

REPUBLIC OF SOUTH AFRICA



PRACTICE MANUAL

of the

South Gauteng High Court

October 2009
Johannesburg

ACKNOWLEDGEMENTS

This office is indebted to and would like to acknowledge the contribution of the following: (towards)

- (i) my predecessors, for the initial practice manual;
- (ii) Joffe J, for the initial draft of the revised manual;
- (iii) all judges of the South Gauteng High Courts for their comments and inputs;
- (iv) the Johannesburg Bar, the National Forum of Advocates and the Johannesburg Attorneys Association for the critical comments.

It is thanks to the inclusive contributions of all involved that this Practice Manual has now come out in the form in which it is.

**P M MOJAPELO
DEPUTY JUDGE PRESIDENT
SOUTH GAUTENG HIGH COURT
REPUBLIC OF SOUTH AFRICA**

23 October 2009

TABLE OF CONTENTS

CHAPTER 1	APPLICATION OF THE PRACTICE MANUAL.....	5
CHAPTER 2	COURT TERMS	6
CHAPTER 3	COURT RECESS	7
CHAPTER 4	COUNSEL'S DRESS	8
CHAPTER 5	COURT SITTINGS	9
CHAPTER 6	CIVIL TRIALS	10
6.1	ALLOCATION OF CIVIL TRIALS	11
6.2	BUNDLES OF DOCUMENTS	12
6.3	CASE MANAGEMENT	13
6.4	CLOSURE OF THE TRIAL ROLL	14
6.5	EXPERT WITNESSES	15
6.6	GENERAL	16
6.7	HEARING DURATION	17
6.8	PAGINATION, INDEXING, BINDING AND GENERAL PREPARATION OF PAPERS	18
6.9	PART-HEARD TRIALS	19
6.10	PRACTICE NOTE FOR TRIALS.....	20
6.11	PREFERENTIAL TRIAL DATE.....	21
6.12	PRE-TRIAL CONFERENCE	22
6.13	ROLL CALL	24
6.14	SETTLEMENT AGREEMENTS AND DRAFT ORDERS.....	25
CHAPTER 7	CIVIL APPEALS	26
CHAPTER 8	CRIMINAL MATTERS.....	28
8.1	PETITIONS FROM THE LOWER COURT	29
8.2	APPEALS.....	30
8.3	AUTOMATIC REVIEW.....	31
8.4	BAIL APPEALS	32
8.5	REVIEWS	33
8.6	TRIALS.....	34
CHAPTER 9	MOTION COURT	35
9.1	ALLOCATION OF COURTS.....	36
9.2	INDEX.....	39

TABLE OF CONTENTS

9.3	BINDING OF PAPERS.....	40
9.4	PAGINATION	41
9.5	BRIEFING OF COUNSEL.....	42
9.6	CALLING OF THE ROLL OF UNOPPOSED MATTERS IN COURTS 2 AND 3	43
9.7	CLOSURE OF THE MOTION COURT ROLL.....	45
9.8	CONCISE HEADS OF ARGUMENT.....	46
9.9	ENROLMENT	47
	ANNEXURE A.....	49
9.10	ENROLMENT OF APPLICATION AFTER NOTICE OF INTENTION TO OPPOSE GIVEN	50
9.11	ERRORS ON THE UNOPPOSED ROLL.....	51
9.12	HEARING OF OPPOSED MATTERS.....	52
9.13	LONG DURATION	55
9.14	MATTERS NOT ON THE ROLL	56
9.15	POSTPONEMENTS	57
9.16	PRACTICE NOTE	58
9.17	PREPARATION OF PAPERS.....	59
9.18	SERVICE	60
9.19	SETTLEMENT.....	61
9.20	SETTLEMENT AGREEMENTS AND DRAFT ORDERS.....	62
9.21	STALE SERVICE	63
9.22	STRIKING FROM THE ROLL.....	64
9.23	SUPPLEMENTARY ROLL.....	65
9.24	URGENT APPLICATIONS.....	66
CHAPTER 10	PARTICULAR APPLICATIONS.....	70
10.1	ANTON PILLER TYPE ORDERS	71
10.2	ADMISSION OF ADVOCATES.....	77
10.3	CANCELLATION OF SALE IN EXECUTION	78
10.4	CHANGE TO THE MATRIMONIAL REGIME.....	79
	ANNEXURE A.....	80
10.5	COMPROMISE IN TERMS OF SECTION 311 OF THE COMPANIES ACT 61 OF 1973 ...	81
10.6	CURATOR BONIS	84

TABLE OF CONTENTS

10.7	CURATOR AD LITEM.....	85
10.8	ENQUIRIES IN TERMS OF SECTION 417 OF THE COMPANIES ACT 61 OF 1973.....	86
10.9	EVICITION IN TERMS OF THE PREVENTION OF ILLEGAL EVICTIONS AND UNLAWFUL OCCUPATION OF LAND ACT, 19 OF 1998.....	87
10.10	LIQUIDATION	88
10.11	PROVISIONAL SENTENCE	89
10.12	REHABILITATION	90
10.13	REMOVAL OR AMENDMENT OF RESTRICTIONS ON LAND USE.....	91
10.14	SEQUESTRATION.....	92
CHAPTER 11	LEAVE TO APPEAL IN CIVIL MATTERS.....	94
CHAPTER 12	UNOPPOSED DIVORCE ACTION	96
CHAPTER 13	JUDGE IN CHAMBERS	98
CHAPTER 14	JUDGES' CLERKS.....	99
CHAPTER 15	OPENING OF COURT FILES.....	100
CHAPTER 16	STANDARD ORDER	101
16.1	DEFAULT JUDGMENT GRANTED BY THE REGISTRAR	103
16.2	SUMMARY JUDGMENT	104
16.3	PROVISIONAL SENTENCE	105
16.4	DEFAULT JUDGMENT BY COURT.....	106
16.5	ABSOLUTION FROM THE INSTANCE.....	107
16.6	EDICTAL CITATION	108
16.7	SUBSTITUTED SERVICE.....	109
16.8	RULE 43	110
16.9	DIVORCE WITH SETTLEMENT AGREEMENT.....	111
16.10	DIVORCE WITHOUT SETTLEMENT AGREEMENT	112
16.11	POST NUPTIAL REGISTRATION OF A CONTRACT	113
16.12	GENERAL ORDER FOR DISCOVERY	114
16.13	AGREEMENT OF SETTLEMENT.....	115
16.14	RULE NISI	116
16.15	RESTRICTIVE CONDITIONS ON LAND.....	117
16.16	UNALLOCATED ORDER	118

TABLE OF CONTENTS

16.17 PROVISIONAL SEQUESTRATION.....	119
16.18 FINAL SEQUESTRATION	120
16.19 REHABILITATION	121
16.20 SURRENDER	122
16.21 PROVISIONAL LIQUIDATION	123
16.22 FINAL LIQUIDATION.....	124
16.23 DISCHARGE OF PROVISIONAL SEQUESTRATION OR LIQUIDATION	125
16.24 SECTION 311	126
16.25 JUDICIAL MANAGEMENT	127
16.26 LEAVE TO APPEAL	129
16.27 ORDER ON APPEAL.....	130
16.28 ORDER IN TERMS OF RULE 39 (22)	131
16.29 ADMISSION OF TRANSLATOR	132
CHAPTER 17 USHERS.....	133
ANNEXURE NOTICE OF SCHEME MEETING.....	135
ALPHABETICAL INDEX	136

CHAPTER 1 APPLICATION OF THE PRACTICE MANUAL

1. This practice manual sets out the practice in the South Gauteng High Court, Johannesburg, Republic of South Africa.
2. As such it seeks to inform how the courts in this high court function. It also seeks to obtain uniformity amongst judges in respect of practice rulings. It must be emphasised that no judge is bound by practice directives. Accordingly, the practice manual is not intended to bind judicial discretion. Nonetheless, it should be noted, that the judges of this high court strive for uniformity in the functioning of the courts and their practice rulings. The practice manual thus sets out what can be anticipated occurring, in the normal course of events, on any issue dealt with in the practice manual.
3. This manual supersedes all previous practice directives and will come into effect on 01 February 2010, the first day of the first term of 2010.
4. Amendments to the practice manual can only be made by the Deputy Judge President after consultation with the other judges of the South Gauteng High Court, Johannesburg.
5. Reference in this manual to the rules, is a reference to the Uniform Rules of Court in Government Notice R48 of 12 January 1965 as amended and the Transvaal Rules.
6. Reference in this manual to “counsel” includes an advocate and an attorney who appears in court or before a judge in chambers to represent a litigant. Reference in this manual to “legal representative” means a litigant’s attorney of record and includes a party appearing in person.

CHAPTER 2 COURT TERMS

1. The calendar year is divided into four court terms. The duration of each court term is approximately 10 weeks.
2. Each court term commences on a Monday and terminates on a Friday.
3. The first court term of each year commences on the Monday immediately after 23 January. The last court term of each year ends on the Friday immediately before 10 December.
4. The court goes into recess for two weeks between the first and second court term, five weeks between the second and third court term, one week between the third and fourth court term and seven weeks after the end of the fourth court term and the commencement of the first court term in the succeeding year.
5. The Judge President determines the duration of each court term.

CHAPTER 3 COURT RECESS

1. The Judge President determines the duration of recess duty which the judges of the division must perform during recess. The Judge President further directs in which courts the judges who are on duty, sit.
- 2.1 Subject to 2.2 below, only unopposed motion court matters, unopposed divorce actions, opposed rule 43 applications without complexity, urgent applications and bail appeals will be heard during recess.
- 2.2 Save for urgent applications no matters at all may be enrolled for hearing from 25 December to 2 January of each year.
3. Subject to any direction by the Judge President or the Deputy Judge President, the senior judge on duty from time to time during the recess, allocates other matters requiring determination during recess to the other judges on duty.
4. During recess automatic reviews are distributed equally amongst the judges on duty, except that the judges sitting in motion court will not be allocated reviews on Monday or Tuesday of the week and the judge sitting in the urgent court will not be allocated reviews during the entire week.

CHAPTER 4 COUNSEL'S DRESS

1. Counsel are required to be properly dressed. If not properly dressed they run the risk of not being "seen" by the presiding judge.
2. Proper dress for junior counsel comprises:
 - 2.1 A black stuff gown.
 - 2.2 A plain black long sleeved jacket (and not a waistcoat) which has both a collar and lapels. The jacket must have, for closing, one or two buttons at the waist. The buttons must be black.
 - 2.3 A white shirt or blouse closed at the neck.
 - 2.4 A white lace jabot or white bands.
 - 2.5 Dark pants or skirt.
 - 2.6 Black or dark closed shoes.
3. Proper dress for senior counsel comprises:
 - 3.1 A silk gown.
 - 3.2 A silk waistcoat.
 - 3.3 A white shirt or blouse closed at the neck.
 - 3.4 A white lace jabot or white bands.
 - 3.5 Dark pants or skirt.
 - 3.6 Black or dark closed shoes.
4. Counsel must ensure when appearing in court that their waistcoats or jackets, as the case may be, are buttoned up.
5. It is not proper for counsel to enter court not fully robed as set out in paragraph 2 and paragraph 3 supra. It follows that counsel should not robe in court.

CHAPTER 5 COURT SITTINGS

1. Save as set out below, all the courts of this division will commence sitting at 10h00. The courts adjourn at 11h15 and resume sitting at 11h30. The courts adjourn at 13h00 and resume sitting at 14h00. The courts adjourn for the day at 16h00.
2. Counsel must be punctual in their attendance in court at the aforesaid times.
3. Notwithstanding para 1 above, it should be noted, that:
 - 3.1 Roll call of civil trials commences at 9h30.
 - 3.2 Motion courts 2 and 3 commence sitting during court term at 9h30.
 - 3.3 Applications for leave to appeal are usually enrolled for hearing at 9h30.
4. The presiding judge may, at his/her discretion, deviate from the times set out above.

CHAPTER 6 CIVIL TRIALS

- 6.1 Allocation of civil trials
- 6.2 Bundles of documents
- 6.3 Case management
- 6.4 Closure of the trial roll
- 6.5 Expert witness
- 6.6 General
- 6.7 Hearing duration
- 6.8 Pagination, indexing, binding and general preparation of papers
- 6.9 Part-heard trials
- 6.10 Practice notes for trials
- 6.11 Preferential trial date
- 6.12 Pre-trial conference
- 6.13 Roll call
- 6.14 Settlement agreements and draft orders

6.1 ALLOCATION OF CIVIL TRIALS

1. A trial will normally be allocated by the Deputy Judge President for hearing by a specific judge at roll call. Roll call is held at 09h30 in Court GC.
2. An allocation of a trial for hearing by a specific judge may be made prior to roll call in which event counsel and/or the litigants' legal representatives will be informed of the allocation before roll call.
3. In the allocation of trials due regard will be had to any justifiable claim for precedence in allocation.
4. As a general rule precedence in allocation will be given to trials in which a proper pre-trial minute was timeously filed with the registrar.
5. Only trials that are ready for immediate commencement and continuous running to their conclusion will be allocated for hearing.
6. If it appears at roll call in a trial where the parties have opposing expert witnesses that there is no joint expert minute, the trial will not be allocated until there has been proper compliance with this practice. This may result in the removal of the trial from the roll and the parties having to apply for a new trial date.
7. If, after allocation of a trial for hearing, it appears to the trial judge that there is no joint expert minute, the presiding judge to whom the trial has been allocated, will not commence or continue with the hearing of the trial but will require proper compliance with the practice. The presiding judge will determine the further hearing of the trial.

6.2 BUNDLES OF DOCUMENTS

1. Where a party or the parties to a trial intend utilising documents in their conduct of the trial such documents must be collated, numbered consecutively and suitably bound.
2. Each bundle must be indexed. The index must briefly describe each document in the bundle as a separate item.
3. The parties should preferably agree upon a joint bundle of documents. Where the parties are unable to agree upon a joint bundle, the parties must agree which party's bundle shall be the dominant bundle. The subservient bundle or bundles must not contain documents contained in the dominant bundle or bundles.
4. The documents should not be bound in volumes of more than 120 pages.
5. The bundle of documents must be bound in a manner that does not hinder the turning of pages and which enables it to remain open without being held open.
6. The parties must agree prior to the commencement of the trial upon the evidential status of the documents contained in the bundle. This agreement must be contained in a pre-trial minute. The agreement must also cover the issue as to which document will be part of the record before the court, to deal with the eventuality of an appeal.
7. If unnecessary documents are included in the bundle the court may on the application of any party to the trial, or mero motu, make a punitive cost order in respect thereof.

6.3 CASE MANAGEMENT

1. Any party to a trial who is of the opinion that by reason of its complexity, long duration or any other reason, the trial requires case management, shall deliver a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out -
 - 1.1 the names of the parties to the trial and the case number;
 - 1.2 the nature of the dispute;
 - 1.3 an estimate of the probable duration of the trial;
 - 1.4 the reason why that party is of the opinion that the trial requires case management.

Proof that a copy of this letter has been forwarded to the other party or parties in the trial must be provided.

2. Any party who is in receipt of such a letter and who wishes to make representations in respect thereof may do so by forthwith delivering a letter to the registrar marked for the attention of the Deputy Judge President. A copy of the letter must be delivered to all other parties to the trial and proof thereof must be provided.
3. The registrar will advise the parties of the outcome of the request.
4. In the event of the request for case management being granted, the Deputy Judge President shall appoint a judge to undertake the case management of the trial.
5. On the appointment of the judge as aforesaid:
 - 5.1 all interlocutory applications relating to the trial, will, as far as possible, be heard by that judge.
 - 5.2 any party to the trial, on notice to all other parties to the trial, may apply to the judge for directions as to the conduct of the trial. The judge may furnish such directions or direct that an interlocutory application be brought.
 - 5.3 The appointed judge may direct that one or more pre-trial conference be held before him or in his absence.

6.4 CLOSURE OF THE TRIAL ROLL

1. The trial roll closes at 13h00 on the day preceding the allocated trial date whereafter access to the court file will not be permitted.
2. The prohibition of access to the court file continues for the duration of the trial, save with the leave of the trial judge.
3. Notwithstanding the foregoing, attention is drawn to the requirement in respect of pagination, indexing and binding of papers which must occur not less than five days prior to the date allocated for the hearing of the trial.

6.5 EXPERT WITNESSES

1. The time periods provided in Rule 36 (9) of the Uniform Rules of Court are often inadequate. This can result in trials not being ripe for hearing on their allocated trial date.
2. To preclude this from happening, it is suggested, that in appropriate matters, the parties to a trial, by agreement, lengthen the aforementioned time periods as well as the time period referred to in paragraph 5 infra. Such an agreement should provide that notice of intention to call an expert witness be given not less than thirty (30) court days before the allocated trial date and the summary of the expert's opinion be delivered not less than twenty (20) court days before the allocated trial date.
3. Where one or more parties to a trial wish to enter into such an agreement, but is or are unable to conclude such an agreement, an application may be brought in terms of Rule 27 (1) of the Uniform Rules of Court for the extension of the relevant time periods.
4. It should be noted that such an agreement, and consequently such an application, is generally conducive to the efficient conduct of a trial. Failure to conclude such an agreement without good cause, and opposition to such an application without good cause, may attract a punitive cost order either on the application by the party or the parties seeking the relief, or mero motu by the judge hearing the application.
5. In all trials in which the parties have opposing expert witnesses, such opposing expert witnesses must meet and reduce their agreements and disagreements to writing in joint expert minutes, signed by them. This minute must be filed in the court file not less than five days prior to the date allocated for the hearing of the trial.
6. If it appears at roll call in a trial where the parties have opposing expert witnesses that there is no joint expert minute, the trial will not be allocated until there has been proper compliance with this practice. This may result in the removal of the trial from the roll and the parties having to apply for a new trial date.
7. If, after allocation of a trial for hearing, it appears to the trial judge that there is no joint expert minute, the presiding judge to whom the trial has been allocated, may in his/her discretion not commence or continue with the hearing of the trial and may either require proper compliance with the practice or postpone the trial. The presiding judge will determine the further hearing of the trial, if not postponed.

6.6 GENERAL

1. Counsel must ensure that they are available for the entire duration of the trial. The failure to do so will result in counsel's conduct being referred to the relevant society or association of which counsel is a member for disciplinary action.
2. A postponement of a trial will normally not be granted because counsel is not available for the trial or for the entire duration of the trial.
3. Any matter which may affect the continuous running of the trial to its conclusion must be disclosed at roll call and to the judge to whom the trial is allocated before the commencement of the trial.

6.7 HEARING DURATION

1. A trial is designated “of long duration” if it is anticipated that it will last more than five (5) days.
2. If any party to a trial is of the view that a trial will last longer than five days, that party shall deliver at least two weeks before the trial date a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out -
 - 2.1 the names of the parties to the trial and the case number;
 - 2.2 the nature of the dispute;
 - 2.3 an estimate of the probable duration of the trial;
 - 2.4 that a pre-trial conference in terms of Rule 37 has been held and a copy of relevant minute must be annexed to the letter.
3. If any party to a trial is of the view that a trial will last longer than ten days that party shall act as set out in paragraph 2 above, but shall do so at least four weeks before the trial date.
- 4.1 If any party or the parties to a trial are of the view that a trial will last longer than fifteen (15) days, after following the procedure for the allocation of the trial date, as set out in Transvaal Rule 7, the party or parties shall deliver a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out -
 - 4.1.1 the names of the parties to the trial and the case number;
 - 4.1.2 the nature of the dispute;
 - 4.1.3 an estimate of the probable duration of the trial;
 - 4.1.4 that a pre-trial conference in terms of rule 37 has been held and a copy of the relevant minute must be annexed to the letter.
- 4.2 The Deputy Judge President shall inform the parties in writing of the date allocated for the trial upon receipt of the letter that complies with 4.1 above. A trial date for a matter anticipated to last longer than fifteen (15) days will only be allocated by the Deputy Judge President in writing.
- 4.3 After being informed of the trial date, all the parties to the trial must comply with Transvaal Rule 7 (5).
5. If the letter referred to in paragraphs 2, 3 and 4 above is not directed by all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.
6. Any party who is in receipt of a letter referred to in paragraphs 2, 3 and 4 above and who wishes to make representations in respect thereof, may do so by forthwith delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of this letter must be delivered to all other parties to the trial and proof thereof must be provided.

6.8 PAGINATION, INDEXING, BINDING AND GENERAL PREPARATION OF PAPERS

1. The plaintiff shall, not less than ten days prior to the date allocated for the hearing of the trial -
 - 1.1 collate, number consecutively and suitably bind all the pleadings relating to the trial as a separate bundle and ensure that they are in the court file;
 - 1.2 collate, number consecutively and suitably bind all the notices relating to the trial as a separate bundle and ensure that they are in the court file;
 - 1.3 collate, number consecutively and suitably bind all pleadings which were amended after delivery thereof;
 - 1.4 collate, number consecutively and suitably bind the pre-trial minute and all documents relating thereto;
 - 1.5 prepare and attach an index to the pleadings bundle, the notices bundle and the pre-amendment pleadings bundle and the pre-trial bundle respectively. The index must briefly describe each pleading, notice or document as a separate item.
 2. In binding the pleadings, notices and documents, care must be taken to ensure that the method of binding does not hinder the turning of pages and the bundle should remain open without being held open.
 3. The pleadings, notices and documents should not be bound in volumes of more than 120 pages.
 4. The pleadings bundle must only contain the original pleadings (as amended, if applicable).
 5. If a document or documents attached to the pleadings, or contained in the bundles as referred to in para 1, is or are
 - 5.1 in manuscript, or
 - 5.2 not readily legible
- the plaintiff shall ensure that legible typed copies of the document or documents are provided.

6.9 PART-HEARD TRIALS

1. As a general rule, part-heard trials should be avoided. Accordingly no trial should be commenced with where any issue or consideration exists to the knowledge of counsel that would interfere with the completion of the trial.
2. A judge hearing a trial will be most reluctant to postpone a trial which will result in a part-heard trial.
3. Where a trial is part-heard, a date for the continuation thereof must be applied for by delivering a letter to the registrar marked for the attention of the Deputy Judge President. This letter must set out -
 - 3.1 the names of the parties to the action and the case number;
 - 3.2 the name of the judge before whom the trial became part-heard;
 - 3.3 the date when the trial became part-heard;
 - 3.4 an estimate of the probable duration for the completion of the trial;
 - 3.5 whether a copy of the record of the part-heard portion of the trial is available.
4. If the letter referred to in the previous paragraph is not a joint letter from all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.
5. A party who is in receipt of a letter referred to in paragraph 4 above, and who wishes to make representations in respect thereof, may do so forthwith by delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of the letter must be delivered to all other parties to the trial and proof thereof must be provided.
6. The Deputy Judge President shall inform the parties in writing of the date allocated for the completion of the trial.
7. After being informed of the trial date, all the parties to the trial must comply with Transvaal Rule 7 (5).

6.10 PRACTICE NOTE FOR TRIALS

1. The counsel for each party to a trial shall send a practice note by facsimile transmission in respect of the trial enrolled for hearing.
2. The practice note shall be transmitted to telephone number 011 332 8257 and shall be transmitted not earlier than 15h30 on the day preceding the day on which the trial is enrolled for hearing and not later than 08h30 on the day on which the trial is enrolled for hearing.
3. The practice note shall set out -
 - 3.1 the names of the parties to the trial, the case number and its number on the roll;
 - 3.2 the name of each party's counsel, whom they represent and their cellular and landline numbers;
 - 3.3 the nature of the dispute;
 - 3.4 the relief sought at the trial by the party on whose behalf the counsel completing the practice note appears;
 - 3.5 an estimate of the probable duration of the trial;
 - 3.6 the date on which the pre-trial conference was held;
 - 3.7 the date on which the pre-trial conference minute was registered on the registrar's computer system;
 - 3.8 whether any precedence is sought for the hearing of the trial, and if so, the motivation therefore;
 - 3.9 any issue or consideration that would interfere with the immediate commencement and continuous running of the trial to its conclusion;
 - 3.10 if the trial is one of long duration with an estimated duration of longer than five days but less than sixteen days, a copy of the letter referred to in paragraphs 2, 3 and 4 of the sub-chapter entitled "Hearing Duration" must be referred to and attached to the practice note of the party who delivered the letter.

6.11 PREFERENTIAL TRIAL DATE

1. A request for a preferential trial date must be made only after following the procedure for the allocation of a trial date as set out in Transvaal Rule 7.
2. A request for a preferential trial date is made by delivering a letter to the registrar marked for the attention of the Deputy Judge President. The letter must set out -
 - 2.1 the names of the parties to the trial and the case number;
 - 2.2 the nature of the dispute;
 - 2.3 an estimate of the probable duration of the trial;
 - 2.4 the motivation for the allocation of a preferential date.
3. If the aforementioned letter is not directed by all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.
4. Any party who is in receipt of a letter referred to in paragraph 2 above, and who wishes to make representations in respect thereof, may do so forthwith by delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of the letter must be delivered to the other party or parties to the trial and proof thereof must be provided.
5. The Deputy Judge President shall inform the parties in writing of the outcome of the request and of the date allocated for the trial in the event of the request being acceded to.
6. After being informed of a trial date, all the parties to the trial must comply with Transvaal Rule 7(5). The letter from the Deputy Judge President allocating the trial date must be attached to Notice of Set-down delivered in terms of Rule 7(5).

6.12 PRE-TRIAL CONFERENCE

1. A pre-trial conference as contemplated in Rule 37 must be held in every matter which is to proceed to trial.
2. In order to ensure that it is effective, a pre-trial conference must ideally be held after discovery and after the parties have exchanged documents as contemplated in Rule 35. In the event of discovery being made after the holding of a pre-trial conference, a further pre-trial conference must be held after such discovery and exchange of discovered documents.
- 3.1 If it appears at the roll call -
 - 3.1.1 that the parties have seriously endeavoured to narrow the issues and explore settlement;
 - 3.1.2 that there are no outstanding requests for admissions or particularity and no outstanding requests for documents;
 - 3.1.3 that, where applicable, the experts have met and produced a joint minute;
 - 3.1.4 that the trial is ready to commence immediately and run continuously to a conclusion, then the matter will be ripe for allocation, provided a judge is available.
- 3.2 Parties have a continuous obligation to seek to narrow issues and to comply with the substantive requirements of Rule 37, notwithstanding the fact that strict compliance with the Rule may no longer be possible because a pre-trial conference has not been held six (6) weeks before trial.
- 3.3 If it appears at the roll call that one party has prevented substantial compliance with Rule 37 despite genuine and timeous efforts by the other party to achieve substantial compliance therewith, the court may allocate the matter if it appears the matter can run continuously to a conclusion within five (5) days despite the said non-compliance.
- 3.4 If it appears the matter cannot run continuously to a conclusion within five (5) days due to the prevention of substantial compliance with Rule 37, the matter may be placed under case management in the hands of a designated Judge as contemplated in Rule 6.3 and may on application be granted a preferential trial date when a new trial date is sought.
- 3.5 The court may deal with the issues of costs arising out of any postponement at the roll call rather than reserving the costs.
4. If, after allocation of a trial for hearing, it appears to the judge presiding that there has not been proper compliance with Rule 37, the presiding judge to whom the trial has been allocated, may, instead of commencing or continuing with the hearing of the trial, order proper compliance with Rule 37. The presiding judge will then determine the further hearing of the trial.

5. Where a party wishes to request that a judge presides over the pre-trial conference in terms of Rule 37(8), that party shall do so by delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of this letter must be delivered to all other parties to the trial and proof thereof must appear from the letter directed to the Deputy Judge President. Any party who is in receipt of such a letter and who wishes to make representations in respect thereof, may do so by forthwith delivering a letter to the registrar for the attention of the Deputy Judge President. A copy of this letter must be delivered to all other parties to the trial, and proof thereof must appear from the letter directed to the Deputy Judge President.
6. Where a party wishes to request that the registrar should intervene by fixing the time, date and place for the conference in terms of Rule 37(3)(b) that party shall do so by delivering a letter to the registrar. A copy of this letter must be directed to all other parties to the trial and the procedure contemplated in paragraph 5 above shall apply *mutatis mutandis*.
7. The request for intervention by the registrar as contemplated in Rule 37 (3) (b), or the Deputy Judge President, as contemplated in Rule 37 (8), must be made timeously and preferably before the time prescribed for the holding of the conference has expired.
8. At roll call priority may be given to cases in which minutes of acceptable quality (proper pre-trial minutes) were timeously filed with the registrar.
9. Where there are competing minutes of acceptable quality, priority may be given to the matter or matters in the order in which (a) the minutes were filed, (b) the pre-trial conferences were held, and (c) the matters appear on the trial roll.
10. Joint Minute of Experts:
 - a. Where there are overlapping experts, the experts shall meet and produce joint minutes indicating their endeavour to settle, and failing settlement, narrowly defining their differences;
 - b. In such a case the legal representatives shall, before commencement of trial, hold a pre-trial conference to achieve the objectives of Rule 37 with regard to the issue or issues arising between the overlapping experts.

6.13 ROLL CALL

1. A roll call will be held at 09h30 on each day during the court term of all trials enrolled for hearing on that day. If necessary further roll calls will be held at 11h30 and 14h00.
2. Unless advised prior to the commencement of roll call that a trial has been allocated to a specific judge, the parties' legal representatives must attend roll call and continue so attending until the trial has been allocated or otherwise disposed of.
3. If a trial cannot be allocated for hearing on the day for which it is enrolled for hearing, the parties' legal representatives must attend roll call on the next and subsequent days until the trial is allocated for hearing.
4. Unless the parties' legal representatives state the contrary, it will be assumed that -
 - 4.1 the parties' legal representatives are not aware of any reason why the trial, if allocated, cannot commence and run continuously to its conclusion;
 - 4.2 the pleadings have been properly paginated and indexed;
 - 4.3 a bundle of documents (where necessary) properly paginated and indexed has been prepared;
 - 4.4 where separate bundles of documents have been prepared by the parties, there is no duplication of documents in the various bundles;
 - 4.5 all issues relating to the pre-trial conference have been completed.
5. If any of the assumptions referred to in paragraph 4 above are proved to be incorrect, the trial will not be allocated. If the trial has already been allocated and any of the aforementioned assumptions are proved to be incorrect, the trial will not be commenced but will be referred back to the judge who conducted the roll call.
6. Unless indicated to the contrary on the daily roll, roll call at 09h30 will be held in court GC. Counsel will be advised by the presiding judge where the subsequent roll calls, if necessary, will be held.

6.14 SETTLEMENT AGREEMENTS AND DRAFT ORDERS

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

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

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

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

CHAPTER 7 CIVIL APPEALS

1. Once a date has been allocated for the hearing of any civil appeal, the parties may not agree to postpone the appeal without the leave of the Deputy Judge President or the judges to whom the appeal has been allocated for hearing.
2. In all civil appeals, the appellant's heads of argument must be delivered not later than fifteen days before the appeal is heard and the respondent's heads of argument must be delivered not later than ten days before the appeal is heard.
3. If counsel intend to rely on authority not referred to in their heads of argument, copies thereof should be available for the judges hearing the appeal and counsel for each other party.
4. In regard to the content of their heads of argument, counsel are reminded of the dicta in *Catheram Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another 1998 (3) SA 938 SCA at 955 B-F and Ensign-Bickford (South Africa) (Pty) Ltd and Others v AE & CI Explosives and Chemicals Ltd 1999 (1) SA 70 SCA 844-85C.*
5. Counsels' names and contact details, including cell phone numbers, must appear on the heads of argument.
6. When allocating a date for the hearing of an appeal, the Deputy Judge President may direct that the parties deliver heads of argument earlier than provided for in paragraph 2 above.
7. Simultaneously with the filing of their heads of argument counsel shall file a practice note. The practice note shall set out -
 - 7.1 each issue that has to be determined in the appeal;
 - 7.2 an extremely brief submission in respect of each such issue;
 - 7.3 what portion of the record must be read.
- 8.1 In all civil appeals the record shall be securely bound in volumes of no more than 120 pages. Each volume shall be consecutively paginated and have a cover sheet reflecting -
 - 8.1.1 the case number;
 - 8.1.2 the names of the parties;
 - 8.1.3 the total number of volumes in the record;
 - 8.1.4 the volume number of the particular volume;
 - 8.1.5 the court appealed from;
 - 8.1.6 the names, addresses and telephone numbers of the parties' legal representatives.

- 8.2 The first volume of the record shall contain an index of the evidence, documents and exhibits. The index must identify each document and exhibit.
- 8.3 Unless it is essential for the determination of the appeal, and the parties agree thereto in writing, the record shall not contain -
- 8.3.1 the opening address to the court a quo;
 - 8.3.2 argument at the conclusion of the application or trial;
 - 8.3.3 discovery affidavits and notices in respect thereof;
 - 8.3.4 identical duplications of any document contained in the record;
 - 8.3.5 documents that were not proved or admitted in the court a quo.
- 8.4 If it will facilitate the hearing of the appeal, or if requested by the presiding judge in the appeal, the parties shall prepare a core bundle of documents relevant to the determination of the appeal. This bundle should be prepared in chronological sequence and must be paginated and indexed.
- 8.5 In the event of a party failing to comply with any of the foregoing, the court may *mero motu*, or on application of any party to the appeal, make a punitive cost order.

CHAPTER 8 CRIMINAL MATTERS

8.1 Petitions for leave from the lower court

8.2 Appeals

8.3 Automatic review

8.4 Bail appeals

8.5 Reviews

8.6 Trials

8.1 PETITIONS FROM THE LOWER COURT

1. The Criminal Procedure Act now provides that an accused who wishes to note an appeal against conviction or sentence of a lower court must first apply to that court for leave to appeal. If such an application for leave is unsuccessful in the lower court, the accused may “ by petition apply to the Judge President of the Court having jurisdiction” for leave to appeal (Section 309B and 309C).
2. The Judge President has directed that in the South Gauteng High Court, Johannesburg, such a petition may be addressed to the Deputy Judge President of this court.
3. The petition from the lower court must be lodged by way of petition procedure (as was formerly the case in the Supreme Court of Appeal) and not by way of notice of motion to the motion court.
4. The petition to the Judge President or Deputy Judge President for leave to appeal against the conviction or sentence of the lower court must be lodged by delivering the original and two (2) copies to the registrar dealing with petitions who shall in turn distribute them to Judges in accordance with the directives given by the Deputy Judge President.

8.2 APPEALS

1. Criminal appeals are enrolled by the Director of Public Prosecutions.
2. When giving notice of the set down of a criminal appeal, the Director of Public Prosecutions shall, where the appeal is against conviction, specify the date by which the appellant's heads of argument must be delivered and the date by which the respondent's heads must be delivered. The Director of Public Prosecutions may, at his/her discretion or on the direction of the Deputy Judge President, where the appeal is against sentence only, specify the dates by which heads of argument are to be delivered by the respective parties.
3. Failure to file the heads of argument timeously will, as a general rule, only be condoned in exceptional circumstances. Error or oversight by counsel and legal representatives or the latter's employees will rarely be regarded as exceptional circumstances.
4. Where heads of argument have been required by the Director of Public Prosecutions, the Director of Public Prosecutions must in turn file heads of argument not later than five (5) court days before the date upon which the appeal is enrolled for hearing.
5. The presiding judge in the criminal appeal, the judge president or the deputy judge president may direct that the heads of argument be delivered earlier than the dates referred to above.
6. Counsel's names, contact details including cell phone number, must appear on the heads of argument.
7. If counsel intend to rely on authority not referred to in their heads of argument, copies thereof should be available for the judges hearing the appeal and counsel for each party. The same should apply where counsel intend to reply on unreported judgments.
8. In regard to the content of their heads of argument counsel are reminded of the dicta in *Catheram Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938 SCA at 955 B-F and *Ensign-Bickford (South Africa) (Pty) Ltd and Others v AECL Explosives and Chemicals Ltd* 1999 (1) SA 70 SCA at 84H-85C.

8.3 AUTOMATIC REVIEW

1. Criminal matters that came before the High Court on automatic review during the court term are distributed equally amongst the judges on duty save that no reviews are distributed to the judges sitting in motion court for the week that they so sit.
2. Where a particular judge has directed a query to the magistrate who presided in the matter on review and the magistrate has responded thereto, the review may be referred to any other judge who shall deal with the matter. Similarly where a particular judge has referred a review to the Director of Public Prosecutions, and the Director's opinion has been received, the review may be referred to any other judge who shall then deal with, and if possible dispose of, the matter.
3. Save in the case of the greatest urgency a query must be directed to the presiding magistrate before a judge interferes with a conviction or sentence on review. In all cases the opinion of the Director of Public Prosecutions must be obtained before a judge interferes with a conviction or sentence on review.
4. Where a review, in which the judge who refers the matter is considering the release of the accused from prison, is referred to the Director of Public Prosecutions, the judge referring the matter should inform the Director of Public Prosecutions of his consideration and the reason therefore and require a response within a stated period of time.
5. A review judgment is given by two (2) judges. If the two (2) judges agree, the release of the accused can be achieved by way of telegraphic communication.

8.4 BAIL APPEALS

1. Irrespective of the urgency thereof, a bail appeal is not heard in the motion court.
2. As soon as the proceedings in the bail application and the magistrate's judgement have been transcribed, application for the enrolment of the appeal is made to the Director of Public Prosecutions. The Director of Public Prosecutions shall then apply to the Deputy Judge President or, in his absence, the senior judge on duty, for the allocation of a date and time for the hearing of the appeal. The Director of Public Prosecutions shall inform all parties of the allocated date and time of the appeal.
3. Bail appeals are heard by a single judge.

8.5 REVIEWS

1. Irrespective of the urgency thereof, a review of a magistrate's decision in a criminal matter is not heard in the motion court.
2. As soon as the court papers relating to the review have been exchanged between the parties, the applicant may make application for the enrolment of the review to the Director of Public Prosecutions. The Director of Public Prosecutions shall then approach the Deputy Judge President or, in his absence, the senior judge on duty, for the allocation of a date and time for the hearing of the review. The Director of Public Prosecutions shall inform all parties of the allocated date and time of the review.
3. When allocating the date and time for the hearing of the review, the Deputy Judge President or senior judge on duty may direct when each party is to deliver heads of argument prior to the hearing of the review.
4. The practices in regard to the binding of the papers, indexing and pagination as set out in the chapter hereof dealing with motion court, apply equally to the reviews.
5. Reviews are usually heard by two judges sitting in the criminal appeal court.

8.6 TRIALS

1. Criminal trials are enrolled by the Director of Public Prosecutions. The Deputy Judge President, or the senior judge on duty, allocates the matters so enrolled to a particular judge.
2. Counsel must ensure that they are available for the entire duration of the trial. The failure to do so will result in counsel's conduct being referred to the relevant society or association of which counsel is a member for disciplinary action.
3. A postponement of a trial will normally not be granted because counsel is not available for the trial or for the entire duration of the trial.
4. Counsel shall disclose prior to the commencement of the trial any matter which may result in the matter being unable to run continuously to its conclusion.
5. Counsel will not be released from their obligation to remain in attendance for the duration of the trial.

CHAPTER 9 MOTION COURT

- 9.1 Allocation of courts
- 9.2 Index
- 9.3 Binding of papers
- 9.4 Pagination
- 9.5 Briefing of counsel
- 9.6 Calling of the roll of unopposed matters in courts 2 and 3
- 9.7 Closure of the motion court roll
- 9.8 Concise heads of argument
- 9.9 Enrolment
- 9.10 Enrolment of application after notice of intention to oppose
- 9.11 Errors on the unopposed roll
- 9.12 Hearing of opposed matters
- 9.13 Long duration
- 9.14 Matters not on the roll
- 9.15 Postponements
- 9.16 Practice note
- 9.17 Preparation of papers
- 9.18 Service
- 9.19 Settlement
- 9.20 Settlement agreements and draft orders
- 9.21 Stale service
- 9.22 Striking from the roll
- 9.23 Supplementary roll
- 9.24 Urgent applications

9.1 ALLOCATION OF COURTS

1. During Court Term

Six Courts are allocated for the hearing of opposed and unopposed motion matters each week.

1.1 Court 1

1.1.1 This Court is presided over by the senior motion court judge for the week.

1.1.2 This Court is available for the hearing of opposed matters.

1.1.3 This court commences sitting on the Monday at 10h00 and sits until 13h00. It resumes sitting on Tuesday at 10h00 and terminates its sitting on Friday at 16h00.

1.1.4 The Judge presiding in this court allocates the opposed matters which are to be heard on the Monday on the preceding Friday from 13h00.

1.1.5 The Judge presiding in this court allocates the balance of the opposed roll on the Monday from 13h00.

1.2 Court 2

1.2.1 This court hears the following unopposed matters on the Tuesday of each week:

1.2.1.1 Sequestration applications.

1.2.1.2 Return days of provisional orders of sequestration.

1.2.1.3 Voluntary surrender of estates.

1.2.1.4 Rehabilitations.

1.2.1.5 Winding-up applications.

1.2.1.6 Return days of provisional orders of winding-up.

1.2.1.7 Provisional sentence.

1.2.1.8 All applications in terms of the Insolvency Act and the Companies Act

1.2.2 This court hears opposed motion matters, as allocated to it by the senior motion court judge, from Wednesday at 10h00 until Friday at 16h00.

1.3 Court 3

1.3.1 This court hears the following unopposed motion matters on the Tuesday of each week:

1.3.1.1 All other applications (excluding summary judgment, default judgments (subject to the provisions of Rule 31) and Rule 43 applications)

1.3.1.2 All other applications (excluding summary judgment and Rule 43 applications)

1.3.2 This court hears opposed motion matters, as allocated to it by the senior motion court judge, from Wednesday at 10h00 until Friday at 16h00.

1.4 Court 4

1.4.1 This court hears the following motion matters on the Tuesday and Wednesday of each week:

1.4.1.1 Summary judgment applications (unopposed and opposed).

1.4.1.2 Rule 43 applications (unopposed and opposed).

1.4.1.3 Default Judgments (subject to provisions of Rule 31)

1.4.2 Unless specifically so directed by the Deputy Judge President, this court is not available for the hearing of motion matters on Thursday or Friday of the week.

1.5 Court 5

1.5.1 This court hears opposed and unopposed motion matters allocated to it by the senior motion court judge.

1.5.2 This court commences sitting on Monday at 10h00 and terminates its sitting on Friday at 16h00.

1.6 Court 6

1.6.1 This court hears both opposed and unopposed urgent applications that have not been allocated to any of the other motion courts on the ordinary roll.

1.6.2 This court is available from 16h00 on the Friday preceding the motion court week and terminates its sitting on the following Friday at 16h00.

2. During Court Recess

Three courts are allocated for the hearing of opposed and unopposed motion matters each week.

2.1 Court 2

2.1.1 This court hears the matters referred to in para. 1.2.1 and 1.4.1.1 on the Tuesday of each week.

2.1.2 Save as provided for in para. 1.4.1.1 no opposed matters are heard.

2.1.3 Only opposed summary judgment applications without complexity will be heard during recess.

2.2 Court 3

2.2.1 This court hears the matters referred to in para. 1.3.1 and 1.4.1.2 on the Tuesday of each week.

2.2.2 Save as provided for in para. 1.4.1.2 no opposed matters are heard.

2.2.3 Only opposed rule 43 applications without complexity will be heard during recess.

2.3 Court 6

2.3.1 This court hears both opposed and unopposed urgent applications.

2.3.2 This court is available from 16h00 on the Friday preceding the motion court week and terminates its sitting on the following Friday at 16h00, save for the last week of recess. In the last week of recess the court terminates on Monday, at 08h00.

3. In all the motion courts, whether in term or in recess, matters not completed on the designated day will stand over until the next day for completion.

9.2 INDEX

2. Prior to the hearing of the application (and preferably simultaneous with the notice of set down) the applicant must deliver a complete index of all documentation before the court for the determination of the application.
3. The index should briefly describe each affidavit and annexure as a separate item.
4. This practice is equally applicable to unopposed applications.

9.3 BINDING OF PAPERS

1. Prior to the set down of the application the applicant must ensure that all the documentation before the court for the determination of the application is properly bound.
2. In binding the application, care must be taken to preclude that the method of binding hinders the turning of pages.
3. The documentation should not be bound in volumes of more than 100 pages each.

9.4 PAGINATION

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

9.5 BRIEFING OF COUNSEL

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

9.6 CALLING OF THE ROLL OF UNOPPOSED MATTERS IN COURTS 2 AND 3

1. Courts 2 and 3 commence sitting at 09h30 on the Tuesday of each week during the court term for the hearing of the matters referred to in paragraph 2 below.
2. Counsel who are briefed in matters enrolled to be heard in courts 1, 4, 5 and 6 on the Tuesday at 10h00 may call their motion matters in court 2 and court 3 from 09h30 on the Tuesday. To this end, prior to the commencement of court 2 and court 3 at 09h30, those counsel are to hand to the clerks of the judges presiding in the relevant court a list reflecting -
 - 2.1 counsel's name;
 - 2.2 the name and number of the matters counsel wishes to have called in that court;
 - 2.3 the number of the other court or courts in which counsel is to appear on the Tuesday at 10h00 as well as the name and roll number of the matters in the other courts.

As soon as practicable after their use, the clerks of the judges presiding in courts 2 and court 3, must hand the list to the clerk of the senior motion court judge.

3. From 10h00, and after the matters referred to in paragraph 2 have been completed, the calling of the roll in court 2 and court 3 will commence.
4. Prior to the calling of the roll as set out in paragraph 3 above, the secretary of the presiding judge will invite counsel to call matters which are to be removed from the roll or postponed, including applications in which rule nisi's have been granted and in which the return date is to be extended, to be called.
5. Thereafter the roll will be called in each court. In court 2 matters will be called consecutively according to their number on the roll. In court 3 the roll will be called page by page and counsel may call the matters in which they appear, which are reflected on the relevant page.
6. It is emphasised that court 2 has precedence over court 3. Counsel must ensure that all their matters in court 2 have been called before attending court 3.
7. Accordingly, if a matter is called in court 2 and there is no appearance, the presiding judge may there and then strike the matter from the roll.
8. Once court 2 has completed its roll, the clerk of the presiding judge of court 2 will inform the clerk of the presiding judge in court 3 thereof. Thereafter the matters in court 3 will be called consecutively according to their number on the roll. If a matter is called in court 3 after court 2 has completed its roll and there is no appearance, the presiding judge may there and then strike the matter from the roll.

9. If a matter has to stand down after it has been called, it must stand down until the roll has been called once, unless the presiding judge indicates otherwise.

9.7 CLOSURE OF THE MOTION COURT ROLL

1. The motion court roll closes at noon on the preceding Thursday. If the Thursday is a public holiday, the roll closes at noon on the last preceding working day.
2. After the closure of the roll, the parties to a motion are not entitled to access to the court file and may not insert or remove documents from it. Such leave must be sought at the first calling of the matter and must be supported by an affidavit.
3. Access to the court file must not be sought from the relevant judge nor from the relevant judge's clerk.

9.8 CONCISE HEADS OF ARGUMENT

1. Concise heads of argument, rarely longer than 5 pages, must be attached to the practice note (see paragraph 9.16 below) deposited by each party.
2. The heads should indicate the issues that fall for determination and counsel's contentions in respect of those issues. Reference to the authorities relied upon for those contentions should be set out.
3. If concise heads of argument were deposited for a previous hearing of the matter and the issues for determination have not changed, concise heads of argument need not be filed again. The practice note must indicate that reliance will be placed on the concise heads of argument which was filed previously.
4. At the hearing of the matter further heads of argument may be handed in.
5. The practice note and heads of argument should also be served on the other side or at least be exchanged with the opposing counsel.

9.9 ENROLMENT

1. The motion court roll for a particular week closes at 12h00 on the Thursday preceding the week. If the Thursday is a public holiday the roll closes one day earlier.
2. In order to enrol a matter in the motion court, the form referred to as J118, must be properly completed. A specimen J118 form is annexed hereto marked "A". The J118 must not be altered in any respect.
3. When completing the J118 particular attention must be given to the indication of whether the matter is opposed or unopposed and the designation of the type of matter. If the matter does not fall within any of the type of matters set out on the J118, the designation "O" for other must be utilised. In addition to inserting an "O" alongside "Case type (see OPTIONS)", the type of the matter must be set out in the open block under the heading "(OPTIONS)".
4. If at the time of enrolment it is known that the matter is not proceeding on its merits, the J118 must be endorsed with the words "NOT PROCEEDING ON MERITS" in the block alongside "U" (unopposed) / (opposed)".
5. If the J118 is utilised to enrol an application for default judgment, the following must appear in a document attached to the J118:
 - 5.1 The date of service of the summons.
 - 5.2 The dies induciae allowed in the summons.
 - 5.3 The date when the dies induciae lapsed.
 - 5.4 A statement that no notice of intention to defend was given.
 - 5.5 The precise relief sought.
6. If the J118 is utilised to enrol an application for summary judgment, the following information must appear in a document attached to the J118:
 - 6.1 The date of delivery of the notice of intention to defend.
 - 6.2 The date on which the application for summary judgment was delivered.
 - 6.3 If applicable, a statement that no opposing affidavit was filed.
 - 6.4 The precise relief sought.
7. If the J118 is utilised to enrol an action for provisional sentence, the following information must appear in a document attached to the J118:
 - 7.1 The date of service of the provisional sentence summons.
 - 7.2 A statement that no opposing affidavit was filed.
 - 7.3 The precise relief sought.

8. If the J118 is utilised to enrol an application in which notice of intention to oppose was given but no answering affidavit was filed, the following information must appear in a document attached to the J118:
 - 8.1 The date on which notice of intention to oppose was given.
 - 8.2 The date by which the answering affidavit had to be filed.
 - 8.3 A statement that no answering affidavit was filed.

9. If the J118 is utilised to enrol any other unopposed application, except an ex parte application, the following information must appear in a document attached to the J118:
 - 9.1 The date of service of the application.
 - 9.2 The date by when notice of intention to oppose was to be given.
 - 9.3 A statement that no notice of intention to oppose was given.

10. It is emphasised that the J118 must be utilised to enrol the matter irrespective of any notice of set down or notice of motion that may have been utilised in the matter. Any such notice of set down or notice of motion must indicate that the matter will be heard at 9h30 or so soon thereafter as the matter may be heard.

ANNEXURE A

J118

*		Case # (year first, eg. 92/1236)
*		Date of hearing
*		U (unopposed) / OP (opposed)
*		Case type (see OPTIONS)
*		NAMES OF PARTIES
*		(-Surname, then initials - 1st plaintiff and 1st defendant only)
*		Pigeon hole number

OPTIONS

FAMILY LAW	PAYMENT	VARIOUS	SOLVENCY
E – DIVORCE	D – DEFAULT JUDGMENT	T – INTERLOCUTORY	R –REHABILITATION
N – RULE 43	S – SUMMARY JUDGMENT	I – INTERDICT	B – SURRENDER
C – CUSTODY	P – PROVISIONAL JUDGMENT	H – REVIEW	PS – PROV. SEQUESTRATION
F – INTERDICT	O – OTHER (specify)	V – DECLARATORY	FS – FINAL SEQUESTRATION
		O – OTHER (specify)	FL – FINAL LIQUIDATION
			PL – PROV. LIQUIDATION

NOTICE OF SET DOWN
SOUTH GAUTENG HIGH COURT, JOHANNESBURG

To The Registrar

Kindly set the above matter down in accordance with
the above information.

SIGNED ON THE ____ DAY OF _____.

SIGNATURE

(Any addition information must be stated on a second page)

9.10 ENROLMENT OF APPLICATION AFTER NOTICE OF INTENTION TO OPPOSE GIVEN

1. Where the respondent has failed to deliver an answering affidavit and has not given notice of an intention to only raise a question of law (rule 6 (5)(d)(iii)) or a point in limine, the application must not be enrolled for hearing on the opposed roll.
2. Such an application must be enrolled on the unopposed roll. In the event of such an application thereafter becoming opposed (for whatever reasons), the application will not be postponed as a matter of course, but will be referred to the senior motion court judge for direction.
3. The notice of set down of such an application must be served on the respondent or the respondent's attorney of record.
4. In the event of the application being enrolled on the opposed roll, in the absence of urgency and an acceptable explanation on affidavit for the incorrect enrolment of the application, the application will be removed from the roll.

9.11 ERRORS ON THE UNOPPOSED ROLL

1. If an unopposed matter is placed by the registrar on the roll of the wrong court, the matter will normally not be transferred to the roll of the correct court. The matter will be dealt with by the judge on whose roll the matter appears.
2. If an urgent application is enrolled in the wrong court, the application may be referred to the urgent court with the leave of the judge in whose court it was erroneously enrolled.
3. If an opposed matter is erroneously placed on the roll of unopposed matters, the clerk of the judge on whose roll the matter appears, must on instruction from the judge, hand the court file to the clerk of the senior motion court judge. The matter will then be allocated for hearing in the normal course.

9.12 HEARING OF OPPOSED MATTERS

1. Enrolment

- 1.1. All opposed matters are enrolled for hearing on the Tuesday of the chosen motion court week for hearing at 10h00 or so soon thereafter as the matter may be heard.
- 1.2. The opposed motions are heard by courts 1, 2, 3 and 5 as set out in “allocation of courts” or any other court as designated by the senior motion court judge and as directed by the Deputy Judge President.

2. Hearing of opposed matters on the Monday

- 2.1. By agreement between the parties and notwithstanding para. 1 above parties can, subject to allocation by the senior motion court judge, agree to the hearing of an opposed matter irrespective of its nature on the Monday of the chosen motion court week. In such an event -
 - 2.1.1. all counsel in the matter must deposit a practice note and concise heads of argument in the appropriate box by not later than 13h00 on the preceding Thursday;
 - 2.1.2. it must be stated in each practice note that all the parties have agreed to the matter being heard on the Monday;
 - 2.1.3. the court file must be properly paginated and indexed;
 - 2.1.4. the secretary of the senior motion court judge will advise the respective parties' legal representatives during the Friday afternoon whether it has been possible to allocate the matter for hearing on the Monday and in which court the matter will be heard;
 - 2.1.5. if it was not possible to allocate the matter for hearing on the Monday, the matter will be allocated for hearing on the Tuesday or later in the week depending on the nature of the application.

3. Hearing of opposed matters on the Tuesday

- 3.1. The following opposed matters are heard on the Tuesday irrespective of the consent of the parties:
 - 3.1.1. Applications for and return days of winding-up orders.

- 3.1.2. Applications for judicial management
 - 3.1.3. Applications for and return days of sequestration orders.
 - 3.1.4. Exceptions.
 - 3.1.5. Applications relating to custody and access.
- 3.2. If there is no appearance by the legal representatives of the parties or any of them on the Tuesday in respect of the applications referred to in paragraph 3.1 above, the application may, subject to the discretion of the presiding judge, be struck from the roll or be otherwise dealt with in terms of the rules of court. Any counsel who is required to be in any other court should notify the presiding judge accordingly.
- 3.3. All the parties to the applications referred to in paragraph 3.1 above must deposit a practice note and concise heads of argument in the appropriate box by no later than 13h00 on the preceding Friday.
- 3.4. The court file must be properly paginated and indexed.

4. Hearing of opposed matters on the Wednesday, Thursday and Friday

- 4.1. All other opposed matters will be allocated by the senior motion court judge for hearing in the courts referred to in paragraph 1.2 above on Wednesday, Thursday and Friday of the relevant week.
- 4.2. No matter will be so allocated unless
- 4.2.1. the court file has been properly paginated and indexed;
 - 4.2.2. all the parties to the matter have timeously deposited in the appropriate box their practice notes and concise heads of argument by not later than 13h00 on the preceding Monday.
- 4.3. A printed roll prepared by the secretary of the senior motion court judge will be published by the clerk in the foyer of the High Court and sent electronically to the Johannesburg Bar Council and Attorneys' Association by no later than 09h00 on the Tuesday. The printed roll will indicate, in the event of an allocation having been made, the court to which the matter has been allocated for hearing. Where a matter has not been allocated due to for failure to comply with paragraph 4.2 above or for any other reason, such matter will appear on the roll as unallocated and will be called before the senior motion court judge on Wednesday at 10h00.

5. Basis of allocations of opposed motions

- 5.1. Considerations of urgency (as disclosed in the practice note), estimated duration and efficiency form the basis of allocation.
- 5.2. Where the same counsel appears in more than one matter, it is endeavoured, where practical, to allocate all such matters to the same court. To this end counsel should indicate in their practice notes whether they appear in other matters and give details of such other matters, i.e. the number on the roll and the names of the parties.
- 5.3. Date of when the matter was enrolled may be considered when the matter is allocated.

6. Difficulties with allocation

- 6.1. If a problem is encountered with an allocation of an opposed motion such problem must be raised with the senior motion court judge.
- 6.2. Only the senior motion court judge may change the allocation of a matter.

9.13 LONG DURATION

1. An opposed motion which is expected to require a day or more (including the delivery of an *ex tempore judgment*) may not be enrolled for hearing without the consent of the Deputy Judge President.
2. The consent of the Deputy Judge President for the enrolment of the matter is sought in writing, a copy of which must simultaneously be made available to the other party or parties to the opposed motion and must contain:-
 - 2.1. a short exposition of the nature and complexity of the matter;
 - 2.2. the estimated duration thereof;
 - 2.3. an assurance that all the necessary affidavits have been exchanged (or in exceptional cases an indication of the date by when they will have been exchanged);
 - 2.4. an assurance that the papers have been properly indexed and paginated;
 - 2.5. proposals for the filing of heads of argument by the parties;
 - 2.6. suggestions as to when the application can be heard.

The other party or parties to the opposed motion who wish to make representations in respect thereof may do so in writing.
3. The Deputy Judge President will determine the date of the hearing of the aforesaid opposed motion and furnish such directions as he deems fit in respect thereof.
4. The opposed motion must forthwith be enrolled for hearing in terms of the determination of the Deputy Judge President.

9.14 MATTERS NOT ON THE ROLL

1. Any matters not on the roll must only be brought to the attention of the presiding judge of the court on whose roll the matter ought to have appeared after the roll of that court has been called at least once. At that time the presiding judge's secretary will invite counsel to mention matters not on the roll.
2. Once counsel has determined that a matter is not on the roll and the relevant court file has been located, the court file should be handed to the secretary of the judge presiding over that portion of the roll in which the matter should have appeared. The judge's secretary shall prepare a list of such matters for use by the judge's secretary and the presiding judge.
3. If the matter is not on the roll due to a fault in the registrar's office, the file should be endorsed to that effect by the registrar dealing with enrolment. Once the matter is enrolled, the presiding judge will give directions for the hearing of the matter.
4. If the matter is not on the roll due to an act or omission on the part of the legal representative who was responsible for the enrolment of the application, an affidavit explaining the act or omission by the legal representative must be filed in the court file. In the absence of urgency and prejudice the matter will not be enrolled.

9.15 POSTPONEMENTS

1. A motion, whether opposed or unopposed, will generally not be postponed to a specific date. It will either be postponed *sine die* or removed from the roll.
2. Where a motion has to be postponed to a specific date (eg rehabilitation for which notice has been given) such date, in the absence of urgency, must be to a date at least two weeks hence.
3. Prior to allocation and in respect of unallocated matters, the clerk of the senior motion court judge for the particular week must be informed in person or telephonically immediately it becomes known that an opposed matter is to be postponed.
4. Subsequent to the allocation of an opposed matter to a particular judge for hearing, the clerk of the judge to whom the matter has been allocated, must be informed in person or telephonically immediately it becomes known that a matter is to be postponed.

9.16 PRACTICE NOTE

1. Counsel for each party in a motion which appears on the opposed roll is to deposit a practice note in the designated box, not later than 13h00 on the preceding Thursday, if a hearing on the following Monday is envisaged, by not later than 13h00 on the Friday if a hearing on Tuesday is envisaged and by not later than 13h00 on the Monday in all other cases.
2. The practice note shall set out -
 - 2.1. the name of the parties, the case number and its number on the roll;
 - 2.2. the names and telephone numbers of all counsel in the motion;
 - 2.3. the nature of the motion;
 - 2.4. an indication of the issues to be determined in the application;
 - 2.5. the relief sought at the hearing by the party on whose behalf counsel completing the practice note appear;
 - 2.6. an estimate of the probable duration of the motion;
 - 2.7. if the matter is urgent and if so motivate the urgency;
 - 2.8. whether or not the papers need to be read and, if so, which portions thereof.
3. In the absence of a practice note from the applicant, a motion appearing on the opposed roll will not be dealt with other than for removal from the roll, save in the event of respondent's counsel advancing considerations which are sufficient to persuade the presiding judge to hear the application.
4. A practice note must be deposited as set out in 1 above on each occasion the motion appears on the opposed roll.
5. Concise heads of argument (see 9.8 above) are to be attached to the practice note at the time of depositing thereof.
6. When the day on which the practice note and concise heads are to be deposited falls on a public holiday, such documents shall be deposited on the preceding business day.

9.17 PREPARATION OF PAPERS

1. The original application, the original return of service and other original documents comprising the application must be contained in the court file.

2. If a document or documents attached to the founding or replying affidavit is
 - 2.1 in manuscript and

 - 3.2 not readily legiblethe applicant shall ensure that typed and legible copies of the document or documents are provided.

2. The respondent bears the obligation referred to in the previous sub-paragraph in respect of documents attached to the answering affidavit.

9.18 SERVICE

1. Service is proved by filing in the court file the original return of service which establishes the service. In the absence of an acceptable explanation, returns of service will generally not be accepted from the bar.
2. Where publication in the Government Gazette or newspaper of a court order, notice or other document has to be proved, the full page of the Government Gazette or newspaper containing the relevant order, notice or other document must be filed. The court order, notice or other document must be clearly highlighted. In the absence of an acceptable explanation, proof of publication will generally not be accepted from the bar.
- 3.1 Where service is effected at the registered address of a company or close corporation the Sheriff must state in his return that he or she ascertained that there was a board at the address where service was effected indicating that that address was indeed the registered office of the company or close corporation.
- 3.2 In the absence of such a statement in the return of service, the registered address must be proved by filing in the court file of a form CM22 issued by the registrar of companies.
4. Where service is effected at a domicilium citandi et executandi, the original document wherein the domicilium is chosen must be in the court file.
5. In actions or applications for the imprisonment of the defendant or respondent, personal service of the summons or application must be effected on the defendant or respondent. If notice of the set down of the matter has to be given to the defendant or respondent, personal service of the notice of set down must be effected on the defendant or respondent.
6. When service of any document by registered post is prescribed or authorised (in any action or application), such service is proved by the production of an affidavit by the person who procured the despatch of such document, in which he/she -
 - 6.1 indicates the date of despatch together with the name and address of the addressee;
 - 6.2 describes the document so despatched;
 - 6.3 indicates, if that be the case, that the item in question has not been returned to the sender by the Post Office as being undelivered, and to which he annexes the documentary proof of posting of a registered article issued by the Post Office.

9.19 SETTLEMENT

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

9.20 SETTLEMENT AGREEMENTS AND DRAFT ORDERS

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

or

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

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

3. All applications must be accompanied by a draft order reflecting the precise terms of the relief sought. Such draft order must be filed with the registrar at the time of issuing of the application.

9.21 STALE SERVICE

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

9.22 STRIKING FROM THE ROLL

1. If there is no appearance when a matter is called in court 2 it may there and then be struck from the roll.
2. If there is no appearance when a matter is called in court 3, and court 2 has completed its roll, it may there and then be struck from the roll.
3. In all other matters if there is no appearance when the matter is called, it may there and then be struck from the roll.
4. If a matter has been struck from the roll, counsel in the course of the week in which the matter was struck from the roll, may seek that the matter be re-enrolled. The matter will only be re-enrolled if a proper explanation for non-appearance is given. In appropriate circumstances the explanation must be on oath.
5. If a matter has been struck from the roll it may only be re-enrolled for a subsequent week if simultaneous with the filing of the J118, an affidavit explaining the previous non-appearance is filed.
6. The negligence or ignorance of the provisions of the practice manual of counsel or legal representative will not necessarily constitute an acceptable explanation for the non-appearance.
7. Where the applicant or plaintiff has failed to file a practice note and/or heads of argument where they are required in terms of the practice manual, the relevant matter may be struck from the roll.

9.23 SUPPLEMENTARY ROLL

1. If it is ascertained before 13h00 on the Monday of the motion court week, that a matter has been omitted from the roll due to a fault in the registrar's office, the matter must forthwith be drawn to the attention of the registrar's office.
2. The registrar's office will prepare a supplementary roll in respect of those matters. Matters on the supplementary roll are to be placed before the senior motion court judge.
3. The supplementary motion court roll will be called before the senior motion court judge on Wednesday of the motion court week at 10h00 or so soon thereafter as may be possible.

9.24 URGENT APPLICATIONS

1. A judge is designated for the hearing of urgent applications for each week of the year. For this purpose the week commences on Friday at 16h00 and terminates on the Friday of the next week at 16h00.
2. The normal time for the bringing of an urgent application is 10h00 on the Tuesday of the motion court week.
 - 3.1 If the urgent application cannot be brought at 10h00 on the Tuesday of the motion court week, it may be brought on any other day of the motion court week at 10h00. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on the Tuesday.
 - 3.2 If the urgent application cannot be brought at 10h00 on any day during the motion court week, it may be brought at 11h30 or 14h00 on any day during the motion court week. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on the Tuesday and other than 10h00 of the relevant court day.
 - 3.3 If the application cannot be brought at 10h00 on the Tuesday or at 10h00 on any other court day or at 11h30 or 14h00 on any court day it may be brought at any time during the court day. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on the Tuesday and other than at 10h00, 11h30 or 14h00 on any other court day.
 - 3.4 The aforementioned requirements are in addition to the applicant's obligation to set out explicitly the circumstances which render the matter urgent. In this regard it is emphasised that while an application may be urgent, it may not be sufficiently urgent to be heard at the time selected by the applicant.
 - 3.5 The aforementioned practices will be strictly enforced by the presiding judge. If an application is enrolled on a day or at a time that is not justified, the application will not be enrolled and an appropriate punitive cost order may be made.
4. The first paragraph of relief sought in the applicant's notice of motion must be for the enrolment of the application as an urgent application and for the dispensing of the forms and service provided for in the rules of court, to the extent necessary.
 - 5.1 Unless the circumstances are such that no notice of the application is given to the respondent, or unless the urgency is so great that it is impossible to comply therewith, the notice of motion must follow the format of form 2 (a) of the First Schedule to the rules of court and therefore must provide a reasonable time, place and method for the respondent to give notice of intention to oppose the application and must further provide a reasonable time within which the respondent may file an answering affidavit. The date and time selected by the applicant for the enrolment of the application must enable the applicant to file a replying affidavit if necessary.

- 5.2 Deviation from the time periods prescribed by the rules of court must be strictly commensurate with the urgency of the matter as set out in the founding papers.
- 5.3 In cases of extreme urgency, the reasonable time afforded to the respondent to give notice of intention to oppose, is usually not less than 2 hours, excluding the hour between 13h00 and 14h00.
- 6.1 If the facts and circumstances set out in the applicant's affidavits do not -
- 6.1.1 constitute sufficient urgency for the application to be brought as an urgent application and/or
 - 6.1.2 justify the abrogation or curtailment of the time periods referred to in the rule 6(5) and/or
 - 6.1.3 justify the failure to serve the application as required in rule 4 the court will decline to grant an order for the enrolment of the application as an urgent application and/or for the dispensing of the forms and services provided for in the rule. Save for a possible adverse cost order against the applicant the court will make no order on the application.
- 6.2 The aforementioned requirements will be strictly enforced by the presiding judge.
- 7.1 For the purposes of urgent applications ordinary court hours are 10h00 to 11h15, 11h30 to 13h00 and 14h00 to 16h00 of a court day. If a party wishes to bring an urgent application out of ordinary court hours the presiding judge's clerk must be telephoned at her office or on cell number 082 573 5233. The following information must be conveyed to the judge's clerk -
- 7.1.1 The identity of the parties.
 - 7.1.2 Whether or not service has been or will be effected.
 - 7.1.3 Whether or not the application is or is anticipated to be, opposed.
 - 7.1.4 The type of application.
 - 7.1.5 The nature of the relief sought.
 - 7.1.6 Why it is not possible for the application to be heard during ordinary court hours.
 - 7.1.7 When it is anticipated the application will be ripe for hearing.
- 7.2 The judge's clerk will communicate with the judge and thereafter advise the party when and where the application will be heard or what directions the judge has given in regard to the application.
- 7.3 When an urgent application is brought out of ordinary court hours, the applicant must ensure that the order of the court can be typed so that it can be signed by the presiding judge's clerk.
- 7.4 The judge designated for the hearing of urgent applications is not to be contacted directly.
- 7.5 If the judge designated for the hearing of urgent applications directs that the application be heard in court after ordinary court hours the judge's clerk shall telephone -
- 7.5.1 the court stenographer on urgent application duty to arrange the stenographer's attendance in court at the arranged time. The stenographer's telephone number is obtained from LOM on the Friday before 16h00.

- 7.5.2 the security officer on duty at the main entrance of the High Court at telephone number 011 332 8264 to arrange for the admission of the parties to the court and for the parties to be directed to Court 6 E.
- 8.1 When an urgent application is brought for the Tuesday at 10h00 the applicant must ensure that the relevant papers are filed with the registrar by the preceding Thursday at 12h00.
- 8.2 The registrar's office must ensure that the court files of all urgent application set down for the Tuesday at 10h00 are brought to the clerk of the judge hearing the urgent applications by 16h00 on the preceding Friday.
- 8.3 The clerk of the judge hearing urgent applications will prepare a roll in respect of the urgent applications to be heard on the Tuesday at 10h00. The clerk will publish the roll in the foyer of the High Court by no later than 10h00 on the Tuesday.
- 8.4 Where an urgent application is brought for any other time than Tuesday at 10h00, the registrar's office shall ensure that the court file is brought to the clerk of the judge hearing urgent applications as soon as possible. The judge's clerk shall prepare a roll in respect of the urgent applications to be heard on the other days of the week. The clerk will publish the roll in the foyer of the High Court by no later than 09h00 on the day of the hearing.
- 9.1 Save in exceptional circumstances the applicant should not frame the relief sought in the form of a *rule nisi* which has in whole or in part interim effect. Where applicable the urgent relief should be sought pending the determination of the application.
- 9.2 Annexure A to this chapter is an example of the appropriate format of a notice of motion to be utilised in an urgent application.
- 10.1 On the Friday of each week at 16h00 the registrar shall send to the secretary of the judge designated for the hearing of urgent applications for the week commencing at 16h00 on the Friday -
- 10.1.1 the cellular phone provided for the judge's clerk;
 - 10.1.2 15 consecutively numbered court files (These files are to be utilised in the event of an urgent application being brought without a court file having been opened by the registrar of the court);
 - 10.1.3 an official stamp of the registrar of the High Court. The stamp imprint must include the letters J.S.
- 10.2 On Friday of each week, before 16h00 the clerk of the judge who is to take over the urgent court, must obtain from LOM (Business Solutions) the telephone number of the stenographer on urgent court duty for the urgent court week.

- 10.3 On the first court day after any of the files referred to in 10.1.2 above has been utilised, the judge's clerk shall inform the registrar of the names of the parties and the allocated case number.
- 10.4 On the Friday morning at the conclusion of the week during which the designated judge heard the urgent applications, the judge's clerk must return the cellular telephone, the unused numbered files and the aforesaid stamp to the registrar.

CHAPTER 10 PARTICULAR APPLICATIONS

- 10.1 Anton Piller type orders
- 10.2 Admission of advocates
- 10.3 Cancellation of sales in execution
- 10.4 Change to matrimonial regime
- 10.5 Compromise in terms of Section 311 of the Companies Act
- 10.6 Curator bonis
- 10.7 Curator ad litem
- 10.8 Enquiries in terms of Section 417 of the Companies Act
- 10.9 Eviction where the Prevention of Unlawful Occupation of Land Act 1998 applies
- 10.10 Liquidation
- 10.11 Provisional sentence
- 10.12 Rehabilitation
- 10.13 Removal of amendment of restrictions on land use
- 10.14 Sequestration

10.1 ANTON PILLER TYPE ORDERS

1. These practises apply when an order which is sought ex parte involves a search for a movable object or the attachment thereof in order to preserve evidence as is meant in *Shoba v Officer Commanding 1995 (4) SA 1 (A)* or if the item is not identified in the papers, i.e. if identification is dependent upon a pointing out which is still to be made.
2. Such an application must stand on its own and not form part of an application in which other relief is claimed. Duplication of costs is to be minimised by incorporating evidence in one application by reference in any other application.
3. When the applicant wishes the matter to be heard in camera:
 - 3.1 the applicant may, without being obliged to do so, prove the reason why such a hearing is necessary in a separate affidavit. If a separate affidavit is employed and a hearing in camera is refused without a party or the judge having placed reliance on the contents of the application itself, the applicant may withdraw and remove the Anton Piller application;
 - 3.2 a certificate from counsel in support of a hearing in camera is not necessary;
 - 3.3 all steps must be taken as if the application is being set down on the motion court roll by use of the ordinary forms and in the ordinary manner except that the notice of set down and application are handed to the clerk of the senior judge on motion court duty for purposes of safekeeping and maintaining secrecy all in accordance with the directions of the senior judge.
4. A notice which accords with annexure A hereto must be handed to the person on whom the order is to be served prior to any execution of the order.
- 5.1 Annexure B represents a model order which applies to relief along Anton Piller lines. It may be adapted according to circumstances but the judge's attention must be drawn to deviations.
- 5.2 Deviations from annexure B must be limited to what is necessary and must heed the following guidelines:
 - 5.2.1 Unless the procedure is limited in case law, undertakings to the court must be employed to counteract injustice and avoidable inconvenience to the respondent.
 - 5.2.2 The order must be justifiable in terms of South African law.
 - 5.2.3 It must be borne in mind that it is of the essence of an Anton Piller type order that it results in some immediate interference with the respondent without any prior notice (even if a rule nisi pattern of order were to be used). Immediate operation must be limited to what can be fully justified by urgency or other need for breach of the audi alteram partem principle.
 - 5.2.4 Relief which can not be so justified must be dealt with in a separate part of the notice of motion (and where necessary of the court order) so that the respondent has a proper opportunity to oppose such relief. Immediate preserving of evidence does not imply a need

to allow the making of copies or other early discovery without the other party having a chance to be heard.

ANNEXURE A

1. The order being served on you requires you to allow the persons named therein to enter the premises described in this order and to search for, examine and remove or copy the articles specified in this order. You are also required to point out and hand over any such item to the sheriff. Particulars are stated in the order.

- 2.1 When this notice is handed to you, you are entitled, if you are an employee of the respondent or in charge of the premises, to contact the respondent or a more senior officer of the respondent. You are entitled to the attendance and advice of such senior person, the respondent or an attorney provided such person arrives without delay and not later than one hour after the handing over of this notice.

- 2.2 Until the attorney, the respondent or such other officer arrives or until the time has passed for him or her to arrive, you need not comply with any part of this order, except that you must allow the applicant's attorney, the sheriff and the other persons named in the order to enter the premises and to take such steps as, in the opinion of that attorney, are reasonably necessary to prevent prejudice to the further execution of the order.

3. You are further entitled to have the sheriff and the applicant's attorney explain to you what this notice and the court order mean.

4. You may be punished for contempt of court if you, inter alia,
 - 4.1 obstruct the sheriff unlawfully in the execution of this order; or
 - 4.2 wilfully disobey this order; or
 - 4.3 remove or intentionally cause harm to any item about to be attached or removed in terms of this order, until the attachment is set aside by the Court or is lifted on instruction from the applicant.

ANNEXURE B

Having heard counsel for the applicant and having read the papers filed of record, and on the basis that the applicant undertakes to this court that -

1. this order will not be executed outside the hours between 08h00 and 18h00 on a weekday;
2. applicant will prevent the disclosure of any information gained during the execution of this order to any party except in the course of obtaining legal advice or pursuing litigation against the respondent;
3. applicant will compensate the respondent for any damage caused to the respondent by anyone exceeding the terms of this order;
4. applicant will compensate the respondent for any damage caused to the respondent by reason of the execution of this order should this order subsequently be set aside,

IT IS ORDERED:

1. That the respondent and any other adult person in charge of the premises of the respondent at New Road, Delmas grant the sheriff of the above Honourable Court, applicant's manager (Mr XY Zuma), attorney AB Collins ("applicant's attorney") and a computer operator nominated by applicant access to the said premises for the purpose of
 - 1.1 searching the premises for the purpose of enabling any of those persons to identify and point out to the sheriff originals or copies of or extracts from applicant's recipes and formulae for the manufacture of AZ toys;
 - 1.2 examining any item for the purpose of identifying it and deciding whether it is of the nature mentioned in the preceding subparagraph;
 - 1.3 searching the premises for the purposes of finding any computer disc containing any of the items referred to above.
2. That the respondent forthwith discloses passwords and procedures required for effective access to the computer for the purpose of searching on the computer and making a disc copy, or, if that is not possible, a print out of computer documents containing information of the nature which would be expected in a document mentioned in paragraph 1.1 above.
3.
 - 3.1 That the respondent permit the sheriff to attach and to remove any document pointed out by a person mentioned in paragraph 1 as being a document covered by paragraph 1.
 - 3.2 That, subject to paragraph 5.2 hereof, the sheriff is authorised to attach any document which is pointed out by any of the aforesaid persons and is directed to remove any attached document in respect of which the applicant or the applicant's attorney does not give a different instruction. The sheriff is directed to keep each removed item in his custody until the applicant authorises its release to the respondent or this Court directs otherwise.

4. That until completion of the search authorised in the preceding paragraphs the respondent may not access any computer or any area where documents of the class mentioned in paragraph 1.1 may be present except with the leave of the applicant's attorney or to make telephone calls or send an electronic message to obtain the attendance and advice mentioned in the notice which is handed over immediately prior to execution of this order.
5. The sheriff is directed, before this order and this application is served or executed, to -
 - (a) hand to the respondent or the other person found in charge of the said premises a copy of a notice which accords with annexure A of the Practice Manual; and
 - (b) to explain paragraphs 2, 3 and 4 thereof; and
 - (c) to inform those persons the following:
 - 5.1 That any interested party may apply to this Court on not less than twenty four (24) hours' notice to the offices of the applicant's attorney for a variation or setting aside of this order, the court's practices and rules applying unless the court directs otherwise.
 - 5.2 That the respondent is entitled to make a copy of any document which the sheriff intends to remove unless the sheriff declares that the time involved makes the procedure impractical and the sheriff either does not remove the relevant item or removes it in a container sealed by him and which the sheriff may not open except to give to effect this order or to any further direction from the Court.
 - 5.3 That the respondent or his representative is entitled to inspect items in the sheriff's possession for the purpose of satisfying themselves that the inventory is correct.
6. The sheriff is ordered to immediately make a detailed inventory of all items attached and to provide the Registrar of this court, the applicant's attorney, and the respondent with a clear copy thereof.
7. That unless a different direction is obtained from the Court, applicant and applicant's attorney will, two days after this order is executed, become entitled to inspect any of the removed items in order to assess whether it provides evidence relevant to the present application or to the further legal proceedings envisaged in the application.
8. That the sheriff is ordered to inform the respondent that the execution of this order does not dispose of all the relief sought by the applicant and to simultaneously serve the notice of motion and explain the nature and exigency thereof.
9. The costs of this application are reserved for determination in the further proceedings foreshadowed in this application save that -

- (a) if the applicant does not institute those legal proceedings within three weeks of the date of this order, either party may, on not less than 96 hours' notice to the other, apply to this Honourable Court for an order determining liability for those costs and determining what must be done about removed items and any copies thereof;
- (b) any other party affected by the grant or execution of this order may on no less than 96 hours' notice apply to this Honourable Court for an order determining liability for the costs of such party and determining what must be done about any item removed from any such party or any copy thereof.

Note: in some situations the following may also be appropriate:

- 10. The respondent and any other adult person in charge of the premises at which this order is executed are further directed to disclose to the sheriff of the above Honourable Court the whereabouts of any document or item falling within the categories of documents and items referred to in 1.1 above, whether at the premises at which this order is executed or elsewhere to the extent that the whereabouts are known to such person(s).
- 11. In the event of any document or item is disclosed to be at the premises other than the premises mentioned in paragraph 1.1 of this order, the applicant may approach this court ex parte for leave to permit execution of this order at such other premises.

10.2 ADMISSION OF ADVOCATES

1. An application for admission as an advocate must, in addition to the information required by section 3(1) of the Admissions of Advocates Act No74 of 1964 and Rule 3A of the Rules of the Supreme Court allege that -
 - 1.1 the applicant is not arraigned on a criminal charge and has not been convicted of a criminal offence;
 - 1.2 the applicant's estate has not been sequestrated and that no sequestration proceedings are pending;
 - 1.3 the applicant was not found guilty in misconduct proceedings while in a previous profession or employment and that when any previous profession was relinquished or employment was terminated, no misconduct proceedings were pending; and
 - 1.4 the applicant is unaware of any fact which may detrimentally affect the adjudication of the application.
2. If the applicant is unable to make any of the allegations aforementioned, full details of the circumstances which preclude the allegation being made must be furnished.
3. The registrar is to ensure that the court files containing the admission applications are handed to the clerks of the judges hearing the application at least two days before the hearing of the applications.
4. Applications for admissions are heard before two judges.

10.3 CANCELLATION OF SALE IN EXECUTION

1. If an application in terms of rule 46(11) is unopposed it is dealt with by the judge before whom it comes in chambers. If the application is opposed the application will be heard in open court.
2. The notice of motion must inter alia be served on the purchaser against whom relief is sought. The notice of motion must inform the purchaser of the time within which and the manner in which the applicant and the registrar must be informed of the purchasers intention to oppose the relief sought if any.
3. If no intention to oppose the relief sought is filed, the applicant must depose to an affidavit stating that fact. The affidavit must be placed in the court file before the application comes before the judge.

10.4 CHANGE TO THE MATRIMONIAL REGIME

1. The application is commenced by publication in the Government Gazette of a notice substantially in the form of Annexure A hereto.
2. The report of the Registrar of Deeds must be obtained before such advertisement is placed.
3. At least 3 weeks before the hearing date a copy of the notice referred to in para 1 must be forwarded to each creditor by registered post and must be accompanied by a letter, a copy of which must be placed before the court, which states -
 - 3.1 on which date and time and to which court application will be made;
 - 3.2 the full names of the spouses, their identity numbers and their residential addresses and places of employment in the preceding 12 months;
 - 3.3 the effect of the proposed order;
 - 3.4 that a creditor whose interests will be prejudicially affected by the change of marital regime, may appear at the hearing to oppose the granting of the order.
4. The name, address, amount owing to, and the cause of action of each contingent and other creditor must be set out in the application. Proof of compliance with para 1, 2 and 3 must be proved at the hearing of the application by the filing of a supplementary affidavit.

ANNEXURE A

Take notice that on the _____ day of _____ 20____ at 10h00 or so soon thereafter as the matter can be heard, the abovementioned applicants will apply to the South Gauteng High Court of Johannesburg (address) for an order in the following terms:

1. The applicants are given leave to change the matrimonial property system which applies to their marriage, by the execution and registration of a notarial contract, a draft whereof is attached to the first applicant's supporting affidavit and is marked ". . ." and which contract, after registration thereof, will regulate their property system;
2. The Registrar of Deeds is authorised to register the notarial contract;
3. This order –
 - 3.1 will lapse if the notarial contract is not registered by the Registrar of Deeds within two months of the date of the granting of this order; and
 - 3.2 will not prejudice the rights of any creditor of the applicants as at date of registration of the contract.

10.5 COMPROMISE IN TERMS OF SECTION 311 OF THE COMPANIES ACT 61 OF 1973

1. Every chairperson and alternate chairperson must be identified by name. It must be proved that such person is not a professional advisor of and has no direct or indirect interest in the offeror, in the company or in a holding company or a subsidiary of any of them.
- 2.1 The proposed statement in terms of section 312 must be attached to the application. To limit costs, the facts therein which require proof must be repeated in the affidavit only by way of an appropriate reference to the statement as is meant in *Ex parte De Villiers 1993 1 SA 493 (A) at 508H-I*.
- 2.2 The statement must not amount to an abbreviated repetition of the terms of the compromise but must explain its impact in terms which are readily understandable by a layman. The statement must explain what will happen to an affected party's interest if the scheme is approved; what conditions precedent and other risks of failure are operative and what the prospects are about those risks; what must be done to obtain and to enforce rights created by the scheme; how those rights may be lost; how the party will be informed of or can gain knowledge of fulfilment of conditions like approval of some third party; and what must be done to enable the party to vote.
- 2.3 The statement may be compiled by an accountant, liquidator or other person with adequate knowledge of the facts and must state the name of its author.
 - 2.3.1 The statement in terms of section 312(1)(a)(i) must be approved of by the court in advance and must therefore form part of the application.
 - 2.3.2 That statement must be in a document which is separate from the applicant's statement in compliance with section 312(1)(a)(ii) and separate from any other information (the information which explains why the scheme is a good idea rather than what its impact will be) which the applicant intends putting before interested parties, whether in order to comply with a requirement of some body or of its own volition.
 - 2.3.3 The statement and the actual scheme of arrangement must be forwarded to interested parties in a way which contrast them from documents about which the court made no finding, by way of binding them separately, using pages with a different colour, or making the distinction with a blank page and clear headings.
 - 2.3.4 The papers sent to interested parties must commence with the said statement, followed by the scheme of arrangement and then followed by such other documents as the applicant may have in mind.
 - 2.3.5 Reasons for any opinion that the offer is fair and reasonable must be stated in an affidavit by the individual or individuals who provided the opinion.
3. The court must be informed about the extent to which parties who are entitled to vote are not from the Witwatersrand. If the court is not so informed it will incline to require publication in a newspaper with

national circulation in its dominant language and in another official language in a national newspaper which is in circulation in the province wherein the company carried on business.

4. The order must -
 - 4.1 require proof of giving notice in accordance with membership according to both the company's register and the sub-register of all CSDP's;
 - 4.2 allow shareholders sufficient time to obtain powers of attorney from their CSDP's;
 - 4.3 if relevant information is to be ascertained or published only in the future, allow shareholders sufficient time to receive that information, to consult with their advisers and to get a response to the place where the meeting is to be held.
5. Unless expressly otherwise directed, the court order need not be published in any newspaper. The application must be drafted so as not to ask for such publication. The notice convening the scheme must be published.
6. The chairperson must forthwith
 - 6.1 cause a notice convening the meeting which substantially conforms with the annexure hereto to be published in an official gazette and such newspaper as the court directs, on a date which is at least two weeks prior to the date of the meeting; and
 - 6.2 send the following by prepaid registered post to each creditor of the company:
 - 6.2.1 A copy of the court order.
 - 6.2.2 A copy of the offer to compromise.
 - 6.2.3 A copy of the statement in terms of sections 312(1) and (2) of the Act.
 - 6.2.4 A form which can be used as proxy.
 - 6.2.5 A statement showing
 - 6.2.5.1 the amount for which the creditor is reflected in the company's records as a creditor of the company and the extent to which he is reflected as a preferent or as a secured creditor;
 - 6.2.5.2 the company's asset and the values thereof;
 - 6.2.5.3 the aggregate amounts due to (a) secured, (b) preferent and (c) concurrent creditors;
 - 6.2.5.4 the amount which creditors claim to be owing to them, the validity of those claims; and what security is held therefor;
 - 6.3 A notice which accords with the annexure hereto should form the front page of the documents sent to a creditor. If not, the front page must explain the essence of the scheme in simple terms. In either event the words explaining the scheme must appear in bold print.
7. If reason arises for regarding one or more creditors as a class of creditors which possibly should, in the order authorising the convening of the meetings, have been recognised as a further class of creditors, the votes of any creditor who may be in that class shall be cast, counted and reported on separately.

8. The chairperson must report to the court on
 - 8.1 the grounds, if any, for concluding that one or more creditors constitute such an additional class of creditors;
 - 8.2 the number of creditors who attend in person;
 - 8.3 the number of creditors who were represented by proxies and which thereof was represented by the chairperson in terms of proxies;
 - 8.4 the amount of the claims of those creditors;
 - 8.5 which proxies were rejected;
 - 8.6 each resolution taken at any meeting with particulars of the number of votes cast in favour and against each resolution and the number of abstentions, stating the number of votes cast by the chairperson by virtue of proxies;
 - 8.7 each ruling of the chairperson at a meeting;
 - 8.8 the salient qualities of every other offer of compromise which was open for consideration at a meeting.

10.6 CURATOR BONIS

1. At the first hearing of the application for the appointment of a curator bonis, the only relief granted is the appointment of a curator ad litem. All other relief is postponed sine die pending receipt of the curator ad litem's and the master's report.
2. The application is re-enrolled after the aforementioned reports have come to hand.
3. Save in exceptional circumstances, which must be established on affidavit, an application for the appointment of a curator bonis will not be heard if the aforementioned reports have not been filed in the court file.
4. The consent of both the curator ad litem and the proposed curator bonis must be annexed to the application.

10.7 CURATOR AD LITEM

1. Where the appointment of a curator ad litem is sought to assist a litigant in the institution or conduct of litigation, the applicant must establish the experience of the proposed curator ad litem in the type of litigation which the litigant wishes to institute or conduct.
2. A consent to act by the proposed curator ad litem must be annexed to the application.
3. In order to preclude giving notice of the application to the prospective defendant, the applicant should seek that the costs of the application be reserved for determination in the contemplated trial.
4. The order sought should only permit the proposed curator to settle the action with the approval of a judge.
5. Where the curator ad litem requires the approval of the court to settle the action, the curator ad litem and plaintiff's counsel may approach the deputy judge president for the allocation of a judge in chambers to approve the settlement.

10.8 ENQUIRIES IN TERMS OF SECTION 417 OF THE COMPANIES ACT 61 OF 1973

- 1.1 The request that the enquiry be held in secret should be fully motivated. Secrecy will not be ordered as a matter of course.
- 1.2 Where application is made to examine a particular witness, it must be shown that the witness in question has refused to furnish the information required of him or is otherwise unwilling to cooperate with the liquidator.
- 1.3 Since the amendment of section 417 which has given the power to the Master to hold the enquiry, any application to the Court under this section must indicate whether the Master himself has instituted an enquiry and why it is necessary to apply to Court for this purpose.

10.9 EVICTION IN TERMS OF THE PREVENTION OF ILLEGAL EVICTIONS AND UNLAWFUL OCCUPATION OF LAND ACT, 19 OF 1998

1. The application for eviction must be a separate application. The procedure to be adopted (except in urgent applications) is as follows:
 - 1.1 The notice of motion must follow Form 2(a).
 - 1.2 The notice of motion must allow not less than five days from date of service of the application for delivery of a notice of intention to oppose.
 - 1.3 The notice of motion must give a date when the application will be heard, in the absence of a notice of intention to oppose.
2. After the eviction application has been served and no notice of intention to oppose has been delivered or if a notice of intention to oppose has been delivered at a stage when a date for the hearing of the application has been determined, the applicant may bring an ex parte interlocutory application authorising a section 4(2) notice and for directions on service.
3. When determining a date for the hearing of an eviction application, sufficient time must be allowed for bringing the ex parte application, for serving the section 4(2) notice and for the 14 day notice period to expire.
4. If the eviction application is postponed in open court on a day of which notice in terms of section 4(2) was duly given, and if the postponement is to a specific date, it will not be necessary to serve another section 4(2) notice in respect of the latter date.
5. A number of pro forma orders are attached hereto for the guidance of practitioners. The orders must be adapted to meet the exigencies of each case.

10.10 LIQUIDATION

1. The applicant should seek a final winding-up order in the notice of motion.
2. The court may nonetheless in the exercise of its discretion grant a provisional order and direct that service and publication of the provisional order be affected.
3. The service referred to in para 2 could include -
 - 3.1 service of the order on the company or close corporation at its registered office;
 - 3.2 publication of the order in the government gazette;
 - 3.3 publication of the order in a newspaper circulating in the area where the company or close corporation carries on business;
 - 3.4 service on all known creditors. This will only be ordered where the applicant has ready access to the identity and address of the creditors. Depending on the information that the applicant has as to the creditor's address such service can be ordered to be effected by e-mail, facsimile transmission or pre-paid registered post.
4. If a provisional order of liquidation is granted, proof of compliance with the service ordered must be provided on the return date. Such proof is provided by filling an affidavit setting out the manner in which the ordered service was complied with. The presiding judge will only accept the affidavit of service from the bar in exceptional circumstances made out in an affidavit.
5. If an extension of the return date of a provisional order of liquidation is sought, the party seeking such an extension must deliver an affidavit motivating such an extension.
6. Where a company or a close corporation seeks its own winding-up, it is not necessary for the application or for any provisional order that may be granted to be served on the company or close corporation.
7. Where the applicant seeking a winding-up order is a shareholder of a company or member of a close corporation, he shall serve the application on all interested parties, such as a co-shareholder or joint member. Failing such service the applicant should indicate in the founding affidavit why such service is not necessary.

10.11 PROVISIONAL SENTENCE

1. Proof of presentation of a negotiable instrument is unnecessary unless presentation is disputed or the court requires proof thereof.
2. The original liquid document upon which provisional sentence is sought must be handed to the court when the provisional sentence is sought.

10.12 REHABILITATION

1. An application for rehabilitation will not be read by the presiding judge, if the master's report is not in the court file. The presiding judge will only accept the master's report from the bar in exceptional circumstances made out in an affidavit.
2. If the applicant avers that a contribution paid by a creditor has been repaid to the creditor, adequate proof thereof must be provided.
3. The applicant, as is required by section 127 of Act 24 of 1936, must state what dividend was paid by the creditors. It is not acceptable to attempt to comply with this requirement by attaching the distribution account which the presiding judge is expected to analyse and interpret.
4. As the date of the hearing of an application for rehabilitation has been advertised, any postponement of the application will be to a specific date.

10.13 REMOVAL OR AMENDMENT OF RESTRICTIONS ON LAND USE

1. This section applies to applications based on the principle that the consent of the holder of a right to the cancellation or amendment of the conditions embodying his right is to be inferred from the fact that he does not object to the application, as is discussed in, inter alia, *Ex parte Gold 1956 (2) SA 642 (T)* and *Ex parte Glenrand (Pty) Ltd 1983 (3) SA 203 (W)*.
2. It follows that the court should be convinced that the holder of the right in question has knowledge of the application. There should accordingly be service on all persons concerned. Service under Rule 4(2) of the Rules of Court is authorised by way of exception to the ordinary methods of service. Full and cogent reasons should therefore be advanced in support of a request under the sub-rule.
3. The fact – if fact it is – that it might be difficult or costly to ascertain particulars of the persons concerned, and to effect service on them, is not the most important consideration. The nature and extent of the curtailment of the rights of affected persons and the need to ensure that they are made aware of the application, is of greater importance. It follows that the court might distinguish between persons directly or indirectly affected by such applications, and differentiated service might be authorised.
4. When the application is presented to court
 - 4.1 it must be proved that the application together with a request to report was in good time served upon the Registrar of Deeds, any Township Board which is involved and, if possible, a local authority which is able to comment upon -
 - 4.1.1 the correctness of the facts;
 - 4.1.2 the identity of persons who may have a legal interest or whose refusal of consent could be adequate reason to refuse the application; and
 - 4.1.3 about the best method of notifying interested parties.
 - 4.2 a plan or map must be attached (if necessary extending beyond the township within which the property is situated) which will assist the court to ascertain which owners or users (of roads or of rights) have sufficient interest to make notice appropriate;
 - 4.3 proof must be given of the problems encountered or expected which render normal service on interested parties or direct notice on them (perhaps in terms of Court rule 4(2)) impractical;
 - 4.4 The effect of granting the order must be explained since persons affected may by their mere objection put an end to the application, the order should be so worded as to inform affected persons that they are free to make their objection, either by written notice to the Registrar or on the return day, without fear that they will be mulcted in costs.

10.14 SEQUESTRATION

1. In an application for sequestration, unless leave to proceed by way of substituted service has been granted, personal service of the application must be effected on the respondent.
2. Unless the court directs otherwise in terms of section 11 (2) of Act 24 of 1936, the provisional order of sequestration must be served on the respondent personally.
3. If an extension of a provisional order of sequestration is sought, the party seeking such an extension must deliver an affidavit motivating such an extension.
4. If the applicant fails to establish that the application is not a so-called “friendly” sequestration the following will apply:
 - 4.1 Sufficient proof of the existence of the debt which gives rise to the application must be provided. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.
 - 4.2 The respondent’s assets must be valued by a sworn appraiser on the basis of what the assets will probably realise on a forced sale. Mere opinions, devoid of reasoning as to what the assets will probably realise, will not be regarded as compliance herewith. The valuation must be made on oath and the appraiser must be qualified as an expert witness in the normal manner.
 - 4.3 Where the applicant seeks to establish advantage to creditors by relying on the residue between immovable property valued as aforesaid and the amount outstanding on a mortgage bond registered over the immovable property, proof of the amount outstanding on the mortgage bond at the time of the launching of the application is required. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.
 - 4.4 Where the applicant seeks to establish advantage to creditors by relying on a sum of money paid into an attorney’s trust account to establish benefit for creditors, an affidavit by the attorney must be attached to the application in which he confirms that the money has been paid into his trust account and will be retained there until the appointment of a trustee.
 - 4.5 In establishing advantage to creditors the following sequestration and administration costs will be assumed in an uncomplicated application:
 - 4.5.1 Cost of application – R 6000
Cost of application if correspondent utilised – R 8000 (if the applicant’s attorney of record has agreed to limit fees proof thereof must be provided).
 - 4.5.2 The aforementioned costs are assumed to increase by R 700 for every postponement of if the application or if the provisional order has to be furnished to all known creditors, the aforementioned costs are assumed to increase to R 700.

- 4.5.3 The cost of administration, subject to a minimum of R 2500 are:
 - 4.5.3.1 1% plus VAT on cash or money in a financial institution
 - 4.5.3.2 3% plus VAT on immovable property and shares
 - 4.5.3.3 10% plus VAT on movable property including book debt
 - 4.5.4 Other administration costs include sheriff fees (Schedule 3 of Act 24 of 1936) and the cost of security.
 - 4.5.5 The aforementioned costs do not include the costs of the realisation of the asset. The cost must be established. unless evidence to the contrary is placed before the court, it will be assumed that the cost of the realisation of immovable property is 6% of the selling price plus advertising charges.
 - 4.5.6 Regard being had to the costs set out in para 4.5.5, the applicant must in the application set out a calculation indicating the probable dividend to concurrent creditors.
- 4.6 Where the application is brought as an urgent application with the purpose of staying a sale in execution, notice of the application must be given to the judgement creditor. In addition the applicant must set out facts to enable the court to determine that the assets which are to be sold at the sale in execution will realise more, if sold privately.
- 4.7 Notwithstanding para 3 above, a court will be reluctant to grant an extension of a return date in a “friendly” sequestration.

CHAPTER 11 LEAVE TO APPEAL IN CIVIL MATTERS

1. An application for leave to appeal must be filed with the registrar in charge of civil appeals.
2. If the judgment in respect of which leave to appeal is sought was not handed down in typed form when the judgment was delivered, the applicant shall forthwith take the necessary steps to cause the judgment to be transcribed. All the other parties to the application for leave to appeal shall forthwith in writing be informed of the steps taken by the applicant in this regard.
3. If the applicant does not within three days of the service of the application for leave to appeal take the necessary steps to cause the judgment to be transcribed, the respondent's legal representatives may take the necessary steps to ensure that the judgment is transcribed. All the other parties to the application for leave to appeal shall forthwith in writing be informed of the steps taken by the respondent in this regard.
4. If the judgment was handed down in typed form, or after the judgment has been transcribed, it may be placed in the court file and the applicant may apply by letter to the registrar in charge of civil appeals for the allocation of a date for the hearing of the application for leave to appeal. In the event of the parties agreeing thereto, three alternative dates may be set out in the letter, being dates upon which the parties' counsel are available to argue the application for leave to appeal. The applicant must forthwith forward a copy of this letter to all the other parties to the application for leave to appeal.
5. If the applicant does not apply for the allocation of a date for hearing of the application for leave to appeal within a period of 7 days after the judgment has become available, the respondent may so apply. The application is made by directing a letter to the registrar in charge of civil appeals. At the same time the respondent must place a copy of the judgment in the court file. The respondent must forthwith forward a copy of the letter to all the other parties to the application for leave to appeal
6. Once the registrar in charge of civil appeals is in possession of -
 - 6.1 the application for leave to appeal,
 - 6.2 the judgment and
 - 6.3 the letter requesting a date for the hearing of the applicationthe aforesaid registrar will submit the relevant court file to the secretary of the judge who delivered the judgment. The secretary of the judge will endorse the date and time on which the application for leave to appeal is to be heard. The judge's secretary will return the file to the aforesaid registrar.
7. The registrar in charge of civil appeals shall thereupon notify the parties of the date and time so determined and shall enrol the matter accordingly. Thereafter the aforesaid registrar shall return the court file with proof of notification of the date and time of the hearing to the secretary of the judge who delivered the judgment and shall confirm that the application has been enrolled.

8. Applications for leave to appeal are normally enrolled for 09h30. It is anticipated that the application including judgment thereon will be concluded by 10h00. If the parties or any one of them envisage the application taking longer than half an hour to be concluded, a statement to this effect must be made in the letters referred to above. In such a case the presiding judge may determine another time for the hearing of the application for leave to appeal.
9. If none of the parties to the application for leave to appeal apply to the registrar for the allocation of a date for the hearing of the application for leave to appeal, the registrar in charge of civil appeals will submit the relevant court file to the clerk of the judge who delivered the judgment. The aforesaid registrar shall indicate the parties' failure to comply with the foregoing and request a date for the hearing of the application for leave to appeal. The clerk of the judge will endorse the date and time on which the application is to be heard. The judge's clerk will return the court file to the aforesaid registrar. Thereafter the practice set out in paragraph 7 shall be followed.
10. The convenience of counsel is not conclusive in the determination of a date for the hearing of an application for leave to appeal.

CHAPTER 12 UNOPPOSED DIVORCE ACTION

1. Prior to the closure of the roll, the legal representative who enrolled the matter must determine that the court file contains all the relevant pleadings, notices and returns of service. The legal representative must further ensure that the court file is properly paginated, indexed and bound. Documents will only be accepted from the bar in exceptional circumstances which must be established on affidavit.
2. The pleadings, notices and returns of service referred to in the previous paragraph must all be originals. If any one is not an original, an affidavit must be included in the documents explaining why the original is not in the court file and proving that the copy is a true copy of the original. Where the summons is not the original summons, the affidavit must additionally prove that the original summons was properly signed and stamped when issued. In such a case the presiding judge will determine if the matter can proceed in the absence of the original pleadings, notices and returns of service.
3. If a copy of a marriage certificate is utilised to prove the marriage, the copy must have been certified as a true copy of the original.
4. Where the party proving the marriage requires return of the original or certified marriage certificate, a copy thereof must be available to be placed in the court file at the hearing.
5. In the event that the parties have concluded an agreement of settlement, the original agreement of settlement must not be placed in the court file. The original agreement must be handed up through the witness proving its conclusion.
6. A divorce roll consists of no more than 50 matters. If a matter is not on the printed roll it will not be enrolled save in exceptional circumstances which must be made out on affidavit.
7. In order to enrol the matter, the form known as the J 118 must be properly completed. The following must appear on a document attached to the J 118:
 - 7.1 The date of service of the summons,
 - 7.2 The dies induciae allowed in the summons,
 - 7.3 The date when the dies induciae lapsed,
 - 7.4 A statement that no intention to defend was given,
 - 7.5 Alternatively to 7.1 TO 7.4, the date when the opposing parties claim or plea and if applicable counterclaim was withdrawn.
8. A matter may not be enrolled prior to the expiry of the dies induciae even if the dies induciae will have expired by the time the matter is heard.

9. Any amendment to the pleadings must be sought in writing. If the amendment is granted the judge's clerk must note the order on the court file. The notation of the order will, in so far as the amendment may relate to the parties' names and the spelling thereof, draw the attention of the registrar's office thereto and ensure that any court order will correctly reflect the parties' names.

10. Subject to the discretion of the presiding judge the evidence necessary for the grant of a decree of divorce may be presented on affidavit provided that -
 - 10.1 the affidavit proves that no child was born to or adopted by the parties to the marriage, or, if there was that such child is over the age of 18 years;
 - 10.2 all financial matters between the spouses have been settled in a signed written agreement which is identified in and attached to the affidavit, or if the only order to be sought in regard to financial matters is division of the joint estate or forfeiture of the benefits of the marriage in community of property;
 - 10.3 all the necessary evidence is set out in the affidavit. (In this regard it is emphasised that primary facts and not conclusion of fact are required);
 - 10.4 the affidavit is attached to the notice of enrolment.

CHAPTER 13 JUDGE IN CHAMBERS

1. Counsel who wishes to see a judge in chambers should approach the relevant judge's clerk. If the relevant judge's clerk is not available, another judge's clerk may be approached. If no judge's clerk is available the court usher may be approached.
2. The judge's clerk or usher will advise counsel if and when the meeting with the judge will take place.
3. Where counsel seek to see a judge in chambers, all counsel in the matter must be present. In view hereof it is not advisable for counsel to see a judge in chambers where one or more of the parties are not represented by counsel.
4. It is not necessary for counsel who appear in a trial allocated to a particular judge, to see that judge in chambers prior to the commencement of the trial, other than for the purpose of introducing themselves to the judge, if they have not already done so.

CHAPTER 14 JUDGES' CLERKS

1. The duties of judges' clerks are set out in a manual which is made available to each judge's clerk on his or her appointment.
2. The judges' clerks must familiarise themselves with their functions as set out in the practice manual.
3. Court orders must be carefully and correctly noted by the judges' clerks on the court file. If a draft order is made an order of court, judges' clerks must staple the draft order onto the inside of the front cover of the court file. If the draft order provides for the postponement of the matter or for the extension of a rule nisi, the date to which the matter is postponed or the extended return date must be noted on the court file.
4. If a judge has marked a judgment as reportable the judge's clerk must hand a printed copy and an electronic copy of the judgment to the head librarian. The head librarian will arrange for the reporting of the judgment. The indication on the judgment that it is reportable must be signed in original on the copy of the judgment handed to the head librarian.
5. If a judge has marked a judgment as being of interest to other judges, a printed copy thereof bearing such indication signed by the judge in original must be handed by the judge's secretary to the head librarian. The head librarian will arrange for the distribution of the judgment to the judges of the division.
6. The judges' clerk must hand a copy of every printed and signed judgment of his/her judge to the head librarian who shall compile and retain an electronic collection of all judgments delivered in the South Gauteng High Court (Johannesburg), once such judgments have been printed and signed by the judges.
7. When a judge is sitting in the trial court and a matter has been allocated to the judge, the relevant judge's clerk must notify the clerk of the Deputy Judge President by e-mail -
 - 7.4 immediately after the hearing of the matter has been concluded;
 - 7.5 whilst the matter continues, on adjournment each afternoon, that the matter will continue the next morning;
 - 7.6 the estimated further duration of the matter.

The e-mail must also contain the name of the judge hearing the matter, the parties' names and the case number.

CHAPTER 15 OPENING OF COURT FILES

1. Papers which commence a proceeding (including an appeal and a rule 43 application) must be accompanied by an “opening sheet” which will facilitate the registration of the proceedings by the registrar of the court. The “opening sheet” must follow the format of annexure “ ” hereto and must contain the information required thereto.
2. If the parties or any one of them in the proceedings is a natural person, the parties’ surnames must precede the parties’ given names in the opening sheet and in all subsequent pleadings, affidavits and documents relating to the proceedings.
3. Each proceeding is allocated a distinctive case number by the registrar in all proceedings. Except for appeals, the distinctive number follows the reference to the year in which the proceeding was registered (eg 2008/7235). In appeals the procedure is reversed and the distinctive number precedes the reference to the year in which the proceeding was registered (eg. 2008/7235).
4. An application for leave to appeal retains the case number of the matter in which leave to appeal is sought.

CHAPTER 16 STANDARD ORDER

1. To facilitate the printing of the court orders certain standard orders have been devised. Where practical practitioners should seek relief in terms of the standard orders.
2. Any deviation from the standard order must be motivated either in the court papers or by counsel at the hearing of the matter.
3. The standard orders that are annexed hereto are:
 - 16.1 Default judgment granted by registrar
 - 16.2 Summary judgment
 - 16.3 Provisional sentence
 - 16.4 Default judgment by court
 - 16.5 Absolution from the instance
 - 16.6 Edictal citation
 - 16.7 Substituted sentence
 - 16.8 Rule 43
 - 16.9 Divorce with settlement agreement
 - 16.10 Divorce without settlement agreement
 - 15.11 Post nuptial registration of a contract
 - 15.12 General order for discovery
 - 15.13 Agreement of settlement
 - 15.14 Rule nisi
 - 15.15 Restrictive conditions on land
 - 15.16 Unallocated order
 - 15.17 Provisional sequestration
 - 15.18 Final sequestration
 - 15.19 Rehabilitation
 - 15.20 Surrender
 - 15.21 Provisional liquidation
 - 15.22 Final liquidation
 - 16.23 Discharge of provisional sequestration or liquidation

- 16.24 Section 311
- 16.25 Judicial Management
- 16.26 Leave to appeal
- 16.27 Order on appeal
- 16.28 Order in terms of Rule 39 (22)
- 16.29 Admission of translator

16.1 DEFAULT JUDGMENT GRANTED BY THE REGISTRAR

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record and having considered the matter:-

DEFAULT JUDGMENT is granted against the _____ for:

1. Payment of the sum of
2. Interest
- 3.
4. The following property is declared executable:

BY THE COURT

REGISTRAR

16.2 SUMMARY JUDGMENT

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

SUMMARY JUDGMENT is granted against the _____ for:

1. Payment of the sum of
2. Interest on the sum of.....at the rate of.....per annum from.....to date of payment
3. Costs of suit

BY THE COURT

REGISTRAR

16.3 PROVISIONAL SENTENCE

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

PROVISIONAL SENTENCE is granted against the Defendant for:

1. Payment of the sum of
2. Interest on the sum of at the rate of per annum from to date of payment
3. Costs of suit
4. The following property is declared executable:

BY THE COURT

REGISTRAR

16.4 DEFAULT JUDGMENT BY COURT

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

DEFAULT JUDGMENT is granted against the Defendant for:

1. Payment of the sum of
2. Interest on the sum of at the rate of per annum from to date of payment
3. Costs of suit

BY THE COURT

REGISTRAR

16.5 ABSOLUTION FROM THE INSTANCE

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

THE COURT ORDERS THAT:

1. Absolution from the instance be granted to the Defendant
2. The Plaintiff is ordered to pay the costs of the action

BY THE COURT

REGISTRAR

16.6 EDICTAL CITATION

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

THE COURT ORDERS THAT:

1. Leave is granted to the applicant to sue the abovementioned respondent by way of edictal citation for the following relief:-
2. The citation must be served on the respondent
3. The respondent is to be afforded (days) within which to enter appearance to defend
4. The costs of this application are to be costs in the cause.

BY THE COURT

REGISTRAR

16.7 SUBSTITUTED SERVICE

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

THE COURT ORDERS THAT:

1. Leave is granted to the applicant to serve the summons in which the applicant claims:
 - 1.1
 - 1.2by way of substituted service
2. Service of the summons must be effected by
3. The respondent is to be afforded(days) within which to enter appearance to defend
4. The costs of this application are to be costs in the cause.

BY THE COURT

REGISTRAR

16.8 RULE 43

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

THE COURT ORDERS THAT:

1. is ordered to pay maintenance to in the amount of R..... per month.
2. (a) is awarded care and primary residence of the minor children born out of the marriage.

(b) shall be entitled to reasonable contact to the said minor children, which access shall include:-
 - (i)
 - (ii)
- (c) is ordered to pay maintenance to in respect of the aforesaid minor children in the amount of R..... per month per child.
3. is ordered to make a provisional contribution to legal costs pendent elite in monthly instalments in the amount of R.....
4. The payments referred to above will commence on or before the day of200.... and shall thereafter be made on or before the day of each succeeding month.
5. The costs of this application are to be costs in the cause.

BY THE COURT

REGISTRAR

16.9 DIVORCE WITH SETTLEMENT AGREEMENT

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The marriage between the Plaintiff and Defendant is dissolved.
2. The Deed of Settlement (marked " ") is hereby made an order of Court.

BY THE COURT

REGISTRAR

16.10 DIVORCE WITHOUT SETTLEMENT AGREEMENT

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The marriage between the Plaintiff and Defendant is dissolved.
2. is awarded care and primary residence of the minor children.....
3. The other parent shall be entitled to reasonable contact to the said children which contact shall include:
4. is ordered to pay maintenance to in the amount of per month.
5. is ordered to pay maintenance in respect of the minor children at the rate of
6. The Defendant is ordered to pay the costs of the action.

BY THE COURT

REGISTRAR

16.11 POST NUPTIAL REGISTRATION OF A CONTRACT

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

FIRST APPLICANT

and

SECOND APPLICANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The applicants are given leave to effect the execution and registration of a notarial contract, a draft whereof is annexed to the application, which contract will after registration thereof regulate their matrimonial property system;
2. The Registrar of Deeds is authorised to register the said notarial contract;
3. This order-
 - 3.1 will lapse if the notarial contract is not registered by the Registrar of Deeds within two months of the date of the granting of this order;
 - 3.2 will not prejudice the rights of any creditor of the applicants as at date of registration of the contract.

BY THE COURT

REGISTRAR

16.12 GENERAL ORDER FOR DISCOVERY

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. shall make discovery of the following documents on affidavit within from the date of the granting of this order;
2. The costs of this application are to be paid by

BY THE COURT

REGISTRAR

16.13 AGREEMENT OF SETTLEMENT

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED:-

1. THAT the Agreement of Settlement marked "X" is made an order of court.

BY THE COURT

REGISTRAR

16.14 RULE NISI

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. A rule nisi is issued calling upon the respondent to show cause on Tuesday day of (month and year) 9:30 or so soon thereafter as the matter may be heard why an order should not be made in the following terms:-
 - 1.1
 - 1.2
 - 1.3
2. Pending the return day the respondent is interdicted from:
 - 2.1
 - 2.2

BY THE COURT

REGISTRAR

16.15 RESTRICTIVE CONDITIONS ON LAND

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. A rule nisi is issued calling on any interested persons who may choose to do so, to object either by letter received by the Registrar before....., or by personally or through counsel appearing in court on at 09:30 against the granting of the following order:-
 - 1.1
 - 1.2
 - 1.3
2. Any person who has a right which may be affected is entitled to object to the granting of such an order, and may do so without incurring liability for costs. If he opposes by writing a letter to the Registrar, the objector must state the objector's full names, identity number and address and describe the property or right which will be affected by the grant of the order.
3. The order sought will be the following effect:

The papers in this matter are open for inspection without charge at the office of the Registrar, High Court, Von Brandis Square, Prichard Street, Johannesburg, and at the offices of applicant's attorney:-
Messrs.
of
5. Service is to be effected:-
 - 5.1 by the despatch of a copy of the order by prepaid post before to the following persons -
at the addresses set out alongside their names
6. A copy of the order, in two official languages, is to be exhibited on a prominent part of the public notice board at the office of the for a period of four weeks from
7. Copies of the order in two official languages are to be exhibited at conspicuous places at.....

BY THE COURT

REGISTRAR

16.16 UNALLOCATED ORDER

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

BY THE COURT

REGISTRAR

16.17 PROVISIONAL SEQUESTRATION

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The estate of the respondent is placed under provisional sequestration.
2. The respondent and any other party who wishes to avoid such an order being made final, are called upon to advance the reasons, if any, why the court should not grant a final order of sequestration of the said estate on the day of at 09:30 or as soon thereafter as the matter may be heard.

BY THE COURT

REGISTRAR

16.18 FINAL SEQUESTRATION

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The estate of the respondent is placed under final sequestration.

BY THE COURT

REGISTRAR

16.19 REHABILITATION

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the application of:-

APPLICANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

The abovementioned applicant be and is hereby rehabilitated.

BY THE COURT

REGISTRAR

16.20 SURRENDER

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the application of:-

APPLICANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

The surrender of the estate of the Applicant is accepted as insolvent and the estate is placed under sequestration in the hands of the Master of the High Court.

BY THE COURT

REGISTRAR

16.21 PROVISIONAL LIQUIDATION

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The above mentioned respondent is hereby placed under provisional winding up.
2. All persons who have a legitimate interest are called upon to put forward their reasons why this court should not order the final winding up of the respondent on at 09:30 am or so soon thereafter as the matter may be heard.
3. A copy of this order be served on the respondent at its registered office.
4. A copy of the order be published forthwith once in the Government Gazette.
5. A copy of this order be forthwith forwarded to each known creditor by prepaid registered post or by electronically receipted telefax transmission.

BY THE COURT

REGISTRAR

16.22 FINAL LIQUIDATION

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. That the above mentioned respondent is hereby placed under final winding up.

BY THE COURT

REGISTRAR

**16.23 DISCHARGE OF PROVISIONAL SEQUESTRATION
OR LIQUIDATION**

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The order of provisional is set aside.
2. The rule nisi is discharged.

BY THE COURT

REGISTRAR

16.24 SECTION 311

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

and

APPLICANT

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED:-

1. That a meeting in terms of section 311 (1) of the Companies Act, 61 of 1973 (the Act) of:
 - 1.1 the secured creditors;
 - 1.2 the preferred creditors; and
 - 1.3 the concurrent creditors.

be convened by the chairperson for the purpose of considering by way of casting votes the acceptance, with or without modification, of the Offer of Compromise which is an Annexure to the application.

2. That or in the event of unavailability is appointed as Chairperson of the said meeting with power to determine the date and place of the meeting and to adjourn the meeting when it appears to be appropriate.
3. That the chairperson shall comply with part of the Practice Manual and enrol the matter for finalisation on
4. That a creditor who desires to make use of proxy should use the prescribed form
5. That to entitle him to vote a creditor who did receive the documents sent by the chairperson, must lodge each in a form which complies with section 366 (1) (a) of the Companies Act, 1973 with the chairperson at his office not later than 24 (twenty four) hours before the meeting.
6. That a creditor who did not receive such papers may become entitled to vote if he, before the commencement of the meeting, hands to the chairperson an affidavit in which he confirms that he did not receive those papers and that he is a creditor, stating the amount and the nature of his claim.
7. That during normal business hours, a creditor is entitled, free of charge, to inspect a copy of the application, of the said offer of compromise, and of the list statement in terms of section 312 (1) and 312 (2) of the said Act, at the office of the chairperson (namely) and there to obtain a free copy of the required proxy.
8. That the chairperson shall post to any creditor who so requests a copy of the statement in terms of section 321 (1) and 321 (2).

BY THE COURT

REGISTRAR

16.25 JUDICIAL MANAGEMENT

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED:-

1. That the respondent is hereby placed under provisional judicial management in terms of Act 61 of 1973.
2. That while this order is in force the respondent is under judicial management, subject to the supervision of the Court, of a provisional judicial manager or managers appointed by the Master.
3. That as from today any other person or persons vested with the management of the respondent's affairs be divested thereof.
4. That the provisional judicial manager or managers discharge the duties prescribed by section 430 of Act 61 of 1973.
5. That the provisional judicial manager or managers appointed by the Master be empowered without the authority of the shareholders but subject to the authority of creditors and the Master to borrow money with or without security on behalf of the respondent for the purpose of paying essential running expenditure in and about the business of the respondent including salaries, wages and premises rental for business required by the respondent and to pledge the credit of the respondent for any goods or services required.
6. That while the respondent is under provisional judicial management all actions, proceedings, the execution of all writs, summonses and other processes against the respondent be stayed and be not proceeded with without leave of this Court being obtained.
7. That the rate of remuneration of the provisional judicial manager or managers be fixed by the Master in accordance with the services rendered and disbursements incurred, or should the Master so request, the said rate of remuneration shall be fixed by the Court after the Master has reported thereon.
8. That a rule nisi is hereby issued calling upon all persons concerned to appear and to show cause, if any, to this Court on
- 8.1 why a final judicial management order should not be granted;
- 8.2 why the following directions should not be included in the said order –

16.26 LEAVE TO APPEAL

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. Leave to appeal is granted.
2. Leave is granted to appeal to the Supreme Court of Appeal/the Full Court of this division.
3. The costs of this application are costs in the appeal.

BY THE COURT

REGISTRAR

16.27 ORDER ON APPEAL

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO.:

PH NO.:

BEFORE THE HONOURABLE JUDGE

In the matter between:

APPELLANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter.

IT IS ORDERED THAT

1. The appeal is upheld / dismissed
2. The order of the court a quo is set aside and substituted with the following order:
(Set out order if the appeal is upheld)
3. The respondent / appellant is ordered to pay the costs of the appeal.

BY THE COURT

REGISTRAR

16.28 ORDER IN TERMS OF RULE 39 (22)

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The matter is transferred to the magistrate court for the area in terms of Rule 39 (22).
2. The costs incurred to date are costs in the cause.

BY THE COURT

REGISTRAR

16.29 ADMISSION OF TRANSLATOR

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the ex parte application of:-

APPLICANT

HAVING read the documents filed of record, heard counsel and having heard the application:-

IT IS ORDERED THAT:-

1. The proper officer places the name of the applicant on the roll of translators for translations from to and from to

BY THE COURT

REGISTRAR

CHAPTER 17 USHERS

1. The standards that are expected of ushers in the performance of their court duties as described in that job description are set out hereunder.
2. While in attendance in court, ushers should be neatly and appropriately dressed. The appropriate dress code is the following:
 - 2.1 Male ushers should be dressed in shoes, socks, dark long trousers, white shirt with buttoned collar, and a sober tie.
 - 2.2 Female ushers should be dressed in shoes, dark skirt or long trousers, and a white, collared blouse.
 - 2.3 All ushers are required to wear a black gown which must be in a proper state of repair. Gowns are issued by the registrar, and each usher is responsible to ensure that the gown remains in his possession, and is properly cared for. If a gown is lost, the usher concerned will be responsible for the cost of replacement. If a gown becomes unduly worn, it must be returned to the registrar, and will be replaced.
3. Ushers must adhere to the duty roster issued by the registrar unless a departure from the roster has been arranged with the chief registrar. A copy of the roster for the week will be circulated to all judges at the commencement of the working week.
4. The working hours of ushers are from 8h00 am to 4h15 pm, and they should make their transport arrangements accordingly. Working hours may not be altered without prior arrangement with the chief usher and the judge concerned.
5. An usher will present himself or herself at the chambers of the judge to whom he or she has been allocated at 09h30 am each day in order to determine what may be required of him or her in order to ensure that the court commences at 10h00 am. The usher will thereafter attend the court concerned. Once the court is ready to convene he or she will report at the chambers of the judge concerned in sufficient time to enable the court to convene at 10h00 am. If a court is not ready to convene by 10h00 am the usher will immediately report the fact to the judge concerned.
6. Ushers will remain in court, and will remain alert, throughout the court session.
7. An usher who has been allocated to perform duties in two courts must inform the clerks of both judges accordingly. If the usher is performing duties in a trial court and in an appeal court, the usher is required to remain in attendance at the trial court, unless specific arrangements to the contrary have been made by the judges concerned, and conveyed to the usher.
8. If the court session has not been completed by 3h55 pm, the usher may leave the court at that time in order to complete his or her other duties before the end of the working day.

9. Ushers must at all times conduct themselves in a manner which enhances the dignity of the court which they serve. Ushers are also entitled to be treated with due dignity by clerks and judges alike. Any complaint that an usher might have in that regard should be reported to the chief usher, who will deal with the matter accordingly.

ANNEXURE NOTICE OF SCHEME MEETING

In the ex parte application of

XYZ Limited (Registration number 05/30021/06) Applicant

Under authority of an Order of the South Gauteng High Court, Johannesburg (“the Court”) issued in the above matter on 11 January 2000, this notice serves to convene a meeting of shareholders of the applicant, other than ZYX, who are registered as such at the close of business on Thursday, 17 January 2000 (“the scheme members”).

The meeting will be held at 10h00 on Friday, 25 January 2000, at . . . , Johannesburg. (Mention ONE person only) . . . has been appointed by the Court as chairperson and the chairperson’s offices are at . . . (state that chairperson’s address).

The purpose of the meeting is to consider and, if deemed fit, to agree (with or without modification) a scheme of arrangement. **Its basic characteristic is that, subject to the fulfilment of certain conditions precedent which are stated in paragraph Z of the scheme, XYZ will take over all shares of scheme members who are registered members on 17 January 2000, at a price of R qqq per share which is payable on 1 March 2000.**

A copy of the scheme, the statement in terms of section 312(1) of the Companies Act, 1973, which explains the scheme, this notice, the approved form of proxy, and the Order of Court convening the scheme meeting have been sent to the scheme members. A scheme member may, during normal business hours, inspect or obtain a copy of those documents free of charge at . . . and at the said office of that chairperson.

Each scheme member may personally or through proxy attend, speak and vote at the meeting. An acceptable proxy, duly signed, must be received at the chairperson’s office not later than 10h00 on Thursday, 24 January 2000 or be handed to the chairperson more than 10 (ten) minutes before the time for commencement of the meeting.

The Order of Court requires the chairperson to report on the meeting to the above Honourable Court at 10h00 or so soon thereafter as counsel may be heard on Tuesday, 22 February 2000. During normal business hours in the week preceding that date a free copy of the chairman’s report to court will be available to any scheme member at the chairperson’s office.

B G D, address, Applicant’s Attorneys

ALPHABETICAL INDEX

Application of the Practice Manual	5
Civil appeals	26
Civil trials	10
Allocation of civil trials	11
Bundles of documents	12
Case management	13
Closure of the trial roll	14
Expert witness	15
General	16
Hearing duration	17
Pagination, indexing, binding and general preparation of papers	18
Part heard trials	19
Practice note for trials	20
Preferential trial date	21
Pre-trial conference	22
Roll call	24
Settlement agreements and draft orders	25
Counsels' dress	8
Court terms	6
Court recess	7
Court sittings	9
Criminal matters	28
Petitions from the lower courts	29
Appeals	30
Automatic review	31
Bail appeals	32
Reviews	33
Trials	34

Judge in chambers	96
Judges' clerks	97
Leave to appeal	92
Motion Court	34
Allocation of courts	35
Binding of papers	39
Briefing of counsel	41
Calling of the roll of unopposed matters in courts 2 and 3	42
Closure of the motion court roll	44
Concise heads of argument	45
Enrolment	46
Enrolment of application after notice of intention to oppose given but respondent has failed to file an answering affidavit	48
Errors on the unopposed roll	49
Hearing of opposed matters	50
Index	38
Long duration	53
Matters not on the roll	54
Pagination	40
Postponements	55
Practice note	56
Preparation of papers	54
Service	58
Settlement	59
Settlement agreements and draft orders	60
Stale service	61
Striking from the roll	62
Supplementary roll	63
Urgent applications	64
Opening of court file	98
Particular applications	68

Anton Piller type orders	69
Admission of advocates	75
Cancellation of sales in execution	76
Change to matrimonial regime	77
Compromise in terms of Section 311 of the Companies Act	79
Curator bonis	82
Curator ad litem	83
Enquiries in terms of Section 417 of the Companies Act	84
Eviction where the Prevention of Unlawful Occupation of Land Act 1998 applies	85
Liquidation	86
Provisional sentence	87
Rehabilitation	88
Removal or amendment of restrictions on land use	89
Sequestration	90
Standard orders	99
Default judgment granted by registrar	101
Summary judgment	102
Provisional sentence	103
Default judgment by court	104
Absolution from the instance	105
Edictal citation	106
Substituted sentence	107
Rule 43	108
Divorce with settlement agreement	109
Divorce without settlement agreement	110
Post nuptial registration of a contract	111
General order for discovery	112
Agreement of settlement	113
Rule nisi	114
Restrictive conditions on land	115
Unallocated order	116

Provisional sequestration	117
Final sequestration	118
Rehabilitation	119
Surrender	120
Provisional liquidation	121
Final liquidation	122
Discharge of provisional sequestration or liquidation	123
Section 311	124
Judicial Management	124
Leave to appeal	127
Order on appeal	128
Order in terms of rule 39 (22)	129
Admission of translator	130
Unopposed divorce actions	94
Ushers	131