promptness with which the parties have conducted the proceeding, including the degree to which each party has been prompt in undertaking interlocutory steps in relation to the proceeding;
- (d) the degree to which any lack of promptness by a party in undertaking the step or proceeding has arisen from circumstances beyond the control of that party;
- (e) any prejudice that may be suffered by a party as a consequence of any order proposed to be made or any direction proposed to be given by the court;
- (f) the public importance of the issues in dispute and the desirability of a judicial determination of those issues;
- (g) the extent to which the parties have had the benefit of legal advice and representation; and
- (h) any other relevant matter.

Registrar's office hours

2. (1) The offices of the registrar must, except on Saturdays, Sundays and public holidays, be open from 09h00 to 13h00 and from 14h00 to 15h00 for the purpose of issuing any process or filing any document, but for the purpose of filing a notice of intention to defend or a notice of intention to oppose, the offices must be open from 09h00 to 13h00 and from 14h00 to 16h00.

- (2) Despite subrule (1), the registrar -
 - (a) may in exceptional circumstances issue process or accept documents at any time and in that case he or she must record in writing those exceptional circumstances and place such record on the file in question; and
 - (b) must issue process or accept documents at any time when directed to do so by the Judge-President or a judge designated by the Judge-President.

Rules of court and practice directions

3. (1) These rules and any practice directions made thereunder provide for a court-driven process for the conduct of proceedings in the court.

(2) Where there is a conflict between a rule of court and a practice direction the rule of court takes precedence.

(3) The Judge-President may, for the orderly conduct of proceedings in any cause or matter, issue or cause to be issued practice directions or repeal and replace the practice directions or amend a provision of a practice direction.

(4) The Judge-President must publish in the *Gazette* any practice direction made or amendment made to a practice direction under subrule (3).

(5) Legal practitioners and litigants must comply with all practice directions issued under this rule and failure to do so may attract sanctions.

(6) Proceedings instituted under the previous rules or practice directions are, from the date of coming into operation of these rules, governed by these rules and the practice directions made under these rules unless otherwise directed by the court, a judge or the managing judge.

Forms

4. Annexure A contains Forms 1 to 28 and these are provided as a guide to legal practitioners or litigants representing themselves and must be used, with necessary adaptation, as near as possible to the particular rule to which the form relates and the pleading or notice must show whether the relevant court is the seat of the court or a division thereof.

PART 2
COURT PROCESS BEFORE JUDICIAL CASE MANAGEMENT

Declaration by cedent in any cause or matter

5. (1) Where a person has acquired a right of action through a cession, that person (hereafter “the cessionary”) may not act on his or her own behalf in any cause or matter in the court under that cession, unless when he or she for the first time lodges any process in the cause or matter with the registrar, he or she at the same time files with the registrar a sworn declaration by the person who ceded the right of action to him (hereafter “the cedent”).

(2) The declaration referred to in subrule (1) must be in such form as the Judge-President may prescribe in a practice direction and the cedent must declare that -

- (a) the cession is a genuine transaction in terms of which he or she truly intends to cede his or her rights in the claim to the cessionary;
- (b) he or she has not ceded the claim to the cessionary to enable the cessionary to act on his or her behalf in the legal proceeding in return for payment made, to be made or promised to be made to the cessionary;
- (c) the cession is not for any purpose that defeats any law; and
- (d) the cessionary has not held himself or herself out as a person qualified to represent a member of the public in legal proceedings contrary to any law.

(3) A declaration referred to in subrule (1) must be made by the cedent before a member of the Namibia Police holding the rank of warrant officer or above who must, before administering the oath or affirmation, explain to the declarant that if the declaration is false the cedent is liable for perjury or any other competent verdict and may, on conviction, be liable for any criminal sanction.

(4) This rule does not apply to a cause or matter in which a person is represented by a legal practitioner.

Particulars of litigant to be provided

6. (1) In every action or application a legal practitioner must file with the registrar a return containing the particulars set out in subrule (4) in such form as may be prescribed and published by the registrar with the approval of the Judge-President.

(2) If any party to an action or application is not represented by a legal practitioner that party must file the return referred to in subrule (1) together with the issue of the summons, application, notice of intention to defend or notice of opposition.

(3) The requirement to file a return in terms of this rule does not apply to the Government Attorney, except that the Government Attorney must file such return on withdrawing as legal practitioner of record of a party in terms of rule 44.

- (4) The return required to be filed in terms of subrule (1) must contain the following information about the party, whether the party is represented by a legal practitioner or not -
- (a) in the case of a natural person, his or her full names, identity number where available and if a Namibian citizen or any other person ordinarily resident in Namibia, his or her physical address and where available, his or her telephone or cellular phone number or both, workplace telephone number, facsimile number and personal or workplace email address or both;
 - (b) in the case of a close corporation, its name and registration number, postal address and registered office referred to in section 25 of the Close Corporations Act 1988 (Act No. 26 of 1988) and the particulars referred to in paragraph (a) of at least one member or officer as defined in that Act and the particulars referred to in paragraph (a) of its accounting officer appointed in terms of section 59 of that Act;
 - (c) in the case of a company, its name and registered number, postal address and registered office referred to in section 178 of the Companies Act 2004 (Act No. 28 of 2004) and the particulars referred to in paragraph (a) of at least one director and the secretary referred to in section 223 of that Act including all particulars referred to in section 223(1) of that Act and, in case of the officer or secretary of any other body corporate, the particulars referred to in paragraph (b) of section 223(1) of that Act;
 - (d) in the case of any other juristic person, the particulars referred to in paragraph (a) of at least one officer or secretary or a person, by whatever name called, running its affairs; and
 - (e) in the case of a trust which is duly authorised to litigate, the particulars referred to in paragraph (a) of all trustees and a reference number given by the master to the trust deed registered with the master.

(5) The particulars provided in terms of subrule (4) remain binding on the party to whom they relate and may be used by the court or by the other party to effect service of any notice or document on that party or give notice to that party, in case of his or her legal practitioner of record withdrawing and it becomes necessary for the court or any party to require the presence of that party before the court in relation to the action or application to which the return relates.

(6) A party must, if no longer represented by a legal practitioner or if there is a change in the particulars of that party required by subrule (1), as soon as practicable deliver a notice to the registrar and to all the other parties informing them that he or she is no longer represented by a legal practitioner or of the change in particulars.

(7) If, within five days of the withdrawal of the legal practitioner of record or change in particulars, the new particulars are not so delivered as contemplated in subrule (6) the old particulars remain binding as contemplated in subrule (5).

Combined summons

7. (1) A person who wishes to institute an action against any other person may, subject to rule 45, make a claim by suing out of the office of the registrar a combined summons which must be as near as is possible to the example in Form 1.

(2) A summons is considered as having been properly issued when the registrar date-stamps it with the official court stamp and uniquely numbers it for identification purposes.

- (3) Where the plaintiff seeks relief in respect of several distinct claims founded on separate and distinct facts, such claims and facts must be separately and distinctly stated.
- (4) A combined summons consists of two parts namely the first part which is addressed to the sheriff and the second part which contains particulars of the claim.
- (5) The first part of a combined summons must follow the example in Form 1 and is addressed to the sheriff directing him or her -
- (a) to inform the defendant, among other things, that if he or she disputes the claim and wishes to defend he or she must, within the time stated therein, which time must not, subject to section 24 of the Act, be less than 10 days, give notice of his or her intention to defend; and
 - (b) to draw to the defendant's attention the terms of rule 23(3) and must always end with the following words: 'As soon as the managing judge has given notice of a case planning conference in terms of rule 23(1), you will be required to meet with the plaintiff in order to agree a case plan for submission to the managing judge and for the exchange of pleadings and the time within which you will deliver your plea will be determined by the court having regard to such plan and if you fail to cooperate in submitting such plan, the court will determine the time within which you must deliver your plea and you must comply with such order'.
- (6) The second part of a combined summons consists of the particulars of claim and must be headed as such and if the plaintiff is represented by a legal practitioner, the particulars must contain the address of the legal practitioner within a flexible radius.
- (7) The plaintiff's legal practitioner or if the plaintiff is unrepresented, the plaintiff himself or herself must sign the particulars of claim.
- (8) The particulars of claim must contain a statement of the material facts relied on by the plaintiff in support of his or her claim, the cause of action and the relief claimed, which statement must also comply with rule 45.
- (9) A combined summons must set out -
- (a) the name and, where known, the first name or initials by which the defendant is known to the plaintiff, his or her residence or place of business and, where known, his or her occupation and, if he or she is sued in any representative capacity, that capacity and the summons must also state the defendant's sex;
 - (b) the full names, sex, occupation and the residence or place of business of the plaintiff, and where he or she sues in a representative capacity, that capacity;
 - (c) if the plaintiff elects to receive any subsequent document by electronic means through e-justice, he or she must state his or her electronic address; and
 - (d) the cause of action and the relief claimed.
- (10) The plaintiff or if legally represented, his or her legal practitioner, must indicate an address within a flexible radius, which may be an electronic address, at which service of all subsequent pleadings and documents will be accepted in the suit.
- (11) After the combined summons has been signed, stamped and numbered by the registrar, it must be returned to the plaintiff or if represented, to his or her legal practitioner, for the purpose of service.

Service of process

8. (1) Service of any process of the court directed to the deputy-sheriff and any document initiating application or action proceedings must be effected by the sheriff in one or other of the ways set out in this rule.

- (2) Service of any process referred to in subrule (1) may be effected -
- (a) by delivering a copy thereof personally to the person to be served, but if the person to be served is a minor or a person under legal disability, service must be effected on the guardian, tutor, curator or the like of that minor or person under disability;
 - (b) where personal service is not reasonably possible, by leaving, subject to subrule (5), a copy of the process at the place of residence or place of business of the person to be served, but where such person is a minor or a person under legal disability service must be effected on the guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than 16 years of age, and for the purposes of this paragraph when a building, other than a hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person on whom service is to be effected;
 - (c) by delivering a copy thereof at the place of employment of the person to be served or at the place of employment of the guardian, tutor, curator or the like to that person who is apparently not less than 16 years of age and apparently in authority over the person to be served;
 - (d) if the person to be served has chosen a *domicilium citandi*, by delivering or leaving a copy thereof at the *domicilium* so chosen; or
 - (e) by delivering a copy thereof to any agent who is duly authorised in writing to accept service on behalf of the person to be served.
- (3) Service of any process may also be effected -
- (a) on a company or other body corporate, by handing a copy of the process to a responsible employee of the company or body at its registered offices or its principal place of business in Namibia or if no such employee is willing to accept service, by affixing a copy to the main gate or door of such office or place of business or in any other manner provided by any law or these rules;
 - (b) on a partnership, firm or voluntary association, by handing a copy of the process to a responsible employee or official at the place of business of the partnership, firm or association or if it has no place of business, by serving a copy of the process on a partner, the owner of the firm or the chairperson or secretary of the committee or other managing body of such association as the case may be, in one of the manners set forth in this rule;
 - (c) on a regional council or local authority council, by handing a copy of the process on the chairperson or chief executive officer of the council or on any person acting on behalf of that person;
 - (d) on a statutory body, by handing a copy to the secretary or similar officer of that body or any person acting on behalf of that person; and

- (e) on the State, a minister, deputy minister or other official of the State in his or her official capacity, by handing a copy to a responsible employee at the offices of the Government Attorney or the relevant ministry or organ of the State respectively.
- (4) Where at any premises contemplated in subrule (2) or (3), no person is willing to accept service, service may be effected by affixing a copy of the process to -
- (a) the main door of the premises concerned; or
- (b) if this is not accessible, any other place to which the public has access.
- (5) Where two or more persons are sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians or in any other joint representative capacity, service must be effected on each of them in any manner set out in this rule.
- (6) Where the person to be served with any process or document initiating application proceedings is already represented by a legal practitioner of record in the matter to which the application is interlocutory or incidental, the process may be served by the party initiating the proceedings on the legal practitioner and if that legal practitioner is a registered user of e-justice, service must be effected by e-justice.
- (7) Service by the deputy-sheriff must be effected between the hours of 07h00 and 19h00, except that no service of any civil summons, order or notice and no proceedings or act required in any civil action, except the issue or execution of a warrant of arrest, may be validly effected on a Sunday unless the court or a judge directs otherwise.
- (8) It is the duty of the deputy-sheriff or other person serving the process or documents to explain the nature and contents thereof to the person on whom service is being effected and to state in his or her return of service or on the signed receipt that he or she has done so.
- (9) Where it is not possible to effect service in any manner described in this rule, the court may, on application of the person wishing to cause service to be effected, give directions in regard thereto and where such directions are sought in regard to service on a person known or believed to be within Namibia, but whose whereabouts therein cannot be ascertained, rule 13(2) applies with necessary modifications required by the context.

Proof of service

9. (1) Service of any process of the court in Namibia is proved -
- (a) where service has been effected by the deputy-sheriff, by the return of service of that deputy-sheriff;
- (b) where service has been effected by electronic means with e-justice, by an e-justice electronic print-out of such service;
- (c) where service has not been effected by the deputy-sheriff or in terms of paragraph (b), by an affidavit of the person who effected service or in the case of service on a legal practitioner or a member of his or her staff, the State or any minister, deputy minister or any other official of the State, in his or her capacity as such, by the production of a signed receipt from the person on whom the process was served.
- (2) The document which serves as proof of service must, together with the served process or document, without delay be furnished to the person at whose request service was effected.

(3) Within five days from receipt of the document which serves as proof of service and the process or document referred to in subrule (2), the person on whose request service was effected must file with the registrar each such document on behalf of the person who effected service.

(4) Whenever the court is not satisfied as to the effectiveness of the service, it may order any further steps that it considers practicable and reasonable to be taken.

Service of process emanating from outside Namibia

10. (1) Where a request for the service on a person in Namibia of any civil process or citation is received from a State, territory or court outside Namibia and is transmitted to the registrar in terms of section 29(2) of the Act, the registrar must transmit to a deputy-sheriff or any person appointed by a judge of the court for service of such process or citation -

- (a) two copies of the process or citation to be served; and
- (b) two copies of a translation in English of that process or citation, if the original is in any other language.

(2) Service must be effected by delivering to the person to be served one copy of the process or citation to be served and one copy of the translation, if any, thereof in accordance with this rule.

(3) After service is effected the sheriff or the deputy-sheriff or the person appointed to serve the process or citation must return to the registrar one copy of the process or citation together with -

- (a) proof of service, which must be by affidavit made before a magistrate, justice of the peace or commissioner of oaths by the person by whom service is effected and verified -
 - (i) in the case of service by the sheriff or a deputy-sheriff, by the certificate and seal of office of that sheriff or deputy-sheriff; or
 - (ii) in the case of service by a person appointed by a judge of the court, by the certificate and seal of office of the registrar; and

- (b) particulars of charges for the cost of effecting the service.

(4) The particulars of charges for the cost of effecting service under this rule must be submitted to the taxing officer of the court, who must certify the correctness of such charges or other amount payable for the cost of effecting service.

(5) The registrar must, after effect has been given to any request for service of civil process or citation, return to the Permanent Secretary for Justice -

- (a) the request for service referred to in subrule (1);
- (b) the proof of service together with an appropriate certificate duly sealed with the seal of the court for use out of its jurisdiction; and
- (c) the particulars of charges for the cost of effecting service and the certificate or copy thereof, certifying the correctness of such charges.

Service of process outside Namibia

11. (1) Service of process or any document in a foreign country must be effected -
- (a) where there is no law in that country prohibiting such service or the authorities of that country have not interposed any objection to such service by -
 - (i) the head of any Namibian diplomatic or consular mission in that foreign country authorised to serve such process or document;
 - (ii) any foreign diplomatic or consular officer of the foreign country to Namibia who attends to the service of process or documents on behalf of Namibia in that foreign country;
 - (iii) an official signing as or on behalf of the head of the department dealing with the administration of justice in that foreign country and is authorised under the law of that country to serve process or document; or
 - (b) where the foreign country is a designated country in terms of legislation which provides for the reciprocal service of civil process, in terms of that legislation.
- (2) Any process of court or document to be served in a foreign country must, unless the official language or one of the official languages of that foreign country concerned is English, be accompanied by a sworn translation thereof into an official language of that country or part of that country in which the process or document is to be served together with a certified copy of the process or document and the translation.
- (3) Any process or document to be served as provided in subrule (1) must be delivered to the registrar together with revenue stamps to the value of N\$250 affixed thereto, except that no revenue stamps are required where service is effected on behalf of the Government of Namibia.
- (4) The registrar must, after defacement of the revenue stamps affixed to the process or document, transmit any process or document delivered in terms of subrule (3), together with the translation referred to in subrule (2), to the Permanent Secretary for Foreign Affairs or to a destination indicated by the Permanent Secretary for Foreign Affairs for service in the foreign country concerned and the registrar must satisfy himself or herself that the process or document allows a sufficient period for service to be effected in good time.
- (5) Service of any process or document in the Republic of South Africa is proved -
- (a) where service has been effected by a sheriff, by the return of service of that sheriff;
 - (b) where service has been effected by any other person, in the manner described in subrule (6).
- (6) Service of any process or document in a foreign country, other than a foreign country referred to in subrule (1)(b) and the Republic of South Africa where the service has been effected by a sheriff, is proved by a certificate duly authenticated in terms of the laws of the country of the person effecting service in terms of subrule (1) in which he or she -
- (a) identifies himself or herself that he or she is authorised under the law of that country to serve process or document therein;
 - (b) states that the process or document in question has been served as required by the law of that country and sets out the manner and the date of such service; and

- (c) affirms that the law of the country concerned permits him or her to serve process of the court or documents or that there is no law in that country prohibiting such service and that the authorities of that country have not interposed any objection to the service.

(7) If the court is not satisfied as to the effectiveness of the service it may order such further steps to be taken as it considers practicable and reasonable.

Edictal citation

12. (1) A person may not serve any process or document outside Namibia whereby proceedings are instituted in the court whether the address of the person to be served is known or not, except by leave of the court granted in terms of this rule and subject to rule 11(1)(b).

(2) A person desiring to obtain the leave referred to in subrule (1) must make application to the court setting out concisely the -

- (a) nature and extent of his or her claim;
- (b) grounds on which it is based and on which the court has jurisdiction to entertain the claim; and
- (c) manner of service which the court is asked to authorise,

and if the manner proposed is other than by personal service, the application must further set out the last-known whereabouts of the person to be served and the inquiries made to ascertain his or her present whereabouts.

(3) On receipt of an application made under subrule (2), the court may make an order as to the manner of service and order the time within which notice of intention to defend is to be given and any other step that the person to be served must take and if service by publication is ordered, the service may be on Form 2 approved and signed by the registrar.

(4) A person desiring to obtain leave to effect service outside Namibia of any document, other than one whereby proceedings are instituted, may either make application for such leave in terms of subrule (2) or request such leave at any case management conference and in the latter case no papers need be filed in support of the request and the court may act on such information as may be given from the bar or given in any other manner as it may require and may make any order.

(5) An order obtained in terms of these rules must be served in the manner set out in rule 11.

Substituted service

13. (1) Where it is impossible to effect service within Namibia in terms of rule 8 or where a person desires to effect service but the address of the person to be served is unknown, the person desiring to effect service must make application to the court on Form 3 setting out all relevant information and in that case rule 12(2) applies with necessary modifications required by the context to that application.

(2) A person desiring to obtain leave to effect service in Namibia by way of publication of any document, other than one whereby proceedings are instituted, may make application for such leave in terms of this rule or request such leave at any case management conference, status hearing or pre-trial conference and, in the latter case, no papers need be filed in support of the request and the court may act on such information as may be given from the bar or given in any other manner as it may require and may make any order.

Notice of intention to defend

14. (1) The defendant in every civil action is, subject to section 24 of the Act, allowed 10 days after service of summons on him or her within which to deliver a notice of intention to defend either personally or through his or her legal practitioner, except that the days from 16 December to 15 January both inclusive are not to be counted in the time allowed within which to deliver a notice of intention to defend.

(2) In actions against the State or against any minister, deputy minister or any official in the service of the State and in his or her official capacity, the time allowed for delivery of notice of intention to defend is not less than 20 days after service of the summons, unless the court has specifically authorised a period shorter than 20 days.

(3) When a defendant delivers a notice of intention to defend he or she must in that notice -

(a) give his or her full residential or business address; and

(b) appoint an address within a flexible radius from the office of the registrar, not being a post office box or *poste restante*, for service on him or her of all documents in that action; or

(c) indicate, if he or she is represented by a registered user and he or she elects to be served by e-justice, his or her legal practitioner's e-justice address and in that case service given at that address is valid and effectual, except where by any order or practice of the court personal service is required.

(4) Simultaneously with the delivery of the notice of intention to defend referred to in subrule (1) the defendant must deliver the return in terms of rule 6.

(5) The fact that a party has delivered a notice of intention to defend does not mean that he or she has waived any right to object to the jurisdiction of the court or to any irregularity in the proceedings.

(6) Despite subrules (1) and (2), a notice of intention to defend may be delivered even after expiry of the period specified in the summons or the period specified in subrule (2), but before default judgment has been granted, except that the plaintiff is entitled to costs if the notice of intention to defend is delivered after the plaintiff has lodged an application for judgment by default.

Default judgment

15. (1) If a defendant fails to deliver a notice of intention to defend as contemplated in rule 14, the registrar may not allocate the case to a managing judge and in that case this rule applies.

(2) If a defendant fails to deliver a notice of intention to defend or a plea, the plaintiff may set the action down for a default judgment as provided for in subrule (4).

(3) The court or managing judge may, where the claim is for a debt, liquidated demand or the foreclosure of a bond, without hearing evidence and in the case of any other claim after hearing or receiving evidence orally or on affidavit, grant judgment against the defendant or make such order as the court or managing judge considers appropriate.

(4) The proceedings referred to in subrule (2) must be set down for hearing before 12h00 on the day but one before the day on which the matter is to be heard.

(5) No notice of set down for default judgment referred to in subrule (2) need be given to a party that fails to deliver a notice of intention to defend, except that if a period of six months has lapsed

after service of summons, no order may be made in terms of subrule (3), unless a notice of set down has been served on the defendant.

(6) Service in terms of subrule (5) must be effected not less than 10 days before the date on which the action has been set down for default judgment.

Rescission of default judgment

16. (1) A defendant may, within 20 days after he or she has knowledge of the judgment referred to in rule 15(3) and on notice to the plaintiff, apply to the court to set aside that judgment.

(2) The court may, on good cause shown and on the defendant furnishing to the plaintiff security for the payment of the costs of the default judgment and of the application in the amount of N\$5 000, set aside the default judgment on such terms as to it seems reasonable and fair, except that -

- (a) the party in whose favour default judgment has been granted may, by consent in writing lodged with the registrar, waive compliance with the requirement for security; or
- (b) in the absence of the written consent referred to in paragraph (a), the court may on good cause shown dispense with the requirement for security.

(3) A person who applies for rescission of a default judgment as contemplated in subrule (1) must -

- (a) make application for such rescission by notice of motion, supported by affidavit as to the facts on which the applicant relies for relief, including the grounds, if any, for dispensing with the requirement for security;
- (b) give notice to all parties whose interests may be affected by the rescission sought; and
- (c) make the application within 20 days after becoming aware of the default judgment.

(4) Rule 65 applies with necessary modification required by the context to an application brought under this rule.

PART 3 JUDICIAL CASE MANAGEMENT

Application of overriding objective by court

17. (1) The court must seek to give effect to the overriding objective referred to in rule 1 when it exercises any power given to it under these rules or in interpreting any other rule of procedure or practice direction applicable in the court.

(2) Under these rules the control and management of cases filed at the court is the primary responsibility of the court and the parties and their legal practitioners must cooperate with the court to achieve the overriding objective.

Power of court to manage cases

18. (1) In order to further the overriding objective the court must actively manage cases and the powers of the court provided in this Part are in addition to any powers given to the court by any law, other rule or practice direction or any powers it may otherwise have.

(2) In giving effect to the overriding objective the court may, except where the rules expressly provide otherwise -

- (a) extend or shorten the time for compliance with any rule, practice direction or court order;
 - (b) extend or shorten any time prescribed for the doing of anything or the taking of any steps in the course of litigation;
 - (c) adjourn or bring forward a trial or hearing;
 - (d) require a party or a party's legal practitioner to attend the court or an informal hearing with the judge in chambers;
 - (e) schedule a hearing by telephone or e-mail or by using any other verifiable method of direct communication;
 - (f) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective;
 - (g) direct the parties to cooperate with each other in the conduct of the proceedings;
 - (h) identify the real issues in dispute in the case at an early stage;
 - (i) decide promptly which issues need full investigation and trial and which may be disposed of summarily;
 - (j) decide the order in which issues are to be resolved;
 - (k) fix timetables and otherwise control the progress of the case;
 - (l) separate the adjudication of interlocutory motions from that of the merits to be heard at the trial;
 - (m) give directions for the better, more practical and more timely production of evidence by expert witnesses, which order may include that expert witnesses of opposing parties meet in order to discuss narrowing or resolving defined issues where their opinions conflict;
 - (n) give directions for the production or discovery of documents at a more convenient, practical and earlier time;
 - (o) determine, as soon as practicable, firm dates for particular steps as well as for the trial or hearing of the case; and
 - (p) order, for sufficient reason, that all or any of the evidence to be adduced at the trial be given on affidavit, subject to the other parties' right to cross-examine the deponent.
- (3) When the court makes an order, it may -
- (a) make the order subject to conditions; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (4) A power of the court under these rules to make an order includes the power to vary or revoke the order.
- (5) Except where a rule or some other enactment provides otherwise, the court may exercise its powers at the instance of any party or of its own initiative.

- (6) Where the court proposes to -
 - (a) make an order of its own initiative; or
 - (b) hold a hearing to decide whether to make the order,

the court must give each party likely to be affected by the order sufficient notice of the hearing and afford the parties an opportunity to be heard before making any order.

Obligations of parties and legal practitioners in relation to judicial case management

19. Every party to proceedings before the court and, if represented, his or her legal practitioner is obliged -

- (a) to cooperate with the court and the managing judge to achieve the overriding objective;
- (b) to assist the court in curtailing proceedings;
- (c) to limit interlocutory proceedings to what is strictly necessary in order to achieve a fair and expeditious disposal of a cause or matter;
- (d) to comply with any order or direction given by the court at any stage of the proceedings;
- (e) to attend all case management conferences, status and informal hearings arranged by the court;
- (f) to comply with deadlines provided for the taking of any steps under these rules, the practice directions and any applicable law with diligence and promptitude;
- (g) to use reasonable endeavours to resolve a dispute by agreement between the persons in the dispute;
- (h) to ensure that costs are reasonable and proportionate;
- (i) to act promptly and minimise delay;
- (j) to disclose critical documents to each other at the earliest reasonable time after the person becomes aware of the existence of the document; and
- (k) on receipt of critical documents referred to in paragraph (j), not to use the documents for a purpose other than in connection with the civil proceedings.

Protective costs orders in cases of public interest

20. (1) On an application by a party and served on any other party the court may, on such conditions as it thinks fit, make a protective costs order at any stage of the proceedings if the court is satisfied that -

- (a) the issues raised in the case are of general public importance and it is a first impression case;
- (b) the public interest requires that those issues be resolved; and
- (c) having regard to the financial resources of the applicant or applicants and the respondent or respondents and to the amount of costs that are likely to be involved it is fair and just to make the order, as long as the conduct of the applicant in the case is not frivolous or vexatious.

- (2) A protective costs order may -
 - (a) prescribe in advance that there will be no order as to costs in the substantive proceedings whatever the outcome of the case;
 - (b) prescribe in advance that there will be no adverse costs order against the party requesting the protective costs order in case that party is unsuccessful in the substantive proceedings; or
 - (c) cap the maximum liability for costs against the party requesting the protective costs order in the event that that party is unsuccessful in the substantive proceedings.
- (3) If a litigant covered by a protective costs order refuses an offer of settlement and fails in the event to be awarded more than the offered amount or remedy, the protective costs order does apply only with respect to the proceedings up to the date of the offer of settlement.
- (4) The court may make any award regarding costs that it considers fit in respect of an application for a protective costs order under this rule.

Individual docket allocation to managing judges

- 21.** (1) The control and management of every case filed at the court vests in the court and not in the parties or their legal practitioners.
- (2) As soon as appearance to defend has been entered by a defendant in an action the registrar must, with the approval of the Judge-President, docket-allocate the case to a managing judge who must manage it as provided in this Part until conclusion.
- (3) If for any reason a judge is unable to manage or continue a case under this Part the registrar must, immediately on that inability being known by him or her and with the concurrence of the Judge-President, allocate the case to another judge and advise all parties in writing of such allocation and that other judge may, of his or her own initiative or on good cause shown, alter any order regarding case management given by the previous managing judge.
- (4) The registrar may not, without the leave of the managing judge, set down for hearing before another judge or in another court any proceeding related to a case docket allocated by the registrar to a managing judge.

JCM procedure until trial

- 22.** (1) From docket allocation of a case until the trial or hearing the managing judge controls and manages the procedure and processes relating to the case.
- (2) The procedure includes the following steps -
 - (a) notice by the managing judge calling a case planning conference and directing the parties and, if represented, their legal practitioners to present a case plan for such conference;
 - (b) holding of a case planning conference at which a case plan is finalised and a case plan order made;
 - (c) finalising all pleadings in terms of the case plan order and filing a report for the case management conference;

- (d) holding of a case management conference and the issuing of an order specifying the issues determined at that conference;
- (e) holding of a pre-trial conference and the issuing of an order in respect of issues determined at the pre-trial conference; and
- (f) holding of a status hearing or further case management conference as directed by the managing judge.

Case planning conference

23. (1) As soon as the docket of a case has been allocated to a managing judge he or she must inform the parties of the time and date, being a date not more than 15 days from the date of docket allocation, that a case planning conference will be held for the purpose of considering a case plan and in that behalf direct the parties on Form 4 to submit a case plan for consideration at the case planning conference.

(2) Whether or not the parties submit a case plan before the case planning conference the managing judge must at that conference determine what should be included in the case plan and make it an order of court.

(3) The case plan must address the following -

- (a) whether the plaintiff intends to apply for summary judgment and the proposed dates for filing the necessary papers in respect thereof, the proposed date of hearing of the summary judgment and the proposed dates for filing of heads of argument;
- (b) whether the defendant intends to except to or apply to strike out the plaintiff's particulars of claim and if so, the basis of the exception or strike out and a proposed date for the hearing of that exception or application to strike out, the dates for filing all necessary papers in respect of the exception or strike out, as well as the dates for filing heads of argument;
- (c) whether or not there will be notice given of any irregular proceedings or security for costs sought;
- (d) dates for the filing of the plea, replication and, in case of a counterclaim, the plaintiff's plea thereto;
- (e) the dates for filing of discovery affidavits by all parties; and
- (f) any issue that may be appropriately dealt with at that early stage or on which the managing judge's direction is sought by the parties.

(4) If a party intends to exercise any of the procedural remedies contemplated in paragraphs (a), (b) and (c), the parties must submit to the managing judge a case plan dealing solely with the manner they propose such matter or matters to be adjudicated, after which the managing judge must give directions and proceed in terms of subrule (5).

(5) Where a party wishes to proceed in terms of either subrule 3(a), (b) or (c), the case planning conference must take place only after judgment on the application has been given by the managing judge on a date determined by him or her, but in any event not more than 10 days from the date on which such judgment is given and if such application or process fails the parties must comply with subrule (3) (d) to (f).

(6) The managing judge must give judgment on any application or process referred to in subrule (4) within 15 days of hearing the application, unless the application involves a complex question of law in which case the judgment must be given within 30 days.

(7) If no indication is given that an application or proceeding in terms of subrule 3(a), (b) or (c) will be made or initiated, the party failing to do so is precluded from bringing such proceeding unless -

- (a) it is an application seeking security for costs; or
- (b) the managing judge on good cause shown determines otherwise.

(8) If the parties fail to submit a case plan the managing judge must make any appropriate order on Part B of Form 4.

Proposals by parties in anticipation of case management conference

24. (1) On the date determined by an order of the managing judge, but not later than 30 days after close of pleadings, the parties must submit to the managing judge a case management report which they jointly prepared in respect of issues on which they agree or individually in respect of issues on which they differ, but where individual reports are submitted, those reports must show clearly the issues they agree on and those they do not.

(2) A report referred to in subrule (1) must contain all the proposals by the parties in respect of the issues set out in rule 25 and must be submitted to the managing judge not less than four days before the date referred to in subrule (1).

Case management conference

25. (1) The managing judge must, within 14 days after the case management report referred to in rule 24 has been submitted by the parties, call a case management conference on Form 5 to be attended by all the parties' legal practitioners or by the parties, if unrepresented.

- (2) The following issues must be considered at the case management conference -
- (a) the need for joining other parties and dates for such joinder;
 - (b) consolidation of actions if applicable;
 - (c) the dates for filing of any further pleadings and the need for amendment of pleadings;
 - (d) the dates for filing of witness statements as contemplated in rule 92;
 - (e) the dates for filing expert summaries by all parties;
 - (f) the dates for filing interlocutory applications, if any, and the dates when those applications are proposed to be heard;
 - (g) the control and scheduling of further discovery, including the inspection and production of documents, whether expert testimony is to be called and adjudication of the qualifications of experts, if they are disputed, and determining the dates for any further expert summaries;
 - (h) the dates for filing of expert reports;

- (i) proposals for narrowing the field of dispute between expert witnesses;
- (j) the determination of any objection on points of law, if applicable;
- (k) giving orders or directions for a separate hearing in respect of any relevant issue;
- (l) the settlement of claims, enquiries and accounts;
- (m) securing a statement for a special case of law or facts;
- (n) the date of any additional case management conference if considered necessary and the date for a final pre-trial conference;
- (o) the possibility of settlement talks or possibility of settlement of disputes through any alternative dispute resolution procedure;
- (p) the dispensing with evidence-in-chief of a witness by substituting it with an affidavit;
- (q) an estimate of the number of days required for the trial;
- (r) any application for the transfer of the case from one division to another in terms of section 4A(5) of the Act;
- (s) any other issues that are likely to facilitate the just and speedy disposal of the action or application.

(3) The managing judge may give such directions or prescriptions in respect of any issue discussed at the case management conference as he or she considers appropriate.

(4) The case management conference must, except in exceptional circumstances, be completed in a single conference and may not be adjourned.

(5) As soon as possible after a case management conference but not more than 15 days thereafter, the managing judge must issue a case management order on Form 6.

(6) The case management order must -

- (a) address the issues set out in subrule (2) and other issues, if applicable, that are relevant to the action or application and must establish the time schedule for all relevant events;
- (b) set out the subsequent course of the proceedings,

and the order may, for good cause, be altered by the managing judge.

Pre-trial conference

26. (1) The managing judge must hold a pre-trial conference before the trial or hearing of any matter.

(2) A pre-trial conference must be held at a time and date set by the managing judge in a notice that must be given to the parties on Form 7 and the parties or their legal practitioners, if represented, must attend the conference.

(3) The pre-trial conference must address the issues set out in subrule (6), the parties' proposed final pre-trial order and any other issues that may promote a fair and speedy trial.

(4) The parties must jointly submit to the managing judge a proposed pre-trial order at least four days before the pre-trial conference.

(5) The plaintiff must initiate communication with the defendant and must prepare the initial draft of the order referred to in subrule (4) for discussion with the defendant at the parties' case management meeting.

(6) The parties' proposed pre-trial order referred to in subrule (4) must cover the following -

- (a) all issues of fact to be resolved during the trial;
- (b) all issues of law to be resolved during the trial;
- (c) all relevant facts not in dispute in the form of a statement of agreed facts;
- (d) the names of all witnesses who may be called to testify at the trial and the proposed dates for the filing of witness statements;
- (e) the witnesses to be called by subpoena to testify;
- (f) evidence taken on commission in terms of rule 91;
- (g) a list of all exhibits intended to be introduced as evidence during the trial;
- (h) all plans, photos, diagrams and models to be introduced as evidence or referred to in rule 36(3) as well as plans, photos, diagrams and models to be provided at the trial;
- (i) the anticipated length of the trial;
- (j) time limits for the delivery by the plaintiff of indexed and paginated pleadings and notices as well as documentary exhibits for use at the trial;
- (k) any proposal for expediting the trial or hearing;
- (l) particulars required and necessary for trial and the party giving trial particulars must identify by name, job title, address and telephone number of all factual witnesses who assisted in the preparation of the particulars and further identify and describe all documents that the receiving party has relied on to assist him or her in preparing the particulars;
- (m) prospects for settlement of the case and whether the parties have participated in any alternate dispute resolution mechanism; and
- (n) the need for transfer of the case from one division to another in terms of section 4(A) (5) of the Act.

(7) The managing judge must, immediately after and in any case within 15 days after the completion of the pre-trial conference, issue a pre-trial order on Form 8 in such form as meets the circumstances of the case.

(8) The registrar must provide the pre-trial order referred to in subrule (7) to the parties, but the managing judge may amend the pre-trial order if in the opinion of the judge such amendment is necessary to avoid manifest injustice.

(9) The managing judge's pre-trial order referred to in subrule (7) is based on the parties' proposed pre-trial order and the order -

- (a) must specify the issues set out in subrule (6); and
- (b) must set a firm date for the trial; or
- (c) may direct the transfer of the case from one division to another.

(10) Issues and disputes not set out in the pre-trial order will not be available to the parties at the trial, except with leave of the managing judge or court granted on good cause shown.

(11) A pre-trial conference must, except in exceptional cases, be completed in a single conference and may not be adjourned.

Status hearing, further case management conference and relaxation of rules and orders

27. (1) Where deadlines are not met or the matter stalls for any reason, the managing judge may in that matter schedule a status hearing on Form 9 and may, after hearing the parties, make such order as to the just and speedy disposal of the case, including the imposition of sanctions, including costs.

(2) The managing judge may schedule or a party may request in writing on notice to all parties, additional case management conferences, except that additional conferences may be held solely for the purpose of facilitating the continuing judicial control of the case and may address any of the issues set out in rule 25(2) or any other issues relevant to the management or fair and speedy resolution of the case.

(3) In order to expedite the determination of the real issues between the parties, the managing judge may, for good cause, at any status hearing, case management conference, pre-trial conference or at the trial -

- (a) relax or vary time limits set by these rules, a practice direction, case plan order, case management order or pre-trial order;
- (b) condone technical irregularities where these do not prejudice the other party or the administration of justice;
- (c) allow or order amendments to the pleadings to be filed so that only the real issues between the parties and not mere technicalities are determined at the trial; or
- (d) on application transfer the case from one division to another.

Discovery

28. (1) A party must, without the necessity of being requested by any other party to make discovery, identify and describe all documents, analogues or digital recordings that are relevant to the matter in question and are proportionate to the needs of the case and in respect of which no privilege may be claimed and further identify and describe all documents that the party intends or expects to introduce at the trial.

(2) A document, analogue or digital recording that has not been disclosed and discovered in terms of this rule may not, except with the leave of the managing judge granted on such terms as he or she may determine, be used for any purpose at the trial by the party who failed to disclose it, but any -

- (a) other party may use such document; and
 - (b) any document attached to the pleadings on which that party relies in support of allegations made by that party may be used by that party without discovery thereof under this rule.
- (3) Discovery of any document relevant to the matter in question must be made not less than 10 days before submission of the report to the managing judge referred to in rule 24.
- (4) The party making discovery must do so on Form 10 specifying separately -
- (a) documents, analogue or digital recordings in his or her possession or in possession of his or her agent other than the documents, analogues or tape recordings mentioned in paragraph (b);
 - (b) documents, analogues or digital recordings in respect of which he or she has a valid objection to produce; and
 - (c) documents, analogues or digital recordings which he or she or his or her agent had, but no longer has in his or her possession at the date of the affidavit.
- (5) The following must be omitted from the discovery schedule -
- (a) communications between a legal practitioner and another legal practitioner instructed by the party making discovery to prepare pleadings; and
 - (b) affidavits and notices in the action.
- (6) For the purposes of subrules (4) and (5), a document is considered to be sufficiently specified if it is described as being one of the documents in a bundle of documents of a specified nature which have been initialled and consecutively numbered by the deponent.
- (7) When the parties prepare a case management report referred to in rule 24 for the purpose of the case management conference -
- (a) the discovery affidavit referred to in subrule (4) must form part of such report;
 - (b) unless a document, analogue or digital recording listed under subrule (4)(a) is specifically disputed for whatever reason, it must be regarded as admissible without further proof, but not that the contents thereof are true;
 - (c) if the admissibility of a document, analogue or digital recording referred to in subrule (4) is disputed, the party disputing it must briefly state the basis for the dispute in the report.
- (8) If a party believes that there are, in addition to documents, analogues or digital recordings disclosed under subrule (4), other documents including copies thereof or analogues or digital recordings which may be relevant to any matter in question in the possession of any other party and which are not repetitive or a duplication of those documents, analogue or digital recording already discovered -
- (a) the first named party must refer specifically to those documents, analogues or digital recordings in the report in terms of rule 24 on Form 11; and

- (b) the managing judge must at the case management conference give any direction as he or she considers reasonable and fair, including an order that the party believed to have such documents, analogues or digital recordings in his or her possession must -
- (i) deliver the documents, analogues or digital recordings to the party requesting them within a specified time; or
 - (ii) state on oath or by affirmation within 10 days of the order that such documents, analogues or digital recordings are not in his or her possession, in which case he or she must state their whereabouts, if known to him or her.

(9) If a party believes that the reason given by the other party as to why any document, analogue or digital recording is protected from discovery is not sufficient, that party may apply in terms of rule 32(4) to the managing judge for an order that such a document must be discovered.

(10) The managing judge may inspect the document, analogue or digital recording referred in subrule (9) to determine whether the party claiming the document to be protected from discovery has a valid objection and may make any order the managing judge considers fair and just in the circumstances.

(11) A party may at any time on Form 12 request a party who has made discovery in terms of this rule to make available any document, analogue or digital recording for inspection and the requesting party is entitled to make a copy of such document, analogue or digital recording at his or her own cost.

(12) If the party who has been requested to make available the document, analogue or digital recording referred to in subrule (11) fails or refuses to do so, the managing judge may make an order to compel that party to comply with the request.

(13) If the party ordered by the managing judge to comply in terms of subrule (12) fails to do so, the managing judge may dismiss that party's claim or strike out his or her defence.

(14) On application by a party the managing judge may, at any case management conference or pre-trial conference or during the course of any proceeding, order on Form 13 the production by another party thereto under oath or affirmation of any document or tape recording in his or her possession or under his or her control relating to any matter in question in that proceeding and the managing judge may deal with the document or tape recording that is produced in any manner he or she considers proper.

(15) A recording includes a sound track, film, magnetic tape, record or any other material on which visual images, sound or other information can be recorded.

Expert witness: general

29. (1) A person may not call as a witness any person to give evidence as an expert on any matter in respect of which the evidence of an expert witness may be received unless -

- (a) that person has been granted leave by the court to do so or all the parties to the suit have consented to the calling of the witness; or
- (b) that person has complied with this rule.

(2) A party to any proceedings is entitled to call an expert witness at the trial if -

- (a) the name of the expert, his or her field of expertise and qualifications are included in the case management report required in terms of rule 24;

- (b) a summary of such expert's opinion and reasons therefor are included in the report required in terms of rule 24; and
- (c) the expert has indicated at the end of the report required in terms of rule 24 that he or she honestly believes that the facts stated in his or her report are true.
- (3) The parties must propose in the report to be submitted to the managing judge in terms of rule 24, the date on which the particulars referred to in subrule (2) will be delivered.
- (4) If there is no dispute as to the relevant qualifications of the expert witness and the managing judge is satisfied in that regard after the report in terms of rule 24 has been submitted to him or her the managing judge may, at the case management conference held in terms of rule 25, accept and order that the person in question qualifies as an expert.
- (5) The managing judge must, at the case management conference held in terms of rule 25, give directions pertaining to the evidence of such experts as he or she considers suitable or appropriate.
- (6) The managing judge or the court may, in any cause or matter before him or her or it, direct that there be a meeting 'without prejudice' of the parties' experts after their expert summaries have been filed for the purpose of identifying those parts of their evidence which are in issue.
- (7) Where a meeting referred to in subrule (6) takes place the experts must prepare a joint report indicating those parts of their evidence on which they are in agreement and those on which they are not.

Appointment of court expert

- 30.** (1) The court may, on application made to it by any party to a case, appoint an expert referred to in this rule and rule 31 as 'court expert' to report on certain matters in which case the provisions of this rule apply.
- (2) If after an application has been made under subrule (1), the court is satisfied that in any cause or matter a question that requires the services of an expert witness arises, the court may appoint an independent person as a court expert or if more than one question arises, two or more experts to inquire into and report on any question of fact or opinion not involving questions of law or of construction of a contract or law.
- (3) A court expert in a cause or matter must where possible be a person accepted as such by the parties and failing such acceptance is nominated by the court.
- (4) A question to be submitted to the court expert and an instruction, if any, to be given to the expert must, failing agreement between the parties in respect thereof, be settled by the court.

General provisions relating to court expert

- 31.** (1) The court expert must send his or her report together with any number of copies that the court may direct to the court and the registrar must send copies of the report to the parties or their legal practitioners of record, but the court may direct the court expert to make a further or supplemental report.
- (2) Any part of a court expert's report which is not accepted by all the parties to the cause or matter in which it is made must be treated as information furnished to the court and be given such weight as the court thinks fit.

(3) Where the court expert is of the opinion that an experiment, test or inspection of any kind, other than of one of a trifling character, is necessary to enable him or her to make a satisfactory report he or she must inform the parties or their legal practitioners of record and must, if possible and practicable, make arrangements with them as to the expenses involved, and invite the parties to attend at the experiment, test or inspection and if the parties are unable to agree on any of those matters the disagreement must be settled by the court.

(4) A party may, within 15 days or such shorter period as the court may direct after receiving a copy of the court expert's report, apply to the court on notice to any other party for leave to cross-examine the court expert on his or her report.

(5) Where a court expert is appointed in a cause or matter any party may, on giving to any other party a reasonable notice before the trial of his or her intention to do so, call one expert witness to give evidence on the question reported on by the court expert but no party may call more than one such expert witness without the leave of the court and the court may not grant leave unless it considers the circumstances of the case to be exceptional.

(6) The fees of the court expert are fixed by the court and include a fee for his or her report and a reasonable amount for each day during which he or she is required to be present in court.

(7) Without prejudice to any order providing for payment of the court expert's fees as part of the costs of the cause or matter, the parties are jointly and severally liable to pay the amount fixed by the court for the expert's fees, but where the appointment of the court expert is opposed the court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the fees of the expert as the court may determine.

Interlocutory matters and applications for directions

32. (1) The managing judge must give directions in respect of an interlocutory proceeding which a party has initiated or intends to raise with regard to the date and time of hearing of the matter, times for filing of heads of argument and generally the speedy finalisation thereof.

(2) The managing judge must conduct an interlocutory hearing within 30 days of the interlocutory proceeding being brought.

(3) The managing judge must after hearing an interlocutory matter give a ruling there and then or within 15 days thereafter, except that if it involves a complex question of law the ruling must be given within 30 days after the hearing.

(4) In any cause or matter any party may make application for directions in respect of an interlocutory matter on which a decision may be required, either by notice on a managing judge's motion court day or at a case management conference, status hearing or pre-trial conference.

(5) The party making an application under subrule (4) must give not less than four days' notice of the application to the other party or parties.

(6) The party applying for directions must, in his or her notice, set out the issues in respect of which he or she intends to ask directions and the issues may include generally the proceedings to be taken in the cause and the costs of the application.

(7) Despite subrule (6), specific directions must be sought on the proposed dates for the exchange of further pleadings in so far as intervening circumstances or the direction applied for on being granted may necessitate variation of the case plan in case of an action and due dates for the delivery of affidavits in case of application proceedings.

(8) No affidavit may be used in the hearing of an application for directions except by leave of the managing judge and the managing judge must give an order *ex tempore* on the direction sought and in any event, not more than three days after the hearing.

(9) In relation to any proceeding referred to in this rule, a party wishing to bring such proceeding must, before launching it, seek an amicable resolution thereof with the other party or parties and only after the parties have failed to resolve their dispute may such proceeding be delivered for adjudication by the court.

(10) The party bringing any proceeding contemplated in this rule must, before instituting the proceeding, file with the registrar details of the steps taken to have the matter resolved amicably as contemplated in subrule (9), without disclosing privileged information.

(11) Despite anything to the contrary in these rules, whether or not instructing and instructed legal practitioners are engaged in a cause or matter, the costs that may be awarded to a successful party in any interlocutory proceeding may not exceed N\$20 000.

Medical examination in matters involving death or bodily injury

33. (1) A party to proceedings in which -

- (a) damages or compensation in respect of alleged bodily injury are or is claimed;
- (b) damages resulting from the death of another person are claimed,

is entitled to require any party claiming such damages or compensation and whose own state of health is relevant for the determination thereof to submit to a medical examination.

(2) A party requiring another party to submit to a medical examination must deliver a notice -

- (a) specifying the nature of the examination required, the person or persons by whom the examination will be conducted, the place where the examination is to take place and the date, being not less than 15 days from the date of such notice, and the time when it is desired that such examination is to take place;
- (b) requiring that other party to submit himself or herself for examination there and then; and
- (c) informing the other party that he or she may have his or her own medical adviser present at the examination.

(3) The notice referred to in subrule (2) must be accompanied by a remittance in respect of the reasonable expenses to be incurred by the other party in attending the examination and the expenses must be tendered on the scale as if that person were a witness in a civil suit before the court, except that -

- (a) where the other party is immobile, the amount to be paid to him or her must include the cost of his or her travelling by motor vehicle or any reasonable means of transportation and, where required, the reasonable cost of a person attending on him or her;
- (b) where the other party will actually lose his or her salary or other remuneration during the period of his or her absence from work he or she is, in addition to the expenses referred to in this subrule, entitled to receive an amount not exceeding 80 per cent per day in respect of the salary or other remuneration which he or she has actually lost; and

- (c) any amounts paid by a party in terms of this subrule are costs in the cause unless the court directs otherwise.

(4) The person receiving the notice referred in subrule (2) must within five days after the service thereof notify the person delivering it in writing of the nature and grounds of any objection which he or she may have in relation to the -

- (a) nature of the proposed examination;
- (b) person or persons by whom the examination is to be conducted;
- (c) place, date and time of the examination; or
- (e) amount of the expenses tendered to him or her.

(5) If an objection is raised in relation to the -

- (a) place, date or time of the examination, the person objecting must furnish an alternative date, time or place; or
- (b) amount of the expenses tendered, the person objecting must furnish particulars of such increased amount as he or she requires.

(6) If the person who -

- (a) receives a notice given under subrule (2) fails to deliver an objection within a period of five days from delivery of the notice, he or she is considered to have agreed to the examination on the terms proposed by the person giving the notice; and
- (b) has given notice in terms of subrule (2) regards the objection raised by the person receiving the notice as unfounded in whole or in part, he or she may on notice to the other person make application to the managing judge or the court to determine the conditions on which the examination, if any, is to be conducted.

(7) A party to any cause or matter may at any time by notice in writing require any person claiming damages referred to in subrule (1) to make available in so far as he or she is able to do so to such party within 10 days any medical reports, hospital records, X-ray photographs or other documentary information of like nature relevant to the assessment of the damages and to provide copies of these items on request.

(8) If it appears from any medical examination carried out either by agreement between the parties or under any notice given in terms of this rule or by order of a judge that a further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of the damages referred to in subrule (1), any party may require a second and final medical examination in accordance with this rule.

Examination or inspection of property

34. (1) If it appears to a party that the state or condition of any property of any nature, whether movable or immovable, may be relevant to the decision of a matter at issue in any cause or matter that party may -

- (a) at any stage give notice requiring the party relying on the existence of the state or condition of that property or having that property in his or her possession or under his or her control to make it available for examination or inspection in terms of this rule; and

- (b) in the notice referred to in paragraph (a) require that the property or a fair sample of it remain available for examination or inspection for a period of not more than 10 days from the date of receipt of the notice.

(2) The party called on to submit the property referred to in subrule (1) for examination or inspection may require the party requesting it to specify the nature of the examination or inspection to which it is to be subjected and that party is not bound to subject the property to examination or inspection if this will materially prejudice that party because of the effect the intended examination or inspection may have on the property.

(3) In case of a dispute as to whether the property should be submitted for examination or inspection, either party may refer the dispute to the managing judge by way of notice delivered to the judge stating that the examination or inspection is required and that objection is taken in terms of this rule.

(4) After considering the matter the managing judge may make any order as he or she considers proper or suitable.

Furnishing of examination or inspection reports

35. A party causing an examination or inspection to be made in terms of rule 33 or rule 34 must-

- (a) cause the person making the examination or inspection to give a full report in writing of the results of his or her examination or inspection and the opinions that he or she formed on any relevant matter as a result of the examination or inspection;
- (b) after receipt of the report and on request, furnish any other party with a complete copy of the report; and
- (c) bear the expense of the carrying out of the examination or inspection and such expense forms part of that party's costs.

Plans, photos, diagrams and models

36. (1) A person may not, except with the leave of the court or the consent of all the parties, tender in evidence any plan, diagram, model or photograph unless he or she has not less than 15 days before the pre-trial conference in terms of rule 26 delivered a notice -

- (a) stating his or her intention to do so;
- (b) offering inspection thereof; and
- (c) requiring the party receiving the notice to admit the tendering in evidence of such plan, diagram or photograph within 10 days after receipt of the notice.

(2) If the party receiving the notice in terms of subrule (1) fails, within the period stated in paragraph (c) of that subrule to admit as contemplated in that subrule, the plan, diagram, model or photograph may be received in evidence on its mere production and without further proof thereof but, if that party states that he or she does not admit them, that plan, diagram, model or photograph may be proved at the trial and the party receiving the notice may be ordered to pay the costs of the proving.

(3) The plans, photos, diagrams and models admitted in terms of subrule (2), as well as those not admitted, must be listed and recorded in the pre-trial order in terms of rule 26(7).

Procuring evidence for trial by subpoena

37. (1) A party who requires the attendance of a person to give evidence at a trial may as of right, without any prior proceeding, sue out of the office of the registrar one or more subpoenas for that purpose and each of the subpoenas must contain the names of not more than four persons.

(2) Service of a subpoena on a person named in the subpoena must be effected by the deputy-sheriff in the manner set out in rules 8 and 11 and the process of subpoenaing witnesses must be on Form 14.

(3) If a witness has in his or her possession or control any deed, instrument, writing or thing which the party requiring his or her attendance desires to be produced in evidence the subpoena must specify that deed, document, writing or thing and require the person subpoenaed to produce it to the court at the trial.

Referral to alternative dispute resolution (ADR)

38. (1) The managing judge may, at any time in terms of practice directions issued by the Judge-President, either of his or her own initiative or at the request of a party refer any part of the proceeding or any issue to an alternative dispute resolution (ADR) process or in an attempt to resolve that part of the proceeding or issue by way of alternative dispute resolution and towards that end the managing judge must, after hearing the parties -

- (a) give directions concerning terms of reference, where and how, and if not agreed by the parties, by whom such ADR is to be conducted; and
- (b) stipulate the time when it is to be conducted, as well as the time when or within which a report by the conciliator or mediator concerned is to be submitted to court.

(2) The costs of any ADR procedure referred to in subrule (1) are costs in the cause, unless the parties agree otherwise.

(3) No further proceedings must take place until an order by the managing judge is made in respect of such ADR procedure based on the report of the conciliator or mediator.

(4) If the ADR procedure fails to produce a settlement the report referred to in subrule (1)(b) must only state the fact that the settlement discussions have failed, without stating the reason for such failure, except where it is necessary to inform the court for the possible imposition of sanctions contemplated in rule 39(8).

(5) The managing judge is not obliged to follow the recommendation or conclusion of the conciliator or mediator and he or she may make any order as he or she considers appropriate.

Obligations of parties where matter referred for ADR

39. (1) Where a matter has been referred for ADR in terms of rule 38, the parties must exchange their settlement proposals in writing as follows -

- (a) the letter of the plaintiff or of his or her legal practitioner, if represented, must set out the following information -
 - (i) a brief summary of the evidence and legal principles that the plaintiff relies on to establish his or her claim;
 - (ii) a brief explanation of why, in the opinion of the plaintiff, the relief claimed would succeed at the trial;

- (iii) an itemisation of the damages and other relief the plaintiff believes can be established at the trial and a brief summary of the evidence and legal principles supporting the damages or other relief; and
 - (iv) a concise settlement proposal; and
 - (b) the letter of the defendant or of his or her legal practitioner, if represented, in response to the plaintiff's letter must set out the following information -
 - (i) any points in the plaintiff's letter with which the defendant agrees;
 - (ii) any points in the plaintiff's letter with which the defendant disagrees; and
 - (iii) a concise settlement offer.
- (2) Copies of the letters referred to in subrule (1) must not under any circumstances be brought to the attention of the managing judge or the court.
- (3) The parties or the legal practitioners of the parties, if represented, must within seven days after the exchange of letters referred to in subrule (1) hold a settlement conference before the conciliator or mediator.
- (4) The legal practitioners of the parties must provide their respective clients with the opposing party's letter referred to in subrule (1) before the holding of a settlement conference.
- (5) Only a person with full settlement authority must attend a settlement conference convened by the parties within a time limit as directed by the managing judge or the court, but this subrule does not apply where the Government is a party or where the managing judge or the court issues a contrary order.
 - (6) For the purposes of subrule (5), a party that is -
 - (a) a natural person, must be represented by that natural person or if that natural person is under a disability by his or her legal representative;
 - (b) a juristic person, must be represented by a person duly authorised in writing by that juristic person, other than the legal practitioner of record;
 - (c) a regional or local authority council, must be represented by the chief executive officer of that council or his or her duly authorised representative who is not the legal practitioner of record;
 - (d) insured and will in the cause or matter claim immunity from an insurer under an insurance policy, must be represented by a duly authorised representative of the insurer with settlement authority, together with the person representing the insured party.
- (7) A person referred to in subrule (5) must, without reference to any other person not present at the settlement conference, have the necessary authority to make a final and binding settlement regarding any offer or demand.
- (8) If the person referred to in subrule (5) has no such authority which results in the settlement conference being adjourned to enable him or her to obtain additional authority, he or she may have an order for costs made against him or her if the ADR procedure fails and the matter proceeds to trial.

(9) The letters referred to in subrule (1) and anything discussed during a settlement conference are without prejudice and may not be used by any party in the proceedings to which the letters and the conference relate or in any other proceedings.

PART 4 PROCEDURAL STEPS IN RESPECT OF CAUSES

Joinder of parties and causes of action

40. (1) Any number of persons, each of whom has a claim whether jointly, jointly and severally, separately or in the alternative may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of those persons proposing to join as plaintiffs would, if he or she brought a separate action, be entitled to bring that action -

- (a) so long as the right to relief of the persons proposing to join as plaintiff depends on whether the court is to determine substantially the same question of law or fact which, if separate actions were instituted, would arise in such action; and
- (b) joinder may be allowed by the court on condition that failure of the claim of one plaintiff does not on that very fact extinguish the claims of the other plaintiffs.

(2) A plaintiff may join several causes of action in the same action.

(3) A plaintiff may sue several defendants in one action either jointly, jointly and severally, separately or in the alternative whenever the dispute arising between them or any of them on the one hand and the plaintiff or any of the plaintiffs depends on the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action.

(4) Where there has been a joinder of causes of action or of parties, the court may on the application of any party at any time order that separate trials be held either in respect of some or all of the causes of action or some or all of the parties and the court may on such application make such order as it considers suitable or appropriate.

(5) Any party who seeks a joinder of parties or causes must apply for such joinder to the managing judge for directions in terms of rule 32(4).

(6) If under this rule the managing judge orders the joinder to be effected he or she must simultaneously give directions as regards the time within which it should be done, service of it and further pleadings or amendment of pleadings.

Consolidation of actions and intervention of persons as plaintiffs or defendants

41. (1) Where separate actions have been instituted the managing judge may on the application of any party to any action after notice to all interested parties and if it appears to the managing judge convenient to do so, make an order consolidating the actions, after which -

- (a) the actions proceed as one action;
- (b) rule 40 applies with necessary modifications required by the context to the action so consolidated; and
- (c) the court may make any order it considers suitable or appropriate with regard to the further conduct of the matter and may give one judgment disposing of all matters in dispute in the actions.

(2) A person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply to the managing judge for leave to intervene as a plaintiff or defendant.

(3) The managing judge may on application made under subrule (2) make such order including an order as to costs and give such directions as to further procedure in the action which he or she considers suitable or appropriate.

Proceedings by and against partnerships, firms and associations

42. (1) In this rule -

“association” means any unincorporated body of persons, not being a partnership;

“firm” means a business, including a business carried on by a body corporate or by the sole proprietor thereof under a name other than his or her own;

“plaintiff” and “defendant” include applicant and respondent, respectively;

“relevant date” means the date of accrual of the cause or matter giving rise to the action or application;

“sue” and “sued” and their grammatical derivatives are used in relation to actions and applications.

(2) A partnership, a firm or an association may sue or be sued in its name.

(3) A plaintiff suing a partnership need not allege the names of the partners and if he or she does, any error or omission or inclusion does not afford a defence to the partnership.

(4) Subrule (3) applies with necessary modifications required by the context to a plaintiff suing a firm.

(5) A plaintiff suing a firm or a partnership may at any time before or after judgment deliver to the defendant a notice calling for particulars as to the full name and residential address of the proprietor or of each partner as at the relevant date.

(6) The defendant must within 10 days deliver a notice containing the information referred to in subrule (5).

(7) Concurrently with the statement referred to in subrule (5) the defendant must serve on the persons referred to in that subrule a notice on Form 15 with reasonable adaptations and modifications and deliver proof by affidavit of such service.

(8) A plaintiff suing a firm or a partnership and alleging in the summons or application that a person was at the relevant date the proprietor or a partner must notify that person accordingly by delivering a notice on Form 15 with reasonable adaptations and modifications.

(9) A person served with a notice in terms of subrule (7) or (8) must be regarded as a party to the proceedings with the rights and duties of a defendant.

(10) A party to the proceedings may aver in the pleadings or affidavits that the person referred to in subrule (9) was at the relevant date the proprietor or a partner or that he or she is estopped from denying such status.

(11) If a party to the proceedings disputes such status the court may at the hearing decide that issue *in limine*.

(12) Execution in respect of a judgment against a partnership must first be levied against the assets of the partnership and after such execution, against the private assets of any person held to be estopped from denying his or her status as a partner, as if judgment has been entered against him or her.

(13) Subrules (1) to (12) apply with necessary modifications required by the context to a defendant sued by a firm or a partnership.

(14) If a partnership is sued and it appears that since the relevant date it has been dissolved the proceedings must nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners as if sued individually.

(15) Subrule (14) applies with necessary modifications required by the context where it appears that a firm has been discontinued.

(16) A plaintiff suing an association may at any time before or after judgment deliver a notice to the defendant calling for a true copy of its current constitution and a list of the names and addresses of the office-bearers and their respective offices as at the relevant date.

(17) The defendant must comply with the notice referred to in subrule (16) within 10 days of receipt of the notice.

(18) Subrules (16) and (17) apply with necessary modifications required by the context to a defendant sued by an association.

(19) Subrules (8) to (12) apply with necessary modifications required by the context when -

- (a) a plaintiff alleges that a member, employee or agent of the defendant association is liable in law for its alleged debt; or
- (b) a defendant alleges that a member, employee or agent of the plaintiff association is responsible in law for the payment of any costs which may be awarded against the association.

(20) Subrule (14) applies with the necessary modifications required by the context to the continuance of the proceedings against a member, employee or agent referred to in subrule (19)(a).

Change of parties

43. (1) Proceedings may not terminate solely because of the death, marriage or other change of status of a party unless the cause of such proceedings is at the same time extinguished by the death, marriage or other change of status.

(2) If because of an event referred to in subrule (1) it becomes necessary or proper to introduce a further person as a party in the proceedings, whether in addition to or in substitution for the party to whom such proceedings relate, a party to those proceedings must without delay by notice to that further person, to every other party and to the registrar add or substitute that further person as a party.

(3) After a party has been added or substituted under subrule (2), the proceedings must, subject to an order made under subrule (8), afterwards continue in respect of the person who has been added or substituted as if he or she has been a party from the commencement thereof and all steps validly taken before that addition or substitution continue to be of full force and effect.

(4) A notice referred to in subrule (2) may not, except with the leave of the court granted on such terms as to adjournment or otherwise as to it may consider suitable or appropriate, be given after the commencement of the hearing of any opposed matter.

(5) A copy of the notice served on any person joined as a party to the proceedings must be accompanied -

- (a) in application proceedings, by copies of all notices, affidavits and material documents previously delivered; and
- (b) in an action, by copies of all pleadings and like documents already filed of record,

unless that party is represented by a legal practitioner who is already in possession of copies of the documents referred to in paragraphs (a) or (b).

(6) A notice referred to in subrule (2) must be served by the deputy-sheriff unless the notice is directed to the registrar alone.

(7) If a party to any proceeding dies or ceases to be capable of acting as such, his or her executor, curator, trustee or similar lawful representative, may by notice to all other parties and to the registrar indicate that he or she desires in his or her capacity as such to be substituted for such party and unless the court orders otherwise, he or she is thereafter for all purposes considered to have been so substituted.

(8) The managing judge may, on a notice of application delivered by any party within 10 days of service of notice in terms of subrules (2) or (7), at a case management or pre-trial conference set aside or vary any addition or substitution of a party thus affected or may dismiss the application or confirm the addition or substitution on such terms, if any, as to the delivery of affidavits or pleadings or as to postponement or adjournment or as to costs or otherwise as he or she may consider suitable or proper.

Representation of parties

44. (1) Where a legal practitioner acts on behalf of a party in any proceedings, the legal practitioner must notify all other parties of his or her name and address.

(2) A party represented by a legal practitioner in any proceedings may at any time terminate the legal practitioner's authority to act for him or her and he or she may thereafter act in person or appoint another legal practitioner to act for him or her.

(3) Where a party terminates the authority of his or her legal practitioner, that party must without delay give notice to the registrar and to all other parties of the termination of his or her former legal practitioner's authority and, if he or she has appointed another legal practitioner to act for him or her, of the latter's name and address and the legal practitioner so appointed must without delay file a notice of representation with the registrar and all other parties.

(4) Where the party referred to in subrule (2) does not appoint another legal practitioner to represent him or her, that party must, in the notice of termination of his or her former legal practitioner's authority also notify all other parties of an address within a flexible radius for the service on him or her of all documents in those proceedings.

(5) On receipt of a notice in terms of subrule (3) or (4), the address of the legal practitioner or of the party becomes the address of such party for the service on him or her of all documents in those proceedings, but any service duly effected elsewhere before receipt of the notice is, despite the change, for all purposes valid unless the court orders otherwise.

(6) Where a legal practitioner acting in any proceedings for a party ceases so to act he or she must without delay deliver notice of his or her ceasing to act as legal practitioner to that party, the registrar and all other parties.

(7) The legal practitioner referred to in subrule (6) must cause notice to the party for whom he or she has acted to be served by the deputy-sheriff in the manner referred to in rule 8 with necessary modifications and adaptations.

(8) A party that was formerly represented must, within 10 days after the notice referred to in subrule (6) has been served on him or her, notify all other parties of a new address for service referred to in subrules (3) or (4) and, unless the court otherwise directs, any of the other parties may before receipt of the notice of his or her new address for service of documents serve any documents on that party at that party's last known or given address.

(9) The notice to the registrar must state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them.

(10) The notice to the party formerly represented must inform that party of the provisions of subrules (3) and (4).

PART 5 PLEADINGS

Pleadings in general

45. (1) A legal practitioner or a party to an action, if that party sues or defends in person, must sign the summons and every other pleading.

(2) The division of the court from which the summons is issued, the title of the action describing the parties and the number assigned for the case by the registrar must appear at the heading of each pleading, but, where the parties are numerous or the title lengthy and an abbreviation is reasonably possible, it may be so abbreviated.

(3) Every pleading must be delivered.

(4) After the registrar has registered a pleading he or she must endorse on the first page of the pleading the name of the managing judge to whom the case has been allocated.

(5) Every pleading must be divided into paragraphs, including subparagraphs, which must be consecutively numerically numbered and must contain a clear and concise statement of the material facts on which the pleader relies for his or her claim, defence or answer to any pleading, with sufficient particularity to enable the opposite party to reply and in particular set out -

(a) the nature of the claim, including the cause of action; or

(b) the nature of the defence; and

(c) such particulars of any claim, defence or other matter pleaded by the party as are necessary to enable the opposite party to identify the case that the pleading requires him or her to meet.

(6) Every allegation in the particulars of claim or counterclaim must be dealt with specifically and not evasively or vaguely.

(7) A party who in his or her pleading relies on a contract must state whether the contract is written or oral and when, where and by whom it was concluded and if the contract is written a true copy thereof or of the part relied on in the pleading must be annexed to the pleading.

(8) It is not necessary in a pleading to state the circumstances from which an alleged tacit term can be inferred.

(9) A plaintiff suing for damages must set them out in such a manner as will enable the

defendant reasonably to assess the quantum thereof.

(10) A plaintiff suing for damages for personal injury must specify the nature and extent of the injuries and the nature, effects and duration of the disability alleged to give rise to such damages.

(11) In a claim for damages for personal injuries the plaintiff must, as far as practicable, state separately what amount, if any, is claimed for -

- (a) medical costs and hospital and other similar expenses;
- (b) pain and suffering;
- (c) disability in respect of -
 - (i) the earning of income stating the earnings lost to date and the estimated future loss;
 - (ii) the enjoyment of amenities of life and giving particulars.

Plea

46. (1) Where a defendant on whom a combined summons has been served has delivered notice of intention to defend, he or she must on the date determined in terms of rule 23 deliver a plea with or without a counterclaim or a notice of intention to note an exception or an exception with or without application to strike out.

(2) Every plea must-

- (a) deal with each and every allegation made by the plaintiff in his or her particulars of claim;
- (b) clearly state which allegations by the plaintiff are admitted;
- (c) clearly and concisely state all material facts on which the defendant relies in defence or answer to the plaintiff's claim.

(3) Every allegation of fact in the particulars of claim which is not stated in the plea as denied or admitted is regarded as having been admitted and, if an explanation or qualification of an admission or a denial is necessary, it must be stated in the plea.

(4) If, because of any counterclaim, the defendant claims that on the giving of judgment on that counterclaim, the plaintiff's claim will be extinguished either in whole or in part, the defendant may in his or her plea refer to the fact of such counterclaim and request that judgment in respect of the claim or any portion thereof which would be extinguished by such counterclaim be postponed until judgment on the counterclaim.

(5) If the court accepts a request made under subrule (4), it must, unless the court on the application of any person interested otherwise orders, postpone the judgment on the claim either in whole or in part, but the court may -

- (a) if no other defence has been raised, give judgment for such part of the claim as would not be extinguished as if the defendant were in default of filing a plea in respect thereof; or

- (b) on the application of either party, make such order as to it seems suitable or proper.

Replication

47. (1) After service on him or her of a plea the plaintiff must, subject to subrule (2), on the date determined in terms of rule 23 where necessary deliver a replication to the plea and such replication must describe in sufficient detail all facts supporting the replication.

(2) No replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading is necessary, and in that event, an issue is considered as joined and pleadings are considered as closed in terms of rule 51(b).

(3) Where a replication or subsequent pleading is necessary a party may therein join issue on the allegations in the previous pleading and to such extent as he or she has not dealt specifically with the allegations in the plea or such other pleading, such joinder of issue operates as a denial of every material allegation of fact in the pleading on which issue is joined.

Counterclaim

48. (1) A defendant who counterclaims must simultaneously and together with his or her plea deliver a counterclaim setting out the material facts thereof in accordance with rule 45, unless the plaintiff agrees or if he or she refuses, the court allows it to be delivered at a later stage.

(2) A counterclaim must be set out either in a separate document or in a portion of the document containing the plea and headed 'Counterclaim' and it is unnecessary to repeat therein the names or descriptions of the parties to the proceedings in the counterclaim.

(3) If the defendant is entitled to take action against any other person and the plaintiff, whether jointly or severally, separately or in the alternative, he or she may with the leave of the court proceed in that action by way of a counterclaim against the plaintiff and the other persons, in a manner and on such terms as the court may direct.

(4) A defendant who counterclaims in terms of subrules (1) or (3) must add to the title of his or her plea a further title corresponding with what would be the title of any action instituted against the parties against whom he or she counterclaims and all further pleadings in the action must, subject to rule 45(2), bear such title.

(5) A defendant may counterclaim conditionally on the claim or defence in the event of the counterclaim failing.

Plea to counterclaim

49. (1) The plaintiff must deliver a plea to the counterclaim of the defendant on a date determined in terms of rule 23.

(2) The plea referred to in subrule (1) must conform with necessary adaptations and modifications to rule 46(2) and (3).

Third party procedure

50. (1) Where in an action a party claims -

- (a) as against any other person not a party to the action (in this rule called a "third party") that party is entitled in respect of any relief claimed against him or her to a contribution or indemnification from the third party; or

- (b) that any question or issue in the action is substantially the same as a question or an issue which has arisen between that party and the third party and the question or issue should properly be determined not only as between any parties to the action but also as between those parties and the third party or between any of them,

that party may issue a notice (hereinafter referred to as “third party notice”) on Form 16 and the notice must be served by the deputy-sheriff.

(2) The notice referred to in subrule (1) must state the nature and grounds of the claim of the party issuing the notice, the question or issue to be determined and the relief or remedy claimed and in so far as the statement of the claim and the question or issue are concerned the rules governing pleadings apply with necessary modifications required by the context.

(3) The third party notice -

- (a) must be served before the close of pleadings in the action in connection with which it is issued;
- (b) if intended to be served after the close of pleadings, may only be so served with the leave of the managing judge; and
- (c) must be accompanied by a copy of all pleadings filed in the action up to the date of service of the notice.

(4) If the third party intends to contest the claim set out in the third party notice he or she must deliver notice of intention to defend in the same manner that he would respond to a combined summons and immediately on receipt of the notice the party who issued the third party notice must inform all other parties accordingly.

(5) After service of a third party notice on the third party that party becomes a party to the action and if he or she delivers notice of intention to defend he or she is, as a party, entitled to be served with all documents and must be given notice of all matters.

(6) The third party may plead or except to the third party notice as if he or she were a defendant to the action and may also by filing a plea or other pleading contest the liability of the party issuing the notice on any ground irrespective of the fact that the ground has not been raised in the action by the party issuing the notice, but the third party is not entitled, except to the extent that he or she is entitled to do so in terms of rule 48, to make a counterclaim against any person other than the party issuing the notice.

(7) The rules governing the filing of further pleadings apply to third parties, namely -

- (a) in so far as the third party’s plea relates to the claim of the party issuing the notice, that party is regarded as the plaintiff and the third party as the defendant;
- (b) in so far as the third party’s plea relates to the plaintiff’s claim, the plaintiff is regarded as the defendant and the plaintiff as the defendant must file pleadings as provided in these rules.

(8) Where a party to an action has, as against any other party, whether the first named party has become a party by virtue of a counterclaim by another person or by virtue of a third party notice or by any other means, a claim referred to in subrule (1) he or she may issue and serve on such other party a third party notice in accordance with this rule.

(9) Where subrule (8) applies, the same procedure applies as between the parties to that notice and they are subject to the same rights and duties as if that other party has been served with a

third party notice in terms of subrule (1), except that no further notice of intention to defend need to be delivered.

(10) A party who has been joined as a third party by virtue of a third party notice may at any time make application to the managing judge for the separation of the trial of all or any of the issues that has arisen as a result of the third party notice.

(11) The managing judge may, on application made under subrule (10), make any order as he or she considers suitable or proper, including an order for the separate hearing and determination of an issue, on condition that his or her decision on any other issue arising in the action either as between the plaintiff and the defendant or as between any other parties, is binding on the applicant.

Close of pleadings

51. Pleadings are considered closed if -

- (a) either party has joined issue without alleging any new matter and without adding any further pleading;
- (b) the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed;
- (c) the parties agree in writing that the pleadings are closed and an agreement in that regard is filed with the registrar; or
- (d) the parties are unable to agree whether pleadings have closed and the court on application of a party declares the pleadings closed.

Amendment of pleadings

52. (1) A party desiring to amend a pleading or document, other than an affidavit, filed in connection with a proceeding must give notice to all other parties to the proceeding and the managing judge of his or her intention so to amend.

(2) A notice referred to in subrule (1) must state that unless objection in writing to the proposed amendment is made within 10 days the party giving the notice will amend the pleading or document in question accordingly.

(3) If no objection in writing is made the party receiving the notice is considered as having agreed to the amendment.

(4) If objection is made within the period referred to in subrule (2), which objection must clearly and concisely state the grounds on which it is founded, the party desiring to pursue the amendment must within 10 days after receipt of the objection apply to the managing judge for leave to amend.

(5) The managing judge must set the matter down for hearing and thereafter the managing judge may make such order thereon as he or she considers suitable or proper and that order must be made within 15 days from the date of the hearing.

(6) Whenever the court has ordered an amendment or no objection has been made within the time specified in subrule (2), the party amending must deliver the amendment within the time specified in the court's order or within five days after the expiry of the time specified in subrule (2).

(7) When an amendment to a pleading has been delivered in terms of this rule, the other party is, within 15 days of receipt of the amended pleading, entitled to plead to the amendment or to amend consequentially any pleading already filed by him or her.

(8) A party giving notice of amendment is, unless the court otherwise orders, liable to pay the costs thereby occasioned to any other party.

(9) The court may during the hearing at any stage before judgment, grant leave to amend a pleading or document on such terms as to costs or otherwise as the court considers suitable or proper.

(10) If the amendment of a pleading affects any deadline set in a case plan order, the managing judge or the court must give appropriate directions as to new dates for the taking of such steps as remain unfinished in terms of the case plan order.

PART 6
NON-COMPLIANCE WITH THE RULES OF COURT, PRACTICE
DIRECTIONS OR COURT ORDERS

Sanctions for failure to comply with these rules, practice direction or court order or direction

53. (1) If a party or his or her legal practitioner, if represented, without reasonable explanation fails to -

- (a) attend a case planning conference, case management conference, a status hearing, an additional case management conference or a pre-trial conference;
- (b) participate in the creation of a case plan, a joint case management report or parties' proposed pre-trial order;
- (c) comply with a case plan order, case management order, a status hearing order or the managing judge's pre-trial order;
- (d) participate in good faith in a case planning, case management or pre-trial process;
- (e) comply with a case plan order or any direction issued by the managing judge; or
- (f) comply with deadlines set by any order of court,

the managing judge may enter any order that is just and fair in the matter including any of the orders set out in subrule (2).

(2) Without derogating from any power of the court under these rules the court may issue an order -

- (a) refusing to allow the non-compliant party to support or oppose any claims or defences;
- (b) striking out pleadings or part thereof, including any defence, exception or special plea;
- (c) dismissing a claim or entering a final judgment; or
- (d) directing the non-compliant party or his or her legal practitioner to pay the opposing party's costs caused by the non-compliance.

Sanctions for non-compliance in absence of defaulting party obtaining relief, relaxation, extension or condonation

54. (1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for a failure to comply imposed by the rule, practice direction or court order has

effect and consequences for such failure and such effect and consequences follow, unless the party in default applies for and is granted relaxation, extension of time or relief from sanction.

- (2) Where a rule, practice direction or court order -
 - (a) requires a party to do something within a specified time; or
 - (b) specifies the consequences of a failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

(3) Where a party fails to deliver a pleading within the time stated in the case plan order or within any extended time allowed by the managing judge, that party is in default of filing such pleading and is by that very fact barred.

(4) For the purposes of this rule the days from 16 December to 15 January, both inclusive, are not counted in computing the time allowed for the delivery of any pleading.

Upliftment of bar, extension of time, relaxation or condonation

55. (1) The court or the managing judge may, on application on notice to every party and on good cause shown, make an order extending or shortening a time prescribed by these rules or by an order of court for doing an act or taking a step in connection with proceedings of any nature whatsoever, on such terms as the court or managing judge considers suitable or appropriate.

(2) An extension of time may be ordered although the application is made before the expiry of the time prescribed or fixed and the managing judge ordering the extension may make any order he or she considers suitable or appropriate as to the recalling, varying or cancelling of the consequences of default, whether such consequences flow from the terms of any order or from these rules.

Relief from sanctions or adverse consequences

56. (1) On application for relief from a sanction imposed or an adverse consequence arising from a failure to comply with a rule, practice direction or court order, the court will consider all the circumstances, including -

- (a) whether the application for relief has been made promptly;
 - (b) whether the failure to comply is intentional;
 - (c) whether there is sufficient explanation for the failure;
 - (d) the extent to which the party in default has complied with other rules, practice directions or court orders;
 - (e) whether the failure to comply is caused by the party or by his or her legal practitioner;
 - (f) whether the trial date or the likely trial date can still be met if relief is granted;
 - (g) the effect which the failure to comply has or is likely to have on each party; and
 - (h) the effect which the granting of relief would have on each party and the interests of the administration of justice.
- (2) An application for relief must be supported by evidence.

(3) The managing judge may, on good cause shown, condone a non-compliance with these rules, practice direction or court order.

PART 7
APPLICATION FOR SPECIFIC ORDERS OR JUDGMENTS

Exception

57. (1) Where a pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or a defence, the opposing party may deliver an exception thereto within the period allowed for the purpose in the case plan order or in the absence of provision for such period, within such time as directed by the managing judge or the court for such purpose on directions in terms of rule 32(4) being sought by the party wishing to except.

(2) Where a party intends to take an exception that a pleading is vague and embarrassing he or she must, within 10 days of the period allowed to do so, by notice afford his or her opponent the opportunity of removing the cause of complaint.

(3) The party excepting must within 10 days from the date on which a reply to the notice referred to in subrule (2) is received or after the date on which reply is due, deliver his or her exception.

(4) If a party excepts to a pleading the managing judge must give directions when the exception will be heard and give such other directions as the managing judge considers proper or appropriate.

(5) Where an exception is taken to a pleading the grounds on which the exception is founded must be clearly and concisely stated.

(6) Where an exception is taken to a pleading on the grounds that such pleading lacks the averments which are necessary to sustain an action or defence, no plea, replication or other pleading over is necessary.

Application to strike out

58. (1) Where a pleading contains averments which are scandalous, vexatious or irrelevant, the opposing party may make an application to strike out the averments within -

- (a) the period allowed for the purpose in the case plan order, in case of an action;
- (b) such time as is allowed in the rules governing application proceedings, in case of an application; or
- (c) such time as may be directed by the managing judge or the court on directions in terms of rule 32(4) being sought by the party wishing to strike out,

but the court may not grant the relief sought unless it is satisfied that the applicant will be prejudiced in the conduct of his or her claim or defence if it is not granted.

(2) Where an application to strike out is made, no other pleading is necessary.

(3) A party who applies for the striking out of averments in terms of this rule must seek the managing judge's directions in terms of rule 32(4) for its adjudication and must set out clearly the words or paragraphs of the pleading or affidavit that he or she intends to have struck out as well as the legal grounds therefor.

(4) The managing judge must give directions when an application referred to in subrule (1) may be heard and he or she may give any directions he or she considers suitable or proper.

Security for costs

59. (1) A party entitled to demand security for costs from another must, if he or she so desires, as soon as practicable after the commencement of proceedings, deliver a notice setting out the grounds on which the security is claimed and the amount demanded.

(2) If a party contests the amount of security only that party so objecting must, within three days after the notice contemplated in subrule (1) is received, give notice to the requesting party to meet the objecting party at the office of the registrar on a date pre-arranged with the registrar and that notice must state the date of the meeting and the date must not be more than three days after the notice of objection to the amount of security is delivered to the party requesting the security.

(3) The registrar must determine the amount of security to be given.

(4) If the party from whom security is demanded contests his or her liability to give security or if he or she fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within 10 days of the demand or the registrar's decision, the other party may apply to the managing judge on notice for an order that such security be given and that the proceedings be stayed until the order is complied with.

(5) The managing judge may, if security is not given within the time referred to in subrule (4), dismiss the proceedings instituted or strike out any pleadings filed by the party in default or make any order that he or she considers suitable or proper.

(6) Security for costs is, unless the managing judge otherwise directs or the parties otherwise agree, given in the form, amount and manner directed by the registrar.

(7) The registrar may, on the application by the party in whose favour security is to be given and on notice to interested parties, increase the amount originally furnished if he or she is satisfied that that amount is no longer sufficient and his or her decision is final.

(8) A person to whom legal aid is rendered by or under a law or who is represented by the Government Attorney is not compelled to give security for the costs of the opposing party, unless the managing judge directs otherwise.

Summary judgment

60. (1) Where the defendant has delivered notice of intention to defend, the plaintiff may apply to court for summary judgment on each claim in the summons, together with a claim for interest and costs, so long as the claim is -

- (a) on a liquid document;
- (b) for a liquidated amount in money;
- (c) for delivery of a specified movable property; or
- (d) for ejectment.

(2) The plaintiff must deliver notice of the application which must be accompanied by an affidavit made by him or her or by any other person who can swear positively to the facts -

- (a) verifying the cause of action and the amount, if any, claimed; and

- (b) stating that in his or her opinion there is no *bona fide* defence to the action and that notice of intention to defend has been delivered solely for the purpose of delay.

(3) If the claim is founded on a liquid document, a copy of the document must be annexed to the affidavit and the notice of application must state that the application will be set down for hearing on a date fixed in the case plan order.

(4) The managing judge must give directions for the adjudication of an application for summary judgment, except that a date for hearing may be determined at the case planning conference in terms of rule 23.

- (5) On the hearing of an application for summary judgment the defendant may -

(a) where applicable give security to the plaintiff to the satisfaction of the registrar for any judgment including interest and costs; or

- (b) satisfy the court by -

(i) affidavit, which must be delivered before 12h00 on the court day but one before the day on which the application is to be heard; or

(ii) oral evidence, given with the leave of the court, of himself or herself or of any other person who can swear positively to the fact,

that he or she has a *bona fide* defence to the action and the affidavit or evidence must disclose fully the nature and grounds of the defence and the material facts relied on.

(6) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2) and none of the parties may cross-examine a person who gives oral evidence or by affidavit, but the court may put to any person who gives oral evidence any question that in the opinion of the court is necessary to clarify the matter.

(7) If the defendant does not find security or satisfy the court as provided in subrule (5) the court may enter summary judgment for the plaintiff.

- (8) If on the hearing of an application made under this rule it appears -

(a) that a defendant is entitled to defend and any other defendant is not so entitled; or

(b) that a defendant is entitled to defend as to part of the claim,

the court -

(i) must give leave to defend to a defendant so entitled and in such event give directions as to further exchange of pleadings or give judgment against the defendant not so entitled;

(ii) must give leave to defend to the defendant as to part of the claim and enter judgment against him or her as to the balance of the claim, unless he or she has paid that balance to the plaintiff or into court in terms of rule 64; or

(iii) may make both orders referred to in subparagraphs (i) and (ii).

(9) If the defendant finds security or satisfies the court as provided in subrule (5), the court must give leave to defend and the action must proceed as if no application for summary judgment has been made and in that case the court must give directions as to the exchange of further pleadings.

(10) Subject to subrule (13), leave to defend may be given unconditionally or it may be given subject to such terms as to security, time for delivery of pleadings or any other matter as the court considers suitable and proper.

(11) The court may at the hearing of an application for summary judgment make any order as to costs as the court considers just, but if the plaintiff makes an application under this rule where the -

- (a) case is not within the terms of subrule (1); or
- (b) plaintiff, in the opinion of the court, knew or ought to have reasonably known that the defendant relies on a contention which would entitle him or her to leave to defend,

the court may order that the action be stayed until the plaintiff has paid the defendant's costs and may further order that such costs be taxed on a scale as between legal practitioner and client.

(12) If an application for summary judgment is refused and the court after trial gives judgment for the plaintiff substantially as prayed, and the court finds that summary judgment should have been granted had the defendant not raised a defence which in its opinion was unreasonable, the court may order the plaintiff's costs of the action to be taxed on a scale as between legal practitioner and client.

(13) Where leave to defend has been granted by the court the parties must comply with rule 23(5), failing which the managing judge must issue an order in terms of rule 23(8).

Irregular proceedings

61. (1) A party to a cause or matter in which an irregular step or proceeding has been taken by any other party may, within 10 days after becoming aware of the irregularity, apply to the managing judge to set aside the step or proceeding, but a party that has taken any further step in the cause or matter with knowledge of the irregularity is not entitled to make such application.

(2) An application under subrule (1) is an interlocutory application and must be on notice to all parties and must specify in the notice the particulars of the irregularity alleged as well as the prejudice claimed to be suffered as a result of the alleged irregular step.

(3) The managing judge must give directions as to the hearing of such application.

(4) If at the hearing of the application the managing judge is of opinion that the proceeding or step is irregular or improper he or she may, with due regard to the alleged prejudice suffered, set it aside in whole or in part either as against all the parties or as against some of them and grant leave to amend or make any other order that the court considers suitable or appropriate.

(5) A party that has not complied with an order of court made against him or her in terms of this rule is not entitled to take any further step in the cause or matter, except to apply for an extension of time within which to comply with the order.

Judgment by consent

62. (1) A defendant may, except in matrimonial causes, at any time consent in whole or in part to judgment being granted on a claim contained in the summons.

(2) The defendant must personally sign the consent referred to in subrule (1) and the defendant's signature must either be witnessed by the legal practitioner acting for him or her, not being the legal practitioner acting for the plaintiff or be verified by affidavit and furnished to the plaintiff after which the plaintiff may apply to the managing judge for judgment according to the consent.

Special case and adjudication upon points of law and facts

63. (1) The parties to a dispute may, after institution of proceedings, agree on a written statement of facts in the form of a special case for adjudication by the managing judge.

(2) The statement referred to in subrule (1) must set out the facts the parties agree on and the questions of law in dispute between the parties and their individual contentions and the statement must be -

(a) divided into consecutively numbered paragraphs and accompanied by copies of documents necessary to enable the managing judge to decide on the questions; and

(b) signed by each party's legal practitioner or where a party sues or defends personally by such party and the signed documents must be annexed to the statement.

(3) The managing judge must set down a special case for hearing.

(4) If a minor or a person of unsound mind is a party to the proceedings the court may, before determining the questions of law in dispute, require proof that the statements in the special case, so far as they concern the minor or person of unsound mind, are true.

(5) At the hearing of a special case the managing judge and the parties may refer to the entire contents of the documents referred to in subrule (2) and the managing judge may draw any inference of fact or of law from the facts and documents as if proved at a trial.

(6) Where it appears to the court *mero motu* or on the application of a party that there is in any pending action a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the trial of that question in such manner as it considers appropriate and may order that all further proceedings be stayed until the question has been disposed of.

(7) If a cause or matter referred to in subrule (6) involves an action for damages the court may on application of a party order that questions of liability and the amount of damages be decided separately, unless it appears to the court that the questions cannot conveniently be so decided.

(8) When considering a question in terms of this rule the court may give such decision as is appropriate and may give directions with regard to the hearing of other issues in the proceeding which may be necessary for the final disposal of the cause or matter.

(9) If the question in dispute is one of law and the parties are agreed on the facts, the facts may be admitted and recorded at the trial and the managing judge may give judgment without hearing evidence.

Offer to settle

64. (1) In an action where a sum of money is claimed, either alone or with other relief, the defendant may at any time unconditionally or without prejudice make a written offer to settle the plaintiff's claim and the offer must be signed either by the defendant or by his or her legal practitioner if the latter has been authorised in writing to sign.

(2) Where the plaintiff claims the performance of some act by the defendant, the defendant may at any time tender either unconditionally or without prejudice to perform the act and, unless the act has to be performed by the defendant personally, he or she must execute an irrevocable power of attorney authorising the performance of the act which he or she must deliver to the registrar together with the tender.

(3) A party to an action who may be ordered by court to contribute towards an amount for which a party to the action may be held liable or any third party from whom relief is being claimed in terms of rule 50 may, either unconditionally or without prejudice, by way of an offer of settlement-

- (a) make a written offer to the other party to contribute either a specific sum or in a specific proportion towards the amount to which the plaintiff may be held entitled in the action; or
- (b) give a written indemnity to that other party, the conditions of which must be set out fully in the offer of settlement.

(4) One of several defendants as well as a third party from whom relief is claimed may, either unconditionally or without prejudice, by way of an offer of settlement make a written offer to settle the plaintiff's or defendant's claim or tender to perform any act claimed by the plaintiff or defendant.

(5) Notice of an offer or tender in terms of this rule must be given to all parties to the action and it must state whether the -

- (a) offer or tender is unconditional or without prejudice as an offer of settlement;
- (b) offer or tender is accompanied by an offer to pay all or only part of the costs of the party to whom the offer or tender is made and further whether it is subject to conditions stated in the offer or tender;
- (c) offer or tender is made by way of settlement of both the claim and costs or of the claim only; and
- (d) defendant disclaims liability for the payment of costs or for part thereof, in which case the reasons for such disclaimer must be given and the action may then be set down on the question of costs alone.

(6) A plaintiff or party referred to in subrule (3) may within 10 days after the receipt of the notice referred to in subrule (5) or thereafter with the written consent of the defendant or third party or on the order of the court given on such conditions as the court may consider to be fair, accept an offer or tender, after which the registrar having satisfied himself or herself that the requirements of this subrule have been complied with, must hand over the power of attorney referred to in subrule (2) to the plaintiff or to his or her legal practitioner.

(7) In case of a failure to pay or to perform within 10 days after delivery of the notice of acceptance of the offer or tender the party entitled to payment or performance may, on five days' written notice to the party who has failed to pay or perform, apply to the managing judge for judgment in accordance with the offer or tender as well as for the costs of the application or if the matter has not yet been docket-allocated, give notice to the registrar to set the matter down before a judge in motion court.

(8) Where notice of the acceptance of an offer or tender in terms of subrule (6) or notice in terms of subrule (7) is required to be given at an address other than that provided in rule 14(3), the notice must be given at an address, which is not a post office box or *poste restante*, within a flexible radius of the office of the registrar at which the notice must be delivered.

(9) Where an offer or tender accepted in terms of this rule is not stated to be in satisfaction of a plaintiff's claim and costs the party to whom the offer or tender is made may apply to the managing judge or to court, after notice of not less than five days to the other parties, for an order for costs.

(10) An offer or tender in terms of this rule made 'without prejudice' must not be disclosed to the court at any time before judgment has been given and a reference to such offer or tender must not appear on any file in the office of the registrar containing the papers in the cause or matter.

(11) The fact that an offer or tender referred to in this rule has been made may be brought to the notice of a judge after judgment has been given as a factor relevant to the question of costs.

(12) Where the court has given judgment on the question of costs in ignorance of the offer or tender and it is brought to the notice of the registrar in writing within five days after the date of judgment, the question of costs must be considered afresh in the light of the offer or tender, except that this subrule does not affect the court's discretion as to making an award of costs.

(13) A party who, contrary to this rule, personally or through any person representing him or her discloses an offer or tender referred to in this rule to the judge or the court is liable to have costs given against him or her even if he or she is successful in the action.

(14) This rule applies with necessary modifications required by the context where relief is claimed on an application, a counterclaim in terms of rule 48 or in third party proceedings in terms of rule 50.

PART 8 APPLICATIONS

Requirements in respect of an application

65. (1) Every application must be brought on notice of motion supported by affidavit as to the facts on which the applicant relies for relief and every application initiating new proceedings, not forming part of an existing cause or matter, commences with the issue of the notice of motion signed by the registrar, date stamped with the official stamp and uniquely numbered for identification purposes.

(2) Where relief is claimed against a person or where it is necessary or proper to give a person notice of such application, the notice of motion must be addressed to both the registrar and that person, otherwise the notice must be addressed to the registrar only.

(3) Every application must conclude with the form of order prayed and be verified on oath or by affirmation by or on behalf of the applicant.

(4) Every application, other than one brought *ex parte* in terms of rule 72, must be brought on notice of motion on Form 17 and true copies of the notice and all annexures thereto must be served, either before or after the application is issued by the registrar, on every party to whom notice of the application is to be given.

(5) In the notice referred to in subrule (4) the applicant must -

(a) appoint an address within a flexible radius of the court at which the applicant will accept notice and service of all documents in the proceedings;

(b) set out a day, not less than five days after service thereof on the respondent, on or before which the respondent is required to notify the applicant in writing whether the respondent intends to oppose the application, except that where the Government is the respondent, the time limit may not be less than 15 days; and

(c) state that if no such notification is given, the application will be set down for hearing on a stated day not being less than seven days after service of the notice on the respondent.

(6) Where the respondent does not, on or before the day mentioned for that purpose in the notice, notify the applicant of his or her intention to oppose the application the applicant must inform the registrar who must place the matter on the residual court roll.

(7) A person who makes an application to the court in connection with the estate of a person deceased or alleged to be a prodigal or under any legal disability, mental or otherwise must, before the application is filed with the registrar -

- (a) submit the application to the master for his or her consideration and report; and
- (b) likewise submit any suggestion to the master for a report, if any person is to be proposed to the court for appointment as curator to property,

but this subrule does not apply to an application under rule 72, except where that rule otherwise provides.

(8) Subrule (7) does, with such modifications that may be required by the context, apply to applications for the appointment of administrators or trustees under deeds or contracts relating to trust funds or to the administration of trusts set out by a testamentary disposition.

Opposition to application

66. (1) A person opposing the grant of an order sought in an application must -

- (a) within the time stated in the notice give the applicant notice in writing that he or she intends to oppose the application and in that notice appoint an address within a flexible radius of the court at which he or she will accept notice and service of all documents;
- (b) within 14 days of notifying the applicant of his or her intention to oppose the application deliver his or her answering affidavit, if any, together with any relevant documents, except that where the Government is the respondent, the time limit may not be less than 21 days; and
- (c) if he or she intends to raise a question of law only, he or she must deliver notice of his or her intention to do so within the time stated in paragraph (b), setting out such question.

(2) The applicant may, within 14 days of the service on him or her of the affidavit and documents referred to in subrule (1)(b), deliver a replying affidavit and the court may in its discretion permit the filing of further affidavits.

(3) Where no answering affidavit or notice in terms of subrule (1)(c) is delivered within the period referred to in subrule (1)(b), the applicant must within four days of the expiry of that period give notice to the registrar to place the application before a judge in residual court for determination.

(4) Where, in terms of subrules (1) and (2) pleadings have closed or pleadings are considered to be closed because the last day allowed for delivery of a replying affidavit or further affidavits has lapsed and the replying affidavit or further affidavits have not been delivered, the registrar must allocate the file to a managing judge and provide the managing judge with all the documents filed of record and rule 21(2) applies with necessary modification required by the context.

Referral of application for evidence or to trial

67. (1) Where an application cannot properly be decided on the affidavits the court may dismiss the application or make any order the court considers suitable or proper with the view to ensuring a just and expeditious decision and in particular, but without affecting the generality of the foregoing, it may -

- (a) direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant

leave for him or her or any other person to be subpoenaed to appear and be examined and cross-examined as a witness; or

- (b) refer the matter to trial with appropriate directions as to pleadings, definition of issues or any other relevant matter.

(2) After hearing an application the court may make no order, except an order for costs, if any, but may grant leave to the applicant to renew the application on the same papers, supplemented by such further affidavits as the case may require or allow.

Default of appearance at application hearing

68. If on the date of set down for the hearing of an application the -

- (a) applicant does not appear, the court must grant an order dismissing the application and may, in its discretion, make such order as to costs as the court considers reasonable and fair; or
- (b) respondent does not appear, the court may grant relief against the respondent if the circumstances justify granting such relief, with an appropriate order as to costs and may proceed to hear the application as between the applicant and such of the respondents as are present and wish to oppose the relief sought.

Counter-applications

69. (1) A party to an application proceeding may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action and in which case rules 40 and 48 apply with necessary modifications required by the context.

(2) The periods prescribed with regard to applications apply with necessary modifications required by the context to counter-applications, except that the court may, on good cause shown, postpone the hearing of a counter-application.

Miscellaneous matters relating to applications

70. (1) Despite rules 65 to 69, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and, if the application is contemplated in a case management report referred to in rule 24, it must be heard as directed by the managing judge.

(2) Rules 40, 41, 48, 50 and 64 apply with the necessary modification required by the context to all applications.

(3) The provisions relating to discovery apply to applications subject to such modifications required by the context or they may apply to such an extent as the court may direct.

(4) The court may, on application made to it, order to be struck out from an affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs on the scale as between legal practitioner and client, but the court may not grant the application unless it is satisfied that the applicant will be prejudiced in his or her case if it is not granted.

(5) The days between 16 December and 15 January, both inclusive, are not counted in computing the time allowed for the delivery of a notice of intention to oppose, an answering affidavit or a notice as contemplated in rule 66(1)(c) or a replying affidavit.

Judicial case management of applications

71. (1) As soon as practicable after an application, excluding an urgent application, has been placed before him or her in terms of rule 66(4), the managing judge must give directions through the registrar to all parties in respect of the date determined by the judge for the holding of a case management conference.

(2) The parties must, within 14 days before the holding of the case management conference referred to in subrule (1), hold a case management meeting in order to -

- (a) discuss the nature and basis of the respective claims and defences;
- (b) consider reasonable ways in which the application may be determined promptly; and
- (c) set out concisely and clearly the issues they jointly and severally wish to be addressed during the case management conference.

(3) At the conclusion of the parties' case management meeting the parties themselves or their legal practitioners must draw up and sign a report containing -

- (a) the matters they have discussed and agreed on;
- (b) the matters they have discussed and not agreed on; and
- (c) the issues referred to in subrule (2);

and submit the report to the clerk of the managing judge two days before the holding of the case management conference.

(4) The following issues must be addressed at the case management conference -

- (a) any proposal regarding an issue referred to in subrule (2), whether agreed by the parties or not;
- (b) reasonable ways in which issues may be limited and admissions and concessions be recorded that may lead to the narrowing of the issues to be adjudicated;
- (c) the need for any interlocutory applications and the date for the hearing of those applications;
- (d) the hearing and determination of any preliminary objection on points of law;
- (e) whether the parties seek discovery of particular documents, a list of documents each party requires to be discovered and the time period within which discovery will be made;
- (f) indexing, pagination and binding of the record of all the pleadings and documents filed of record;
- (g) determining the time for the filing of heads of argument;
- (h) determining the date of the hearing of the application; and
- (i) any issues which, in the opinion of the managing judge, may facilitate the just and speedy determination of the application.

(5) Where it is shown by a party at the case management conference that an interlocutory application referred to in subrule (4)(c) is intended -

- (a) the application must be heard within 10 days after the conclusion of the case management conference;
- (b) heads of argument of the legal practitioner or of a party, if that party is not represented by a legal practitioner and he or she wishes to file heads of argument, must be filed by all parties not more than three days before the hearing of the interlocutory application; and
- (c) a ruling must be made at any time before the hearing of the main application, but in any case not more than 15 days after the date on which judgment is reserved, unless the interlocutory application raises a complex question of law in which case judgment must be given within 30 days after judgment is reserved.

(6) If, in the opinion of the managing judge, it is necessary to hold a further case management conference, such further conference must be held so soon after the conclusion of the case management conference in question and in any case not more than five days before the hearing of the application.

(7) A case management conference, whose proceedings must be recorded, must be held in court or in the chambers of the managing judge, as the judge may think fit, and must be attended by legal practitioners representing the parties, but if one or more unrepresented parties are involved the conference must be held in open court.

(8) The managing judge must make an order in respect of any issue determined by him or her during the case management conference.

(9) Where the issues are straightforward the managing judge may dispense with the case management conference and assign a date for hearing of the application giving such directions for the conduct of the hearing as he or she thinks fit.

(10) A managing judge may from time to time hold a status hearing in respect of any application docket allocated to him or her.

(11) Rule 21(1) applies with necessary modifications required by the context to applications under this rule.

***Ex parte* application**

72. (1) An application brought *ex parte* on notice to the registrar supported by an affidavit as stated in rule 65(1) must be filed with the registrar and set down in the motion court before 12h00 on the day but one before the day on which it is to be heard.

(2) An *ex parte* application brought on notice to the registrar must set out the form of the order sought, specify the affidavit filed in support thereof, request him or her to place the matter on the roll for hearing and the request must be on Form 18.

(3) Any *ex parte* application and any relief sought in that application commences with issue of the notice of motion, signed by the registrar, date stamped with the official stamp and uniquely numbered for identification purposes.

(4) Any person having an interest which may be affected by a decision on an application being brought *ex parte* may deliver notice of an application by him or her for leave to oppose, supported by an affidavit setting out the nature of that interest and the grounds on which he or she

desires to be heard, after which the registrar must docket-allocate the matter to a managing judge who must set it down for hearing.

(5) At the hearing the court may grant or dismiss either or both applications as the case may require or may adjourn the hearing on such terms as to the filing of further affidavits by either applicant or otherwise as the court considers suitable or proper.

(6) The court may refuse to make an order in an *ex parte* application, but may grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case or the court may require.

(7) Any person against whom an order is granted *ex parte* may anticipate the return day on delivery of not less than 24 hours' notice.

Urgent applications

73. (1) An urgent application is allocated to and must be heard by the duty judge at 09h00 on a court day, unless a legal practitioner certifies in a certificate of urgency that the matter is so urgent that it should be heard at any time or on any other day.

(2) The judge may, in addition to dismissing an application made under subrule (1) for lack of urgency, make a special order of costs against the applicant if the judge is satisfied the matter is not so urgent that it could not be heard on a court day.

(3) In an urgent application the court may dispense with the forms and service provided in these rules and may dispose of the application at such time and place and in such manner and in accordance with such procedure which must as far as practicable be in terms of these rules or as the court considers fair and appropriate.

(4) In an affidavit filed in support of an application under subrule (1), the applicant must set out explicitly -

- (a) the circumstances which he or she avers render the matter urgent; and
- (b) the reasons why he or she claims he or she could not be afforded substantial redress at a hearing in due course.

(5) Where the urgent application is struck off from the roll for lack of urgency or condonation for non-compliance with rules of court is refused and the applicant wishes to continue to prosecute the application on the merits, the applicant must set down the application in the normal course as an opposed motion and in that case the rules of court or practice directions apply.

(6) The managing judge is responsible for hearing any interlocutory application lodged with the registrar as an urgent application in a matter which has previously been docket allocated to that managing judge, except that if the managing judge due to absence or a reason to the satisfaction of the Judge-President is not available on the date and time specified in the application, the duty judge or any other judge designated by the Judge-President may hear the urgent interlocutory application.

(7) An urgent application referred to in subrule (6) which for any reason cannot be finalised when first called and requires to be postponed to another date for continued hearing, must be postponed to a specified date by the judge who hears the matter when called.

Contempt of court application

74. (1) A party instituting proceedings for contempt of court must do so by way application on notice of motion to the person against whom the contempt of court is alleged.

- (2) The application must be served in terms of these rules.
- (3) The applicant must in a founding affidavit distinctly set out the grounds and facts of the complaint on which the applicant relies for relief in his or her application for contempt of court.
- (4) Where a judge of his or her own initiative institutes proceedings of contempt of court against anyone, the proceedings must be instituted by a notice issued by the registrar and served on the person against whom such contempt of court is alleged and no affidavit is necessary.
- (5) Nothing in this rule may be interpreted as detracting from any of the court's powers with regard to contempt of court committed *in facie curiae* or *ex facie curiae*.

Application in respect of review of taxation of costs

75. (1) A party dissatisfied with the ruling of the taxing officer as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing officer may, within 15 days after the *allocatur* is issued, require the taxing officer to state a case for the decision of a judge.

(2) The case referred to in subrule (1) must set out each item or part of an item together with the grounds of objection advanced at the taxation and must include any finding of fact by the taxing officer.

(3) A case may not be stated under subrule (1) where the amount or the total of the amounts which the taxing officer has disallowed or allowed and which the party dissatisfied seeks to have allowed or disallowed respectively is less than N\$2 500, unless the taxing officer consents to the stating of the case.

(4) The taxing officer must supply a copy of the stated case to each of the parties who may, within 10 days after receipt thereof, submit their contentions in writing, including grounds of objection not advanced at the taxation, in respect of any item or part of an item which was objected to before the taxing officer or disallowed *mero motu* by the taxing officer.

(5) On receipt of the contentions referred to in subrule (4), the taxing officer must compile his or her report and must supply a copy thereof to each of the parties who may, within 10 days after receipt of that report, submit their further contentions in writing to the taxing officer.

(6) On receipt of the parties' contentions in terms of subrule (5), the taxing officer must without delay lay the case together with the contentions of the parties and his or her report and any further contentions thereon before a judge.

(7) On receipt of a case submitted to him or her under subrule (6), the judge may decide the matter -

- (a) on the case and contentions so submitted together with any further information which he or she may require from the taxing officer; or
- (b) after a hearing in his or her chambers, if he or she considers it appropriate.

(8) On receipt of the submissions referred to in subrule (4), the taxing officer may, instead of compiling a report as contemplated in subrule (5), refer the case for decision to the court and any further information to be supplied by the taxing officer to the judge must also be supplied by the taxing officer to the parties who may within 15 days after the receipt thereof submit contentions in writing thereon to the taxing officer.

(9) On receipt of the parties' contentions in terms of subrule (8), the taxing officer must without delay lay such further information together with any contentions of the parties before the judge.

(10) The judge or court deciding a case referred in terms of this rule may make such order as to the costs of suit as he or she considers suitable or appropriate, including an order that the unsuccessful party must pay to the opposing party a sum fixed by the judge or court as to costs.

Review application

76. (1) All proceedings to bring under review the decision or proceedings of an inferior court, a tribunal, an administrative body or administrative official are, unless a law otherwise provides, by way of application directed and delivered by the party seeking to review such decision or proceedings to the magistrate or presiding officer of the court, the chairperson of the tribunal, the chairperson of the administrative body or the administrative official and to all other parties affected.

(2) An application referred to in subrule (1) must call on the person referred to in that subrule to -

- (a) show cause why such decision or proceedings should not be reviewed and corrected or set aside; and
- (b) within 15 days after receipt of the application, serve on the applicant a copy of the complete record and file with the registrar the original record of such proceedings sought to be corrected or set aside together with reasons for the decision and to notify the applicant that he or she has done so.

(3) The application must set out the decision or proceedings sought to be reviewed and must be supported by affidavit setting out the grounds and the facts and circumstances on which the applicant relies to have the decision or proceedings set aside or corrected.

(4) The applicant must verify the correctness of the copy so served on him or her, by comparing it with the original filed with the registrar and the applicant must -

- (a) cause copies of such portions of the record as may be necessary for the purposes of the review to be made; and
- (b) furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies.

(5) The cost of transcription of the record or portion of it, if any, is borne by the applicant and such costs are costs in the cause.

(6) If the applicant believes there are other documents in possession of the respondent, which are relevant to the decision or proceedings sought to be reviewed, he or she must, within 14 days from receiving copies of the record, give notice to the respondent that such further reasonably identified documents must be discovered within five days after the date that notice is delivered to the other party.

(7) The party receiving a notice in terms of subrule (6) must make copies of such additional documents available to the applicant for inspection and copying and the respondent must supplement the record filed with the registrar within three days after the applicant is given access to the additional documents.

(8) If a dispute arises as to whether any further documents should be discovered the parties may approach the managing judge in chambers who must give directions for the dispute to be resolved.

(9) The applicant may, within 10 days after the record has been served on him or her or within 10 days after the processes contemplated in subrules (6), (7) and (8) have been completed,

by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his or her application and supplement the supporting affidavit.

(10) The registrar must assign a managing judge in respect of an application filed in terms of this rule, and rule 66(4) does not apply in respect of such application.

Opposition to review application

77. (1) If the person referred to in rule 76(1) or any party affected desires to oppose the granting of the order prayed in the application he or she must -

- (a) within five days after receipt by him or her of the application or any amendment thereof deliver notice to the applicant that he or she intends so to oppose and must in such notice appoint an address within a flexible radius at which he or she will accept notice and service of all process in those proceedings; and
- (b) within 20 days after the expiry of the time referred to in rule 76(9), deliver any affidavits he or she may desire in answer to the allegations made by the applicant.

(2) The applicant has the rights and obligations in regard to replying affidavits set out in rule 65.

(3) The set down of applications in terms of rule 65 applies with necessary modifications required by the context to the set down of review proceedings brought in terms of this rule.

Election application

78. (1) An election application brought in terms of the Electoral Act is governed by this rule so long as the application is brought in terms of section 109 of the Electoral Act in this rule referred to as 'a section 109 application'.

(2) For the purposes of a section 109 application -

“complaint” means a complaint contemplated in section 109 of the Electoral Act;

“day” means a calendar day and not a court day as defined in rule 1;

“presentation”, in relation to a section 109 application, means the filing of such application with the registrar.

(3) Without derogating from the generality of Part 3, the responsibilities and duties of parties regarding the case management of a section 109 application are the following -

- (a) once a section 109 application is filed with the court, the management of that application lies with the court and not the litigants or their legal practitioners;
- (b) the parties and their legal practitioners have a duty to assist the court in curtailing proceedings and to expedite determination of a section 109 application;
- (c) the fact that the parties agree to allow each other time beyond that prescribed by these rules is not binding on the court; and
- (d) where there is a conflict between any provision of rules 65 to 70 and this rule, this rule applies.

(4) For the purposes of a section 109 application the affidavit referred to in rule 65(1) must disclose fully and clearly the nature of the complaint, the reason for the complaint and the material facts relied upon.

(5) Rules 65(1), (2), (3) and (5), 66(1), (2) and (3) and 69 apply to a section 109 application with the following modifications -

- (a) in rule 66(1)(b) the periods of “14 days” and “21 days” are replaced with “10 days”; and
- (b) in rule 66(2) the period of “14 days” is replaced with “10 days”,

except that the court may on application on notice extend these time periods in the interest of justice.

(6) As soon as practicable after the application has been placed before him or her, the Judge-President must appoint a managing judge to manage the application until a court is constituted in terms of section 10 of the Act to hear the section 109 application.

(7) At least two days before the holding of a case management conference the parties must hold a parties' case management meeting and -

- (a) discuss the nature and basis of their respective claims and defences;
- (b) consider reasonable ways in which the application may be determined promptly; and
- (c) set out concisely and clearly the issues they jointly and severally wish to be addressed during the case management conference.

(8) At the conclusion of the parties' case management meeting the parties by themselves or by their legal practitioners must draw up and sign a report containing -

- (a) the matters they have discussed and agreed on;
- (b) the matters they have discussed and have not agreed on;
- (c) the issues referred to in subrule (7);

and submit the report to the registrar who must place the report before the managing judge at least one day before the holding of a case management conference.

(9) The case management conference must be held not more than three days after the close of pleadings and the following issues must be addressed at the conference -

- (a) any proposal regarding an issue referred to in subrule (7), whether agreed by the parties or not;
- (b) reasonable ways in which issues may be limited and admissions and concessions made which may lead to the narrowing of the issues to be adjudicated;
- (c) the need for interlocutory applications and the date for the hearing of those applications by the managing judge;
- (d) the hearing and determination of any preliminary objection on points of law;
- (e) indexing, pagination, and binding of all the pleadings and documents filed of record;

- (f) determining the time for the filing of heads of argument;
 - (g) determining the date of the hearing of the section 109 application; and
 - (h) any other issues which, in the opinion of the managing judge may facilitate the just and speedy determination of the section 109 application.
- (10) Where it is shown by a party at the case management conference that an interlocutory application referred to in subrule (9)(c) is intended -
- (a) the application must be heard within four days after the conclusion of the case management conference;
 - (b) heads of argument of all parties must be filed not more than two days before the hearing of any interlocutory application; and
 - (c) a ruling must be made not more than three days before the hearing of the section 109 application.
- (11) If in the opinion of the managing judge it is necessary to hold a further case management conference, that conference must be held so soon after the case management conference in question and in any case at least two days before the hearing of the section 109 application.
- (12) A case management conference must be held in the chambers of the judge or in open court at the discretion of the judge and the proceedings must be recorded and the conference must be attended by the parties.
- (13) The managing judge must make an order in respect of any issue addressed and determined by him or her during a case management conference.
- (14) A section 109 application may be heard by a court consisting of the managing judge alone or by any number of judges as the Judge-President may consider necessary and the number may include the managing judge.
- (15) A section 109 application must be heard within 10 days after the conclusion of the -
- (a) case management conference, where only one case management conference is held; or
 - (b) last case management conference, where more than one case management conference is held.
- (16) Subject to the Act and this rule, where this rule does not make provision for the procedure to be followed in a section 109 application, the rules regulating application proceedings apply with such qualifications, modifications and adaptations as the court may consider necessary.
- (17) For the avoidance of doubt, this rule applies only to a section 109 application.
- (18) An application, other than a section 109 application, irrespective of whether such application concerns a matter that is connected with or incidental to an election held or to be held in terms of the Electoral Act is governed by the rules regulating application proceedings generally.

Application in terms of POCA

- 79.** (1) This rule applies to applications brought in terms of sections 25, 43, 51, 59 and 64 of the POCA.

(2) An application referred to in subrule (1) must comply with rule 65(1) and (3) as well as the provisions that apply to specific applications referred to in the relevant sections of the POCA.

(3) The registrar may not set down a POCA application as urgent, unless the Prosecutor-General informs the registrar that an application brought in terms of section 25 or 51 of the POCA is urgent.

(4) If the application is urgent and the registrar has been so informed in accordance with subrule (3), the applicant must comply with rule 73.

Admission of legal practitioners

80. (1) A person applying to be admitted and authorised to practise as a legal practitioner must, subject to rule 65, not less than 30 days before the day on which his or her application is to be heard by the court -

- (a) give written notice to the registrar of the date on which the application is to be made being a date for the holding of the residual court as published by the registrar from time to time;
- (b) deliver to the registrar both the original and a copy of every document in support of the application and an affidavit stating whether he or she has at any time been struck off the roll kept in relation to legal practitioners or suspended from practice by the court in Namibia or by a court or other authority in a foreign country; and
- (c) serve a copy of the documents and affidavit referred to in paragraph (b) on the secretary of the Law Society of Namibia.

(2) If the applicant at any time before the hearing of the application delivers to the registrar any document or declaration other than the documents or affidavit referred to in subrule (1) (b), he or she must immediately serve copies of that document or declaration on the secretary of the Law Society of Namibia.

Application for appointment of curator

81. (1) A person who intends to make application to the court for an order -

- (a) declaring another person (hereinafter referred to as 'the patient') to be of unsound mind and not having full control of his or her mind and as such incapable of managing his or her affairs; and
- (b) appointing a curator to the person or property of such patient,

must in the first instance apply to the court for the appointment of a curator *ad litem* to that patient.

(2) An application referred to in subrule (1) must be brought *ex parte* and it must, in the founding affidavit, set out fully -

- (a) the grounds on which the applicant claims *locus standi* to make the application;
- (b) the grounds on which the court is alleged to have jurisdiction;
- (c) the patient's age and sex, full particulars of his or her means and information as to his or her general state of physical health;

- (d) the relationship, if any, between the patient and the applicant and the duration and intimacy of their association;
 - (e) the facts and circumstances relied on to show that the patient is of unsound mind or is not having full control of his or her mind and incapable of managing his or her affairs; and
 - (f) the name, occupation and address of the respective persons suggested for appointment by the court as curator *ad litem* and subsequently as curator to the patient's person or property and a statement that these persons have been approached and have intimated that if appointed they would be able and willing to act in these respective capacities.
- (3) The application must as far as possible be supported by -
- (a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponent's own knowledge concerning the patient's mental condition and if that person is related to the patient or has any personal interest in the terms of any order sought, full details of such relationship or interest must be set out in his or her affidavit; and
 - (b) affidavits by at least two medical practitioners one of whom is, where practicable, a psychiatrist, who have conducted recent examinations of the patient with a view to ascertaining and reporting on his or her mental condition and stating -
 - (i) all such facts as were observed by them at such examinations in regard to such condition;
 - (ii) the opinions found by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the opinions; and
 - (iii) whether the patient is in their opinion incapable of managing his or her affairs,

and those medical practitioners must, as far as possible, be persons unrelated to the patient in any capacity whatsoever and without personal interest in the terms of the order sought.

Appointment of curator *ad litem*

- 82.** (1) At the hearing of the application referred to in rule 81(1) the court may -
- (a) appoint the person proposed or any other suitable person as curator *ad litem*;
 - (b) dismiss the application; or
 - (c) make such further other order as the court may consider suitable or appropriate and in particular on good cause shown by reason of urgency or special circumstances, dispense with any of the requirements of this rule.

(2) On his or her appointment, the curator *ad litem* so appointed must without delay interview the patient and inform him or her of the purpose and nature of the application, unless after consulting a medical practitioner referred to in rule 81(3)(b) he or she is satisfied that this would be detrimental to the patient's health.

- (3) The curator *ad litem* must further make such inquiries as the case appears to require and thereafter -
- (a) prepare and file his or her report on the matter with the registrar;
 - (b) at the same time furnish the applicant with a copy of the report; and
 - (c) in the report -
 - (i) set out such further facts, if any, as he or she has ascertained in regard to the patient's mental condition, means and circumstances; and
 - (ii) draw attention to any consideration which in his or her view may assist the court in formulating the terms of any order sought.
- (4) On receipt of the report referred to in subrule (3) the applicant must submit a copy of the report, together with copies of the documents referred to in rule 81(2) and (3) to the master for his or her consideration and report to the court.
- (5) In his or her report the master must -
- (a) as far as he or she is able, comment on the patient's means and general circumstances and the suitability or otherwise of the person proposed for appointment as curator to the person or property of the patient; and
 - (b) make such recommendations as to the furnishing of security and rendering of accounts by and the powers to be conferred on such curator as the facts of the case appear to him or her to require.
- (6) The master must furnish the curator *ad litem* with a copy of the master's report referred to in subrule (5).

Appointment of curator by court

83. (1) After receipt of the report of the master the applicant may, on notice to the curator *ad litem*, place the matter on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind and as such incapable of managing his or her affairs and for the appointment of the person proposed as curator to the person or property of the patient or to both.

(2) When placing the matter on the roll in terms of subrule (1) the applicant must, if he or she thinks fit, inform the patient about the application and the master's report.

(3) At the hearing the court may require the attendance of the applicant, the patient and such other persons as it may think fit to give such oral evidence or furnish such information as the court may require.

(4) After consideration of the application, the reports of the curator *ad litem* and the master and any further information or evidence as has been adduced orally or otherwise, the court may -

- (a) direct service of the application on the patient;
- (b) declare the patient to be of unsound mind and incapable of managing his or her own affairs and appoint a suitable person as curator to his or her person or property or both on such terms as the court may consider suitable or appropriate; or

- (c) dismiss the application or generally make such order, including an order that the costs of such proceedings be defrayed from the assets of the patient, as the court may consider suitable or appropriate.

(5) Different persons may, subject to due compliance with the requirements of this rule in regard to each of them, be proposed and separately appointed as curator to the person or curator to the property of any person found to be of unsound mind and incapable of managing his or her own affairs.

(6) Rules 81(1) and (2), 82 and 83(1) to (4) apply with necessary modifications required by the context to an application for the appointment by the court of a curator under section 19 of the Mental Health Act, 1973 (Act 18 of 1973) to the property of a person detained as or declared mentally disordered or defective or detained as a mentally disordered or defective prisoner or as a President's decision patient who is incapable of managing his or her affairs.

(7) Rules 81, 82 and subrules (1) to (5) apply, except to the extent that the court may on application otherwise direct, with necessary modifications required by the context to an application for the appointment of a curator *bonis* to any person on the ground that he or she is, because of some disability, mental or physical, incapable of managing his or her own affairs.

Release from curatorship

84. (1) A person who has been declared by a court to be of unsound mind and incapable of managing his or her affairs and to whose person or property a curator has been appointed and who intends applying to the court for a declaration that he or she is no longer of unsound mind and incapable of managing his or her affairs or for release from the curatorship, must give 15 days' notice of the application to the curator and the master.

(2) On receipt of the notice referred to in subrule (1) and after due consideration of the application and such information as is available to him or her, the master must, without delay, report on the application to the court and at the same time comment on any aspect of the matter which in his or her view ought to be brought to the attention of the court.

(3) Subrules (1) and (2) with necessary modifications required by the context also apply to an application for release from curatorship by a person who has been discharged under section 37 of the Mental Health Act, 1973 (Act 18 of 1973) from detention in an institution, but in respect of whom a curator *bonis* has been appointed by the court under section 19 of that Act.

- (4) After the hearing of an application referred to in subrule (1) or (3) the court may -
- (a) declare the applicant to be no longer of unsound mind and to be capable of managing his or her affairs and order his or her release from the curatorship;
 - (b) dismiss the application;
 - (c) of its own initiative appoint a curator *ad litem* to make such inquiries as it considers desirable and to report to it;
 - (d) call for such further evidence as it considers desirable and in that event postpone the further hearing of the matter to permit the production of such report, affidavit or evidence; or
 - (e) postpone the matter *sine die*; and
 - (f) make such order as to costs as it considers suitable or proper.

Sworn translators

85. (1) On application to court supported by affidavit a person who has attained the legal age of majority may be admitted and enrolled by the court as a sworn translator in the official language of Namibia and in any other language on satisfying the court as to his or her competency.

(2) No person may be admitted and enrolled as a sworn translator unless his or her proficiency in the language in which he or she intends to translate has been duly certified in writing, after examination, held not more than six months before the date of his or her application by a competent sworn translator of not less than seven years' standing, but if there is no sworn translator of such standing within Namibia the court may appoint as examiner any person who it considers to be duly qualified to hold the examination.

(3) A person admitted and enrolled under subrule (2) must, before beginning to exercise the functions of his or her office, take the following oath or make the following affirmation:

"I (full name) do hereby swear/solemnly affirm and declare that I will in my capacity as a translator of the High Court of Namibia faithfully and correctly translate, to the best of my knowledge and ability, any document into the official language of the Republic of Namibia from or into and any other language in respect of which I have been admitted and enrolled as a translator."

(4) An oath or affirmation referred to in subrule (3) must be taken or made before a judge admitting and enrolling the translator and the judge must at the foot of the oath or affirmation, endorse a statement of the fact that the oath was taken or the affirmation was made before him or her and also indicate the date on which the oath was so taken or the affirmation was made and also sign the statement.

Revival of rule *nisi*

86. After a rule *nisi* has been discharged because of default of appearance of the applicant the court or the managing judge may, on application by a party with an interest in the matter and on notice to all interested parties, revive the rule and may direct that the rule so revived need not be served again.

PART 9 MATRIMONIAL CAUSES AND MATTERS

Matrimonial proceedings: general

87. (1) In any summons instituting proceedings in a matrimonial cause or matter -

- (a) a certified copy of the marriage certificate of the parties must be attached to the particulars of claim; and
- (b) the original marriage certificate or an original duplicate copy thereof must be presented through evidence in court at the hearing of the matter.

(2) Service of all process and documents initiating proceedings in matrimonial matters must be served on a party personally.

(3) Where personal service of combined summons has been effected more than six months before the matter is set down for trial on an unopposed basis, the combined summons must be re-served, otherwise the trial may not take place.

(4) Where in any matrimonial cause or matter it is alleged that an adulterous third party is involved and that party is resident in Namibia and his or her address is known, service of the summons must also be effected on that person.

(5) Where the third party is resident outside Namibia and his or her address is known notice of the proceedings may be given to that party by registered post.

(6) Where it is not possible to determine the whereabouts of the third party in or outside Namibia the court may dispense with service of summons in terms of subrule (4) or notice of proceedings in terms of subrule (5), if it is shown that reasonable steps taken to ascertain the whereabouts of the third party were unsuccessful.

(7) The evidence referred to in subrule (6) must be placed before the court and in considering the evidence referred to in that subrule a judge must not take an undue formalistic approach in satisfying himself or herself that reasonable steps were taken.

(8) If no appearance to defend has been entered within the prescribed time the matter may be set down in the motion court at least two days before the date of hearing.

Restitution order

88. (1) An order of restitution of conjugal rights must be served personally on the party against whom it is granted not less than 14 days before the first restitution date.

(2) Where the court makes an order to extend the return date of a restitution order or rule *nisi* it must extend the date to a fixed date which falls on a date published in advance by the registrar as the date for the hearing of unopposed divorce matters.

(3) If the restitution order has been properly served, but the rule *nisi* cannot be confirmed on the return date, application may be made from the bar to extend the rule to a subsequent 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 practitioner has withdrawn and there is no appearance by the plaintiff or his or her new legal practitioner on the return date or extended return date of a restitution order -

(a) the court must of its own initiative extend the return date; and

(b) the registrar must address a letter to the plaintiff, to be sent by registered post or any other convenient means, at an address contained in the parties' particulars filed in terms of rule 6.

(6) If there is no appearance by the plaintiff or his or her legal practitioner on the extended return date referred to in subrule (5)(a) the rule *nisi* must be discharged.

(7) If on the 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.

Application of JCM to matrimonial proceedings

89. (1) Part 3 applies to defended divorce proceedings, except that in addition to the requirements of rule 25(2), the parties must also address the issues contained in subrule (2).

- (2) The additional requirements to be addressed at the case management conference are -

(a) where applicable, proposals must be made in a report for the custody and maintenance of and access to minor children and for the maintenance of either spouse and for the division of matrimonial property including, where necessary, the commissioning of a social welfare report; and

(b) in case of a dispute, each party must file together with the report an affidavit with documentary annexures, setting out his or her proposals on custody, access, maintenance and division of property including full disclosure of -

(i) his or her income from every source, whether in Namibia or elsewhere, together with documentary proof where available;

(ii) a full list of the parties' respective assets and liabilities with formal valuations or if that is not reasonably practicable, estimated valuations of each; and

(iii) a list of the financial needs of the minor children supported by vouchers where available, for their education and welfare.

(3) Rules 25(4) and (5), 26 and 27(1) apply with necessary modifications required by the context to divorce proceedings, but the managing judge may at any time dispense with any proceeding if he or she considers it reasonable so to do in order to curtail the proceedings or to save costs.

Interim and pending matrimonial matters

90. (1) This rule applies whenever a spouse seeks relief from the court in respect of one or more of the following matters -

(a) maintenance pending suit;

(b) a contribution towards the costs of a pending matrimonial action;

(c) interim custody of a child of the family;

(d) interim access to a child of the family;

(e) an order that none of the spouses may damage, transfer, encumber, conceal or otherwise dispose of any joint assets while the matrimonial cause is pending; or

(f) an order that a spouse may not commit any act of domestic violence against the other, which may include an order requiring a spouse to stay away from a specified residence or workplace of the other spouse.

(2) An applicant must deliver a sworn statement in the nature of particulars of claim setting out the relief claimed and the grounds therefor together with a notice to the respondent on Form 19 and the -

- (a) applicant or his or her legal practitioner must sign both the statement and notice; and
- (b) notice must give an address for service within a flexible radius of the court and be served by the deputy-sheriff,

but, if the matter is already opposed service may be effected on the legal practitioner of the respondent, if he or she is represented.

(3) The respondent must within 10 days after receiving the statement referred to in subrule (2) deliver a sworn reply in the nature of a plea, signed and giving an address as mentioned in subrule (2) and if he or she fails to do so he or she is by that very fact barred.

(4) As soon as possible after the acts referred to in subrule (3) have been carried out the managing judge must inform the parties through his or her clerk that the application will be dealt with in a summary hearing within 10 days.

(5) If the respondent is in default the managing judge must inform the applicant of the managing judge's decision without conducting a hearing.

(6) The managing judge may hear such evidence as he or she considers necessary and may dismiss the application or make such order as he or she thinks fit to ensure a just and expeditious decision.

(7) The managing judge may, on application made to him or her, vary his or her decision in the event of a material change taking place in the circumstances of either party or a child or the contribution towards costs proving inadequate.

(8) A legal practitioner in a cause or matter under this rule must, unless the court directs otherwise, charge a fee in accordance with the tariffs provided in Section A of Annexure "D".

(9) When an undefended divorce action is postponed the action may be continued before another court notwithstanding that evidence has been given.

PART 10 TRIAL

Evidence taken on commission

91. (1) A managing judge may, on application to him or her and on notice to all the other parties, in any matter where it appears convenient or necessary so to do for the purpose of attaining justice, make an order for taking evidence of a witness before the trial or during a trial before a commissioner of the court and permit a party to the matter to use that deposition of evidence on such terms, if any, as the managing judge considers suitable or appropriate and in particular may order that the evidence be taken only after the close of pleadings or only after the giving of discovery.

(2) Where the evidence of a person is to be taken on commission as contemplated in subrule (1) before any commissioner within Namibia, the person may be subpoenaed to appear before the commissioner to give evidence as if he or she is at the trial.

(3) The evidence of a witness to be examined before the commissioner in terms of an order granted under subrule (1) must, unless the managing judge in ordering the commissioner directs the examination to be by interrogatories and cross-interrogatories, be adduced on oral examination in the presence of all parties and their legal practitioners, if any, and the witness concerned is subject to cross-examination and re-examination.

(4) A commissioner may not decide on the admissibility of evidence tendered but must note any objections made and such objections must be decided by the managing judge hearing the matter.

(5) Evidence taken on commission must be recorded in the same manner as evidence is recorded in a court and the transcript of a record duly certified by the person transcribing the record and by the commissioner constitutes the record of the examination, except that evidence before the commissioner may be taken down in narrative form.

(6) The commissioner must return the record of the evidence to the registrar with the commissioner's certificate to the effect that it is the record of the evidence given before him or her and that evidence then becomes part of the record of proceedings in the case.

Witness statement

92. (1) After the case management conference or at the pre-trial conference the managing judge must order the parties on Form 20 to serve on the other party a witness statement of the oral evidence which the party serving the statement intends to adduce during the trial in relation to any issues of fact to be decided at the trial.

(2) The witness must indicate at the end of his or her statement that he or she believes that the facts stated in the statement are true to the best of his or her knowledge.

(3) The court may give directions as to the order in which witness statements are to be served.

(4) Where the court has directed that a witness statement in a language other than English is to be filed with the court, the party wishing to rely on it must have it translated into English by a sworn translator and must file with the court both the sworn translated statement and the witness statement that is in the other language.

(5) The sworn translator referred to in subrule (4) must depose to and file with the registrar an affidavit verifying the translation and exhibiting both the translation and a copy of the witness statement that is in the other language.

(6) A witness statement may be used only for the purpose of the proceedings in which it is served.

Use of served witness statement at trial

93. (1) If a party has served a witness statement and he or she wishes to rely at the trial on the evidence of that witness he or she must call the witness to give oral evidence.

(2) Where a witness is called to give oral evidence under this rule his or her witness statement will stand as his or her oral evidence-in-chief unless the court orders otherwise.

(3) A witness giving oral evidence at a trial may, with the leave of court, amplify his or her witness statement and give evidence in relation to new matters which have arisen since the witness statement was served on the other parties, except that the court may give such leave only if it considers that there is good reason not to confine the evidence of the witness to the contents of his or her witness statement.

(4) Before the witness reads his or her witness statement into the record, the presiding judge must admonish the witness in the following terms -

‘The oath you have just taken or the affirmation you have just made requires you to tell the truth, the whole truth and nothing but the truth.

Do you confirm that your legal practitioner has prepared a witness statement to constitute your evidence-in-chief in this case?

Do you also confirm that the information contained in the statement was provided by you to your legal practitioner and that it is information of which you bear personal knowledge?

Because of the oath you have taken or the affirmation you have made, I want you to understand that once you have read the statement into the record that statement is your evidence given under oath or affirmation in the proceedings and that if anything in it is not true and you are aware of such fact, you may be liable for perjury. Do you understand?

Therefore, if anything in the statement is not true or is inaccurate, it is your duty to tell me so and to state the true or correct facts. Do you understand?'

(5) If a witness statement for use at the trial is not served within the time specified by the court the witness may not be called to give oral evidence, unless the court on good cause shown permits such witness to give oral evidence.

(6) Where a witness is called to give evidence at a trial he or she may be cross-examined on his or her witness statement only and not on the statement of any other witness who has been called to testify for the party who called him or her to testify.

(7) A person may request the court to direct that a witness statement is not open for inspection by the public or is not available to persons not acting as professional advisors of the party in possession of the statement because of -

- (a) the interests of justice;
- (b) the public interest; or
- (c) the need to protect the interests of a child, patient or person under physical or mental disability.

Notice to admit facts

94. (1) A party may serve notice on another party on Part A of Form 21 requiring that other party to admit a fact or part of the case of the serving party specified in the notice, which notice to admit facts must be served not more than 20 days before the trial.

(2) Where the other party makes an admission in response to the notice the admission may be used against him or her only in the proceedings in which the notice to admit is served and by the party who served the notice, except that the court may allow a party to amend or withdraw any admission made by him or her on good cause shown and on such terms as it thinks just.

Notice to admit or produce documents

95. (1) A party is considered to have admitted the authenticity of a document disclosed to him or her on Part B of Form 21, unless he or she serves notice that he or she wishes the document to be proved at the trial.

(2) A notice to prove a document must be served by the latest date for serving witness statements directed by the court or within seven days of disclosure of the document, whichever is later.

Set down of defended action or opposed motion

96. (1) The assignment of a trial or hearing date is done by order of the managing judge either at -

- (a) the case planning conference in terms of rule 23;
- (b) the case management conference in terms of rule 25;
- (c) a status hearing in terms of rule 27; or
- (d) the pre-trial conference in terms of rule 26.

(2) Where a party or his or her legal practitioner is present when the date is assigned no further notice of set down need be served, but where a party or his or her legal practitioner is absent, the registrar must give adequate notice to all parties of the date or dates to be assigned which must not be less than 30 days from the date of trial or hearing.

(3) When a matter has been set down for hearing a party may, on good cause shown, apply to the judge not less than 10 court days before the date of hearing to have the set down changed or set aside.

(4) Where the postponement of a case is sought on the ground that an instructed legal practitioner could not be engaged in time to act in the matter on behalf of a party while such party is represented by an admitted instructing legal practitioner of record, the party seeking a postponement must clearly set out in a sworn statement why such instructing legal practitioner cannot personally act in the matter.

(5) In considering whether or not a postponement should be granted, prejudice to the opposing party is not the only consideration, convenience of the court and the interests of the administration of justice generally are also relevant considerations.

(6) Despite this rule, a party to opposed or defended proceedings may, on good cause shown and with the consent of all parties and having regard to the convenience of the judge, apply on notice to all the parties to the judge for a special date or dates of the trial or hearing during any term of court or during any vacation.

Withdrawal, abandonment and settlement

97. (1) A person instituting proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings, in any of which events he or she must deliver a notice of withdrawal and may include in that notice a consent to pay costs and the taxing officer must tax such costs on the request of the other party.

(2) A consent to pay costs referred to in subrule (1) has the effect of an order of court for such costs.

(3) If no consent to pay costs is included in the notice of withdrawal the other party may apply to court on notice for an order for costs.

(4) A party in whose favour a decision or judgment has been given may abandon the decision or judgment either in whole or in part by delivering notice to that effect and that judgment or

decision abandoned in part is considered as abandoned and subrules (1), (2) and (3) relating to costs applies with the necessary modifications required by the context to a notice delivered in terms of this subrule.

(5) If in proceedings a settlement or an agreement to withdraw is reached it is the duty of the legal practitioner for the plaintiff or applicant to immediately inform the registrar accordingly.

(6) A party to a settlement which has been reduced to writing and signed by the parties or their legal practitioners but which has not been carried out may, unless those proceedings have been withdrawn, apply for judgment in terms of the settlement on at least five days' notice to all interested parties.

Non-appearance of party or legal practitioner at trial

98. (1) If a trial is called and the plaintiff appears and the defendant does not appear in person or by his or her legal practitioner, the plaintiff may prove his or her claim insofar as the burden of proof lies on him or her and judgment must be given accordingly insofar as he or she has discharged such burden, but, if the claim is for a debt or liquidated demand no evidence is necessary unless the presiding judge otherwise orders.

(2) If a trial is called and the defendant appears and the plaintiff does not appear in person or by his or her legal practitioner, the defendant is entitled to an order granting absolution from the instance with costs, but he or she may lead evidence with a view to satisfying the presiding judge that final judgment should be granted in his or her favour and the presiding judge if so satisfied may grant such judgment.

(3) When a defendant has by his or her default been barred from pleading and the case has been set down for hearing and the default is duly proved the defendant may not, except where the presiding judge in the interests of justice otherwise orders, be permitted either personally or by his or her legal practitioner to appear at the trial or hearing.

(4) Subrules (1) and (3) apply to a person making a claim either by way of counter-claim or a third party notice or by any other means as if he or she were a plaintiff and subrule (2) applies to any person against whom such a claim is made as if he or she were a defendant.

Onus of proof and procedure at trial

99. (1) Where the onus of proof is on the plaintiff he or she or his or her legal practitioner may briefly outline the facts intended to be proved and the plaintiff may then proceed to the proof thereof.

(2) If the onus of proof is on the defendant he or she or his or her legal practitioner is entitled to the same rights as those accorded to the plaintiff or his or her legal practitioner by subrule (1).

(3) Either party may apply at the opening of the trial for a ruling by the presiding judge on the onus of adducing evidence and the presiding judge after hearing argument may give a ruling as to the party on whom such onus lies, but that ruling may thereafter be altered to prevent injustice.

(4) Where the onus of adducing evidence on one or more of the issues is on the plaintiff and that of adducing evidence on any other issue is on the defendant the -

- (a) plaintiff must first call his or her evidence on any issues in respect of which the onus is on him or her and may then close his or her case; and
- (b) defendant, if absolution from the instance has not been granted, may if he or she does not close his or her case thereafter call his or her evidence on all issues in respect of which the onus is on him or her.

(5) If there is one or more third parties or if there are defendants to a counterclaim who are not plaintiffs in the action the following procedure must be followed -

- (a) any such third party is entitled to address the presiding judge in opening his or her case and must lead his or her evidence after the evidence of the plaintiff and of the defendant has been concluded and before any address at the conclusion of that evidence;
- (b) the defendants to a counterclaim who are not plaintiffs must, unless the presiding judge directs otherwise, first lead their evidence and thereafter any third party may lead his or her evidence in the order in which he or she became a third party;
- (c) if the onus of adducing evidence is on the claimant against the third party or on the defendant to any counterclaim, the presiding judge may make such order as he or she considers convenient with regard to the order in which the parties must conduct their cases and address the presiding judge; and
- (d) with regard to their respective rights of reply, subrule (3) applies with the necessary modifications required by the context to any dispute as to the onus of adducing evidence.

(6) After the defendant has called his or her evidence the plaintiff has the right to call rebutting evidence on any issues in respect of which the onus was on the defendant, except that if the plaintiff has called evidence on any such issues before closing his or her case he or she is not entitled to call any further evidence.

(7) Where a party is or parties are represented by more than one legal practitioner -

- (a) a witness called by that party may be examined by only one legal practitioner representing that party, but the same witness may be re-examined by a different but only one legal practitioner representing that party; and
- (b) a witness of that party may be cross-examined by only one legal practitioner representing the other party.

(8) Despite subrule (4) or (6), a defendant is not prevented from cross-examining a witness called at any stage by the plaintiff on any issue in dispute and the plaintiff is entitled to re-examine such witness consequent on such cross-examination without affecting the right given to him or her by subrule (6) to call evidence at a later stage on the issue on which such witness has been cross-examined and the plaintiff may further call the witness so re-examined to give evidence on any such issue at a later stage.

Absolution from the instance, closing addresses and judgment

100. (1) At the close of the case for the plaintiff the defendant may apply for absolution from the instance in which case the -

- (a) defendant or his or her legal practitioner may address the court;
- (b) plaintiff or his or her legal practitioner may reply; and
- (c) defendant or his or her legal practitioner may thereafter reply to any matter arising out of the address of the plaintiff or his or her legal practitioner.

(2) If absolution from the instance is not applied for or has been refused and the defendant has not closed his or her case the defendant or his or her legal practitioner may briefly outline the facts intended to be proved and the defendant may then proceed to the proof thereof.

(3) The presiding judge may, at the conclusion of the evidence in trial actions, confer with the legal practitioners in his or her chambers as to the form and duration of the addresses to be submitted in court.

(4) After the cases on both sides are closed the plaintiff or one or more legal practitioners representing the plaintiff may address the court and the defendant or one or more legal practitioners representing the defendant may do likewise after which the plaintiff or one legal practitioner only representing the plaintiff may reply to any matter arising out of the address of the defendant or his or her legal practitioner.

(5) After the conclusion of addresses by the parties or their legal practitioners the presiding judge may immediately deliver his or her judgment or decision or reserve delivery of the judgment or decision in which case he or she must announce or inform the parties of the intended time and date of delivery of judgment and postpone the matter to such date and time.

(6) In an action in which any causes of action or parties have been joined in accordance with these rules the presiding judge may, at the conclusion of the trial, give such judgment in favour of such of the parties as is or are entitled to relief or grant absolution from the instance.

Variation of procedure, transfer of cases and costs

101. (1) Where it appears convenient so to do the presiding judge may at any time make an order with regard to the conduct of the trial as to him or her seems just and may thereby vary any procedure laid down by these rules.

(2) Where the parties to a trial consent they are entitled at any time before trial, on written application to the presiding judge, to have the cause transferred to the magistrate's court, so long as the matter is one within the jurisdiction of the latter court.

(3) Where the presiding judge considers that the proceedings have been unduly prolonged by the successful party by the calling of unnecessary witnesses, excessive examination or cross-examination or by over-elaboration in argument he or she may penalise such party with regard to costs.

(4) The presiding judge may make such order as to costs as to him or her seems just and without limiting the discretion of the court in any way -

- (a) the court may order that a plaintiff who is unsuccessful is liable to any other party, whether defendant or other plaintiff, for any costs occasioned by his or her joining in the action as plaintiff;
- (b) if judgment is given in favour of a defendant or if the defendant is absolved from the instance, the court may order -
 - (i) the plaintiff to pay that defendant's costs;
 - (ii) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally the one paying the other to be absolved and that if one of the unsuccessful defendants pays more than his or her *pro rata* share of the costs of the successful defendant he or she is entitled to recover from the other unsuccessful defendants their *pro rata* share of the excess; or
 - (iii) that, if the successful defendant is unable to recover the whole or a part of his or her costs from the unsuccessful defendants he or she is entitled to recover from the plaintiff such part of his or her costs as he or she cannot recover from the unsuccessful defendants; and

- (c) if judgment is given in favour of the plaintiff against more than one of the defendants the court may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally the one paying the other to be absolved and that if one of the unsuccessful defendants pays more than his or her *pro rata* share of the costs of the plaintiff he or she is entitled to recover from the other unsuccessful defendants their *pro rata* share of the excess.

Record of proceedings

- 102.** (1) The record of proceedings is made up of -
- (a) a judgment or ruling given by the court;
 - (b) evidence given in court or considered to have been given in court;
 - (c) in the case of an application, affidavits and other supporting documents filed in the case;
 - (d) objection made to any evidence received or tendered;
 - (e) the proceedings of the court generally, including an inspection *in loco* and a matter demonstrated by a witness in court;
 - (f) JCM processes; and
 - (g) any other portion of the proceedings which the court may specifically order to be recorded.
- (2) The record referred to in subrule (1) is kept by such means as to the court seems appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.
- (3) The person taking the shorthand notes or making the mechanical record must certify the notes or record as correct and file them with the registrar.
- (4) It is not necessary to transcribe the shorthand notes or mechanical record unless the managing judge or court so directs or a party appealing so requires.
- (5) If the shorthand notes or mechanical record are transcribed the person transcribing them must certify the transcript of such notes or record as correct and file the transcript, notes and record with the registrar and the transcript of the notes or record certified as correct is considered to be correct unless the managing judge orders otherwise.
- (6) A party to a cause or matter in which a record has been made in shorthand or by mechanical means may apply in writing through the registrar to the managing judge or court to have the record transcribed, if an order to that effect has not already been made, and that party is entitled to a copy of any transcript ordered to be made on payment of the fees set out in Annexure B.
- (7) Any stenographer employed to take down shorthand notes or any person employed to make a mechanical record of any proceedings is considered to be an officer of the court and he or she must, before entering on his or her duties, take the following oath or make the following affirmation:

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

PART 11
POST-TRIAL OR POST-HEARING MATTERS

Variation and rescission of order or judgment generally

103. (1) In addition to the powers it may have, the court may of its own initiative or on the application of any party affected brought within a reasonable time, rescind or vary any order or judgment -

- (a) erroneously sought or erroneously granted in the absence of any party affected thereby;
- (b) in respect of interest or costs granted without being argued;
- (c) in which there is an ambiguity or a patent error or omission, but only to the extent of that ambiguity or omission; or
- (d) an order granted as a result of a mistake common to the parties.

(2) A party who intends to apply for relief under this rule may make application therefor on notice to all parties whose interests may be affected by the rescission or variation sought and rule 65 does, with necessary modifications required by the context, apply to an application brought under this rule.

(3) The court may not make an order rescinding or varying an order or judgment unless it is satisfied that all parties whose interests may be affected have notice of the proposed order.

Execution: general

104. (1) The party in whose favour judgment of the court has been given may, subject to rule 107(1), sue out of the office of the registrar one or more writs for execution thereof as near as may be in accordance with Form 22, except that no writ may be issued in respect of the salary, earnings or emolument or any part thereof due to the judgment debtor.

(2) Despite subrule (1), a judgment creditor who wishes to lay claim to the salary, earnings or emoluments or any part of the salary, earnings or emoluments due to the judgment debtor must do so by way of an order of attachment of salary, earnings or emoluments and in that case he or she must proceed in terms of rule 108(6).

(3) The registrar may not issue process of execution for the levying and raising of any costs awarded by the court to a party, unless the costs have been taxed by the taxing officer or agreed to in writing by the party concerned in a fixed sum.

(4) Despite subrule (3), it is competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed subject to due taxation thereafter, except that if those costs have not been taxed and the original bill of costs duly allocated has not been lodged with the deputy-sheriff before the day of the sale, those costs must be excluded from his or her account and plan of distribution.

(5) If by any process of the court the deputy-sheriff is directed to levy and raise a sum of money on the goods of a person the deputy-sheriff himself or herself or his or her assistant must, unless the judgment creditor gives in writing different instructions regarding the situation and or location of the assets to be attached, without delay proceed to the dwelling-house or place of employment or business of that person and at that house or place -

- (a) demand satisfaction of the writ and failing satisfaction;
 - (b) demand that so much movable and disposable property be pointed out as he or she may consider sufficient to satisfy the writ; and
 - (c) failing such pointing out, search for that property.
- (6) The deputy-sheriff must immediately make an inventory of any property referred to in subrule (5) and, unless the execution creditor has in writing directed otherwise and subject to rule 105(1), the deputy-sheriff must take that property into his or her custody, except that if -
- (a) there is any claim made by any other person to any of the property seized or about to be seized by the deputy-sheriff then, if the judgment creditor in writing gives the deputy-sheriff an indemnity to the satisfaction of the deputy-sheriff to make him or her harmless from any loss or damage because of the seizure thereof, the deputy-sheriff must retain or seize and make an inventory of and keep, that property; and
 - (b) satisfaction of the writ was not demanded from the judgment debtor personally the deputy-sheriff must give to the judgment debtor written notice of the attachment and a copy of the inventory made by him or her, unless the whereabouts of the judgment debtor are unknown.
- (7) The deputy-sheriff must file with the registrar any process with a return of what he or she has done in respect thereof and must furnish a copy of that return and inventory to the party who caused the process to be issued.
- (8) All writs of execution lodged with the deputy-sheriff before the day of the sale in execution rank, subject to any hypothec existing before the attachment, *pro rata* in the distribution of proceeds of the goods sold in the order of preference referred to in rule 111(5).
- (9) If a surplus remains after the distribution of proceeds the deputy-sheriff must pay it over to the judgment debtor and the deputy-sheriff must make out and deliver to the judgment debtor an exact account, in writing, of the deputy-sheriff's costs and charges of the execution and sale and the account is liable to taxation on application by the judgment debtor and if on taxation any sum is disallowed the deputy-sheriff must refund such sum to the judgment debtor.

Execution against movable property in general

105. (1) Where movable property has been attached by the deputy-sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the deputy-sheriff, undertake in writing on Form 23 that they will produce that property on the day appointed for the sale thereof, unless the attachment is sooner legally removed and thereafter the deputy-sheriff must leave the property attached and inventoried on the premises where it was found with the deed of suretyship.

(2) If the judgment debtor together with a surety do not give the undertaking referred to in subrule (1) then, unless the judgment creditor otherwise directs, the deputy-sheriff must remove that property to some convenient place of security or keep possession of the property on the premises where it was seized and the expense involved must be recovered from the judgment debtor and defrayed out of the proceeds from the sale the property.

(3) If the property to be attached and removed consists of livestock, the deputy-sheriff may in writing demand from the judgment creditor payment of a deposit equal to the amount indicated on a quotation obtained for two month's water and grazing for keeping of the livestock so to be removed.

(4) Where movable property is attached in terms of subrule (1), the deputy-sheriff must, where practicable and subject to rule 113, sell it by public auction to the highest bidder after -

- (a) due advertisement by him or her in two suitable newspapers circulating in the district in which the property has been attached; and
- (b) a period of not less than 15 days from the time of seizure of the property.

(5) Where perishables are attached the deputy-sheriff may, with the consent of the judgment debtor or after the judgment creditor has in writing indemnified the deputy-sheriff against any claim for damages which may arise from such sale, sell the goods immediately and in such manner as the deputy-sheriff considers practicable and reasonable.

(6) The advertisement referred to in subrule (4) must be placed not more than 20 days and not less than five days before the scheduled date for the sale in execution and each subsequent sale in execution scheduled due to the cancellation of a previous sale in execution must be re-advertised in accordance with subrule (4) and this subrule with the necessary modifications where necessary.

Execution against incorporeal property, liens and real rights

106. (1) If incorporeal property, whether movable or immovable, is available for attachment it may, without the necessity of a prior application to court, be attached in the manner set out in this rule.

(2) Where the property or right to be attached is a lease, bill of exchange, promissory note, bond or other security for the payment of money the attachment is complete only when -

- (a) notice has been given by the deputy-sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or other security;
- (b) the deputy-sheriff has taken possession of the writing, if any, evidencing the lease, bill of exchange, promissory note, bond or other security; and
- (c) in the case of a registered lease or any registered right, notice has been given to the registrar of deeds.

(3) Where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment is complete only when the deputy-sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution and the deputy-sheriff may, on exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller, enter on the premises where such property is and make an inventory and valuation of that interest.

(4) Where the property attached consists of all other incorporeal property or incorporeal rights in property referred to in subrules (2) and (3) -

- (a) the attachment is complete only when -
 - (i) the deputy-sheriff has in writing given notice of the attachment to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, the deputy-sheriff has also given notice to the registrar of deeds in whose deeds registry the property or right is registered; and
 - (ii) the deputy-sheriff has taken possession of the writing or document evidencing the ownership of the property or right or has certified that he or she has been

unable, despite diligent search, to obtain possession of the writing or document;
and

(b) the deputy-sheriff may, on exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter the premises where the property is and make an inventory and valuation of the right attached.

(5) Attachment of property subject to a lien is effected in accordance with subrule (3) with the necessary modifications required by the context.

(6) Where property which is subject to a real right of any third person is sold in execution the sale is subject to the rights of that third person unless the third party agrees otherwise.

Attachment of debt held by garnishee

107. (1) When it is brought to the knowledge of the deputy-sheriff that there are debts which are subject to attachment and are owing or accruing from a third person to the judgment debtor the deputy-sheriff may, if requested by the judgment creditor, attach those debts and thereafter must serve a notice on the third person (hereinafter “the garnishee”) requiring payment by him or her to the deputy-sheriff of so much of the debt as may be sufficient to satisfy the writ.

(2) If the garnishee pays over the debt as required under subrule (1), the deputy-sheriff must give a receipt to the garnishee which constitutes a discharge to the extent of the portion of the attached debt held by the garnishee of the debt attached.

(3) If the garnishee refuses, neglects or fails to comply with a notice given under subrule (1), the deputy-sheriff must without delay notify the judgment creditor and the judgment creditor may by notice served on all the parties call on the garnishee to appear before the court to show cause why he or she should not pay to the deputy-sheriff the debt due or so much thereof as may be sufficient to satisfy the writ.

(4) If the garnishee does not dispute the debt due or claimed to be due from him or her to the party against whom execution is issued or he or she fails to appear to answer to the notice, the court may accordingly order execution to issue without any previous writ or process for the amount due from that garnishee or so much of the amount as may be sufficient to satisfy the writ.

(5) If the garnishee disputes his or her liability in part the court may order execution to issue in respect of so much as may be admitted but, if liability is not admitted, the court may order that any issue or question necessary for determining the garnishee’s liability be tried or determined in a similar manner as an issue or question in an action may be tried or determined or the court may make such other order in the circumstances as may be just.

(6) Nothing in these rules as to the attachment of debts in the hands of a garnishee affects a cession, preference or retention claimed by any third person in respect of those debts.

(7) The costs connected with an application for the attachment of debts and the proceedings arising from or incidental thereto are in the discretion of the court.

(8) Where the deputy-sheriff is of the opinion that an application to the court or an order with respect to a garnishee will probably cost more than the amount to be recovered, he or she may, after attachment and with the judgment creditor’s consent, sell the debts by auction in the same way as any other movable property or may cede the debts at the nominal amount thereof to the execution creditor.

(9) A person who has paid the amount due, including all costs and other incidental expenses, under and in respect of a writ of execution is entitled to a withdrawal of the writ.

Conditions precedent to execution against immovable property and transfer of judgments

108. (1) The registrar may not issue a writ of execution against the immovable property of an execution debtor or of any other person unless -

- (a) a return has been made of any process which may have been issued against the movable property of the execution debtor from which it appears that that execution debtor or person has insufficient movable property to satisfy the writ; and
- (b) the immovable property has, on application made to the court by the execution creditor, been, subject to subrule (2), declared to be specially executable.

(2) If the immovable property sought to be attached is the primary home of the execution debtor or is leased to a third party as home the court may not declare that property to be specially executable unless -

- (a) the execution creditor has by means of personal service effected by the deputy-sheriff given notice on Form 24 to the execution debtor that application will be made to the court for an order declaring the property executable and calling on the execution debtor to provide reasons to the court why such an order should not be granted;
- (b) the execution creditor has caused the notice referred to in paragraph (a) to be served personally on any lessee of the property so sought to be declared executable; and
- (c) the court so orders, having considered all the relevant circumstances with specific reference to less drastic measures than sale in execution of the primary home under attachment, which measures may include attachment of an alternative immovable property to the immovable property serving as the primary home of the execution debtor or any third party making claim thereto.

(3) The deputy-sheriff must file with the registrar a return referred to in subrule (1) (a) together with a copy of the writ under which it was issued.

(4) The execution creditor must make an application in terms of subrule (1)(b) within 30 days from the date on which -

- (a) the return referred to in subrule (1)(a) has been filed by the deputy-sheriff in terms of subrule (3); or
- (b) if application as provided for in subrule (1)(b) has been made and that application is dismissed by the court, the date on which the application is dismissed by the court.

(5) A further application may not be made in respect of the same immovable property which previously formed the subject matter of any earlier application made in terms of subrule (1)(b) or (4)(b), unless the immovable property which previously formed the subject matter of the application is no longer the primary home of the execution debtor.

(6) An execution creditor who fails to apply to the court as provided for in subrule (1)(b) or (4)(b) and who wishes to enforce such judgment by way of an order for payment in installments or by way of an emolument attachment order must transfer the judgment to the magistrates' court for the district in which the execution debtor resides or conducts business or is employed and for that purpose comply with sections 65M, 65A and 65J of the Magistrates' Court Act, 1944 (Act No. 32 of 1944) (hereafter "Magistrates' Court Act, 1944").

(7) If, within the time provided for in subrule (4), a party in whose favour judgment has been granted fails to -

- (a) submit to the registrar, for issuing, a writ as provided for in rule 104(1) or any further writ as provided for by that rule;
- (b) apply to the court as provided for in subrule (1)(b); or
- (c) comply with the provisions of subrule (6),

the registrar must transfer such judgment to the magistrates' court for the district in which the person against whom such judgment was granted resides, conducts business or is employed.

(8) When transferring a matter to the magistrates' court under subrule (7), the registrar must -

- (a) submit to the clerk of the magistrates' court a certified copy of -
 - (i) the judgment or order issued against the judgment debtor;
 - (ii) the duly taxed bill of costs; and
 - (iii) the writ which accompanied the return provided for in subrule (1)(a); and
- (b) notify the execution creditor in writing that the judgment has been transferred.

(9) On receipt by the clerk of the magistrates' court of the documents referred to in subrule (8), the provisions of section 65M of the Magistrates' Court Act, 1944 do apply to the transferred judgment and the execution creditor must comply with those provisions, except that the provisions of section 65E (4) of that Act do not apply to any return issued in terms of subrule (1) (a).

Execution against immovable property

109. (1) A writ of execution against immovable property must contain a full description of the nature and situation including the address of the immovable property to enable it to be traced and identified by the deputy-sheriff and must be accompanied by sufficient information to enable him or her to give effect to subrule (3).

(2) The deputy-sheriff of the district in which the property is situated or the deputy-sheriff of the district in which the office of the registrar of deeds or other officer charged with the registration of that property is situated must make the attachment on a writ on Form 25.

(3) The mode of attachment of immovable property is by notice in writing by the deputy-sheriff served on the owner of the property and on the registrar of deeds or other officer charged with the registration of that immovable property and, if the property is in the occupation of some person other than the owner, also on that occupier and the notice must be served by means of registered post, duly prepaid and posted and addressed to the person intended to be served.

(4) After attachment the deputy-sheriff of the district in which the attached property is situated must conduct the sale in execution ordered by the court and the sale must take place in that district, except that the sheriff in the first instance and subject to rule 110(1) may on good cause shown authorise the sale to be conducted elsewhere and by another deputy-sheriff.

(5) On receipt of written instructions from the execution creditor to proceed with the sale the deputy-sheriff must ascertain and record what bonds or other encumbrances are registered against the property together with the names and addresses of the persons in whose favour those bonds and encumbrances are so registered and must thereafter notify the execution creditor accordingly.

(6) An immovable property which is subject to a claim preferent to that of the execution creditor may not be sold in execution unless -

(a) the execution creditor has -

(i) caused notice in writing of the intended sale to be served by registered post -

(aa) on the preferent creditor, if his or her address is known; and

(bb) if the property is rateable, on the regional council or local authority council concerned,

calling on either or all of them to stipulate within 10 days of a date to be stated a reasonable reserve price or to agree in writing to a sale without reserve; and

(ii) provided proof to the deputy-sheriff that the preferent creditor or the regional council or local authority council concerned has so stipulated or agreed; or

(b) the deputy-sheriff is satisfied that it is impossible to notify any preferent creditor in terms of this rule of the proposed sale or the preferent creditor or the regional council or local authority council, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice.

(7) The deputy-sheriff may by notice served on any person require that person to deliver up to the deputy-sheriff immediately all documents in his or her possession or control relating to the debtor's title to any immovable property attached under this rule.

Procedure for sale of immovable property

110. (1) The deputy-sheriff must appoint a day and place for the sale of the property that day being, except by special leave of a magistrate of the district in which the property to be sold is situated, not less than one month after service of the notice of attachment.

(2) The execution creditor must, after consultation with the deputy-sheriff -

(a) prepare a notice of sale containing a short description of the property, its situation and street number, if any, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the deputy-sheriff; and

(b) furnish the deputy-sheriff with as many copies of the notice as the latter may require.

(3) The deputy-sheriff must indicate two suitable newspapers circulating in the district in which the property is situated and require the execution creditor to -

(a) publish the notice referred to in subrule (2)(a) once in each of those newspapers not less than five days and not more than 10 days before the date appointed for the sale and in the *Gazette* not more than 14 days before the date appointed for the sale; and

(b) furnish the deputy-sheriff, not later than the day before the date of the sale, with one copy of each of those newspapers and with the number of the *Gazette* in which the notice is published,

but a new notice must be published in respect of each subsequent sale re-scheduled after the initial publication.

(4) The deputy-sheriff must, not less than 10 days before the date of the sale, forward by registered post a copy of the notice of sale referred to in subrule (2)(a) to every execution creditor who has caused the immovable property to be attached and to every mortgagee of the property whose address is known.

(5) The deputy-sheriff must, not less than 10 days before the date of the sale affix -

(a) one copy of the notice on the notice board of the magistrates' court of the district in which the property is situated; or

(b) if the property is situated in the district where the court out of which the writ issued is situated, then on the notice board of that court; and

(c) one copy on a visible structure at or as near as may be to the place where the sale is to take place.

(6) The execution creditor must, not less than 30 days before the date of the sale -

(a) prepare the conditions of sale so near as reasonably possible to those on Form 26 or as approved by the court;

(b) submit the conditions to the deputy-sheriff to confirm them; and

(c) thereafter supply the deputy-sheriff with two copies of the conditions of sale, one of which must lie for inspection by interested parties at the office of the deputy-sheriff.

(7) Any interested party may, not less than 10 days before the date of the sale and on 24 hours' notice to the execution creditor and the bondholders, apply to the magistrate of the district in which the property is to be sold for a modification of the conditions of sale and the magistrate may make such order including an order as to costs as the magistrate considers suitable and proper.

(8) The deputy-sheriff must sell by public auction any immovable property attached in execution.

(9) The sale of property in execution must, subject to rule 109(6), be without reserve and be on the conditions stipulated under subrules (6) and (7) and the property must be sold to the highest bidder, except that if a primary home of a person is being sold in execution, the highest bid must-

(a) not be less than 75% of the regional or local authority council or land valuation of the property; and

(b) in the absence of a regional or local authority council or land valuation, not be less than 75% of a sworn valuation.

(10) If the purchaser fails to carry out any of his or her obligations under the conditions of sale a judge may, on the report of the deputy-sheriff after due notice to the purchaser, summarily cancel the sale and the property may again be put up for sale.

(11) The purchaser is responsible for any loss sustained because of the cancellation of a sale under subrule (10) and an aggrieved creditor whose name appears on the deputy-sheriff's distribution account may, on application to the judge who summarily cancelled the sale, recover the loss from the purchaser.

(12) If an application has been made under subrule (11), the deputy-sheriff must prepare a written report on the circumstances surrounding the cancellation of the sale and -

- (a) in writing notify the purchaser that the report will be placed before the judge who is hearing the application; and
- (b) place the written report before the judge to assist the judge in determining the application.

(13) On receipt of the report referred to in subrule (12), the judge may summarily pronounce judgment based on the written report of the deputy-sheriff.

(14) If the purchaser is already in possession of the property, the deputy-sheriff may, on 10 days' notice to the purchaser, apply to a judge for an order ejecting him or her or any person claiming to hold under him or her, from the property.

Transfer of property and distribution of proceeds from sale

111. (1) The execution creditor may appoint a legal practitioner to attend to the transfer of the property when it is being sold in execution.

(2) The deputy-sheriff must give transfer to the purchaser against payment of the purchase money and on performance of the conditions of sale and may for that purpose do all that is necessary to effect registration of transfer and anything so done by him or her is as valid and effectual as if the deputy-sheriff were the owner of the property.

(3) The deputy-sheriff may not pay out the purchase money to the creditor until transfer has been given to the purchaser, but on receipt of the purchase price, he or she must without delay pay all moneys received in respect of the purchase price into the trust account of the legal practitioner acting for the execution creditor or, in the absence of a legal practitioner acting for the execution creditor, deposit it into the suspense account of the magistrate of the district.

- (4) The deputy-sheriff must as soon as possible after the sale -
 - (a) prepare in order of preference, as provided in subrule (5), a plan of distribution of the proceeds;
 - (b) forward a copy of such plan to the registrar of the court;
 - (c) immediately thereafter give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for 15 days from a date mentioned in the notice at his or her office and at the office of the registrar; and
 - (d) unless all the parties have signified in writing their agreement to the plan, lay the plan for inspection at the office of the deputy-sheriff and at the office of the registrar.

(5) After deduction from the proceeds of sale of the costs and charges of execution the following is the order of preference, namely -

- (a) the claims of preferent creditors ranking in priority in their legal order of preference; and
- (b) thereafter the claims of other creditors whose writs have been lodged with the deputy-sheriff in the order of preference appearing in section 96 and sections 99 to 103 of the Insolvency Act, 1936 (Act No. 24 of 1936).

(6) An interested person objecting to the plan referred to in subrule (4) must, within five days of the expiry of the period referred to in that subrule, give notice in writing to the deputy-sheriff and all other interested persons of the particulars of his or her objection and must bring such objection before a judge for review on 10 days' notice to the deputy-sheriff and the interested persons.

(7) The judge reviewing the objection made under subrule (6) must hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order, including an order as to costs, as the judge considers suitable or appropriate.

(8) If -

- (a) no objection is lodged to the plan referred to in subrule (4);
- (b) the interested parties signify their concurrence with the plan; or
- (c) the plan is confirmed or amended on review,

the legal practitioner or magistrate referred to in subrule (3) must, on production of a certificate from the conveyancer that transfer has been given to the purchaser and on the request of the deputy-sheriff, pay out in accordance with the plan of distribution and if the address of a payee is not known pay the amount due to him or her into the Guardian's Fund established under any law relating to the administration of estates.

Superannuation

112. (1) A writ of execution may not be issued after the expiry of three years from the day on which a judgment has been pronounced, unless the -

- (a) debtor consents to the issue of the writ; or
- (b) judgment is revived by the court on notice to the debtor,

but in such a case no new proof of the debt is required.

(2) In case of a judgment for periodic payments the three years referred to in subrule (1) run in respect of any payment from the due date of payment.

(3) Once a writ of execution of a judgment has been issued, it remains in force and may, subject to section 11(a)(ii) of the Prescription Act, 1969 (Act No. 68 of 1969), at any time be executed without being renewed until judgment has been satisfied in full.

Interpleader

113. (1) Where a person in this rule called 'the applicant' -

- (a) does not have beneficial interest in respect of property in his or her possession or under his or her control; and
- (b) is sued or expects to be sued in respect of that property or its proceeds; or
- (c) receives a claim in respect of that property or its proceeds,

by or from two or more persons in this rule called 'claimants', the applicant may apply to the court for interpleader relief.

(2) The deputy-sheriff has the same rights as an applicant in respect of property attached by him or her in execution and an execution creditor has the rights of a claimant.

(3) Where subrule (1) applies the applicant may deliver on Form 27 a notice called an 'interpleader notice' to the claimants.

(4) Where the claims relate to money the applicant is required, on delivering the notice mentioned in subrule (3), to pay the money to the registrar who must hold it until the conflicting claims have been decided.

(5) Where the claims relate to a thing capable of delivery the applicant must tender the subject matter to the registrar when delivering the interpleader notice or take such steps as are necessary and required to secure the availability of the thing in question as the registrar may direct.

(6) Where the conflicting claims relate to immovable property the applicant must place the title deeds thereof, if available to him or her, in the possession of the registrar when delivering the interpleader notice and must at the same time hand to the registrar an undertaking to sign all documents necessary to effect transfer of the immovable property in accordance with an order which the court may make or in terms of an agreement of the claimants.

(7) The interpleader notice must -

(a) state the nature of the liability and the nature of the property claimed which form the subject matter of the dispute;

(b) call on the claimants to give notice, in writing, within five days of service of the interpleader notice on them, of their intention to deliver particulars of claim in regard to the subject matter of the dispute and in such notice to appoint an address within a flexible radius of the office of the registrar at which they will accept notice and service of all documents;

(c) call on the claimants within the time stated in the notice, not being less than 14 days from the date of service of the notice, to deliver particulars of their claims; and

(d) state that on a further date, not being less than 15 days from the date specified in the notice for the delivery of claims, the applicant will apply to court for its decision as to his or her liability or the validity of the respective claims on which hearing date the claimants are also called upon to appear in support of their claims.

(8) The applicant must deliver together with the interpleader notice an affidavit stating that he or she -

(a) claims no interest in the subject matter in dispute other than for charges and costs;

(b) does not collude with any of the claimants;

(c) is willing to deal with or act in regard to the subject-matter of the dispute as the court may direct.

(9) If a claimant to whom an interpleader notice and affidavit have been duly delivered -

(a) fails to deliver particulars of his or her claim within the time stated; or

(b) having delivered such particulars, fails to appear in court in support of his or her claim,

the court may make an order declaring him or her and all persons claiming under him or her barred as against the applicant from making any claim on the subject matter of the dispute.

(10) If a claimant delivers particulars of his or her claim and appears before it, the court may -

- (a) then and there adjudicate on each claim after hearing such evidence as it thinks fit;
- (b) order that a claimant be made a defendant in an action already commenced in respect of the subject matter in dispute in place of or in addition to the applicant;
- (c) order that an issue between the claimants be stated by way of a special case or otherwise and tried and for that purpose order which claimant is the plaintiff and which is defendant; or
- (d) if it considers that the matter is not a proper matter for relief by way of interpleader notice, dismiss the application; and
- (e) make such order as to costs and the expenses, if any, incurred by the applicant under subrule (5) as the court considers fair and reasonable.

(11) If an interpleader notice is issued by a defendant in an action, proceedings in that action must be stayed pending a decision on the interpleader, unless the court on an application made by any other party to the action orders otherwise.

PART 12 CRIMINAL PROCEEDINGS

Criminal proceedings

114. (1) The process for summoning an accused person to answer an indictment and other matters connected with and incidental thereto are those provided in the Criminal Procedure Act, 1977 and must be by writ sued out by the chief clerk to the Prosecutor-General who presents the indictment or in the case of a private prosecution by the private prosecutor or his or her legal practitioner and must be directed to the deputy-sheriff.

(2) When a person committed for sentence under section 121 or 140 of the Criminal Procedure Act, 1977, is indicted before the court he or she may be brought up for sentence at any sitting for criminal business of the court.

(3) The Prosecutor-General or a prosecutor delegated by the Prosecutor-General or a private prosecutor must endorse on or annex to every original indictment and on every copy of an indictment delivered to the deputy-sheriff for service a notice of trial.

(4) The notice referred to in subrule (3) must specify the division of the court before which and in case of it being a circuit court, the place so designated as a circuit court, the particular session and time when the deputy-sheriff will bring the accused to trial on the indictment.

(5) The Prosecutor-General or a delegated prosecutor or a private prosecutor or his or her legal practitioner must deliver to the deputy-sheriff for service the writ, a copy of the indictment and notice of trial or if there are more than one accused as many writs and copies of the indictment and notice of trial as there are accused and in the case of a private prosecution the private prosecutor or his or her legal practitioner must at the same time hand to the deputy-sheriff his or her lawful costs and charges for serving same.

(6) The deputy-sheriff must serve the writ, copy of indictment and notice of trial by way of personal service on the accused person or persons.

(7) The chief clerk to the Prosecutor-General or where the prosecution is at the instance of a private party that party or, if represented, his or her legal practitioner must sue out of the office of the registrar any subpoena or process for procuring the attendance of a person before the court to give evidence in a criminal case or to produce any book, document or thing.

(8) The person suing out a subpoena or process under subrule (1) must deliver the subpoena or process to the deputy-sheriff at the deputy-sheriff's office for service together with so many copies of the subpoena or process as there are persons to be served.

(9) The deputy-sheriff must serve the subpoena or process referred to in subrule (7) on the witness -

(a) personally; or

(b) at the witness's residence or place of business or employment by delivering it to some person there who is apparently not less than 16 years of age and apparently residing or employed there.

(10) The person serving the subpoena or process must, if required by the person on whom it is served, exhibit the original to the person to be served.

(11) If the person to be served with a subpoena or process keeps his or her residence or place of business closed so as to prevent the service of the subpoena or process it is sufficient service to affix a copy thereof to the outer or principal door of that residence or place of business.

(12) When a court imposes on a person a fine for contempt of court for failing to appear or otherwise and the fine is not duly paid the registrar of the court must furnish the deputy-sheriff with particulars of the fine and deliver to the deputy-sheriff a completed warrant and the deputy-sheriff must, immediately on that warrant being delivered to him or her, execute it.

(13) An application under section 149 of the Criminal Procedure Act, 1977 to change the place of trial in criminal proceedings may be made to the court on notice by or on behalf of the Prosecutor-General or the accused and the court may thereafter make such order as it considers suitable or appropriate.

(14) Any process or document referred to in this rule may be served by a police official referred to in section 329 of the Criminal Procedure Act, 1977.

PART 13 APPEALS

Leave to appeal

115. (1) When leave to appeal from a judgment or order of the court is required the person seeking leave to appeal may, on a statement of the grounds for the leave to appeal, request for leave to appeal at the time of the judgment or order.

(2) When leave to appeal from a judgment or order of the court is required and it has not been requested at the time of the judgment or order, application for such leave must be made together with the grounds for the leave to appeal within 15 days after the date of the order appealed against.

(3) If the reasons or the full reasons for the court's judgment or order are given on a later date than the date of the judgment or order, the application may be made within 15 days after the later date and the court may, on good cause shown, extend the period of 15 days.

(4) If when giving an order the court declares that the reasons for the order will be furnished to any of the parties on request that request must be delivered within 10 days after the date of the order.

(5) The application referred to in subrule (2) or (3) must be set down on a date arranged with the registrar who must give written notice of the date to the parties and the date for set down must not be less than 15 days and not more than 30 days after the expiry of the periods referred to in subrule (2) or (3).

(6) The application referred to in subrule (5) must be heard by the judge who presided at the trial or hearing or if he or she is not available by another judge of the court.

(7) The registrar must arrange for a typed transcription of the record of proceedings appealed against if -

- (a) so requested by the judge who presided at the trial; or
- (b) the application referred to in subrule (5) is to be heard by a judge other than the judge who presided at the trial.

(8) Leave to appeal in criminal proceedings heard by the court is governed by sections 316 and 316A of the Criminal Procedure Act, 1977.

(9) The registrar must, on receipt of a notice in terms of section 310 of the Criminal Procedure Act, 1977, make an entry in the appeals register and open a court file with a unique number for identification purposes.

(10) On receipt of the record of proceedings the registrar must, as soon as possible, allocate a date for a hearing in chambers of the application for leave to appeal referred to in subrule (9), which date must not be more than 40 days after the date of receipt of the record of proceedings.

Civil appeal from magistrates' courts

116. (1) An appeal to the court against the decision of a magistrate in a civil matter must be prosecuted within 60 days after the noting of the appeal and unless so prosecuted it is, without further notice, considered to have lapsed.

(2) The prosecution of an appeal automatically operates as the prosecution of any cross-appeal which has been duly noted.

(3) Where a cross-appeal has been noted and the appeal lapses the cross-appeal also lapses unless application for a date of hearing for such cross-appeal is made to the registrar within 20 days after the date of the lapse of the appeal and served on any interested parties.

(4) An interested party served with an application under subrule (3) and who desires to oppose the application must within 20 days of that service deliver a notice to oppose the application and at the same time make available to the registrar in writing his or her full residential and postal addresses and the address of his or her legal practitioner if he or she is represented.

(5) The appellant must, within 40 days of noting an appeal, request from the registrar in writing and on notice to all other parties for the assignment of a date for the hearing of the appeal and must at the same time make available to the registrar in writing his or her full residential and postal addresses and the address of his or her legal practitioner if he or she is represented.

(6) A party who receives a notice under subrule (5) and desires to oppose the appeal must file a notice to oppose within 20 days after receipt of the notice of appeal and must at the same

time make available to the registrar in writing his or her full residential and postal addresses and the address of his or her legal practitioner if he or she is represented.

(7) In the absence of a request by the appellant in terms of subrule (5) the respondent may, at any time before the expiry of the period of 60 days referred to in subrule (1), request a date of hearing in like manner.

(8) When the registrar receives a request from an appellant or a respondent in terms of subrule (5) or (7) the appeal is considered to have been duly prosecuted.

(9) On receipt of the request for assignment of a date, the registrar must forthwith assign a date of hearing, which date must be at least 40 days after the receipt of the application for the assignment of a date of hearing, unless all parties consent in writing to an earlier date but the registrar may not assign a date of hearing until subrule (12) has been duly complied with.

(10) The registrar must without delay give the applicant written notice of the date of hearing after which the applicant must without delay deliver a notice of set down and in writing give notice thereof to the clerk of the court from which the appeal emanated.

(11) A notice of set down of a pending appeal operates automatically as a set down of any cross-appeal and vice versa.

(12) The appellant must simultaneously with delivery of the application for a date for the hearing of the appeal referred to in subrule (5) -

- (a) obtain a copy of the record from the clerk of the magistrate's court in question and deliver a copy of the record to the registrar, which record must comply with the requirements set out in rule 117; and
- (b) if the appeal is to be heard by more than one judge the appellant must, on the request of the registrar, lodge a further copy of the record for each additional judge.

(13) The appellant must, not less than 15 days before the appeal is heard, deliver heads of arguments, which he or she intends to argue on appeal as well as a list of the authorities to be tendered in support of each point.

(14) The respondent must, not less than 10 days before the appeal is heard, likewise deliver heads of arguments, which he or she intends to argue on appeal as well as a list of the authorities to be tendered in support of each point.

(15) Despite this rule, the Judge-President may, after consultation with the parties concerned, direct that an appeal be dealt with as an urgent matter and order that it be disposed of and the appeal be prosecuted at such time and in such manner as to him or her seems just and reasonable.

Content of record in civil appeal

117. (1) The record referred in rule 116(12) must contain a correct and complete copy of a record of all the matters mentioned in rule 102(1) and all other documents necessary for the hearing of the appeal together with an index thereof.

(2) The record delivered must be divided into separate and conveniently sized volumes, containing not more than 100 pages per volume and each volume must be certified as complete and correct by the legal practitioner or party delivering the record or the person who prepared the record.

(3) The copy of the record lodged with the registrar must be an exact duplicate of the copy delivered with reference to the volumes and the format and must be securely bound in suitable

covers disclosing clearly the names of the parties, the court appealed from and the names of the legal practitioners of the parties.

(4) The covers in which records are to be bound must be of the same size as the records, except that plastic covers with holes on the binding edge with spiral plastic rings or metal rings which bind the contents may not be used under any circumstances.

(5) The copies of the record must be clearly typed on stout foolscap or A4 standard paper double-spaced in black record ink and on one side of the paper only.

(6) The name of the witness giving evidence must appear at the top of each page containing his or her evidence.

(7) The left side of each page must have a margin of at least 40 mm that must be left clear, except in the case of exhibits that are duplicated by photo printing, where it is impossible to obtain a margin with the said dimensions and where the margin of the said exhibits is so small that part of the documents will be obscured by binding those documents must be mounted on sheets of A4 paper and folded back to ensure that the prescribed margin is provided and every tenth line of each page of the record must be numbered.

(8) Subrules (1) to (7) apply with the necessary modifications required by the context to the copy of the record to be served on all parties.

(9) Subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect and other documents of a formal nature must, except where they may affect the merits of an appeal, be omitted from the copies of the record prepared in terms of this rule, but a list thereof must be included in the record.

(10) By consent of the parties, exhibits having no bearing on a point at issue in an appeal and immaterial portions of lengthy documents may likewise be omitted from the copies and in that case a written consent setting out what documents or portions thereof have been omitted and signed by the parties or on behalf of the parties by their legal practitioners must be filed with the registrar when the copies are lodged, but the court hearing the appeal may at all times refer to the original record and take cognisance of all matters appearing therein.

Criminal appeal from magistrates' courts

118. (1) The registrar must, on notice to the appellant and the respondent or where the appellant or respondent is the accused to the accused or his or her legal practitioner, set down for hearing on such day in term-time or vacation as the Judge-President may appoint for such matters an appeal by -

- (a) an accused against conviction, a decision, sentence or an order made by a magistrate's court in a criminal matter in which the prosecution has been at the instance of a member of the public; or
- (b) the Prosecutor-General or other prosecutor against a decision, sentence or order of a magistrate's court in such a matter.

(2) The registrar must on notice to all parties set down for hearing an appeal against conviction, a decision, sentence or an order of a magistrate's court in any other criminal matter in accordance with such directions as he or she may receive from the Judge-President from time to time.

(3) Despite the provisions of any law to the contrary a notice referred to in subrule (1) or (2) may be served on the appellant or respondent or his or her legal practitioner by -

- (a) e-justice where the legal practitioner representing the party is a registered user;
- (b) personal service; or
- (c) sending it by registered post, addressed to the appellant or respondent or his or her legal practitioner at an address appearing on the notice of appeal or at an address which the appellant or respondent or his or her legal practitioner has subsequently furnished to the registrar in writing.

(4) Where the appellant is not represented by a legal practitioner the ultimate responsibility for ensuring that all copies of the record on appeal are in all respects properly before the court rests with the magistrate against whose decision the appeal has been entered and in the absence of such magistrate the responsibility rests with the control magistrate or divisional magistrate with jurisdiction over that magistrates' court.

(5) The registrar may not allocate an appeal to a judge unless a certificate to the effect that all copies of the record on appeal are in all respects properly before the court has been issued by the magistrate referred to in subrule (4), but where the appellant is the State or is represented by a legal practitioner the responsibility rests with the appellant.

(6) Not less than 15 days before the appeal is heard the appellant must deliver a concise statement, without elaboration, of the main points which he or she intends to argue on appeal as well as a list of the authorities to be tendered in support of each point.

(7) Not less than 10 days before the appeal is heard the respondent must deliver statement similar to the one delivered by the appellant under subrule (6).

(8) If the appellant or respondent is not represented by a legal practitioner, delivering of a concise statement, without elaboration, of the main points which he or she intends to argue on appeal is not a requirement.

(9) Rule 117 applies with the necessary modifications required by the context to the record of a criminal appeal from the magistrates' court.

Appeal in terms of any legislation

119. (1) Notice of an appeal to the court from the decision of a statutory body must, unless otherwise provided in an applicable law, be delivered within 20 days after the date of such decision, but where the reasons for the decision of the body are given on a later date the notice may be delivered within 20 days of that later date.

(2) The time limits set out in subrule (1) apply only where the applicable legislation does not prescribe time limits.

(3) The secretary or another person authorised so to do of the body whose decision is appealed against must, within 15 days after a notice of appeal has been filed -

- (a) deliver to the registrar of the court the record of proceedings if such record exists; and
- (b) simultaneously lodge with the registrar one hard copy of the record, but if the appeal is to be heard by more than one judge the appellant must, on the request of the registrar, lodge a further copy of the record for each additional judge.

(4) The appellant must, within 20 days of the delivery of the record of appeal, request from the registrar in writing and with notice to all other parties for the assignment of a date for

the hearing of the appeal and must at the same time make available to the registrar in writing the particulars stated in rule 6 and the address of his or her legal practitioner, if he or she is represented.

(5) A party that receives the notice referred to in subrule (4) and desires to oppose the appeal must file a notice to oppose within 20 days and must at the same time make available to the registrar in writing his or her full residential and postal addresses and the address of his or her legal practitioner, if he or she is represented.

(6) The respondent may, in the absence of an application referred to in subrule (3) by the appellant, at any time after the expiry of the period mentioned in that subrule but within 30 days after the delivery of the record of appeal, apply for a date of hearing in like manner and with notice to all other parties.

(7) A respondent who makes an application under subrule (6) must make available to the registrar in writing his or her full residential and postal addresses and the address of his or her legal practitioner, if he or she is represented.

(8) On the expiry of the period mentioned in subrule (6) and unless a hearing date has been applied for within the period provided for in that subrule, the appeal is considered to have lapsed.

(9) Rule 116 applies with the necessary modifications required by the context to an appeal noted under this rule and in respect of processes and procedures not provided for herein or in the relevant legislation.

(10) The registrar may not set down an appeal referred to in rule 116 or 118 or under this rule at the instance of a legal practitioner unless that legal practitioner has filed with the registrar a power of attorney authorising him or her to appeal and the power of attorney must be filed together with the application for a date of hearing.

Criminal appeal to Supreme Court

120. (1) Where-

- (a) an accused has been granted leave to appeal in terms of section 316 of the Criminal Procedure Act, 1977 or the Prosecutor-General or other prosecutor has been granted leave to appeal in terms of section 316A (2) of that Act;
- (b) an accused has noted an appeal in terms of section 318 of the Criminal Procedure Act, 1977; or
- (c) the court has reserved a question of law arising on the trial of an accused in terms of section 319 of the Criminal Procedure Act, 1977,

the registrar of the court must lodge with the registrar of the Supreme Court a certified copy of the record of the proceedings in the court and must notify the parties that the record has been lodged with the registrar of the Supreme Court.

(2) An accused person is entitled, on payment of the prescribed fees, to obtain from the registrar such number of copies of the record or parts of the record as is required in terms of rule 5(7) of the Rules of the Supreme Court, except that if the accused person is unable because of poverty to pay the prescribed fees he or she may, in writing, request from the registrar the required number of copies of the record and on stating the reasons and facts on which he or she relies to claim poverty and the registrar may permit him or her to obtain copies of the record without payment of fees.

(3) A question arising as to the accused person's inability to pay the prescribed fees is decided by the registrar and the registrar's decision is final.

(4) If leave to appeal in a criminal case is granted by the court the registrar must, without delay, notify the registrar of the Supreme Court of that fact.

Civil appeal to Supreme Court

121. (1) Notice of an appeal to the Supreme Court against a judgment or order of the court must be filed in accordance with the Rules of the Supreme Court.

(2) Where an appeal to the Supreme Court has been noted the operation and execution of the order in question is suspended pending the decision of such appeal, unless the court which gave the order on the application of a party directs otherwise.

(3) If the order referred to in subrule (2) is carried into execution by order of the court the party requesting the execution must, before such execution, enter into such security *de restituendo* as the parties may agree or in the absence of an agreement, the registrar may decide, for the restitution of any amount obtained on the execution, which amount includes capital and interest, if so ordered, and taxed costs and the registrar's decision is final.

PART 14 TARIFFS AND TAXATION

Tariff of court fees

122. The court fees payable in respect of the court are contained in Annexure B.

Tariff for deputy-sheriff

123. (1) The fees and charges contained in Annexure C are chargeable and allowed to deputy-sheriffs.

(2) Where there are more ways than one of doing any particular act the least expensive way must be adopted unless there is some reasonable objection to it or unless the party at whose instance process is executed desires any particular way to be adopted at his or her expense and so long as that other way is reasonable and fair.

(3) Where a dispute arises as to the validity or amount of any fees or charges and where necessary work is done and necessary expenditure is incurred but for which no provision is made the matter must be determined by the taxing officer of the court.

Fees of instructing legal practitioner and instructed legal practitioner

124. (1) The fees set out in Section A of Annexure D are, unless the court authorises fees consequent on the employment of an instructed legal practitioner, allowed as between party and party for one legal practitioner only in the following matters -

- (a) an undefended action for divorce or claim under rule 90, whether opposed or unopposed;
- (b) an application for judgment by default granted by the court or an unopposed summary judgment;
- (c) an unopposed application for leave to sue by way of edict or for substituted service;

- (d) an unopposed application for admission to practise and to be enrolled as a legal practitioner or to be enrolled as a sworn translator;
- (e) an unopposed application for the postponement or adjournment of proceedings, the removal of any matter from the roll, the confirmation, discharge or extension of a restitution order, in the event of a defended divorce, or discharge or extension of a return date of a rule *nisi*;
- (f) an unopposed application for sequestration or voluntary surrender of an estate, liquidation of a company or corporation, the rehabilitation of a person's estate or an application for curatorship;
- (g) an unopposed application for rescission of judgment;
- (h) a claim falling within the magistrates' courts' jurisdiction; or
- (i) an appeal or review from magistrates' courts.

(2) In matters other than those contemplated in subrule (1) only such fees as are consequent on the employment of one instructed legal practitioner are allowed as between party and party, unless the court authorises the fees of two or more instructed legal practitioners to be included in a party and party bill of costs.

(3) In order for the court to make an award of costs against the opposing party to include the costs of an instructing legal practitioner and an instructed legal practitioner it must be satisfied that -

- (a) the employment of the instructed legal practitioner is reasonable and necessary because of that instructed legal practitioner's special skill or the complexity of the matter; or
- (b) in the particular circumstances of the case it is not reasonable or possible for the instructing legal practitioner, although admitted and enjoying the right of audience, to personally perform the task in respect of which the instructed legal practitioner's costs are sought.

(4) Where fees in respect of the employment of more than one instructed legal practitioner are allowed in a party and party bill of costs, the fees so permitted in respect of that additional employed instructed legal practitioner may not exceed one half of those allowed in respect of the most senior instructed legal practitioner employed.

(5) The taxation of the fees of an instructed legal practitioner as between party and party may be allowed by the taxing officer as he or she considers reasonable, due regard being had to -

- (a) the time necessarily taken;
- (b) the complexity of the matter;
- (c) the nature of the subject matter in dispute;
- (d) the amount in dispute;
- (e) the seniority of the legal practitioner employed;
- (f) the fees ordinarily allowed for like services before the promulgation of this rule; and

(g) any other factors which he or she considers relevant.

(6) This rule does not apply to the employment of one legal practitioner by another legal practitioner where the last mentioned legal practitioner so employed -

(a) is an employee or a partner or a member of the same law firm as the first named legal practitioner who employed him or her; or

(b) is the correspondent in the legal proceedings concerned at the seat of the court or a division of the court for another legal practitioner who does not practise at the seat of the court or such division of the court.

(7) Where one legal practitioner instructs another legal practitioner who in turn instructs another legal practitioner the first named legal practitioner is not entitled to recover any costs.

Taxation and tariff of fees of legal practitioners

125. (1) The taxing officer is, subject to rule 124, competent to tax a bill of costs for services actually rendered by a legal practitioner in connection with litigious work of the court and he or she must tax such bill, subject to subrules (7), (8) and (11), in accordance with the provisions contained in Annexures D and E, except that the taxing officer may not tax costs in instances where some other officer is empowered to do so.

(2) At the taxation of a bill of costs the taxing officer may call for such books, documents, papers or accounts as in his or her opinion are necessary to enable him or her to determine properly any matter arising from such taxation and the taxing officer may in his or her discretion require the parties to make submissions on any particular issue emanating from the bill of costs.

(3) With a view to awarding the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him or her in relation to his or her claim or defence and to ensure that all such costs are borne by the party against whom such order has been awarded the taxing officer must on every taxation allow all such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party.

(4) The taxing officer may not, except as against the party who incurred those costs, allow costs which appear to the taxing officer to have been incurred or increased through over-caution, negligence or mistake or by payment of a special fee to an instructed legal practitioner or special charges and expenses to witnesses or to other persons or through other unusual expenses.

(5) If any person other than the legal practitioner of record drafted the bill of costs, that other person may not be awarded more than what the legal practitioner would have been entitled to for drawing, copying and delivering the bill of costs.

(6) The taxing officer may not proceed to the taxation of any bill of costs unless he or she is satisfied that -

(a) a party appearing before him or her is appearing in person or is duly represented by a legal practitioner, except that a candidate legal practitioner who holds a right of audience in terms of section 19 of the Legal Practitioners Act, 1995 does, for purposes of taxation before the taxing officer, have the same rights as a legal practitioner; and

(b) the party liable to pay costs has received due notice, which notice period must be not less than five days, as to the time and place of such taxation and notice that he or she is entitled to be present, but such notice is not necessary -

- (i) if the party against whom costs have been awarded has not appeared at the trial or hearing either in person or through his or her legal practitioner;
- (ii) if the person liable to pay costs has consented in writing to taxation in his or her absence; or
- (iii) for the taxation of writ of execution and post-writ execution costs.

(7) The taxing officer may at any time depart from any of the provision on tariffs in this rule in extraordinary or exceptional cases when strict adherence to the provisions would be inequitable and unfair.

(8) The taxing officer must, in computing the fee to be allowed in respect of taking instructions, drafting or perusal of pleadings, witness statements, opinions, advice on evidence or on commission, affidavits, petitions, notices of appeal or powers of attorney or consideration of a plan or exhibit, take into account the time necessarily taken, the complexity of the matter, the nature of the subject matter in dispute, the amount in dispute and any other factors which he or she considers relevant.

(9) In order to reduce as far as possible the costs arising from the copying of documents to accompany the briefs of an instructed legal practitioner, the taxing officer may not allow the costs of any unnecessary duplication in briefs.

(10) The taxing officer may in his or her discretion allow fees as between party and party for the copying of any document which in his or her view is reasonably required for the particular proceedings.

(11) Where one or more instructed legal practitioner referred to in rule 124 have necessarily been engaged in the performance of any of the services covered by the tariff any of those instructed legal practitioners are, subject to rule 124(7), entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him or her.

(12) Despite rule 124 and this rule, where costs are awarded in favour of a litigant who represents himself or herself, such litigant's costs are limited to disbursements necessarily and reasonably incurred and they must be taxed by the taxing officer and in that case the rules governing taxation of costs in these rules apply with the necessary modifications required by the context.

(13) A folio contains 100 words or part thereof, and four figures are counted as a word.

PART 15 MISCELLANEOUS AND GENERAL

Translation of documents

126. (1) Where a document in a language other than the official language of Namibia is produced in any proceedings it must be accompanied by a translation certified to be correct by a sworn translator.

(2) A translation so certified by a sworn translator is considered *prima facie* to be a correct translation and admissible as such on its production.

(3) If no sworn translator is available or if in the opinion of the court it would not be in the interests of justice to require a sworn translation whether because of the expense, inconvenience or delay involved the court may, despite subrule (1), admit in evidence a translation certified to be correct by any person who it is satisfied is competent to make that translation.

Interpretation of oral evidence into official language

127. (1) Where evidence in proceedings is given in a language other than the official language of Namibia that evidence must be interpreted by a competent interpreter, sworn to interpret faithfully and to the best of his or her ability into the official language.

(2) Before a person is employed as an interpreter the court may, if in its opinion it is expedient to do so or if a party on reasonable grounds so desires, satisfy itself as to the competence and integrity of that person after hearing evidence, if the hearing of evidence is reasonable and practicable.

(3) Where the services of an interpreter are employed in any proceedings the costs, if any, of interpretation are, unless the court otherwise orders, costs in the cause, except that where the interpretation of evidence given in the official language of Namibia is required by the legal practitioner of a party such costs are at such party's expense.

Authentication of documents executed outside Namibia for use within Namibia

128. (1) In this rule, unless the context otherwise indicates -

“document” means any deed, contract, power of attorney, an affidavit, a solemn or attested declaration or other writing; and

“authentication” means, in relation to a document, the verification of any signature thereon.

(2) A document executed in any country outside Namibia is, subject to subrule (3), considered to be sufficiently authenticated for the purpose of use in Namibia if it is duly authenticated in that foreign country by -

- (a) a government authority of that country charged with the authentication of documents under the law of that country; or
- (b) a person authorised to authenticate documents in that foreign country,

and a certificate of authorisation issued by a competent authority in that foreign country to that effect accompanies the document.

(3) Subrule (2) does not apply to an affidavit or a solemn or attested declaration purporting to have been made in Australia, Botswana, Canada, France, Germany, Lesotho, New Zealand, South Africa, Swaziland, the United Kingdom, Zambia or Zimbabwe before a commissioner of oaths or by whatever name called appointed as such in terms of any law of that country.

Commissioners of the court

129. (1) A person duly appointed as a commissioner of the court for taking affidavits in any place outside Namibia is, by virtue of such appointment, a commissioner of the court.

(2) A commissioner of oaths appointed as such in terms of any law of any of the countries mentioned in rule 128(3) is considered as duly appointed commissioner of the court for the taking of affidavits or solemn or attested declarations within his or her area of appointment in any of the countries mentioned in that rule.

Citation of foreign authority

130. Subject to Article 140(1) of the Namibian Constitution, where a legal practitioner in his or her heads of argument or any other written submissions or oral submissions relies on foreign authority in support of a proposition of law -

- (a) he or she 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, he or she 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.

Preparation of court documents

131. (1) All typed pleadings, notices and other court documents must comply with the following typing style -

- (a) line spacing, including line spacing of quotations must be 1.5;
- (b) text must be typed in the Arial (regular) font 12 points;
- (c) quotations must be typed in the Arial (regular) font 11 points;
- (d) footnotes must be typed in the Arial (regular) font 10 points;
- (e) short quotations forming part of a sentence must be typed the same as the text and must comply with paragraph (b);
- (f) the justification of the text of typed pleadings, notices and other court documents must be set to full justification;
- (g) all pleadings, notices and other court documents should bear page numbers, except that the covering page may not be numbered;
- (h) page numbers must be at the right hand side at the top of the page; and
- (i) the second line of a paragraph should not be indented.

(2) Any document filed with the court, other than an exhibit or a facsimile thereof, must be clearly and legibly printed or typewritten in permanent black ink on one side only of paper of good quality and of A4 standard size, weighing at least 60g/m² and a document is considered to be typewritten if it is reproduced clearly and legibly on suitable paper by duplicating by means of photographic production.

(3) Any pleading, stated case, affidavit or affirmation, grounds of appeal or other similar court documents must be divided into concise paragraphs and the paragraphs must be consecutively numerically numbered.

(4) A pleading, notice or other court document, including an affidavit or affirmation, must at the end of such pleading, notice, court document, affidavit or affirmation contain the particulars of the party filing the document, the party on whom it is served and each such pleading, notice, court document, affidavit or affirmation must be served separately and filing notices may not be used.

(5) Any affidavit filed with the registrar by or on behalf of an applicant or a respondent must, if he or she is represented by legal practitioner, on the first page thereof bear the name and address of that legal practitioner.

(6) Despite any rule to the contrary, a civil or labour cause or matter will not be heard unless and only if all the papers filed of record in that matter are indexed before the hearing, which indexing should be in compliance with the time periods and format set out in the practice directions.

(7) Indexing must also be done on e-justice and must comply with the provisions set out in the practice directions.

(8) A legal practitioner representing the plaintiff or applicant or if plaintiff or applicant is representing himself or herself, the plaintiff or applicant must see to it that the requirements in subrule (6) are complied with.

(9) Unless otherwise provided by these rules or the practice directions the -

(a) applicant must, not less than 15 days; and

(b) respondent must, not less than 10 days,

before the hearing file heads of argument with the registrar, but the managing judge may direct otherwise or the court may, on good cause shown, accept heads of argument filed out of time.

(10) The practice directions pertaining to the heads of argument apply in all circumstances where such heads of argument are required.

(11) A party to a cause or matter and a person having a personal interest therein with leave of the registrar on good cause shown may, subject to payment of the required court fees, examine any court process, notice or document in that cause or matter at the service bureau and may against payment of the required fee request from the service bureau copies of the court process, notice or document in that cause or matter.

(12) Failure to comply with the requirements in this rule may result in the -

(a) the registrar rejecting the document; or

(b) matter not being heard and an appropriate order as to costs being made.

Lapse of summons and inactive cases

132. (1) If summons in an action for payment of a debt is not served within six months of the date of its issue or having been served the plaintiff has not within that time after service taken further steps in the prosecution of the action the summons lapses.

(2) Despite subrule (1), if the plaintiff or his or her legal practitioner files an affidavit with the registrar before the expiry of that period, setting out -

(a) that at the request of the defendant an extension of time in which to pay the debt claimed or any portion thereof has been granted to the defendant;

(b) that in terms of the agreement judgment cannot, except in case of default, be sought within a period of six months from the issue of summons; and

(c) the period of extension,

the summons does not lapse until 12 months after the expiry of the period of extension.

(3) Where there is no activity in a case registered with the registrar for six months -

(a) after date of registration of the case with the registrar;

(b) after the date of filing of any pleading notice, request or other court document; or

- (c) if the case has been allocated to a managing judge, from the time that any activity is to be carried out in terms of Part 3,

that case is considered inactive.

(4) The registrar must, after consulting the Judge-President, docket-allocate any inactive case that has not yet been docket-allocated to a managing judge.

(5) A managing judge to whom an inactive case has been referred in terms of subrule (4) must deal with it as if the case had originally been docket-allocated to him or her.

(6) The managing judge must give notice on Form 28 to the parties or their legal practitioners as appear in pleadings or other documents filed of record to appear before him or her on a date specified in the notice and the case must be called on that day to be dealt with in the same way as in a status hearing in terms of rule 27.

(7) Where a party or his or her legal practitioner appears on that date the managing judge must inquire as to why there is no activity on the case and if the managing judge is satisfied with the reason he or she must make such order that he or she may consider suitable or appropriate and give appropriate directions for the speedier conduct of the proceedings.

(8) If there be no appearance by a party or his or her legal practitioner on the date referred to in subrule (7) the managing judge must -

- (a) order that the parties be informed of his or her order referred to in subrule (7) at any address provided in terms of rule 6;
- (b) postpone the case to a suitable date; and
- (c) order that the plaintiff must show good cause on that date why the case must not be struck from the roll.

(9) If there is appearance by the plaintiff or his legal practitioner on that date and the managing judge is satisfied as to the reason for the non-activity he or she must order that the next step be taken within a specified time and may make an appropriate order as to costs.

(10) If there is no appearance on that date or the plaintiff fails to satisfy the managing judge in respect of the reason for the non-activity the managing judge must strike the case from the roll.

(11) A case that has been struck from the roll in terms of subrule (10) is considered as having lapsed.

Delivery of reserved judgment

133. In any matter or cause, including a labour or review application, an application for leave to appeal or any appeal, unless a judgment is delivered immediately after the trial or hearing, the court must announce or inform the parties of the intended time and date of delivery of judgment and postpone the matter to such date and time.

Destruction of documents

134. (1) In a matter which has not been adjudicated by the court or a judge and has not been withdrawn the registrar may, subject to the provisions of the Archives Act, 1987 (Act 4 of 1987), after the lapse of three years from the date of the filing of the last document therein authorise the destruction of the documents filed in his or her office relating to such matter.

(2) Records of minutes of evidence and proceedings in criminal proceedings must be transferred to an archives depot as contemplated in section 5 of the Archives Act, 1987 (Act No. 4 of 1987), 30 years after disposal of such cases.

(3) Any matter other than a criminal matter which has been adjudicated on by the court or a judge, must be transferred to an archives depot as contemplated in section 5 of the Archives Act, 1987 (Act No. 4 of 1987), 30 years after disposal of such case.

Registration and electronic-filing

135. (1) Despite anything to the contrary in these rules, the Judge-President must by notice in the *Gazette* determine the date on which the e-justice system in terms of these rules or any other rules comes into operation.

(2) As from the date determined under subrule (1) every party to a civil or labour matter in the court must file the original of any court process, notice or document electronically with the registrar by making use of the e-justice made available by the court.

(3) The filing of any court process, notice or document referred to in subrule (2) must be done by a registered user on the e-justice or through the service bureau at the court on the e-justice, unless the managing judge or the registrar directs otherwise.

(4) The responsible legal practitioner representing a firm of legal practitioners which practises in the court may cause the firm to register as user of the e-justice system by making the necessary application which is subject to such terms and conditions as provided for in the e-justice manual referred to in subrule (8).

(5) The service bureau serving any division of the court must be situated at that division.

(6) Service of any process, notice or document of the court, other than service by the deputy-sheriff, must be done through the e-justice as long as both the party effecting service and the party on whom service is to be effected are represented by legal practitioners who are registered users.

(7) Service of any process, notice or document of the court, other than service by the deputy-sheriff, to be effected by or on a party or legal practitioner who is not a registered user of the e-justice system must be done personally and the original proof of service must be filed at the service bureau simultaneously with the original process, notice or document so served.

(8) The e-justice administrative policies and procedures contained in the Administrative Policies and Procedures Manual published by the registrar form part of these rules.

(9) A party who files any process, notice or document in the court through e-justice must keep in his or her custody and control the original hard copy of that process, notice or document and must produce them to the court on being required by the court to do so.

(10) The process, notice or document filed and kept in terms of subrule (9) must be available for the duration of the matter in which it has so been filed and must be kept for a period of at least five years after the case is considered finalised in terms of these rules.

(11) A legal practitioner resident in the jurisdiction of the court attached to a law firm which is a registered user of the e-justice must keep an account with the registrar for payment of court fees for the purposes of filing through the e-justice system.

Availability of e-justice system

136. (1) Despite subrule (2), the e-justice system is designed to provide service for 24 hours a day.

(2) In case of a process, notice or document of court being filed after the hours provided for in rule 2, the date and time of filing of the document is, unless authorised by the registrar or the court, considered to have been filed at 9h00 on the first court day following the date of actual filing.

Report by registrar on work of court

137. (1) The registrar must at the end of every legal year compile and submit to the Judge-President a report containing the following information about the work of the court in the legal year in question -

- (a) all cases, according to type of case, registered at the registry of the seat of the court and any local division of the court;
- (b) the number of cases, according to type of case, completed;
- (c) the number of reserved judgments, according to type of case, the length of time during which a judgment remained reserved and the deadline by which the judgment should have been delivered in terms of any directive of the Judge-President; and
- (d) the status of each case and type of case.

(2) After verifying the report referred to in subrule (1), the Judge-President must direct the registrar to publish the verified report.

Savings and transitional provisions

138. Despite the repeal of the Rules of the High Court by these rules -

- (a) anything done under a provision of the repealed rules and which could have been done under a corresponding provision of these rules, is deemed to have been done under such corresponding provision of these rules;
- (b) a case that has been registered with the registrar or has been allocated to a managing judge under the repealed rules continues under these rules, but if there is any uncertainty in this regard the managing judge must direct the appropriate procedure to be followed after considering representations from the parties; and
- (c) the delivery of process, notices or documents continues to be effected by way of filing of original documents at the registrar's office and service of copies thereof until the Judge-President gives notice under rule 135(1) and the preparation of such process, notices, or documents must comply with the requirements prescribed in rule 131(1).

ANNEXURES**ANNEXURE A
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FORM 1
(Rule 7(1))
COMBINED SUMMONS
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

To the deputy-sheriff:

INFORM A.B., of (state sex and occupation).....
(hereinafter called the defendant), that C.D., of.....(state sex and
occupation)..... (hereinafter called the plaintiff), hereby
institutes action against him or her in which action the plaintiff claims the relief and
on the grounds set out in the particulars annexed hereto.

INFORM the defendant further that if he or she disputes the claim and wishes to defend the
action he or she must -

1. Within 10 days of the service on him or her of this summons file with the registrar of the court at (set out the address of the seat of the court or the local division of the court) notice of his or her intention to defend and serve a copy thereof on the plaintiff's legal practitioner, which notice must give an address (not being a post office box or *poste restante*) referred to in rule 14(3)(b) for the service on the defendant of all notices and documents in the action, but, if the defendant chooses to have further pleadings served on him or her by way of electronic means, such electronic address must be provided to the plaintiff in the notice of defence.
2. Simultaneously with the delivery of the notice of intention to defend, the defendant must deliver the return in terms of rule 6(4), which contains the following information about the defendant:
 - “(a) in the case of a natural person, his or her full names, identity number where available and if a Namibian citizen or any other person ordinarily resident in Namibia, his or her physical address and where available, his or her telephone or cellular phone number or both, workplace telephone number, facsimile number and personal or workplace email address or both;
 - (b) in the case of a close corporation, its name and registration number, postal address and registered office referred to in section 25 of the Close Corporations Act 1988 (Act No. 26 of 1988) and the particulars referred to in paragraph (a) of at least one member or officer as defined in that Act and the particulars referred to in paragraph (a) of its accounting officer appointed in terms of section 59 of that Act;
 - (c) in the case of a company, its name and registered number, postal address and registered office referred to in section 178 of the Companies Act 2004 (Act No. 28 of 2004) and the particulars referred to in paragraph (a) of at least one director and the secretary referred to in section 223 of that Act including all particulars referred to in section 223(1) of that Act and in case of the officer or secretary of any other body corporate the particulars referred to in paragraph (b) of section 223(1) of that Act;

- (d) in the case of any other juristic person, the particulars referred to in paragraph (a) of at least one officer or secretary or a person, by whatever name called, running its affairs; and
 - (e) in the case of a trust which is duly authorised to litigate, the particulars referred to in paragraph (a) of all trustees and a reference number given by the master to the trust deed registered with the master.”
3. The particulars provided in terms of item 2 remain binding on the party to which they relate and may be used by the court, or by the other party to effect service of any notice or document on such party or give notice to such party.
 4. As soon as the managing judge has given notice of a case planning conference in terms of rule 23(1), he or she is required to meet with the plaintiff in order to agree a case plan in terms of rule 23(3) for submission to the managing judge for the exchange of pleadings, and the time within which he or she must deliver his or her plea and counterclaim, if any, will be determined by the court having regard to such plan and if he or she fails to cooperate in submitting such a plan, the court will determine the time within which he or she must deliver his or her plea and counterclaim, if any , and he or she must comply with such order.

INFORM the defendant further that if he or she fails to file and serve notice of intention to defend judgment as claimed may be given against him or her without further notice to him or her or if, having filed and served such notice, he or she fails to plead, except, make application to strike out or counterclaim, judgment may be given against him or her. And immediately thereafter serve on the defendant a copy of this summons and return it to the registrar with whatsoever you have done thereupon.

DATED at on this day of 20

.....
 Plaintiff / Plaintiff’s Legal Practitioner
 Name of signatory:
 Address:

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address

 Windhoek/Oshakati

FORM 2
Rule 12(3)
EDICTAL CITATION
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

To:

A B (sex)
..... (occupation) formerly residing at
..... but whose present whereabouts are unknown:

TAKE NOTICE that by summons sued out of this court, you have been called on to give notice,
within days after the publication of this notice, to the registrar and to the plaintiff's legal
practitioner of your intention to defend (if any) in an action wherein

C D claims:

- (a)
(b)
(c)

TAKE FURTHER NOTICE that if you wish to defend the action, you are to deliver a notice of intention
to defend which must give your full residential or business address, and must also appoint an address,
not being a post office box or poste restante, for service on you of all documents in this action within
a flexible radius from the office of the registrar or if you elect to be served by electronic means indicate
your electronic address and in that case service thereof at the address so given is valid and effectual,
except where by any order or practice of the court personal service is required.

TAKE NOTICE FURTHER that if you fail to give such notice, judgment may be granted against you
without further reference to you.

TAKE FURTHER NOTICE that simultaneously with the delivery of the notice of intention to
defend, the defendant must deliver the return in terms of rule 6(4), which must contains the following
information about the defendant:

- (a) in the case of a natural person, his or her full names, identity number where available
and if a Namibian citizen or any other person ordinarily resident in Namibia, his or her
physical address and where available, his or her telephone or cellular phone number or
both, workplace telephone number, facsimile number and personal or workplace email
address or both;
(b) in the case of a close corporation, its name and registration number, postal address
and registered office referred to in section 25 of the Close Corporations Act 1988
(Act No. 26 of 1988) and the particulars referred to in paragraph (a) of at least one
member or officer as defined in that Act and the particulars referred to in paragraph
(a) of its accounting officer appointed in terms of section 59 of that Act;

- (c) in the case of a company, its name and registered number, postal address and registered office referred to in section 178 of the Companies Act 2004 (Act No. 28 of 2004) and the particulars referred to in paragraph (a) of at least one director and the secretary referred to in section 223 of that Act including all particulars referred to in section 223(1) of that Act and in case of the officer or secretary of any other body corporate the particulars referred to in paragraph (b) of section 223(1) of that Act;
- (d) in the case of any other juristic person, the particulars referred to in paragraph (a) of at least one officer or secretary or a person, by whatever name called, running its affairs; and
- (e) in the case of a trust which is duly authorised to litigate, the particulars referred to in paragraph (a) of all trustees and a reference number given by the master to the trust deed registered with the master.”

The particulars so provided remain binding on the party to which they relate and may be used by the court or by the other party to effect service of any notice or document on such party or give notice to such party.

TAKE FURTHER NOTICE that as soon as the managing judge has given notice of a case planning conference in terms of rule 23(1), you will be required to meet with the plaintiff in order to agree a case plan in terms of rule 23(3) for submission to the managing judge for the exchange of pleadings and the time within which you will deliver your plea and counterclaim if any will be determined by the court having regard to such plan and if you fail to cooperate in submitting such a plan, the court will determine the time within which you must deliver your plea and counterclaim, if any, and you must comply with such order.

DATED at on this day of 20

.....
 Plaintiff / Plaintiff’s Legal Practitioner
 Name of signatory:
 Address:

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address

 Windhoek/Oshakati

FORM 3
Rule 13(1)
SUBSTITUTED SERVICE
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

To:

A B (sex)
..... (occupation) formerly residing at
..... but whose present whereabouts are unknown:

TAKE NOTICE that by summons sued out of this court, you have been called on to give notice,
within days after the publication of this notice, to the registrar and to the plaintiff's legal
practitioner of your intention to defend (if any) in an action wherein

C D claims:

- (a)
(b)
(c)

TAKE FURTHER NOTICE that in the event of you defending the action, you are to deliver a notice
of intention to defend which must therein give your full residential or business address, and must also
appoint an address, not being a post office box or poste restante, for service on you of all documents
in this action within a flexible radius from the office of the registrar or if you elect to be served by
electronic means indicate your electronic address and in that case service thereof at the address so given
is valid and effectual, except where by any order or practice of the court personal service is required.

TAKE NOTICE FURTHER that if you fail to give such notice, judgment may be granted against you
without further reference to you.

TAKE FURTHER NOTICE that simultaneously with the delivery of the notice of intention of defend,
the defendant must deliver the return in terms of rule 6(4), which contains the following information
about the defendant:

- (a) in the case of a natural person, his or her full names, identity number where available
and if a Namibian citizen or any other person ordinarily resident in Namibia, his or her
physical address and where available, his or her telephone or cellular phone number or
both, workplace telephone number, facsimile number and personal or workplace email
address or both;
(b) in the case of a close corporation, its name and registration number, postal address
and registered office referred to in section 25 of the Close Corporations Act 1988
(Act No. 26 of 1988) and the particulars referred to in paragraph (a) of at least one
member or officer as defined in that Act and the particulars referred to in paragraph
(a) of its accounting officer appointed in terms of section 59 of that Act;

- (c) in the case of a company, its name and registered number, postal address and registered office referred to in section 178 of the Companies Act 2004 (Act No. 28 of 2004) and the particulars referred to in paragraph (a) of at least one director and the secretary referred to in section 223 of that Act including all particulars referred to in section 223(1) of that Act and in case of the officer or secretary of any other body corporate the particulars referred to in paragraph (b) of section 223(1) of that Act;
- (d) in the case of any other juristic person, the particulars referred to in paragraph (a) of at least one officer or secretary or a person, by whatever name called, running its affairs; and
- (e) in the case of a trust which is duly authorised to litigate, the particulars referred to in paragraph (a) of all trustees and a reference number given by the master to the trust deed registered with the master.”

The particulars so provided remain binding on the party to which they relate and may be used by the court or by the other party to effect service of any notice or document on such party or to give notice to such party.

TAKE FURTHER NOTICE that as soon as the managing judge has given notice of a case planning conference in terms of rule 23(1), you as defendant will be required to meet with the plaintiff in order to agree a case plan in terms of rule 23(3) for submission to the managing judge for the exchange of pleadings and the time within which you will deliver your plea and counterclaim if any will be determined by the court having regard to such plan and if you fail to cooperate in submitting such a plan, the court will determine the time within which you must deliver your plea and counterclaim, if any, and you as defendant must comply with such order.

DATED at on this day of 20

.....
 Plaintiff / Plaintiff’s Legal Practitioner
 Name of signatory:
 Address:

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address

 Windhoek/Oshakati

FORM 4
 Rule 23(1)
CASE PLANNING CONFERENCE NOTICE
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

A. NOTICE TO LEGAL PRACTITIONERS - CASE PLANNING CONFERENCE

The managing judge hereby calls on the parties or their legal practitioners to attend a case planning conference to be held at the court indicated on the notice board at on

The parties or their legal practitioners are directed to submit a joint case plan in terms of rule 23(2) and (3) at least three days before the case planning conference to the managing judge.

Take further notice that whether a case plan has been submitted or not, an order in terms of this rule may be made as the managing judge considers just and on failure to submit a joint case plan the parties will be barred from applying for summary judgment or filing notice to except of strike.

B. PROFORMA ORDER

Despite being invited to submit a case plan in terms of rule 23(1), no case plan has been submitted and the following order is hereby made:

1. The defendant’s plea and counterclaim, if any, must be filed on or before.....(date)
2. The plaintiff’s replication, if any, must be filed on or before..... /..... (date)
3. In the case of a counterclaim by the defendant, the plea to the counterclaim must be filed on or before..... (date)
4. In the case of a plea to counterclaim, if any, (date)
5. In the case of replication, if any, to the plea to a counterclaim..... (date)

[Note: No date given by the managing judge in respect of 1-5 must be a date that is more than 15 days from the date of the previous pleading.]

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
Registrar of the High Court
Main/Northern Local Division
Physical Address _____
_____ Windhoek/Oshakati

To:
..... /party
Legal practitioner for
(Address)

And To:
..... /party
Legal practitioner for
(Address)

FORM 5
 Rule 25(1)
CASE MANAGEMENT CONFERENCE NOTICE
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

The managing judge hereby directs the parties or their legal practitioners to attend a case management conference to be held at on at court indicated on the notice board.

All court documents must be clearly indexed and paginated.

All the issues listed in rule 25(2), as well as issues not listed therein but included in the report, must be considered by the parties at the parties' case management meeting and directions will be given by the managing judge based on the report.

An order will be made by the managing judge in terms of rule 25(5).

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address _____

 Windhoek/Oshakati

To:
 /party
 Legal practitioner for
 (Address)

And To:
 /party
 Legal practitioner for
 (Address)

FORM 6
Rule 25(5)
CASE MANAGEMENT ORDER
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

On a case management conference was held pursuant to rule 25 of the Rules of the High Court of Namibia. The parties met before the conference and submitted a report prepared by them in terms of rule 24.

Having considered the report and submissions by the parties or their legal practitioners during the case management conference -

It is hereby ordered:

1. Joinder of parties, consolidation of actions, change of parties, etc
2. Filing of further pleadings, amendments to pleadings, filing of statements and deadlines therefor.
3. Interlocutory motions:
 - (a) Deadlines for filing the requisite notices and heads of argument.
 - (b) Date for hearing the intended interlocutory motions.
4. Date or dates for filing witness statements sufficient to constitute evidence- in-chief.
5. Discovery:
 - (a) Directions, as appropriate, in respect of the discovery already made by the parties.
 - (b) Directions on any additional discovery requested by any party.
 - (c) Any further directions that the managing judge may consider necessary to achieve the overriding objective.
6. Expert evidence:
 - (a) Qualification of experts who submitted summaries.
 - (b) Deadlines for any further expert summaries.
 - (c) Narrowing the field of dispute between expert witnesses.
 - (d) Whether or not a court expert is likely or desired.

- 7. Recording of any admission of fact or evidence.
- 8. Points of law:
 - (a) Determination of specified points of law.
 - (b) Date of hearing and heads of argument.
- 9. Any possible alternative dispute resolution.
- 10. Settlement of issues or accounts
- 11. Any special case
 - (a) Formulation
 - (b) Dates for hearing and heads of argument
- 12. Dispensing with oral evidence in chief of witnesses and dates for submission of affidavits *in lieu* thereof.
- 13. Any directions by managing judge, whether sought by a party or not.
- 14. Any issues to facilitate a speedy disposal of the case.
- 15. Any application for the transfer of the case from one division to another in terms of section 4A (5) of the Act;
- 16. Date for any additional case management conference.
- 17. An estimate of the number of days required for the trial
- 18. Trial date allocated where possible.

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address _____

 Windhoek/Oshakati

To:
 /party
 Legal practitioner for
 (Address)

And To:
 /party
 Legal practitioner for
 (Address)

FORM 7
 Rule 26(2)
PRE-TRIAL CONFERENCE NOTICE
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

On at a pre-trial conference will be held before the managing judge and all parties or their legal practitioners are required to attend such conference where the issues set out in rule 26(6) will be determined taking into consideration the joint report submitted to the managing judge in advance. The pre-trial conference will be held in the court indicated on the notice board.

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address _____

 Windhoek/Oshakati

To:
 /party
 Legal practitioner for
 (Address)

And To:
 /party
 Legal practitioner for
 (Address)

FORM 8
 Rule 26(7)
PRE-TRIAL ORDER
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

On.....a pre-trial conference was held under rule 26 of the Rules of the High Court of Namibia. The parties submitted a proposed pre-trial order prepared by them in terms of rule 26(4) and (5).

It is hereby ordered: (The specific directions to be inserted)

1. Issues of fact to be resolved at the trial.
2. Issues of law to be resolved at the trial.
3. The facts that are not in dispute.
4. The list of each party’s witnesses expected to be called to testify.
5. State whether any exhibits will be introduced at the trial and when notice thereof must be given by a party.
6. All plans photos, diagrams and models admitted or disputed.
7. The trial dates.
8. The date for filing of index by the plaintiff.
10. Any further direction which the managing judge considers necessary to achieve the overriding objective.

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address _____

 Windhoek/Oshakati

To:
 /party
 Legal practitioner for
 (Address)

And To:

..... /party

Legal practitioner for

(Address)

FORM 9
Rule 27(1)
NOTICE OF STATUS HEARING
IN HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

1. The managing judge hereby schedules a status hearing in terms of rule 27(1) of the Rules of the High Court, in the above matter for the purpose of determining the status of the matter and in particular for the purpose of making such orders as are appropriate for the just and speedy disposal of the case.
2. The status hearing will be held at on before the Hon. or his or her assigned delegate and the parties are obliged to attend either personally or by a legal practitioner.

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address _____

 Windhoek/Oshakati

To:
 /party
 Legal practitioner for
 (Address)

And To:
 /party
 Legal practitioner for
 (Address)

FORM 10
Rule 28(4)
DISCOVERY - FORM OF AFFIDAVIT
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

I,, the above-named plaintiff/defendant, make oath and say/affirm and solemnly declare:

- 1. I have in my possession or power the documents and tape recordings relating to the matters in question in this cause set out in parts A and B of the First Schedule hereto.
- 2. I object to produce the documents and tape recordings set out in part B of the First Schedule hereto.
- 3. I do so for the reason that (here state on what grounds the objection is made, and verify the fact as far as may be).
- 4. I have had, but have not now in my possession or power, the documents and tape recordings relating to the matters in question in this action, set forth in the Second Schedule.
- 5. The last-mentioned documents and tape recording were last in my possession or power (state when).
- 6. The (here state what has become of the last-mentioned documents, and in whose possession they are now).
- 7. According to the best of my knowledge and belief, I have not now, and never had in my possession, custody and or power, or in the possession, custody or power of my legal practitioner, or agent, or any other person on my behalf, any document, or copy of or extract from any document, relating to any matters in question in this cause, other than the documents set forth in the First and Second Schedule.

.....
Plaintiff/Defendant

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 or affirming and that he/she regards the oath or affirmation as binding on his/her conscience and has declared as follows:

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

Or

“I solemnly affirm that the contents of this affidavit are true and correct”

.....

COMMISSIONER OF OATHS

Full names:.....

Capacity:.....

Address:.....

.....

.....

To:

..... /party

Legal practitioner for

(Address)

And To:

Registrar of the High Court

Main / Northern Local Division

(Address)

FORM 11
 Rule 28(8) (a)
DISCOVERY: ADDITIONAL DOCUMENTS TO BE DISCLOSED
IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

Please take note that the above named plaintiff/defendant requires you within 15 days to deliver to the under-mentioned address a written statement setting out what documents and tape recordings of the following nature you have presently or had previously in your possession:

- (a)
- (b)
- (c)
- (d)

In such statement you must specify in detail which documents are still in your possession. If you no longer have any such documents which were previously in your possession you must state in whose possession they are now.

If you fail to deliver the statement within the time aforesaid, application will be made to court for an order compelling you to do so and directing you to pay the costs of such application.

.....
 Legal practitioner for plaintiff/defendant
 (Address)

To:
 /party
 Legal practitioner for
 (Address)

And To:
 Registrar of the High Court
 Main / Northern Local Division
 (Address)

FORM 12
 Rule 28(11)
DISCOVERY - NOTICE TO INSPECT DOCUMENTS
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

TAKE NOTICE that you are hereby requested to make available for inspection and copying at our own cost the documents mentioned in your notice of the day of 20....., at your office, or at and between the hours of and on the following days:

.....;
;

TAKE FURTHER NOTICE that if you fail or refuse to do so, the managing judge may make an order to compel you to comply with the request; and

TAKE FURTHER NOTICE that if you are ordered by the managing judge to comply and if you fail to do so, the managing judge may dismiss your claim or strike out your claim/ defence.

DATED at thisday of20.....

..... / party
 Legal practitioner for
 (Address)

To:
 /party
 Legal practitioner for
 (Address)

To:
 Registrar of the High Court
 Main/Northern Local Division
 (Address)

FORM 13
 Rule 28(14)
DISCOVERY - ORDER TO PRODUCE DOCUMENTS
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

TAKE NOTICE that the (plaintiff or defendant) is hereby ordered to produce within 10 days for inspection the following documents referred to in his or her affidavit, dated the day of 20

(Describe the documents)

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address _____

 Windhoek/Oshakati

To:
 /party
 Legal practitioner for
 (Address)

And To:
 /party
 Legal practitioner for
 (Address)

FORM 14
Rule 37(2)
SUBPOENA
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

To the deputy-sheriff:

INFORM:

- (1)
- (2)
- (3)
- (4)

(State names, sex, occupation, race and place of business or residence of each witness)

That each of them is hereby required to appear in person before this court at on the day of 20 at o'clock in the morning/afternoon and thereafter to remain in attendance until excused by the said court, in order to testify on behalf of the above-named plaintiff/defendant in regard to all matters within his or her knowledge relating to an action now pending in the said court and wherein the plaintiff claims:

- (1)
- (2)
- (3)

from the defendant.

AND INFORM him or her that he or she is further required to bring with him or her and to produce to the said court

(describe accurately each document, book or other thing to be produced)

AND INFORM each of the said persons further that he or she should on no account neglect to comply with this subpoena as he or she may thereby render himself or herself liable to a fine of N\$ 4 000 or to imprisonment for one year.

DATED at on this day of 20

.....
Registrar of the High Court

.....
Plaintiff/defendant's legal practitioner
(Address)

FORM 15
Rule 42(7) and (8)
NOTICE TO ALLEGED PARTNER
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

To: A B

TAKE NOTICE that action has been instituted by the above-named plaintiff against the above-named defendant for the sum of and that the plaintiff alleges that the above-named defendant is a firm/partnership of which you were from to proprietor/partner.

If you dispute that you were a proprietor/partner or that the above-mentioned period is in any way relevant to your liability as a proprietor/partner, you must within 10 days of the service of this notice give notice of your intention to defend. On your giving the notice a copy of the summons served on the above-named will be served on you.

To give the notice you must file with the registrar and serve a copy thereof on the plaintiff at the address set out at the foot hereof stating that you intend to defend. Your notice must give an address (not being a post office or *poste restante*) for the service on you of notices and documents in the action. Unless you do all these things your notice is invalid.

Thereafter you should file a plea in which you may dispute that you were a partner or that the period alleged above is relevant or that the defendant is liable.

If you do not give such notice you will not be at liberty to contest any of the above issues. If the above-named defendant is held liable you will be liable to have execution issued against you, should the defendant's assets be executed in execution and be insufficient.

DATED at on this day of 20

.....
Legal practitioner for defendant/ defendant
(Address)

[Note: In application proceedings this form should be appropriately altered]

To:
.....
Legal practitioner for plaintiff/ plaintiff
(Address)

.....
Partners
(Address)

To:
Registrar of the High Court
Main/Northern Local Division
(Address)

FORM 16
Rule 50(1)
NOTICE TO THIRD PARTY
IN THE HIGH COURT OF NAMIBIA
(Main/ Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

..... Third Party

TO THE ABOVE-NAMED THIRD PARTY:

TAKE NOTICE that the above-named plaintiff has commenced proceedings against the above-named defendant for the relief set out in the summons, a copy of which is attached hereto.

The above-named defendant claims a contribution or indemnification on the grounds set out in the summons (or such other grounds as may be sufficient to justify a third-party notice).

If you dispute those grounds or if you dispute the claim of the plaintiff against the defendant, you must give notice of your intention to defend, within days. The notice must be in writing and filed with the registrar and a copy thereof served on the above-named defendant at the address set out at the foot of this notice. It must give an address (not being a post office or *poste restante*) for the service on you of notices and documents in the action. Within 10 days of your giving the notice you must file a plea to the plaintiff’s claim against the defendant or a plea to the defendant’s claim against you or both such pleas.

.....
Defendant’s legal practitioner

To:
.....
Legal practitioner for Plaintiff
(Address)

To:

Third party
(Address)

To:
Registrar of the High Court
Main/Northern Local Division
(Address)

FORM 17
 Rule 65(4)
APPLICATION: NOTICE OF MOTION
 (To Registrar and Respondent)
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Plaintiff

And

..... Defendant

TAKE NOTICE that (hereinafter called the applicant) intends to make application to this court for an order

- (a)
- (b)
- (c)

(here set out the form of order prayed)

and that the accompanying affidavit of will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed (here set out an address referred to in rule 65(5)) at which he or she will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend to oppose this application you are required to-

- (a) notify applicant’s legal practitioner in writing on or before
- (b) and within 14 days of the service of notice of your intention to oppose, to file your answering affidavits, if any.

and further that you are required to appoint in such notification an address within a flexible radius from the court, referred to in rule 65(5) at which you will accept notice and service of all documents in these proceedings.

If no notice of intention to oppose is given, the application will be moved on the at a.m/pm.

DATED at on this day of 20

.....
Applicant’s legal practitioner/applicant

To:
(Address)
Respondent’s Legal practitioner/ Respondent

And To:

Registrar of the High Court
Main/Northern Local Division
(Address)

FORM 18
 Rule 72(2)
APPLICATION: EX PARTE
 (To Registrar)
 IN THE HIGH COURT OF NAMIBIA
 (Main/ Northern Local Division)

Case Number:

In re:

.....

Applicant

TAKE NOTICE that application will be made on behalf of the above-named applicant on theday of at 10 a.m. or as soon thereafter as a legal practitioner may be heard for an order in the following terms:

- (a)
- (b)
- (c)

and the affidavit of annexed hereto will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

DATED at on this day of 20

.....
Applicant's legal practitioner/Applicant

To:
Registrar of the High Court
Main/Northern Local Division
(Address)

FORM 19
 Rule 90(2)
INTERIM AND PENDING MATRIMONIAL MATTERS
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number:

In the matter between:

..... Applicant

And

..... Respondent

To the above mentioned respondent:

TAKE NOTICE that if you intent to oppose this application you must, within 10 days , file an answering affidavit in the form of a plea with the registrar of the court, giving an address for service and serve a copy thereof on the applicant’s legal practitioner. If you fail to do that, you will be automatically barred from opposing the application and an order may be granted against you as claimed. Your answering affidavit must indicate what allegations in the applicant’s statement you admit or deny and must concisely set out your defence.

DATED at on this day of 20

.....
 Applicant’s legal practitioner
 Address for service:

To:
 Legal practitioner for the respondent/Respondent

To: Registrar of the High Court
 Main/Northern Local Division
 (Address)

FORM 20
 Rule 92(1)
ORDER TO SERVE WITNESS STATEMENT
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

TAKE NOTICE that (plaintiff/defendant) is hereby ordered to serve on (plaintiff/defendant) the witness statement(s) of:

1

2

3 (witness (ses))

On or before (date) of the oral evidence of the abovementioned witness(es) which (plaintiff/defendant) intends to rely on in relation to any issue of fact to be decided at the trial.

TAKE FURTHER NOTICE that the following directions are made by the managing judge to which the parties must adhere.

TAKE FURTHER NOTICE that failure to serve the abovementioned witness statement or statements may result in the court disallowing such evidence at the trial.

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
 Registrar of the High Court
 Main/Northern Local Division
 Physical Address _____

 Windhoek/Oshakati

To:
 /party
 Legal practitioner for
 (Address)

And To:
 /party
 Legal practitioner for
 (Address)

FORM 21
Rules 94(1) and 95(1)
NOTICE TO ADMIT FACTS OR DOCUMENTS
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

A. TAKE NOTICE that (plaintiff/defendant) is required to admit the following facts:

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

TAKE FURTHER NOTICE that any such admission may be used against the maker thereof.

B. TAKE NOTICE that.....(plaintiff/defendant) is required to admit the authenticity of the following documents:

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

TAKE FURTHER NOTICE that if you do not admit the authenticity of the above-mentioned documents (or any of them -specified), you are required within 7 days hereof, to serve notice on (plaintiff/defendant) that same must be proved.

DATED at on this day of 20

..... /party
Legal practitioner for
(Address)

To:
..... /party
Legal practitioner for
(Address)

To: Registrar of the High Court
Main/Northern Local Division
(Address)

FORM 22
Rule 104(1)
WRIT OF EXECUTION - GENERAL
IN THE HIGH COURT OF NAMIBIA
(Main/ Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

To the Deputy-sheriff for the district of

You are hereby directed to attach and take into execution the movable goods of, the abovementioned defendant of (address), and of the same to cause to be realised by public auction the sum of together with interest thereon at the rate of per cent per annum from the day of 20 and the sum of for the taxed costs and charges of the said which he or she recovered by judgment of this Court dated the day of 20, in the abovementioned case, and also all other costs and charges of the plaintiff in the said case to be hereafter duly taxed according to law, besides all your costs thereby incurred.

Further pay to the said or his or her legal practitioner the sum or sums due to him or her with costs as abovementioned, and for your so doing this is your warrant.

DATED at on this day of 20

.....
Registrar of the High Court

.....
Judgment creditor's legal practitioner
(address)

FORM 23
Rule 105(1)
FORM OF SECURITY
IN THE HIGH COURT OF NAMIBIA
(Main/ Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

WHEREAS by virtue of certain writ of the High Court of Namibia, dated the day of 20, issued at the instance of A.B against C.D of the deputy-sheriff has seized and laid under attachment the under mentioned articles, namely:

(Describe goods attached)

NOW, therefore, we said C.D and G.H, of a (occupation), as surety for him or her, bind ourselves severally and in solidum, hereby undertaking to the said deputy-sheriff or his or her cessionaries, assigns or successors in office, that the said goods may not be made away with or disposed of, but must remain in possession of the said C.D under the said attachment, and be produced to the said deputy-sheriff (or other person authorised by him or her to receive the same) on the day of 20 (the day appointed for the sale) or on any other day when the same may be required in order to be sold, unless the said attachment is legally removed, failing which, I, the said G.H, hereby bind myself, my person, goods and effects, to pay and satisfy the sum of (estimated value of the effects seized) to the said deputy-sheriff, his or her cessionaries, assigns or successors in office, for and on account of the said A.B.

In witness, whereof, we, the said C.D. and G.H. have hereunto set hands, on this day of 20
C.D

.....
Judgment debtor

G.H
.....
Surety

.....
Deputy-sheriff

ASSIGNMENT OF SURETY BOND

I,, in my capacity as deputy-sheriff for the district of, hereby cede, assign and make over to A.B. all my right, title and interest in the foregoing surety bond.

Signed by me in the presence of the subscribing witnesses at this day of 20

.....

Deputy-sheriff

AS WITNESS:

1.

2.

FORM 24
 Rule 108(2(a))
NOTICE BY JUDGMENT CREDITOR TO JUDGMENT DEBTOR
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

TAKE NOTICE THAT (plaintiff/defendant)(hereinafter called the judgment creditor) has obtained judgment against (plaintiff/defendant) (hereinafter called the judgment debtor) on (date) in this court.

TAKE FURTHER NOTICE THAT the judgment creditor has applied in terms of rule 108(1)(b) for an order declaring the property executable and the judgment creditor is hereby called to provide reasons to this honourable court within 10 days why such an order may not be granted.

DATED at on this day of 20

.....
 Judgment creditor's legal practitioner
 (address)

To: Registrar of the High Court
 Main/Northern Local Division
 (Address)

FORM 25
 Rule 109(2)
WRIT OF EXECUTION - IMMOVABLE PROPERTY
 IN THE HIGH COURT OF NAMIBIA
 (Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

To the deputy-sheriff for the district of

WHEREAS you were directed to cause to be realised the sum of in satisfaction of a judgment debt and costs obtained by A.B, against the said C.D. in this court on the day of 20

AND WHEREAS your return stated(here quote the deputy-sheriff’s return on the writ against movables).

NOW, therefore, you are directed to attach and take into execution the immovable property of the said C.D., being (here give the description of the property) to the cause to be realised therefrom the sum of together with the costs hereof and of the prior writ amounting to and your charges in and about the same, and thereafter to dispose of the proceeds thereof in accordance with rule 110.

FOR which this is your warrant.

DATED at on this day of 20

.....
Registrar of the High Court

.....
Execution creditor’s legal practitioner
(address)

FORM 26
Rule 110(6) (a)
CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

The property which will be put up to auction on the day of
20....., consist of:

(Describe property)

The sale is subject of the following conditions:

1. The property will be sold by the deputy-sheriff of at to the highest bidder with a reserve price of
2. The sale must be in Namibia Dollars, and no bid that is less than the reserve price determined in terms of rule 109(8)(a) will be accepted.
3. If any dispute arises about any bid the property may be again put up for auction.
4. If the auctioneer makes a mistake in selling, the mistake is not binding on any of the parties but may be rectified. If the auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 6 or the balance of the purchase price he or she may refuse to accept the bid of that bidder or accept it provisionally until that bidder has satisfied him or her that he or she is in a position to pay the balance of the purchase price. On the refusal of a bid under such circumstances, the property may immediately be put up for auction.
5. The purchaser must as soon as possible after the sale and immediately on being requested by the, sign these conditions, and if he or she has brought *qua qualitate* state the name of his or her principal.
6. The purchaser must pay a deposit of 10 per cent of the purchase price in cash on the day of sale, the balance against transfer to be secured by a bank or building society guarantee, to be approved by execution creditor's legal practitioner, to be furnished to the deputy-sheriff within days after the date of sale.
7. If transfer of the property is not registered within one month after the sale, the purchaser is liable for payment of interest to the execution creditor at the rate of% and to the bondholder at the rate of% per annum on the respective amounts of the award to the execution creditor and the bondholder in the plan of distribution as from the expiration of one month after the sale to date of transfer.
8. If the purchaser fails to carry out any of his or her obligations under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the deputy-sheriff after due

notice to the purchaser, and the property may again be put up for sale and the purchaser is responsible for any loss sustained by reason of his or her default, which loss may, on the application of any aggrieved creditor whose name appears on the deputy-sheriff's distribution account, be recovered from him or her under judgment of the judge pronounced summarily on a written report by the deputy-sheriff, after such purchaser has received notice in writing that such report will be laid before the judge for such purpose.

- 9. If the purchaser is already in possession of the property, the deputy-sheriff may, on seven days' notice, apply to a judge for an order ejecting him or her or any person claiming to hold under him or her therefrom.
- 10. The purchaser must pay auctioneer's charges on the day of sale and in addition, transfer dues, costs of transfer, and arrears rates, taxes and other charges necessary to effect transfer, on request by the legal practitioner for the execution creditor.
- 11. The property may be taken possession of immediately after payment of the initial deposit and is, after such deposit, at the risk and profit of the purchaser.
- 12. The purchaser may obtain transfer of the property forthwith if he or she pays the whole price and complies with condition 11, in which case any claim for interest lapses, otherwise transfer may be passed only after the purchaser has complied with the provisions of conditions 6, 7 and 11.
- 13. The deputy-sheriff may demand that any buildings standing on the property sold must be immediately insured by the purchaser for the full value of same and the insurance policy handed to him or her and kept in force as long as the whole price has not been paid but if he or she does not do so, the deputy-sheriff may effect the insurance at the purchaser's expense.
- 14. The property is sold as represented by the title deeds and diagram annexed thereto, and the deputy-sheriff does not holding himself or herself liable for any deficiency that may be found to exist and renouncing all excess.
- 15. The property is also sold subject to all servitudes and conditions specified in the deed of transfer.
- 16. The execution creditor is entitled to appoint a legal practitioner to attend to transfer.

At..... this day of 20

.....
Deputy-sheriff

I certify hereby that today the in my presence the hereinbefore-mentioned property was sold for to

I, the undersigned,, residing at in the district of do hereby bind myself as the purchaser of the hereinbefore-mentioned property to pay the purchase price and to perform all and singular the conditions mentioned above.

.....

FORM 27
Rule 113(3)
INTERPLEADER NOTICE BY DEPUTY-SHERIFF

Case Number: /

In the matter between:

..... Plaintiff

And

..... Defendant

In terms of rule 113(1) of the Rules of High Court of Namibia:

WHEREAS the deputy-sheriff of (place) has on the day of; (date) at (time) attached and taken under his/her control the goods as set out in Annexure A hereto in terms of a writ of execution issued by the first claimant, (name of execution creditor) of (address),

AND WHEREAS; (name of claimant/or claimants) of; (address) has/have claimed the goods as set out in Annexure B hereto as his/her/its/their property,

NOW THEREFORE, and if any of the above claimants is/are intending to pursue their claims, they are :

- a) to notify all other parties, in writing, on or before the of their intention to do so;
 - and
- b) within 14 days of delivery of such notice deliver particulars of their claims, in writing, which particulars must, with such modifications as may be required by the context, comply with the requirements of rules 45 and 131;

and further that such claimant/claimants is/are required to appoint in such notification an address within a flexible radius of the office of the registrar at which he/she/it/they will accept notice and service of all documents.

AND TAKE NOTICE THAT the applicant will apply to the court for its decision as to his/her liability or the validity of their claims on the day of; (date) at (time), at which hearing date the claimants are called upon to appear in support of their claims.

FURTHER TAKE NOTICE THAT, if a claimant fails to deliver particulars of his/her/its claim within the time stated above or fails to appear in support of his/her/its claim, the court may make an order declaring him/her/it and all persons claiming under him/her/it barred as against the applicant from making any claim on the subject matter of the dispute.

AND FURTHER TAKE NOTICE THAT in terms of rule 113(8) the affidavit of (full names of applicant), is attached hereto as Annexure C.

DATED at (place) this day of (date).

.....
Deputy-Sheriff
(Address)

Service on: Registrar
Claimants'

FORM 28
Rule 132(6)
INACTIVE CASE
IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)

Case Number: /.....

In the matter between:

..... Plaintiff

And

..... Defendant

Notice to all parties and legal practitioners of record:

TAKE NOTICE that you are called to attend a hearing before the managing judge at
(time) on (date) in the High Court of Namibia (Main/ Northern Local Division)
to show cause to the satisfaction of the managing judge why there has been no activity in this case for
six months and why the case must not be struck from the roll, not to be enrolled again.

TAKE FURTHER NOTICE that the managing judge may make an appropriate costs order.

TAKE FURTHER NOTICE that failing to attend this hearing may result in the case being struck
from the roll and, not being enrolled again.

DATED at on this day of 20

BY ORDER OF THE MANAGING JUDGE.

.....
Registrar of the High Court
Main/Northern Local Division
Physical Address _____

Windhoek/Oshakati

To:
..... /party
Legal practitioner for
(Address)

And To:
..... /party
Legal practitioner for
(Address)

ANNEXURE B
COURT FEES
Tariff of Court Fees

- i All court fees are payable by means of revenue stamps which will on presentation to the registrar be defaced in terms of the Stamp Duties Act, 1993 (Act 15 of 1993).
- ii Court fees in respect of items 1-7 and 11 below will be payable by affixing revenue stamps on the face of the applicable document.
- iii Court fees in respect of items 8-10 below will be payable by affixing revenue stamps on a written request made to the registrar.

	N\$.c
1. On every original initial document whereby an action is instituted or application is made	100.00
2. On every bill of costs to be taxed which is not related to an action or application already registered in the court	100.00
3. On every power of attorney (to be filed with the registrar) to appeal against the judgment of an inferior court, excluding appeals in criminal cases	5.00
4. On every notice of appeal against a judgment of the court (irrespective whether it was presided by one or more judges) to the Supreme Court	100.00
5. For the registrar's certificate on any copy of a document, certifying such document as a true copy of the original, including a certificate certifying a summons as a duplicate original summons (each)	5.00
6. For each copy of an order of court or judgment made by the registrar, for each A4-size page or part thereof	5.00
7. For each copy of a document, notice, pleading or part of a court record made by the registrar, for each A4-size page or part thereof	5.00
8. On a request to inspect a court record made within 5 days after judgment was delivered	5.00
9. For each electronic sound or video file of any recorded session of any proceedings digitally recorded, per session, irrespective whether the file is provided on a separate disk, copied onto any other external device provided to the registrar or transmitted via e-mail	150.00
10. For each copy of any document, notice, pleading, judgment or part of a transcribed court record provided by the registrar in electronic format, irrespective whether the document, notice, pleading, judgment or part of a court record is provided on a separate disk, copied onto any other external device provided to the registrar or transmitted via e-mail	150.00
11. For each copy of any document, notice or pleading submitted to the registrar for purpose of scanning, for each A4-size of part thereof	5.00

ANNEXURE C
TARIFF OF FEES OF DEPUTY-SHERIFFS

Tariff for deputy-sheriffs

	N\$,c
1. For registration of any documents for service or execution, on receipt thereof	7.50
2. For service of any process:	
(a) For service, of summonses, petitions together with applications on notice of motion or notice of set down, other notices, orders or any other documents, each	75.00
except that -	
(i) where any document to be served with any such process is mentioned in the process or forms as an annexure thereto, no additional fees may be charged for the service of such document, but a fee of N\$7.50 may be charged for service of each separate document that is not annexed to the process concerned;	
(ii) fees for the service of a separate document may not be charged in respect of the service of process in criminal cases.	
(b) Attempted service of summonses, petitions together with applications on notice of motion or notice of set down, other notices, orders and any other documents	35.00
An attempted service of more than one document on the same person must be treated as an attempted service of one document only.	
3. Travelling allowance:	
(a) For the distance actually and necessarily travelled by the deputy-sheriff or his or her assistant, reckoned from the office of the deputy-sheriff, both on the forward and the return journey, per kilometre or fraction of a kilometre	5.00
(b) When two or more summonses or other process, whether at the instance of the same party or of different parties, are capable of being served on one and the same journey, the traveling allowance for performing the round of service must be fairly and equitably apportioned among the several cases, regard being had to the distance at which the parties against whom such process is directed respectively reside from the office of the deputy-sheriff, but the fee for service is payable for each service made or attempted to be made	
(c) This allowance is payable only in cases where the duty in question is to be performed beyond a radius of one kilometre from the office of the deputy-sheriff.	
(d)if the office of the deputy-sheriff is situated more than three kilometres from the office of the magistrate of his or her district the allowance is payable only where the duty is to be performed beyond a distance of one kilometer from the magistrate's office.	
(d) The restriction imposed by paragraph (d) may however be relaxed by the Minister, in his or her discretion, where circumstances warrant this and on the recommendation of the sheriff, in which case the sheriff must specially mention the extent of the recommended relaxation at the time of the appointment of the deputy-sheriff	

4. (a) Postage in civil matters, as per postal tariff
 (b) Postage in criminal matters, as per postal tariff

[**Note:** The deputy-sheriff may take any postal matter to the registrar of the court or if there is no registrar in his or her own town or city, to the magistrate, who must hand to the deputy-sheriff a pre-printed official envelop which is endorsed for use by the deputy-sheriff.]

5. For the execution of -

(a)	any writ -	
(i)	of personal arrest, including the conveyance of the person concerned to court, to a legal practitioner's office or to a prison, per person and if the court sessions is on the same day as the arrest, attending at court, per ½ hour	125.00
(ii)	for conveying the person concerned to court from a place of custody on a day subsequent to the day of arrest and attending at court per ½ hour	125.00
	[Identical notices where there are several lessees, occupiers or owners, for each after the first N\$ 2.00]	20.00
(iii)	for attachment of property <i>ad fundandam jurisdictionem</i> or <i>ad confirmandam jurisdictionem</i> , per ½ hour	125.00
(iv)	where an attachment in terms of subparagraph (iii) is withdrawn or suspended	15.00
(b)	a writ of ejectment; N\$125.00 per ½ hour subject to a minimum fee of	125.00
	[Note: In addition to reasonable expenses necessarily incurred]	
(c)	a writ against immovable property -	
(i)	for execution on the registrar of deeds or other officer charged with the registration of property and if the property is in occupation of some person other than the owner, also on that occupier	125.00
(ii)	for notice of attachment to single lessee or occupier	10.00
	[Identical notices where there are several lessees, occupiers or owners, for each after the first N\$ 2.00]	5.00
(iii)	for making valuation or report for purposes of sale, N\$125.00 per ½ hour, with a minimum of	125.00
(iv)	when a deputy-sheriff has been authorised to sell the property and the property is not sold because the attachment is withdrawn or stayed, irrespective of the amount of the writ and all the necessary notices for the withdrawal of the attachment	125.00
(v)	for ascertaining and recording what bonds or other encumbrances are registered against the property, together with the names and addresses of the persons in whose favour that bonds and encumbrances are so registered, including any correspondence in connection therewith (in addition to reasonable expenses necessarily incurred)	125.00

(vi)	for notifying the execution creditor of such bonds or other encumbrances and of the names and addresses of the persons in whose favour those bonds or other encumbrances are registered	20.00
(vii)	for consideration of proof that a preferent creditor or regional council or local authority council has, in writing, stated a reasonable reserve price or has agreed to a sale without reserve	5.00
(viii)	for drawing or in the case of being furnished with a draft by the execution creditor perusing of the notice by the deputy-sheriff to be served on any person requiring him or her to deliver forthwith all documents in his or her possession or control relating to the debtor's title to the said property	20.00
(ix)	for consideration of notice of sale prepared by the execution creditor in consultation with the deputy-sheriff;	
(x)	for verifying that notice of sale has been published in the newspapers indicated and in the <i>Gazette</i> ; and	
(xi)	for forwarding a copy of the notice of sale to every judgment creditor who has caused the immovable property to be attached and to every mortgagee thereof whose address is known, for each copy, inclusive fee for items (ix), (x) and (xi)	60.00
(xii)	for affixing a copy of the notice of sale to the notice board of the magistrate's court of the district in which the property is situated or if the property is situated in the district in which the court out of which the writ issued is situated, on the notice board of such court and at or as near as may be to the place where the sale is actually to take place, an inclusive fee of	20.00
(xiii)	for considering the conditions of sale	50.00
(xiv)	on the sale of immovable property by the deputy-sheriff as auctioneer, 5 per cent of the proceeds of the sale which must be paid by the purchaser - subject to a minimum fee of N\$2 500.00 and a maximum fee of N\$50 000.00 on any residential property and a maximum fee of N\$150 000.00 on any other property not being zoned exclusively for residential purposes (this includes a call to pay into the deposit account of the magistrate of the district all monies received in respect of the purchase price)	
(xv)	for a report of the deputy-sheriff in support of a request or application to a judge for the cancellation of a sale in execution due to failure by the purchaser to carry out his or her obligations under the conditions of sale or in support of an application to a judge for an order ejecting the purchaser or any person claiming to hold under him or her therefrom	30.00
(xvi)	for giving transfer to the purchaser	30.00
(xvii)	for preparing a plan of distribution of the proceeds (including the necessary copies) and for forwarding a copy to the registrar	60.00
(xviii)	for giving notice to all parties who have lodged writs and to the execution debtor that the plan will lay for inspection, for every notice	10.00

(xix)	for request to magistrate to pay out in accordance with the plan of distribution	10.00
(d)	a writ against movable property -	
(i)	when a writ is paid on presentation, 7½ per cent on the amount so paid, subject to a maximum fee of	5 000.00
(ii)	for any abortive attempt at attachment, including search and enquiry, per ½ hour	125.00
(iii)	when a writ is withdrawn or stayed before any property is attached	20.00
(iv)	for making an attachment, including search and enquiry, per ½ hour	125.00
(v)	notice of attachment, if necessary, to a single person	10.00
	[Identical notices, when there is more than one person to be given notice, for each after the first N\$ 2.00	5.00
(vi)	when an attachment is withdrawn by a judgment creditor or stayed before sale, 2½ percent on the value of the property attached or the amount of the writ, whichever is the lesser, but subject to a maximum fee of	300.00
(vii)	when a writ is paid by the debtor to the deputy-sheriff after attachment but before sale, 7½ percent on the amount so paid, subject to a maximum fee of	5 000.00
(viii)	when monies are taken in execution, 7½ percent of the amount so taken, but subject to a maximum fee of	3 500.00
(ix)	for drawing advertisements of sale of goods attached	60.00
(x)	for selling in execution, whether auctioneer employed or not, including distribution of proceeds, 7½ percent on the proceeds of the sale	
(xi)	the deputy-sheriff himself or herself must sell movable property in execution but he or she must engage the services of an auctioneer if directed thereto in writing by the execution creditor, in which case the execution creditor bears the additional commission, if any;	
(xii)	commission is not chargeable against a judgment debtor on the value of movable property attached and subsequently claimed by a person other than the execution debtor and released in consequence of that claim unless such property has been attached at the express direction of the judgment creditor, in writing, in which case that judgment creditor is liable to the deputy-sheriff for the commission	
(xiii)	for insuring movable property attached when it is considered necessary and when the deputy-sheriff is directed thereto in writing by the execution creditor, in addition to the amount of premium paid, an inclusive fee of	60.00
6.	For keeping possession of property (money excluded)-	
(a)	for an officer necessarily left in possession, reasonable inclusive fee per day not exceeding	250.00/day

	for an additional officer, where necessary, limited to one per day, a fee not exceeding	100.00/day
	[Note: 'Possession' means the continuous and necessary presence on the premises for the period in respect of which possession is charged for a person employed and paid by the deputy sheriff for the sole purpose of retaining possession]	
	(b) for removal and storage, the reasonable and necessary expenses for such removal and storage, and if an animal is to be stabled or fed and given water, the reasonable charges for such stabling, feeding and giving water;	
	(c) for tending livestock, the necessary expenses for tending such stock;	
	(d) when no officer is left in possession and no security bond is taken, but moveable property attached remains under the supervision of the deputy-sheriff, per day	35.00
7.	For -	
	(a) making an inventory, including all necessary copies and time spent in stock taking, per ½ hour (a)	125.00
	(b) assistance, where necessary, in taking inventory, per ½ hour	125.00
8.	For making -	
	(a) return of service or execution, including drawing and typing original for court, limited to one person on each original process; and	
	(b) copy thereof for party desiring service or execution	35.00
9.	Drawing and completing bail bond, deed of suretyship or indemnity bond	30.00
10.	Copies of process and orders necessarily made, per folio	5.00
11.	Copies of summonses, orders, subpoenas, writs, etc	5.00
12.	Taking statement from accused, who is not represented and who desires witnesses to be subpoenaed at the expense of the State, as to his or her means, the names and addresses of the witnesses and what they can say in his or her defense, in order to enable the registrar to decide whether the witnesses should be subpoenaed, per ½ hour	125.00
	[Note: This information is to be obtained at the time of serving the notice of trial and indictment and conveyed to the registrar or clerk of the court in the same letter under cover of which the documents are returned]	
13.	Attending any criminal session of the court, per ½ hour	125.00
14.	Attending any court session in an interpleader where the deputy-sheriff has the rights of an applicant, including the reasonable time spend in travelling to and from the court, measured from the place where the deputy-sheriff ordinarily conducts his or her business, per ½ hour	125.00
	Provided that, in the absence of a written undertaking by any of the parties to the interpleader to pay, payment of this fee will follow the cost order made by the court	125.00
15.	Each necessary letter, excluding formal letters, accompanying process or return	10.00

-
16. Each necessary attendance by telephone or fax (in addition to prescribed trunk call charges), irrespective whether the made or received by the deputy-sheriff 10.00
17. Bank charges due and payable in respect of cash deposits or cheques drawn in respect of payment of any monies due and payable to a party in terms of the rules of court or a court order, the actual expense
18. VAT payable on deputy-sheriff fee is allowed on all fees charged in terms of this Annexure.

ANNEXURE D
TARIFF OF FEES FOR INSTRUCTING LEGAL PRACTITIONER ON A SCALE AS
BETWEEN PARTY AND PARTY

SECTION A.

TARIFF OF FEES OF A LEGAL PRACTITIONER ON A PARTY AND PARTY BASIS IN MATTERS CONTEMPLATED IN RULE 124(1)

The fees stated in the table below are, unless on good cause shown and specifically otherwise ordered by the Court, considered to be the reasonable fees for the professional legal services rendered and an all inclusive fee which fee includes taking instructions, all consultations, drafting, perusals, attendances, telephone calls, copies and appearances, but excludes fees for service of process and court fees.

	FEE N\$
1. An undefended action for divorce	10 000.00
2. (a) An unopposed rule 55 application	2 500.00
(b) An opposed rule 55 application	5 000.00
3. An application for judgment by default	
(a) without a claim for damages	5 000.00
(b) on any claim for damages	6 000.00
4. An unopposed application for summary judgment	10 000.00
5. Any unopposed application for leave to sue by way of edict or for substituted service	5 000.00
6. An unopposed application for admission to practice and to be enrolled as a legal practitioner or to be enrolled as a sworn translator	2 500.00
7. An unopposed application for the postponement or adjournment of proceedings, the removal of any matter from the roll, the confirmation, discharge or extension of a restitution order, in the event of a defended divorce or discharge or extension of a return date of a <i>rule nisi</i>	1 000.00
8. An unopposed application for sequestration or voluntary surrender of an estate, liquidation of a company or corporation or the rehabilitation of a person's estate, or any application for curatorship	10 000.00
9. An unopposed application for rescission of any judgment	5 000.00

SECTION B

TARIFF OF FEES FOR A LEGAL PRACTITIONER IN LITIGIOUS WORK: RULES 124 AND 125

No.	Description	Per Folio	Amount
A - TAKING INSTRUCTIONS			
1.	An administrative fee for initiating or defending proceedings in the court		600.00

2.	First consultation with client (per every 15 minutes or part thereof)	300.00
3.	For further each necessary consultation (per every 15 minutes or part thereof)	300.00
4.	For drawing written or giving oral advice on the merits of the proceedings or evidence (per every 15 minutes or part thereof)	300.00
5.	To set down case, issue subpoena or writ or any other simple instructions	300.00
6.	To draft a petition or affidavit (fixed amount)	300.00
7.	To note an appeal (fixed amount)	300.00
8.	To prosecute or defend an appeal, exclusive of the perusal of the record (fixed amount)	300.00
9.	A fee based on the period that should be taken by an experienced legal practitioner for the work of preparation, research, analysis of evidence, preparation for cross-examination, preparation for argument including drawing heads of argument if required, preparation for pre-trial meetings (per every 15 minutes or part thereof)	300.00
10.	For inspection <i>in loco</i> (per every 15 minutes or part thereof)	300.00

B - ATTENDANCE AND PERUSAL

1.	Attending the receipt of and perusing , and considering, but a minimum of 30 folios will be allowed for each 15 minutes so spent	
(a)	any summons, petition, affidavit, pleading instructed legal practitioner's advice and drafts, report, or important letter, notice or document (per every 15 minutes or part thereof)	300.00
(b)	any formal letter, record, stock-sheets in voluntary surrenders, judgments or any other material document not elsewhere specified (per every 15 minutes or part thereof)	300.00
2.	Attending the receipt of and considering any plan or exhibit or other material document in respect of which the basis of remuneration set out in item 1 cannot be applied (per every 15 minutes or part thereof)	300.00
3.	Making searches in offices of record, (per every 15 minutes or part thereof)	
(a)	by an legal practitioner	300.00
(b)	by a clerk	150.00
4.	Sorting out, arranging and paginating papers for pleading, advice or brief on trial or appeal (per every 15 minutes or part thereof)	300.00

5.	Attending to give or take disclosure (per every 15 minutes or part thereof)	
(a)	by an legal practitioner	300.00
(b)	by a clerk	150.00
6.	Any attendance whether at a pre-trial meeting with other practitioners in order to draw the pre-trial minutes and the draft court or appearances at court for pre-trial meetings, trial or argument (per 15 minutes or part thereof)	300.00
7.	Attending to request and thereafter to procure translation (per 15 minutes or part thereof)	300.00
8.	Other attendances including telephone calls other than formal telephone calls (per 15 minutes or part thereof)	300.00

[**Note:** the fees allowed under this section are in addition to any fees that may be allowed for taking instructions under Section A.]

C - ATTENDANCE-FORMAL

1.	To serve or deliver (other than by post) any necessary document or letter or dispatch any telegram (per every 15 minutes or part thereof), provided that a single fee is to be allowed for the service and delivery of the same document	300.00
2.	To sue out any process or file any document (per 15 minutes or part thereof)	300.00
3.	Formal attendances, including to serve and deliver pleadings and documents, issue proceedings at court, to uplift return of service, deliver to deputy-sheriff, to deliver brief to instructed legal practitioner, attend to receipt of notice of intention to defend, attend on signature on power of legal practitioner or affidavits (per every 15 minutes or part thereof)	300.00
4.	Attending on telephone calls, formal calls - calls entailing a consultation and advice (per every 15 minutes or part thereof)	300.00
5.	Attending receipt of a formal acknowledgement	300.00
6.	Attendances for drawing index, paginating court file, inspections at offices of record (deeds or registrar's office), investigating administrative issues relating to a pending trial or application including inspection of files to ensure that they are in order, including any other administrative attendances not specifically provided for elsewhere (per every 15 minutes or part thereof)	300.00
7.	Drafting pleadings including all administrative work in connection therewith such as typing, editing, copying etc (per every 15 minutes or part thereof)	300.00
8.	Drafting affidavits, statements, summaries, reports (per every 15 minutes or part thereof)	300.00

9.	Travelling time or waiting time (per 15 minutes or part thereof)	300.00
10.	Perusing and considering any pleadings (per 15 minutes or part thereof but a minimum of 30 folios will be allowed for each 15 minutes so spent)	300.00
11.	Perusing necessary documents, plans, diagrams and photographs (per 15 minutes or part thereof but a minimum of 30 folios will be allowed for each 15 minutes so spent)	300.00
12.	Perusing judgments, reports, typed evidence and any other records (per 15 minutes or part but a minimum of 30 folios will be allowed for each 15 minutes so spent)	300.00
13.	Attending on receipt of payment, formal acknowledgement and any other short formal attendance	300.00
14.	Preparing instructed legal practitioner's brief, sorting papers, paginating and arranging (per 15 minutes or part thereof)	300.00
15.	Appearance in court to note judgment and other similar formal appearances - per appearance (per 15 minutes or part thereof)	300.00
16.	Any other matter not specifically provided for should be taxed on a basis of time spent per 15 minutes	

D- DRAFTING AND DRAWING

1.	Any entry in the chamber book, where used, including all attendances (per folio or part thereof)	112.00
2.	Instructions for case on opinion, for instructed legal practitioner's guidance in preparing pleadings, including further particulars and requests for same, including exceptions (per folio)	112.00
3.	Instructions to instructed legal practitioner for advice on evidence for brief on trial or on commission (per folio)	112.00
4.	Instructions to instructed legal practitioner for argument in respect of all classes of pleading, except that a fee for drafting instructions on motion, petition, exception or appeal, will only be allowed in discretion of the taxing officer (per folio)	112.00
5.	Statements of witnesses (per folio)	112.00
6.	Power of attorney for legal practitioner to sue or defend (per folio)	112.00
7.	Formal notices and subpoenas (per folio)	112.00
8.	A petition affidavit, any notice (except a formal notice), summons, further particulars requested and furnished for trial, writs of execution, arrest or attachment and any other important document not otherwise provided for (per folio)	112.00

9.	Letter of telegram (per folio)	112.00
10.	Copy of telegram (per folio)	4.50
11.	Drawing index to brief (per folio)	112.00
12.	Short brief (per folio)	112.00

[**Note 1:** In computing the number of folios of any document referred to in sections B to D, the taxing officer must deduct, but treat as annexures where relevant, any portions consisting of quotations from other documents and papers.]

Note 2: The charges allowed in sections B to D for drafting and drawing include making the first fair copy.]

E - APPEARANCE, CONFERENCE AND INSPECTION

1.	Attendance by legal practitioner when an instructed counsel is employed in court or before a judge or before a commissioner or referee or at an inspection directed by the Court -	
(a)	To note judgment only -	
(i)	by an legal practitioner (per every 15 minutes or part thereof)	300.00
(ii)	by a clerk (per every 15 minutes or part thereof)	150.00
(b)	Otherwise (per 15 minutes or part thereof)	
2.	Appearance by legal practitioner without an instructed legal practitioner before a judge on request by the judge, or before a commissioner or referee, (per 15 minutes or part thereof)	300.00
[Note: the above rates of remuneration are not applicable in respect of the time spent in travelling or waiting, but the taxing officer must, in respect of time necessarily so spent, allow such additional remuneration not exceeding N\$6000-00 per diem as he or she in his or her discretion may deem fair and reasonable, and must also allow a reasonable amount to cover the cost of necessary conveyance.]		
3.	Attending of legal practitioner's clerk to assist a contested proceeding -	
(a)	if instructed legal practitioner employed, (per every 15 minutes or part thereof)	150.00
(b)	if instructed legal practitioner not employed, (per 15 minutes or part thereof)	150.00
4.	Any conference or consultation with instructed legal practitioner with or without witnesses and on pleadings including exceptions and particulars to pleadings, applications, petitions, affidavits, testimony and on any other matter which the taxing officer may consider necessary, (per every 15 minutes or part thereof)	
(a)	by a legal practitioner	300.00
(b)	by a clerk	150.00

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| 5. | Any conference or consultation with client, witness or opposite party, and any other conference or consultation which the taxing office may consider necessary, (every 15 minutes or part thereof) | |
| (a) | by a legal practitioner | 300.00 |
| (b) | by a clerk | 150.00 |
| 6. | Any inspection <i>in situ</i> , or otherwise, (per 15 minutes or part thereof) | |
| (a) | by an legal practitioner | 300.00 |
| (b) | by a clerk | 150.00 |

[**Note:** the above rates of remuneration are applicable in respect of time spent in travelling but the taxing officer must in respect of time necessarily so spent allow additional remuneration not exceeding N\$6000 per service and must also allow the reasonable cost of necessary conveyance.]

7. Evidence: Such just and reasonable charges and expenses as may, in the opinion of the taxing officer, have been properly incurred in procuring the evidence and attendance of witnesses whose fees have been allowed on taxation, except that the qualifying expenses of a witness may not be allowed without an order of court or the consent of all interested parties

F - RESEARCH

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|-----|---|--------|
| 1. | A fee based on the period that should be taken by an experienced legal practitioner for the work of preparation, research, analysis of evidence, preparation for cross-examination, preparation for argument including drawing heads of argument if required, preparation for pre-trial meetings (per every 15 minutes or part thereof) | |
| (a) | by a legal practitioner | 300.00 |
| (b) | by a clerk | 150.00 |

G - MISCELLANEOUS

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|----|--|-----------------|
| 1. | Briefing and copying: for making printed copies for the court, counsel or legal practitioner, or for service or of any other necessary purpose, the charge is per page, provided that the first fair copy is included in the drafting fee. | 5.00 per page |
| 2. | For making printed copies of the record in a civil appeal from a magistrate's court the charge is as set out in item 1. | 5.00 per page |
| 3. | For giving a written opinion (as between legal practitioner and client) | 80.00 per folio |
| 4. | General: Inclusive fee for consultation and discussions with client or instructed counsel not otherwise provided for (per 15 minutes or part thereof) | 300.00 |

H - BILL OF COSTS

In connection with a bill of costs for service rendered by a legal practitioner, an legal practitioner is entitled to charge:

1. For drawing the bill of costs, making the necessary copies and attending settlement, 2, and 5% on the fees allowed upon taxation or agreed upon after settlement.
2. In addition thereto, if recourse is had to taxation for arranging and attending taxation and obtaining consents to taxation, 2,5% on the fees allowed upon taxation
3. VAT: All items taxed must be taxed on the amount exclusive of VAT, but the amount of VAT must be added to the total amount taxed. The provision on VAT is applicable to instructing legal practitioner's and instructed legal practitioner's fees allowed on taxation by the taxing officer

ANNEXURE E
TARIFF OF FEES FOR INSTRUCTED LEGAL PRACTITIONER ON A SCALE AS BETWEEN
PARTY AND PARTY

SECTION A: GENERAL PROVISIONS

1. Fees allowed on taxation are within the discretion of the taxing officer, subject to Part 14 of the rules.
2. The fees reflected in Section B are reflected as minimum and maximum fees allowed, due regard being had to the time necessarily taken, the complexity of the matter, the nature of the subject-matter in dispute, the amount in dispute, the seniority of the legal practitioner employed, the fees ordinarily allowed for like services at the time of the promulgation of this rule, and any other factors which the taxing officer considers relevant, provided that if any fee is charged at a lesser amount, the taxing officer is entitled to tax it at such lesser amount.
3. When the taxing officer is required to tax time, he or she must be guided by the time reasonably spent for the performance of the task.
4. The items set out in Section B allow for the taxation of all time spent on consultations, perusal and research reasonably undertaken by an instructed legal practitioner in performance of any of the tasks set out in Section B, except in respect of items 8.7 and 8.8 (the latter being all inclusive items).
5. Where more than one instructed legal practitioner is allowed, the fees on taxation for each of the additional instructed legal practitioners so involved may not exceed one half of the fees allowed in respect of the most senior of the instructed legal practitioners.
6. Instructed legal practitioners are allowed to charge value added tax in addition to the fee allowed on taxation.

SECTION B: FEES

ITEM	MINIMUM FEE	MAXIMUM FEE
	N\$	N\$
1. Oral or written advice and memoranda in contemplation or in the course of litigation (per hour or part of an hour)	800	1800
2. Drawing pleadings and stated cases including the settling of particulars of claim or third party notice (per hour or part of an hour)	800	1800
3. Advice on evidence (per or part of an hour)	800	1800
4. On preparation for trial or application or any other opposed matter (per hour)	800	1800
5. Drafting or settling of heads of argument (per hour)	800	1800
6. Judicial Case Management		
(a) attendance at any parties' judicial case management or pre-trial conference and drafting or settlement of any minute (per hour or part of an hour)	800	1800

(b)	appearance at any judicial case management or pre-trial hearing (fixed fee)	800	1800
7.	Appearance in court		
(a)	opposed applications (per day or any part thereof)	8000	18000
(b)	exceptions (per day or any part thereof)	8000	18000
(c)	stated cases (per day or any part thereof)	8000	18000
(d)	trials (per day or any part thereof)	8000	18000
(e)	appeals from magistrates' courts, where allowed by order of the court (per day or any part thereof)	8000	18000
(f)	attending on court to note a reserved judgment, including argument as to the terms of the order (whether as to costs or otherwise) (per hour)	800	1800
(g)	application for leave to appeal, an all inclusive fee of all tasks ordinarily performed in relation thereto	4000	9000
(h)	attending court on a formal unopposed postponement, an all inclusive fee of all tasks ordinarily performed in relation thereto	800	1800
8.	Fee <i>in lieu</i> of a first day's hearing when the case has become settled or withdrawn or postponed at the instance of any party		
(a)	not more than two days before the date of hearing		Fee otherwise allowable on taxation for a day's hearing
(b)	not less than three days and not more than five days before the date of hearing		Half of the fee otherwise allowable on taxation for a day's hearing
