



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK – 9 May 2014

No. 5461

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## Government Notice

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### MINISTRY OF JUSTICE

No. 67

2014

#### HIGH COURT PRACTICE DIRECTIONS: RULES OF HIGH COURT OF NAMIBIA, 2014

Under rule 3(3) of the Rules of the High Court of Namibia published under Government Notice No. 4 of 17 January 2014, read with subrule (4) of those Rules, for the orderly conduct of proceedings in any cause or matter, I have –

- (a) issued the practice directions set out in the Schedule; and
- (b) repealed the Practice Directions and all the amendments thereof issued by the Judge-President prior to the coming into operation of these practice directions.

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

Windhoek, 16 April 2014

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## PART 1 GENERAL PROVISIONS

### Definitions

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

"Form" means a Form referred to in the Rules of Court;

"PD" means these practice directions;

"RCR" means restitution of conjugal rights;

"rule" or "rule of court" means a rule issued in terms of the Rules of the High Court of Namibia published under Government Notice No. 4 of 17 January 2014, Government Gazette No. 5392.

### Registrar's office hours

**2.** (1) Where a legal practitioner of record or a party who represents himself or herself calls on the registrar to issue process and/or accept documents at any time other than the times contemplated in rule 2, such person must –

- (a) telephonically inform the registrar on duty of his or her intention to do so and arrange a specific time with the registrar when he or she intends submitting the process or document; and

- (b) upon submission of the process or document to the registrar for the exercise of his or her discretion in terms of rule 2, the litigant or his or her legal practitioner of record submitting the process or document must in addition thereto submit a signed letter explaining the exceptional circumstances warranting the exercise of the registrar's discretion to issue process and/or accept documents outside the hours prescribed in rule 2.

(2) Upon compliance by the legal practitioner or the unrepresented litigant with paragraph (1), the registrar may exercise his or her discretion in terms of rule 2(2)(a).

(3) Whenever the Judge-President or a judge designated by the Judge-President directs the registrar in terms of rule 2(2)(b) to issue process or accept a document, such direction must be in writing and signed by the Judge-President or the judge.

### **Court vacations**

**3.** (1) Court vacations do not apply to the scheduling of the First Motion Court Roll, the Second Motion Court Roll and the Undefended Matrimonial Court Roll, except that none of these Rolls must be scheduled for any day between the period 10 December and 15 January, inclusive of both dates.

(2) The registrar must not schedule any time slots for Judicial Case Management during court vacations but a managing judge may set down any matter for Judicial Case Management during a court vacation if it appears convenient to do so, provided that a managing judge may not set down any matter for Judicial Case Management during the period 10 December and 15 January, inclusive of both dates.

### **Rules of Court, forms and practice directions**

**4.** (1) Reference in court or in any court process, notice, pleading or document to a specific practice direction shall be done by using the initials PD before the number of the specific direction.

(2) These practice directions apply to every litigant, whether represented by legal practitioner or not.

## **PART 2**

### **COURT PROCESS PRIOR TO JUDICIAL CASE MANAGEMENT**

#### **Declaration by cedent in terms of rule 5(1)**

**5.** The declaration referred to in rule 5(1) must be in the form as set out in Annexure 1 and must contain what is prescribed by rule 5(2) and must further comply with the requirements of rule 5(3).

#### **Particulars of litigants to be provided**

**6.** (1) Particulars to be provided in terms of rule 6(1) must be provided on Annexure 2, except that where the legal practitioner submitting the particulars is a registered user of eJustice, such particulars must be provided by on-line completion of the required eJustice party particulars wizard.

(2) Exact particulars must be inserted, and particulars of third parties or correspondents must not to be inserted as substitutes for parties or their respective legal representatives.

### **Combined Summons**

7. (1) Upon receipt of any summons to be issued, the registrar must acknowledge receipt thereof by affixing a date stamp in the left top corner of the front page of the summons, and if presented with copies of the original, on each of the copies.

(2) Upon the issuance of a combined summons in terms of rule 7(1), the registrar must sign the summons at the end of Form 1 and affix the date stamp, bearing the date and time of issuance next to his or her signature and apply the unique case number assigned to the case at the space so provided for at the right top corner, and if presented with copies of the original, each such copy will be signed, stamped and numbered accordingly.

(3) An electronic signature of the registrar may be applied to any summons presented for issuance if it is filed by a registered user using eJustice e-filing.

(4) When a summons, other than a summons filed using eJustice e-filing, is issued bearing a revenue stamp, the registrar must deface the revenue stamp upon issuance, using an official defacing stamp in doing so.

(5) The registrar must open a court file for each new case, whether electronically on eJustice or manually in the event of eJustice not being available and the file must bear the case number, case name and date of issuance of summons.

(6) In the event of a summons being issued in any manner other than through eJustice, the registrar must be provided with a copy of the original summons to be issued, which copy must be retained and filed on the court file after it has been signed, stamped and numbered.

(7) The registrar or deputy registrar or assistant registrar of a particular High Court Division must not issue any summons bearing reference of another High Court Division.

### **Service of Process**

8. Each return of service or return of non-service issued by the deputy-sheriff must clearly state the following –

- (a) the name of the process or document presented for service;
- (b) the full names, surname and if available identification number of the person upon whom service was effected or attempted;
- (c) the date and time of service, or in the event of non-service each such attempt;
- (d) explicitly stating that the nature and contents of the process or documents so served has been explained to the person upon whom service has been effected;
- (e) the manner in which service has been effected or attempted to be effected and in terms of which sub-rule of rule 8 service took place or was attempted;
- (f) the address where service has been effected or attempted;
- (g) the name, signature and address of the deputy-sheriff who effected service or attempted service; and
- (h) a breakdown of the fees charged in respect of the service or non-service.

**Service of process outside Namibia**

9. (1) Any process or document delivered to the registrar in terms of rule 11 must be the original process or document, and in the event of the original not being available a copy certified by a Notary Public as a true and correct copy of the original shall suffice.

(2) A certified copy as envisaged in rule 11(2) shall be regarded as being duly certified if –

(a) in the event of process of court, the copy is certified by the registrar by means of an endorsement or a certificate affixed to the process presented for service; or

(b) in the event of any other document, the copy is certified by a Notary Public admitted as such in Namibia by means of a notarial certificate affixed to the process presented for service .

(3) Prior to any process or document delivered to the registrar being transmitted to the Permanent Secretary of Foreign Affairs as contemplated in rule 11(4), the registrar must certify the process or document to be served with an Apostille.

(4) Transmission of any process or document to the Permanent Secretary of Foreign Affairs by the registrar in terms of rule 11(4) must be done through the office of the Permanent Secretary of the Ministry of Justice.

(5) Where service of a process or a document outside Namibia calls upon a person to appear in any court of law, the date of such appearance must not be less than 75 days from the date on which the process or document was delivered to the registrar in terms of rule 11(3).

(6) Where the process delivered to the registrar for service outside Namibia is a subpoena issued in a criminal matter, such subpoena must be endorsed with the wording of section 12 of the International Co-operation in Criminal Matters Act, 2000 (Act No. 9 of 2000) and must be accompanied by a letter issued and signed by the Permanent Secretary of the Ministry of Justice, clearly stating the exact amounts payable as witness fees, Subsistence and Travelling Allowances, loss of income or income forfeited and any other amounts which the Permanent Secretary may allow in respect of the witness so subpoenaed.

(7) Where the process delivered to the registrar for service outside Namibia is a subpoena issued in terms of the civil procedure, such subpoena shall be endorsed with an undertaking by the party requiring the witness' presence and/or evidence to pay for all expenses in attending court as well as a clear indication of the exact amounts payable as witness fees, Subsistence and Travelling Allowances, loss of income or income forfeited and any other amounts which might be payable to the witness so subpoenaed.

**Edictal citation**

10. (1) An application for edictal citation must bear a unique number assigned to applications and may be enrolled on the residual court roll of First Motion Court.

(2) It shall be the duty of the party issuing process or a document whereby proceedings are instituted, to file a copy of the order issued in terms of rule 12 on the court file of the process or document whereby the proceedings are instituted.

(3) Rule 11, read with PD9, applies to service outside Namibia of an edictal citation order and the service of the process or document whereby proceedings are instituted.

**Substituted service**

**11.** (1) An application for substituted service must bear a unique number assigned to applications and may be enrolled on the residual court roll of First Motion Court.

(2) Rule 11, read with PD9, applies to service of an order issued in respect of an application for substituted service where service is to be affected outside Namibia.

(3) An application for substituted service brought in terms of rule 13(2) must bear the same case number as the main action or application.

(4) Any party moving for an order in terms of rule 13(2) must simultaneously with his or her request to the court provide the court with a draft order in the format of Annexure 3, clearly setting out the relief sought to be granted.

(5) It is the duty of the party issuing process or documents whereby proceedings are instituted to file a copy of the order issued in terms of rule 13(1) on the court file of such process or document whereby proceedings are instituted.

**Default judgment**

**12.** (1) Whenever a defendant is in default of delivery of a notice of intention to defend and a plaintiff elects to apply for default judgment, an application for default judgment is to be set down on the Second Motion Court Roll;

(2) Whenever a defendant is in default of delivery of a plea and a plaintiff elects to apply for default judgment, an application for default judgment is to be set down on the Judicial Case Management Roll of the managing judge assigned to the matter.

(3) Whenever an application for default judgment is made upon a defendant being in default of delivery of a notice of intention to defend, such application for default judgment must in addition to any other requirement bear the words "SECOND MOTION COURT ROLL" and the date of set down at the right top corner of the front page of the application for default judgment;

(4) Whenever an application for default judgment is made upon a defendant being in default of delivery of a plea, such application for default judgment must, in addition to any other requirement, bear the words "JUDICIAL CASE MANAGEMENT ROLL", the name of the managing judge and the date and time of set down at the right top corner of the front page of the application for default judgment, and the registrar's office must immediately upon receipt of the application for default judgment hand the request and any document accompanying it to the managing judge.

**Rescission of judgment in terms of rule 16**

**13.** An application for rescission of judgment made in respect of a judgment granted upon default to –

(a) enter an appearance to defend must be set down on the First Motion Court Roll and must be dealt with in accordance with rule 65;

(b) file a plea must be dealt with by the managing judge, and it must be set down on the judicial case management roll of the assigned managing judge who will give directions as to the further conduct of such application.



PART 3  
JUDICIAL CASE MANAGEMENT

**Individual docket allocation to managing judge**

**14.** (1) A managing judge must notify the registrar within two court days after a file has been docket allocated to him or her if there is any reason disqualifying him or her from managing the file so allocated and simultaneously return the file to the registrar who must immediately in consultation with the Judge- President docket allocate the file to another managing judge.

(2) Where a managing judge grants leave for a case docket allocated to him or her to be set down for hearing of any proceeding related to that case before another judge or in another court, such leave must be granted in the form of a court order, irrespective of whether such order is granted in open court or in Chambers.

(3) Once a file has been docket allocated to a managing judge, all process, notices and documents issued and/or filed in the docket shall bear the name of the managing judge in bold print on the right top corner of the front page of such process, notice or document.

**General Judicial Case Management procedure**

**15.** (1) Where it is possible and where circumstances allow, a managing judge and all parties must endeavour to dispose of all cases within the time periods mentioned in PD 62(1).

(2) Parties may not, without the written consent of the managing judge contained in an order of court (issued in chambers or in open court), agree amongst themselves to vary or alter any date previously determined by the court.

**Case planning**

**16.** (1) Parties must receive not less than 10 days' notice of an intended case planning conference.

(2) Where a managing judge issues a case plan in an order made in terms of rule 23(8), called "default case plan", the default case plan applies to the delivery of pleadings, notices and documents and scheduling of JCM conferences in the following manner –

- (a) delivery of defendant's plea, not less than 10 days from date of case planning conference;
- (b) delivery of plaintiff's replication, if any, not less than 15 days from date of case planning conference;
- (c) delivery of plaintiff's plea to counterclaim, not less than 25 days from date of case planning conference;
- (d) delivery of defendant's replication to plea on counterclaim, if any, not less than 30 days from date of case planning conference;
- (e) delivery of discovery affidavits, not less than 40 days from date of case planning conference;
- (f) delivery of expert summaries, if any, must be filed simultaneously by the parties and filing must be not less than 50 days from date of case planning conference;

- (g) submission of case management report, not less than 60 days from date of case planning conference;
  - (h) case management conference, not less than 70 days from date of case planning conference;
  - (i) submission of joint proposed pre-trial order, not less than 80 days from date of case planning conference; and
  - (j) pre-trial conference, not less than 90 days from date of case planning conference.
- (3) When setting the time frames in respect of case planning, the managing judge and the parties must be guided by the following time limits for the disposal of matters –
- (a) matrimonial trials, 8 months;
  - (b) in respect of matters where a trial is envisaged to last more than five days, 18 months;
  - (c) in respect of matters where a trial is envisaged to last not more than five days, 12 months.

#### **Status hearing called by any of the parties**

**17.** (1) Where a party requires for any reason contemplated in rule 27 of the rules of court, a status hearing not provided for in the case plan, he or she may deliver a notice to the managing judge and the other parties calling on the managing judge to schedule a status hearing.

- (2) A notice delivered referred to in paragraph (1) must clearly set out the following –
  - (a) the reason why a status hearing is to be called;
  - (b) all issues to be canvassed during the status hearing;
  - (c) if an indulgence or specific order is sought, an accompanying affidavit setting out –
    - (i) nature of the indulgence or specific order; and
    - (ii) the relevant facts upon which the party relies for the indulgence or specific order sought.

#### **Discovery**

**18.** (1) Where a party intends to introduce documents at the trial, the party must, in Part A of the First Schedule of Form 10, identify separately the documents in accordance with Annexure 4.

(2) It is the duty of each party to prepare his or her own bundle of discovered documents, and file his or her discovery affidavits only.

(3) Bundles of discovered documents must be exchanged between the parties on a date and time directed by the managing judge, but the bundles must not be submitted to the judge before the trial of the matter.

(4) A managing judge will have sight of a documentary exhibit only when it has been admitted in evidence during the trial of the matter.

(5) In order to give effect to this direction, parties are reminded that documents must be numbered sequentially and clearly marked as annexures and reference must be made to each document in sufficient detail in order to permit easy identification.

### **Alternative Dispute Resolution (ADR) in civil cases**

**19.** (1) Conciliation or mediation (“ADR”) contemplated in rules 38 and 39 of the rules, must be considered at the earliest possible stage of proceedings.

(2) ADR aims at affording the parties the opportunity to resolve their disputes expeditiously and cost effectively.

(3) ADR may include either court-connected ADR (where parties are ordered by the managing judge to participate in ADR or where the parties opt for court-connected ADR) or private ADR (where the parties opt for ADR and agree to appoint a private conciliator or mediator). Where ADR is required or agreed to, and the parties are unable to agree by whom ADR is to be conducted, the managing judge will give directions in that regard.

(4) Only persons accredited by the Judge-President are entitled to be appointed as conciliators or mediators in court-connected ADR, except that the parties may appoint a conciliator or mediator in the case of a private ADR referred in sub paragraph (3).

(5) Despite paragraph (3) and unless a managing judge directs otherwise, mediation is compulsory in the following cases –

- (a) insurance claims;
- (b) medical negligence;
- (c) professional negligence against legal practitioners;
- (d) building contract claims;
- (e) divorce, custody of, and access to minor children;
- (f) spousal and child maintenance;
- (g) loan default claims;
- (h) motor vehicle accident claims;
- (i) defamation.

(6) ADR sessions are conducted on a “without prejudice” basis.

(7) Save as provided in rule 38(4), communications during or in respect of ADR sessions must not be disclosed in any court document or in any court proceeding.

(8) If the dispute remains unresolved after ADR, the managing judge will give the necessary directions for the cause to proceed, but where a managing judge acts as conciliator or mediator, he or she must not act as a judge in the cause.

(9) ADR must be completed as soon as possible, and in any case within two months after commencement of the conciliation or mediation.

(10) Where a reference to ADR does not take place during the case planning conference, the case management conference or the pre-trial conference, the managing judge must convene a further case management conference referred to in rule 27(2) and thereat address what is contemplated in rule 38(1).

PART 4  
PROCEDURAL STEPS IN RESPECT OF CAUSES

*[To be inserted when appropriate.]*

PART 5  
PLEADINGS

*[To be inserted when appropriate.]*

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

**Non-Compliance with rules of court, Practice Directions and court orders**

**20.** (1) Any application contemplated in this Part, read with Part 6 of the rules of court, is to be regarded as an interlocutory application and must be brought on notice and, where necessary, supported by evidence.

(2) Unless the managing judge directs otherwise, an application referred to in paragraph (1) and Part 6 of the rules of court must be brought on not less than five days' notice to all the parties, and must be set down for hearing at the next case management conference scheduled before the assigned managing judge or at such other time as the managing judge, upon request, may schedule.

(3) At such case management conference the managing judge may regulate the further procedure to be followed in each instance which the managing judge considered reasonable and fair including disposing of the matter summarily.

PART 7  
APPLICATION FOR SPECIFIC ORDERS OR JUDGMENTS

**Exceptions**

**21.** (1) Exceptions, for purposes of these Practice Directions, are to be dealt with as if they are interlocutory proceedings.

(2) A party intending to pursue an exception must apply to the managing judge within five days of the delivery of the exception for further directions for the hearing of the exception in accordance with rules 32(4) to (10) of the rules.

(3) The managing judge must deal with the request in accordance with the requirements prescribed by rule 57(4).

**Security for costs**

**22.** (1) The notice of objection referred to in rule 59(2) must in addition to anything stated by that rule include the following –

- (a) the grounds of objection; and

(b) the date and time on which the parties are to meet with the registrar to determine the amount of security.

(2) The party objecting to the amount of security must, not less than 24 hours before the date and time stated in the notice of objection, deliver the notice of objection referred to in rule 59(2) to the party demanding security.

(3) The registrar must not determine the amount of security unless a notice of objection in terms of rule 59(2) has been delivered.

(4) When an application made in terms of Rule 59(4) is opposed, the applicant in such application must apply to the managing judge in accordance with rules 32(4) to (10) of the rules of court for further directions for the hearing of such application.

### **Summary judgment**

**23.** (1) A defendant who desires to proceed in terms of rule 60(5)(a) may request the determination of the appropriate amount of security to be furnished to the satisfaction of the registrar at any time before the hearing of the application for summary judgment.

(2) Upon such determination the defendant may, at any time prior to the hearing of the summary judgment application, give the amount of security so determined in the manner and form directed by the registrar.

(3) Where a defendant desires to proceed in terms of rule 60(5)(b)(ii), he or she must, within the time as contemplated in rule 60(5)(b)(i), deliver his or her application for leave to do so.

### **Irregular proceedings**

**24.** A party who desires to pursue an application in terms of rule 61 of the rules must apply for directions for the hearing of such application in accordance with the requirements prescribed by rule 32.

### **Special Cases**

**25.** A party who, subsequent to the filing of a case plan, desires to pursue any of the applications contemplated in rule 63, must apply for directions for the hearing of such application in accordance with the requirements prescribed by rule 32.

## **PART 8 APPLICATIONS: GENERAL**

### **Opposition to application**

**26.** Not later than four court days from the date on which all affidavits have been filed, the applicant must by notice to all respondents, notify the registrar that all affidavits have been filed. Should the applicant fail to do so, the respondent must, not later than four court days after the last date on which the applicant should have filed such notice, by notice to the applicant and all other respondents, if any, notify the registrar that all affidavits have been filed, after which the registrar must, in consultation with the Judge-President, allocate the file to a managing judge.

### **Urgent applications**

**27.** (1) An urgent application must be accompanied by a certificate of urgency signed by the applicant or his or her legal practitioner, if represented by a legal practitioner, and if not so accompanied by such certificate the registrar must refuse to set the application down.

(2) Where an urgent application is brought on a court day and is set down to be heard at 9h00, the applicant must cause the application to be issued not later than 8h00 on the day on which the application is to be heard.

(3) Where an urgent application is brought on a court day and is set down to be heard at a time other than the time determined by the rules or on a day not being a court day, the applicant must contact the registrar on duty at least two hours prior to the hearing of the application, and where there has been non-compliance with this direction, the registrar must bring the non-compliance to the attention of the presiding judge.

(4) Where an urgent application is brought to court on a court day at a time other than the time determined by the rules or on a day not being a court day, the applicant must in addition to filing the certificate of urgency contemplated in rule 73(1), make out a case that the application be heard at any other time than at 9h00 on a court day.

(5) If the applicant in terms of rule 73(5) desires to continue to prosecute an application struck from the roll for lack of urgency, the application must be continued in the normal course on the judicial case management roll of the managing judge who struck the matter for lack of urgency.

(6) When an urgent application is issued on a court day during the hours between 8h00 and 17h00, the deputy registrar or assistant registrar on duty must immediately upon issuance bring it to the attention of the registrar for the purpose of docket allocation.

(7) When an urgent application is issued on a court day between the hours 17h00 and 8h00 the following day or at any hours on a day other than a court day, the deputy registrar or assistant registrar on duty must report on the application to the registrar at 8h00 or so soon thereafter on the first court day after the day on which the application was issued.

## PART 9 MATRIMONIAL CAUSES AND MATTERS

*[To be inserted when appropriate.]*

## PART 10 TRIAL

### **Trial particulars**

**28.** If any party requires trial particulars, he or she must bring this to the attention of the managing judge during the pre-trial hearing and the managing judge must give directions on the filing thereof.

## PART 11 POST-TRIAL MATTERS

### **Variation or rescission of order or judgment generally**

**29.** An application brought under rule 103 is interlocutory and must reflect the same case number issued in the main proceedings.

### **Attachment of debt held by garnishee**

**30.** A request by the Judgment Creditor under rule 107 (1) must be in writing addressed to the Deputy Sheriff.

**Conditions precedent to execution of immovable property and transfer of judgments**

**31.** An application brought under rule 108 (1b) or 108 (4b) by the Execution Creditor must be on notice to all parties whose interest may be effected; and rule 65 applies with the necessary modifications required by context.

**Interpleader**

**32.** (1) An interpleader notice must be delivered under the same case number as reflected on the writ of execution under which the attachment is made.

(2) If the main action has not been docket allocated, the registrar must immediately upon receiving an interpleader for issuance, docket allocate the file to a managing judge.

(3) The registrar must insert a date and time for hearing of the interpleader on the notice, which date and time must correspond with the managing judge's floating roll.

PART 12  
CRIMINAL PROCEEDINGS

**Criminal Proceedings**

**33.** (1) All criminal trials in the High Court must be subjected to criminal case management prior to being set down for trial.

(2) Criminal Case Management consist of a mentions roll and a pre-trial roll.

(3) The registrar must publish annually the dates for Criminal Case Management: Mentions Roll and Criminal Case Management: Pre-Trial Rolls of the respective judges, and the publication must be made not less than three months before the start of the first term of each legal year.

(4) The Prosecutor- General must ensure that an accused person who is being called upon to answer to an indictment in the High Court of Namibia is called for a Criminal Case Management: Mentions Roll on a date and time published in the list referred to in sub-paragraph (3).

(5) Upon receipt of any new indictment in the High Court, the registrar must assign a criminal case number to the case, enter the particulars of the case in the criminal case register, open a corresponding court file and enter the date to which the matter has been remanded.

(6) The registrar must, upon receipt of any subpoena to be sued out of the office of the registrar in terms of rule 114(7), complete the criminal subpoena register by recording the following information –

- (a) case number;
- (b) case name;
- (c) full names and surname of person subpoenaed;
- (d) address for service of subpoena;
- (e) date on which subpoena is received by the registrar for issuance;
- (f) date on which subpoena is issued by registrar;

- (g) in the event of service to be effected outside Namibia, confirmation that a letter of request for service by the Permanent Secretary: Ministry of Justice is attached; and
- (h) any instructions by the Permanent Secretary regarding payments to be made to such witness is to be recorded.

### **Criminal case management conference: Mentions Roll**

**34.** (1) The first appearance in any criminal case is for the purpose of conducting a criminal case management conference under the mentions roll.

(2) The Judge-President or a judge designated by him or her presides over criminal case management conference under the mentions roll.

(3) The purpose of a criminal case management conference under the mentions roll is to ascertain whether there has been –

- (a) delivery to the accused of the indictment and any further particulars;
- (b) discovery of the contents of the police docket by the prosecution;
- (c) an appointment of a legal practitioner by or for the accused and whether such legal practitioner, if not instructed by the Director: Legal Aid, has been placed in adequate funds to represent the accused during the trial;
- (d) an exchange of pre-trial memorandum; and
- (e) a judge assigned for the trial.

(4) If, in the opinion of the court, the parties have not dealt with all the matters referred to in subparagraph (3) in a satisfactory manner at the first or at any subsequent criminal case management conference under the mentions roll, the court must, if possible, postpone the conference to the earliest subsequent date until the following have been recorded –

- (a) that the indictment and, if requested, any further particulars have been delivered to the accused;
- (b) that the contents of police dockets have been discovered by the prosecution to the accused;
- (c) whether a legal practitioner has been engaged by or for the accused, and, if so, the name of that legal practitioner and whether the said legal practitioner has been placed in adequate funds to represent the accused during the trial where such legal practitioner has not been instructed by the Director: Legal Aid;
- (5) If an accused is represented by a legal practitioner –
  - (a) the prosecution may deliver to the accused and the registrar not later than 10 days before the criminal case management conference under the mentions roll a pre-trial memorandum containing, in a sequentially numbered order each factual allegation that it desires the accused to consider for purposes of making an admission at the trial, and the presiding judge may refer to such memorandum during the criminal case management conference when the judge enquires from the accused whether he or she intends to make any admission at the trial;



- (b) the accused may deliver to the prosecution and the registrar not later than 10 days before the criminal case management conference under the mentions roll a pre-trial memorandum containing in sequentially numbered order each factual allegation he or she makes in his or her defence and which he or she desires the prosecution to consider for purposes of indicating whether it intends to take issue therewith at the trial, and the accused may refer to such memorandum when he or she considers the extent of corroboration required to establish any allegation at the trial.

### **Criminal case management conference: Pre-Trial**

**35.** (1) The court conducts a criminal case management conference under the pre-trial roll for the purpose of curtailing the duration of the trial by timeously enquiring into, and giving directions concerning, the following matters –

- (a) the notification of the trial date to the accused and requesting his or her presence and, if he or she has not attained the age of 18 years, that of his or her parent or guardian at the trial;
- (b) the plea that the accused intends to tender at the trial;
- (c) the limitation of disputes likely to arise during the trial;
- (d) any admissions the accused intends to make at the trial;
- (e) the number and availability of witnesses for the prosecution and defence;
- (f) the need for, and availability of, interpreters;
- (g) the estimated duration of the trial;
- (h) if not dealt with during the criminal case management conference under the mentions roll or if the need arises, any direction under sections 77(1) or 78(2) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (hereinafter referred to as the “CPA”); and
- (i) an enquiry into any other matter that, in the opinion of the presiding judge, may curtail the duration of the trial.

(2) If, in the opinion of the court, the parties have not dealt with all the matters referred to in paragraph (1) in a satisfactory manner at the initial or at any subsequent pre-trial conference, it must, if possible, postpone the conference to the earliest subsequent pre-trial date until the following have been recorded –

- (a) that the indictment and, if requested, any further particulars have been delivered to the accused;
- (b) that the contents of police dockets have been discovered by the prosecution to the accused;
- (c) whether a legal representative has been engaged by or for the accused, and, if so, the name of that legal representative and whether the said legal representative has been placed in adequate funds to represent the accused during the trial where such legal representative has not been instructed by the Director: Legal Aid;
- (d) whether the prosecution and the accused have agreed a trial date and whether the accused has been informed of such date; and

- (e) whether the accused is prepared to put on record –
  - (i) the plea he or she intends to tender at the trial and, if a guilty plea is to be tendered, whether the basis on which the accused intends to tender such plea is acceptable to the prosecution;
  - (ii) an admission, if any, he or she intends to make; and
  - (iii) if applicable, the basis of his or her defence and the particulars of such defence;
- (f) the number of witnesses the accused intends to call and, if he or she is in custody, whether he or she requires assistance in securing the presence of those witnesses at the trial and, if so, the names and physical addresses of those witnesses;
- (g) the language that a witness is likely to testify in and, if a language other than English is likely to be used, whether an interpreter is available for the purpose;
- (h) whether the prosecution and the accused have agreed a set down date for the trial and whether, in their opinion, the number of days set aside for the trial is adequate.

(3) Where an accused indicates during a pre-trial conference that he or she intends to plead guilty to the offence charged, the prosecution may indicate to the court whether or not the plea of guilty on the basis as tendered by the accused is accepted by the prosecution, and, if so accepted, the court may direct that the case be disposed of either on the pre-trial conference roll or on a date allocated for that purpose.

(4) If at any time before the trial date, the accused desires to plead guilty to the offence charged, he or she must forthwith inform the Prosecutor-General of his or her intention to do so and on the basis on which the plea is tendered; in which event, either the accused or the Prosecutor-General may, upon not less than 10 days' notice to the other, set the matter down on the first available date for criminal pre-trial conference, to be dealt with as if the accused has given such indication during a pre-trial hearing in terms of sub-paragraph (3).

- (5) If it appears to the Prosecutor-General that due to –
  - (a) the age of a child witness;
  - (b) the deteriorating physical or mental health of a witness;
  - (c) the availability of a witness when he or she is not ordinarily resident in Namibia and the material nature of the evidence to be given by him or her; or
  - (d) the contemptuous nature of the offence and the public's interest in the administration of justice or for any other good cause in the public interest or in the interest of the security of the State, the trial of the criminal case should be expedited,

he or she may, with the leave of the Judge-President, set the matter down on the first available pre-trial date or, if not possible, on any other appropriate date.

(6) Despite subparagraph (1)-(5) the court may direct that the matter be placed on the roll for trial if –

- (a) the accused and the prosecution agree that the case can be disposed of expeditiously; or

(b) upon the application of either the prosecution or the accused at the pre-trial conference, the court is satisfied that, having regard to the limited nature of the facts in issue, the availability of witnesses and the expected duration of the trial, the case can be disposed of more expeditiously.

(7) The court may set down the matter for trial –

(a) on dates that the prosecution and the accused or his or her legal practitioner have agreed on; or

(b) in terms of sub-paragraph (5); or

(c) in terms of sub-paragraph (6).

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

### PART 13 APPEALS

#### **Leave to Appeal from a judgment or order other than a criminal judgment or order**

**36.** (1) Unless otherwise directed by the presiding judge, the parties in an application for leave to appeal from a judgment or order, other than a criminal judgment or order, are not required to file heads of argument.

(2) Where leave to appeal from a judgment or order, other than a criminal judgment or order, is required in terms of rule 115(5) of the rules, the applicant must within five days after the expiry of the periods referred to in rule 115(2) give written notice to all the parties to meet at the registrar's office on a Wednesday at 9h00 in order to obtain a date for the hearing of the application, and the notice period to meet with the registrar must be not less than three days.

(3) The registrar must, during the meeting to determine the date referred to in subparagraph (2), provide the parties with a written notice of the date and time of set down, and file a copy of such notice on the court file.

(4) If the parties fail to appear during the meeting referred to in subparagraph (2) the registrar may in the absence of the parties set the application down for hearing on any date, and the parties are bound to the set down date.

#### **Leave to Appeal in terms of section 310 of the Criminal Procedure Act, 1977**

**37.** (1) When the State applies for leave to appeal in terms of section 310 of the Criminal Procedure Act, 1977, the registrar must upon receipt of the application register the application by –

(a) assigning a case number to the application;

(b) opening a court file bearing, the case number so assigned; and

(c) entering the case particulars in the appeals register, clearly marking the entry as a section 310 application.

(2) Notwithstanding the requirement that proof of service on every respondent of the documents mentioned in section 310(1)-(4) must be provided, the assigned judge may, in his or her discretion and if such finding will not prejudice the respondent, even in the absence of such proof of service, refuse the application for leave to appeal if he or she decides that no reasonable success on appeal exists.

(3) The registrar must provide the judge assigned to deal with the application with the process and documents mentioned in section 310(1)-(4) of the Criminal Procedure Act, 1977, and the judge must determine the application in Chambers and deliver a typed copy of his or her decision, referred to in section 310(5)(a) of the Criminal Procedure Act, 1977, to the registrar who must in turn deliver a copy of the decision to every applicant and every respondent.

(4) Where the application is granted, the registrar must within 15 days after receipt of the decision referred to in sub-paragraph (3), open a new file for the appeal, assign a case number to the appeal file, enter the appeal in the register of appeals and assign a hearing date for the hearing of the appeal.

### **Leave to Appeal in terms of section 316 and 316A of the Criminal Procedure Act, 1977**

**38.** (1) The registrar must upon receipt of an application for leave to appeal in terms of section 316 or 316A of the Criminal Procedure Act, 1977 appoint a date for the hearing of the application and give at least 15 days written notice to all parties of the date so appointed, except that the period may be shortened in the case of an application for leave to appeal against the refusal or granting of bail.

(2) The registrar may, if he or she considers it necessary, consult with the parties in determining the set down date for hearing of such application.

### **Civil Appeal from Magistrates' Court**

**39.** (1) The registrar must upon receipt of a Notice of Appeal against the judgment, ruling or order of a Magistrates' Court, register the appeal by –

- (a) assigning a sequential case number to the appeal;
- (b) opening a court file bearing, the case number so assigned; and
- (c) entering the case particulars in the appeals register, clearly marking the entry as a civil appeal.

(2) A notice in terms of rule 116(5) or 116(7) must be in writing and be delivered on all parties concerned, calling on them to meet at the registrar's office on a Wednesday at 9h00 in order to obtain a date for set down.

(3) The registrar must not accept a notice referred to in sub-paragraph (2) unless he or she is satisfied that all the parties have been served with the notice at least five days before the meeting with the registrar.

(4) The registrar must not assign a date for the hearing of the appeal, unless he or she is satisfied that there is compliance with rule 116(12) read with rule 117 and rule 119(10).

(5) Subject to rule 116(10), the registrar may, if he or she is satisfied that proper notice has been given, assign a date in the absence of a party.

**Criminal Appeal from Magistrates' Court**

**40.** (1) The registrar must, upon receipt of a Notice of Appeal against the judgment, ruling or order of the Magistrates' Court, register the application by –

- (a) assigning a case number to the appeal;
- (b) opening a court file, bearing the case number so assigned;
- (c) entering the case particulars in the appeals register, clearly marking the entry as a criminal appeal from the Magistrates' Court; and
- (d) if the appeal is in respect of the granting or refusal of bail in the Magistrates' Court, the entry in the register should clearly be marked as "criminal appeal bail".

(2) The registrar must not assign a date for the hearing of the appeal, unless he or she is satisfied that there has been compliance with rule 118(5) read with rule 117, of the rules.

(3) The registrar may assign a hearing date in the absence of a party without consultation with any of the parties to the appeal.

(4) Rule 118(8) of the rules applies to an *amicus curiae* appointment.

**Appeal against Arbitration Award in terms of the Labour Act, 2007 (Act No. 11 of 2007)**

**41.** PD 42 apply with the necessary modifications and adaptations to an appeal against an arbitration award.

**Appeal in terms of any legislation**

**42.** (1) The registrar must upon receipt of a Notice of Appeal against the decision of a statutory body, register the appeal by –

- (a) assigning a case number to the appeal;
- (b) opening a court file, bearing the case number so assigned; and
- (c) entering the case particulars in the appeals register, clearly marking the entry as a statutory body appeal.

(2) A notice in terms of rule 119(4) or 119(6) of the rules is by delivering the Notice, in writing calling upon all the parties to meet at the registrar's office on a Wednesday at 9h00 in order to obtain a set down date.

(3) The registrar must not accept a notice referred to in subparagraph (2), unless he or she is satisfied that all the parties have been served with the notice at least five days before the meeting with the registrar.

(4) The registrar must not assign a date for the hearing of the appeal, unless he or she is satisfied that there has been compliance with rule 119(3) and 119(4) or 119(7) and rule 119(10), read with rule 117 of the rules.

(5) The party requesting the registrar to assign a date is responsible for delivering of the Notice of Set Down.

(6) The registrar may, if he or she is satisfied that proper notice has been given, assign a date in the absence of any of the parties.

### **Criminal Appeal to the Supreme Court**

**43.** (1) The registrar (of the High Court) must within five days from the date on which leave to appeal to the Supreme Court has been granted, notify the registrar of the Supreme Court of that fact, by delivering a notice as near as it may be in accordance with Annexure “5”.

(2) After leave to appeal to the Supreme Court has been granted, the registrar must immediately prepare an appeal record in duplicate, one to be retained by the High Court and one to be dispatched to the Supreme Court.

(3) Upon receipt of the appeal record referred to in sub-paragraph (2), the registrar must certify the record as correct and dispatch the certified record to the registrar of the Supreme Court, which record must to be accompanied by Annexure “6”.

(4) Simultaneously with the dispatch of the record referred to in sub-paragraph (3), the registrar must deliver a notice as near as it may be to Annexure “7” to the appellant.

### **Civil Appeal to the Supreme Court**

**44.** (1) The payment of security in terms of rule 8 of the Rules of the Supreme Court is done at the Division of High Court appealed from.

(2) Whenever the parties are unable to agree as to the amount of security to be entered into, the registrar at the Division of High Court appealed from, may, in writing, be requested to determine and fix the amount.

## **PART 14 TARIFFS AND TAXATIONS**

### **Tariff of court fees**

**45.** (1) A tariff of court fees is payable by means of Revenue Stamp, except where it is paid by a registered user as part of eJustice.

(2) When a court fee is paid with a Revenue Stamp, the Revenue Stamp must be affixed on the document in respect of which the court fee is payable, and the Revenue Stamp must be defaced by the registrar upon receipt of the document containing the Revenue Stamp.

### **Taxation of a Bill of Costs**

**46.** (1) A party who desires to have a bill of costs taxed must submit a written request to the registrar for a date for taxation, and the request must be accompanied by a copy of the bill to be taxed.

(2) The registrar must, upon receipt of the written request for taxation, immediately assign a date, time and venue for the purpose of taxation, and inform the person requesting a taxation date, in writing, of the date, time and venue of taxation.

(3) The Notice of Set Down of taxation containing the date, time and venue of the taxation and the bill of costs so to be taxed are to be served and filed simultaneously.

PART 15  
MISCELLANEOUS AND GENERAL

**Transfer of cases from one Division to another**

**47.** (1) In respect of a civil proceeding a party may at any stage, on notice to all parties, apply to the managing judge or to the court for a matter to be transferred to a Division where the matter may be more conveniently or more reasonably heard, other than the court where the matter commenced.

(2) The party applying need not file an affidavit, but must in writing set out the reasons why the transfer is sought.

**Indexing of papers filed of record**

**48.** (1) Unless the court directs otherwise, indexing, pagination and binding of all papers filed of record in an action must be done not more than five days before the pre-trial conference, and in all other matters not more than five days before the filing of the first heads of argument is due.

(2) Where a legal practitioner for a plaintiff or an applicant or a plaintiff or applicant representing himself or herself, fails to comply with rule 131(8) of the rules, the legal practitioner for the defendant or respondent or the defendant or respondent representing himself or herself, must attend to the indexing, pagination and binding of all papers filed of record not more than three days before the pre-trial conference, and in all other cases not more than three days before the filing of the first heads of argument is due, except where the plaintiff or applicant is unrepresented, the court may direct the legal practitioner of the defendant or respondent to do all that is required in terms of paragraph (1).

(3) Indexed papers must consist of three separate bundles, namely –

- (a) pleadings;
- (b) court orders and Judicial Case Management notices and memoranda;
- (c) notices, correspondence and all other documents.

(4) Bundles containing discovered documents must not form part of any of the bundles referred to in PD 48(3).

(5) An indexed bundle contains:

- (a) Index, bearing –
  - (i) the case heading at the top;
  - (ii) followed by any of the titles listed in sub-paragraph (3)(a) to (c);
  - (iii) a list of all documents contained in the particular bundle, appearing in date sequence, indicating the page number allotted to the specific documents;
  - (iv) signature and particulars of the party or the party's representative filing the index;
  - (v) proof of delivery of the index to the registrar and all other parties.

- (b) All documents listed in the Index must be arranged in date sequence and given a number, starting with “1”, embossed at the right bottom corner of each page.
- (6) The Pleadings Bundle must contain pleadings except pleadings that have been amended, in which event only the latest amended pleadings must be included in the pleadings bundle.
- (7) Heads of arguments must be the last document in the Pleadings Bundle.
- (8) Each indexed bundle must be separately bound.

#### **Filing of pleadings, documents, notices and correspondence after individual docket allocation**

**49.** (1) Every pleading, document and notice, including correspondence, in a case where individual docket allocation has taken place, should bear the name of the managing judge and the next trial or hearing date, if any, at the right top corner of the front page.

(2) Correspondence directed to the managing judge in respect of a specific issue raised by such a judge during any case management conference or trial, must be delivered to the responsible judge’s clerk.

(3) A party who desires to bring an application for the recusal of a judge after notice of docket allocation has been given, must do so in terms of rule 65 of the rules.

#### **Period within which counsel may withdraw**

**50.** (1) A legal practitioner who represents a client in a case in the court and who desires to withdraw from the case because he or she has not been put in sufficient funds to represent the client during the scheduled period for the trial or hearing of the case, may withdraw not later than the date of the pre-trial conference, but if the legal practitioner receives instructions for the first time only after the date of the conference, not later than one week after he or she is informed of the date of set down and must forthwith –

- (a) inform the client of such withdrawal;
  - (b) inform the client of the date on which the matter has been set down for trial or hearing;
  - (c) advise the client that he or she may, if he or she so desires, immediately obtain the services of another legal practitioner to represent him or her in the matter on the date of set down and that, if he or she does not have the financial means to engage the services of counsel, he or she may apply to the Director: Legal Aid, Ministry of Justice, Kisting House, Mungunda Street, Katutura, Private Bag 13370, Windhoek, for legal aid; and
  - (d) advise the client that if he or she fails to obtain the services of another counsel, he or she is entitled to represent himself or herself.
- (2) A legal practitioner who has not withdrawn within the period specified in subparagraph (1) –
- (a) is deemed to have agreed to appear on behalf of the client during the period for which the matter is set down for trial or hearing, irrespective of whether there has been payment of his or her fees and costs; and



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

### **Communication with managing judge**

**51.** (1) As soon as a case is assigned to a managing judge (individual docket allocation) for management until finalisation, the managing judge's Chambers, with the assistance of the court assistant assigned to the managing judge, must give notice to the parties of the name of the managing judge, the name of the court assistant, the name of the judges' secretary and the following contact details, namely email address, fax and telephone numbers of the court assistant and the judges' secretary, for communicating with the judge, and no communication with the managing judge may take place without the knowledge of the other party.

(2) Every pleading filed in the matter, including correspondence intended for the court or managing judge must bear the judge's name, and all contact and communication with the judge shall be through the court assistant, the secretary or the registrar, as the case may be.

### **Lapse of summons and inactive cases**

**52.** (1) Upon lapsing of a summons in terms of rule 132(1), the registrar must endorse the summons on the front page and the court file, and the endorsement shall be as near as possible to Annexure "8".

(2) Upon filing of an affidavit in terms of rule 132(2), the registrar must, if he or she is satisfied that there is compliance with rule 132(2), endorse the summons and the court file with the period of extension stated in the affidavit, clearly identifying the endorsement as an endorsement in terms of rule 132(2).

(3) In order to give effect to rule 132(4) the registrar must retain on the file a copy of any document initiating new proceedings in the court presented for issuance.

(4) Where the court strikes a matter from the roll as contemplated in rule 132(10), read with (11) of the rules, the order must reflect the reason for striking the matter from the roll.

### **Duty**

**53.** (1) The registrar must in consultation with the Judge President, assign a judge and a deputy registrar or assistant registrar who shall perform duties after court hours in respect of any urgent matters.

(2) The registrar must publish the name of the duty judge and the duty registrar or assistant registrar as part of the day roll and the continuous court roll.

(3) A duty judge and a duty registrar or assistant registrar commences duty at 16h00 every Friday and remains on duty until 16h00 the following Friday, unless any of the days fall on a public holiday in which event the duty period may be shortened or extended.

(4) The duty judge must, unless otherwise directed by the Judge-President –

(a) conduct First Motion Court and Second Motion Court and the Undefended Matrimonial Court;

(b) hear urgent applications during and after court hours;

- (c) hear interlocutory applications in matters not under the control of a managing judge;
- (d) hear interpleader matters;
- (e) perform the duties, functions and obligations of any managing judge who is absent due to unforeseen circumstances or illness;
- (f) attend to any other matter assigned to him or her by the Judge President.

### **Manual case numbers**

**54.** (1) The case number given to each case must appear on the court file and all other documents filed of record.

(2) Prior to e-Justice coming into operation, the following initials identifying case type, followed by the case number, are to be used –

- (a) I: Action proceedings;
- (b) A: Applications other than interlocutory applications in an existing case;
- (c) LC: Labour Court application;
- (d) LCA: Labour Court appeal;
- (e) CA: Criminal and civil appeals;
- (f) CR: Criminal review judgment;
- (g) CC: Criminal trial matters;
- (h) AC: Admiralty matters;
- (i) TA: Receiver of Revenue Appeals;
- (j) POCA: Applications brought in terms of the Prevention of Organized Crime Act.

(3) Any manual case number must consist of the initials followed by the case number and the year during which the case number is assigned.

### **Continuous court roll**

**55.** (1) The registrar must publish once a month an updated continuous court roll.

(2) The High Court roll consists of three parts, namely, the managing judge's Court Roll (civil and labour causes), the Residual Court Roll and the Criminal roll.

(3) The registrar must, from time to time, publish a High Court Roll planner reflecting dates allocated for each individual judge and his or her roll, except that that the roll planner must be published not less than three months from the start of the applicable period.

### **Managing Judges' Court Roll**

**56.** (1) A managing judge's Court Roll consists of –

- (a) Civil fixed roll;
  - (b) Civil floating roll;
  - (c) Opposed motion roll; and
  - (d) Case management roll, which includes judicial case management conferences, return dates on motions and matrimonial causes, all motions and interlocutory applications on files already docket allocated.
- (2) A civil matter may not be placed on the fixed roll unless –
- (a) it is anticipated that such a matter will run for more than four days; and
  - (b) the managing judge is satisfied that good reason exists for setting down the matter on the fixed roll.
- (3) Unless the Judge-President directs otherwise, only one case is set down on the fixed roll per week to be heard from Monday to Friday.
- (4) A partly heard civil case, which is not finalised within the allocated time, may be adjourned to any future date for continuation of trial on either the fixed roll or floating roll.
- (5) Floating roll matters are set down from Monday to Friday for a continuous period of three to five days.
- (6) Unless circumstances demand otherwise, the managing judge must not set down more than seven cases on the floating roll for a particular week.
- (7) The hearing of substantive applications in both labour matters and civil matters is set down on the opposed motion roll.
- (8) Any application made in an interlocutory matter should be made to the managing judge on a date and time fixed for his or her judicial case management.
- (9) Return dates in applications and matrimonial causes should correspond with the particular managing judge's judicial case management days and time schedules.
- (10) While a managing judge is not restricted to a maximum amount of cases that may be set down for a particular judicial case management session, judicial case management sessions are limited to the hours of 8h30 to 10h00 and 15h30 to 17h00, and no judicial case management conference may proceed beyond these hours.

### **Residual Court Roll**

- 57.** (1) The Residual Court Roll consists of –
- (a) Urgent applications;
  - (b) All appeals (civil, criminal, labour and leave to appeal);
  - (c) First motion court;
  - (d) Second motion court;
  - (e) Undefended matrimonial court; and

- (f) Non-docket allocated interlocutory roll.
- (2) Unless otherwise provided for, urgent applications are set down on court days at 9h00.
- (3) Applications for leave to appeal in civil, admiralty and criminal matters are set down for Mondays at 9h00.
- (4) The registrar must set down –
  - (a) civil and admiralty appeals for hearing on Mondays at 9h00;
  - (b) criminal appeals prosecuted with the assistance of a private brief or a legal aid brief for hearing on Mondays at 9h00;
  - (c) criminal appeals prosecuted by a prisoner represented by an *amicus curiae* on Fridays at 9h00;
  - (d) a criminal appeal prosecuted by a party acting in person on Fridays at 9h00;
  - (e) labour appeals on Fridays at 9h00.

#### **First Motion Court and Second Motion Court**

**58.** (1) The First Motion Court and the Second Motion Court in the Main Division of the High Court are held on separate dates, as follows –

- (a) the First Motion Court is held at 10h00 on Fridays;
- (b) the Second Motion Court is held at 10h00 every fortnight on Thursday.

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

(3) For the orderly conduct of the business of the First Motion Court and Second Motion Court, a party or its legal practitioner of record must –

- (a) complete in print Annexure “9”, when checking the files for the First Motion Court and Second Motion Court;
- (b) ensure that the completed form is placed on top of all the papers in the court file, and previous forms must be placed in date sequence at the back of the file, and

unless the return has been filed, the presiding judge must not hear the matter and the matter must be struck from the roll with a possible order as to costs.

(4) All matters enrolled for the First Motion Court and Second Motion Court must be placed on the applicable roll no later than 12h00 and on the day but three court days prior to the applicable motion court.

(5) The checking of court files enrolled for the First Motion Court and Second Motion Court must be completed no later than 12h00 and on the day but three court days prior to the applicable motion court.

(6) First Motion Court matters are matters that are not assigned to a managing judge, and include the following –

- (a) motions before close of pleadings;
  - (b) ex parte applications;
  - (c) admissions of counsel;
  - (d) admission of sworn translators;
  - (e) non-docket allocated interlocutory applications;
  - (f) applications for condonation in respect of civil matters and labour appeal matters;
  - (g) application for re-instatement of civil appeal and labour appeal.
- (7) Second Motion Court matters consist –
- (a) All undefended actions which have not been docket allocated (judgment by consent and judgment by default);
  - (b) All applications declaring immovable property specifically executable.
- (8) A legal practitioner seeking an order of the court in first or second motion court is required –
- (a) to furnish the court with a proposed draft order by –
    - (i) filing such proposed order of record before noon on the court day but one preceding the day on which same is to be heard; or
    - (ii) handing it up to the presiding judge when the matter is called; and
  - (b) if the order made by the presiding judge differs from the proposed order so filed or handed up, to furnish the court with a draft order that reflects the order made by the presiding judge for him or her to approve and issue by filing it with the registrar before noon on the day following the day on which the court made the order; and forwarding the draft order electronically in ms-word format to the email addresses appearing on the day roll, which draft order is to reach the aforementioned registrars before noon on the day following the day on which the court made the order.

### **Undefended Matrimonial Court**

**59.** (1) The Undefended Matrimonial Court in the Main Division of the High Court of Namibia is held on Mondays at 10h00.

(2) The Undefended Matrimonial Court in the Northern Local Division of the High Court of Namibia is held every fortnight on Mondays at 10h00.

(3) For the orderly conduct of the business of the Undefended Matrimonial Court, a party or its legal practitioner of record must –

- (a) complete in print Annexure “9”, when checking the files for the Undefended Matrimonial Court.
- (b) ensure that the completed form is placed on top of all the papers in the court file, and previous forms must be placed in date sequence at the back of the file, and

unless the return has been filed, the presiding judge must not hear the matter and the matter must be struck from the roll with a possible order as to costs.

(4) The party setting a matrimonial matter down on the undefended matrimonial court roll must –

- (a) file a notice of set down with the registrar no later than 12h00 and on the day but three court days prior to the undefended matrimonial court;
- (b) ensure that a true copy of the settlement agreement, if any, is placed on the court file for consideration by the court;
- (c) ensure that a draft order indicating clearly whether the entire agreement paragraphs or specific items of the settlement agreement the parties will request the court to incorporate into the final order of divorce, if not the entire agreement, is placed on the court file, and the draft order should specifically deal with issues of division of matrimonial property, custody and control of minor children, maintenance for minor children, maintenance for spouses and other ancillary matters;
- (d) ensure that the original summons, particulars of claim, and a certified copy of the marriage certificate are on the court file;
- (e) complete the return provided for in subparagraph (3).

(5) The checking of court files enrolled for the Undefended Matrimonial Court must be done no later than 12h00, and on the day but three court days prior to the undefended matrimonial court.

(6) Undefended Matrimonial Court matters are matters that have not been defended and are not assigned to a managing judge and include –

- (a) action for divorce;
- (b) annulment of marriage;
- (c) custody and control of children of the family;
- (d) protection order against a spouse, parent or child;
- (e) division of the estate in the matrimonial cause.

(7) A legal practitioner seeking an order of the court in undefended matrimonial court is required –

- (a) to furnish the court with a proposed draft order by –
  - (i) filing such proposed order of record before noon on the court day but one preceding the day on which same is to be heard; or
  - (ii) handing it up to the presiding judge when the matter is called; and
- (b) if the order made by the presiding judge differs from the proposed order so filed or handed up, to furnish the court with a draft order that reflects the order made by the presiding judge for him or her to approve and issue by filing it with the registrar

before noon on the day following the day on which the court made the order; and forwarding the draft order electronically in ms-word format to the email addresses appearing on the day roll, which draft order is to reach the aforementioned registrars before noon on the day following the day on which the court made the order.

### **Labour Court**

**60.** (1) The dress code for judges and legal practitioners and the mode of addressing judges in the Labour Court are the same as those applicable to civil proceedings in the High Court.

(2) PD 39 applies with necessary modifications by context to appeals under any provision of the Labour Act, 2007 (Act No. 11 of 2007), except that such appeals are heard at 09h00 on Fridays.

(3) Parts 8 and 15 apply with necessary modifications by context to a review under any provision of the Labour Act, 2007 (Act No. 11 of 2007).

(4) Parts 8 and 15 apply with necessary modifications by context to an application made to the Labour Court.

(5) Labour Court cases other than labour appeals brought to the Labour Court are set down for the end of the First Motion Court Roll.

(6) If in terms of the Labour Court Rules, an application is made in accordance with the High Court Rules –

- (a) the application must be heard by the duty Judge at the end of the First Motion Court, if the application is an unopposed application;
- (b) if the application is opposed the rules of court will apply for filing of answering and replying affidavits by the parties; and
- (c) the rules of court and the Practice Directions in respect of Judicial Case Management applicable to applications apply.

### **Delivery of reserved judgments and other judicial functions**

**61.** (1) The registrar must inform the Judge-President of any non-compliance with rule 133.

(2) If for any reason whatsoever the delivery of a judgment is to be postponed on the date set for its delivery to a new date and time, the postponement will be in open court and the presiding judge must provide a reason for not delivering the judgment on the set date.

(3) The registrar must inform the Judge-President about situations where the intended delivery date of a judgment has been changed more than twice.

(4) Unless otherwise provided by the rules of court, the time limits for the delivery of judgments in the High Court are contained in Annexure “10”.

(5) The registrar must report to the Judge President or, in his or her absence, the Secretary of the Judicial Service Commission, any judge who has 10 or more reserved judgments which has remained undelivered within the maximum time limits for the delivery of judgments and if it is the Judge President who needs to be reported the registrar must report directly to the Secretary of the Judicial Service Commission.

(6) The confirmation of a criminal judgment in proceedings submitted for review by a magistrate or a request to the magistrate for a statement in terms of section 304(2)(a) of the Criminal Procedure Act must be done within two weeks from the date on which a criminal review from the Magistrates' Court or Regional Magistrate's Court has been submitted to the Judge of the court.

(7) In the event of a judge of the court requesting a statement in terms of section 304(2)(a) from a Magistrate, the criminal review must be finalized and returned to the Magistrates' Court from where the criminal matter originated, within one month from the date on which the Magistrates' statement was received by the registrar.

(8) The registrar must report to the Judge President when any Judge is in contravention of subparagraphs (5) or (6).

### **High Court disposal benchmark and policies**

**62.** (1) The High Court's disposal benchmark for civil and labour causes measured from issuance of initiating process to finalisation of the matter is –

- (a) matrimonial: eight months
- (b) fixed roll cases of more than five days: 18 months
- (c) floating roll cases / Fixed Roll cases of five days and less: 12 months
- (d) motion proceedings: six months.

(2) The managing judge and the parties must, in setting target timelines for completion of pleadings in terms of the case plan order and in setting the trial date, have due regard to subparagraph (1).

(3) The registrar must as far as possible monitor the lifespan of individual cases and report to the Judge-President the average annual lifespan of cases.

(4) Managing judges must report to the Judge-President the particulars of any legal practitioner who displays a habit of causing unnecessary delays and the registrar must report to the Judge-President for possible administrative intervention by the Judge President or other authorities a managing judge whose matters tend to exceed the periods prescribed in subparagraph (1).

(5) The High Court pursues a 100% clearance rate policy, and in pursuit of the policy, the court must, unless there are compelling reasons to adjourn or vacate, apply a strict non-adjournment or non-vacation policy on matters set down for trial or hearing.

### **Reporting and or publication**

**63.** (1) Publication of the report referred to in rule 137 must be posted on the Superior Courts website at [www.ejustice.moj.na](http://www.ejustice.moj.na)

(2) Publication by the registrar of any date, document, report or information in terms of the Practice Directions must be posted on the Superior Courts website at [www.ejustice.moj.na](http://www.ejustice.moj.na)

### **Transitional Provisions**

**64.** (1) The registrar must as soon as possible after commencement of the rules assign all defended actions to responsible judges who will manage the matter in terms of the rules of court until finalisation.



(2) Unless otherwise directed by a managing judge, any matter set down for trial or hearing in terms of the repealed rules and the repealed Consolidated Practice Directions remains on the roll as set down.

(3) Any notice to meet with the registrar to obtain a trial date or hearing date delivered prior to the commencement of the new rules remains in force.

(4) The hearing of Interlocutory applications set down on a Tuesday in terms of the repealed Consolidated Practice Directions remains and will be presided over by the managing judge.

(5) A proceeding instituted prior to the coming into operation of the new rules of court, retains the case number already allocated to it until the finalisation of the matter.

(6) The Rules of the High Court of Namibia made under Government Notice No. 59 of 1990, as amended, applies to the exchange of all pleadings in all defended actions instituted and defended prior to the commencement of the Rules of the High Court of Namibia made under Government Notice No. 4 of 2014, until such time that a managing judge orders otherwise.

#### **Registrar's notes**

**65.** The registrar may publish notes in which he or she explains how his or her office implements certain practice directions, so long as the notes are not inconsistent with the Practice Directions.

## ANNEXURE "1"

**DECLARATION BY CEDENT IN TERMS OF RULE 5 OF THE RULES OF COURT**

I, the undersigned –

---

FULL NAMES AND SURNAME

do hereby make oath and state that –

1. I am a major [male/female] person, currently residing at [insert physical residential address].
2. The content of this affidavit falls within my personal knowledge and is both true and correct.
3. I acknowledge that I am the cessionary, to wit [full names and surname of cessionary], has acquired a right of action through cession against [insert name of person against whom the right of action has been obtained] ("the cession"). A true copy of the relevant deed pertaining to the cession [applicable if the cession is reduced to writing] comprises Annexure "A" hereto.

I, as the cedent or I, as the duly authorized representative of the cedent, hereby declare that –

1. The cession is a genuine transaction in terms of which I truly intended to cede my rights in the claim to the cessionary.
2. I have not ceded the claim to the cessionary to enable the cessionary to act on my behalf in legal proceedings in return for payment made, to be made or promised to be made to the cessionary.
3. The cession is not a ruse and is not made for any purpose that defeats any law.
4. The cessionary has not held [himself or herself] out as a person qualified to represent a member of the public in legal proceedings contrary to any law.
5. The officer before whom I appear for the purposes of making this declaration has, before administering the oath (or affirmation, as the case may be), explained to me that if this declaration is false, I am liable for perjury or any other offence arising from making a false declaration and that I may, on conviction, be liable for any competent criminal sanction.

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[INSERT NAME OF DEPONENT]

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

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

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COMMISSIONER OF OATHS

FULL NAMES:

CAPACITY:

ADDRESS:

\* Appropriate amendments are to be made should the deponent wish to make an affirmation instead of an oath.

\* In terms of rule 5(3), the oath or affirmation (as the case may be) must be made before a member of the Namibian Police holding the rank of warrant officer or above.

## ANNEXURE "2"



**PARTICULARS OF LITIGANTS TO BE PROVIDED IN TERMS OF RULE 6 OF THE  
RULES OF COURT**

Instructing Legal Practitioner	Acting on behalf of: ( <i>insert party</i> )			
	Name and Surname:			
	Firm:			
	E-mail Address:			
	Direct Land Line:			
	Cell Phone Number:			
	Fax Number:			
Natural Person	Full names:			
	ID number:			
	Physical Address:			
	Telephone number:	Home:	Work:	Cell phone:
	Fax Number:		E-mail address:	
Close Corporation or Company	Name and nature of entity:			
	Registration number:			
	Postal Address:			
	Registered business address:			
	Particulars of at least one member or director of the entity:			
	Full names:			
	ID number:			
	Physical Address:			
	Telephone number:	Home	Work	Cell phone:
	Fax Number:		E-mail address:	

Other Juristic Entity or Trust	Name and nature of entity:			
	Registration number / Master's Reference number:			
	Postal Address:			
	Registered business address:			
	Particulars of at least one member or director of the entity:			
	Full names:			
	ID number:			
	Physical Address:			
	Telephone number:	Home:	Work:	Cell phone:

ANNEXURE "3"

**DRAFT ORDER**

CASE NO: \_\_\_\_\_

IN THE HIGH COURT OF NAMIBIA, \_\_\_\_\_ DIVISION

HELD AT \_\_\_\_\_ ON \_\_\_\_\_, \_\_\_\_\_ 20\_\_\_\_

BEFORE THE HONOURABLE JUSTICE \_\_\_\_\_

In the matter between:

APPLICANT

And

RESPONDENT

Having heard, \_\_\_\_\_, Counsel for the Applicant and, \_\_\_\_\_, Counsel for the Respondent and having read the Application for \_\_\_\_\_ and other documents filed of record:

IT IS ORDERED

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BY ORDER OF COURT

REGISTRAR

To: \_\_\_\_\_

\* if the party represents himself or herself, modify the draft accordingly

AND TO \_\_\_\_\_

## ANNEXURE “4”

**DISCOVERY AFFIDAVIT FIRST SCHEDULE – PART A**

No.	Date	Item	Copy / Original	Trial Document

\* Reference to “trial document” refers to those documents which the party, in terms of rule 28(1), is required to identify and describe and which document such party intends or expects to introduce at trial.

Registrar of the Supreme Court  
Supreme Court  
Private Bag 13398  
WINDHOEK

Date: \_\_\_\_\_

Sir / Madam

**NOTICE IN TERMS OF SECTION 316(5) OF THE CRIMINAL PROCEDURE ACT, 1977  
(ACT NO. 51 OF 1977)**

**In Re**

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**HIGH COURT CASE NUMBER:** \_\_\_\_\_

**KINDLY TAKE NOTICE THAT** the High Court of Namibia granted leave to defend the abovementioned matter. Attached, please find a copy of the Court Order.

**KINDLY TAKE FURTHER NOTICE THAT** the registrar of the court will, once a copy of the appeal record is ready, transmit a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, to the Registrar of the Supreme Court.

REGISTRAR OF THE HIGH COURT OF NAMIBIA, \_\_\_\_\_ DIVISION

CC The Appellant  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CC The Office of the Prosecutor General  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ANNEXURE "6"

Registrar of the Supreme Court  
 Supreme Court  
 Private Bag 13398  
 WINDHOEK

Date: \_\_\_\_\_

Sir / Madam

**TRANSMISSION OF RECORD IN TERMS OF SECTION 316(5) OF THE CRIMINAL  
 PROCEDURE ACT, 1977 (ACT NO. 51 OF 1977)**

**In Re**

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**HIGH COURT CASE NUMBER:** \_\_\_\_\_

**KINDLY TAKE NOTICE THAT** the registrar of the High Court of Namibia (Main Division) hereby transmits to the Registrar of the Supreme Court a certified copy of the abovementioned record, including copies of the evidence, taken or admitted at the trial.

**KINDLY TAKE NOTICE THAT** apart from the Application / Notice for Leave to Appeal filed of record, no further statement of the grounds of appeal has been filed / a statement of the grounds of appeal has been filed and is hereby transmitted to you.  
 (Delete if not applicable)

REGISTRAR OF THE HIGH COURT OF NAMIBIA, \_\_\_\_\_ DIVISION

CC The Appellant

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

CC Office of the Prosecutor General

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



ANNEXURE "7"

**The Appellant**

Date: \_\_\_\_\_

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Sir / Madam

**NOTICE IN TERMS OF RULE 16(1) OF THE RULES OF THE SUPREME COURT****In Re**


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**HIGH COURT CASE NUMBER:** \_\_\_\_\_

**WHEREAS** the High Court of Namibia in terms of section 316(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) has granted, to the appellant, leave to appeal,

**AND WHEREAS** the appellant is required to lodge four copies of the record (one of which should be certified) with the registrar of the Supreme Court within the period contemplated in paragraphs (a) and (b) of rule 5 (7) of the abovementioned Rules of Court, and, in addition, furnish the Prosecutor-General with the number of copies required by the State,

**YOU ARE HEREBY NOTIFIED** that you may in terms of rule 16(1) of the Supreme Court Rules, obtain from the registrar of the High Court (Main Division) the required amount of copies of the record against payment in the amount of N\$ \_\_\_\_\_ / copy.

REGISTRAR OF THE HIGH COURT OF NAMIBIA, \_\_\_\_\_ DIVISION

CC The Registrar of the Supreme Court  
Private Bag 13398  
WINDHOEK

CC The Office of the Prosecutor General

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## ANNEXURE "8"

**ENDORSEMENT IN TERMS OF RULE 132(1) OF THE RULES OF COURT**

IN TERMS OF RULE 132(1) THE SUMMONS HAS LAPSED

SUMMONS WAS ISSUED ON \_\_\_\_\_ AND SERVICE WAS NOT AFFECTED WITHIN SIX MONTHS

OR

IN TERMS OF RULE 132(1) THE SUMMONS HAS LAPSED

SUMMONS WAS ISSUED ON \_\_\_\_\_ AND SERVICE WAS AFFECTED ON \_\_\_\_\_ AND FOR SIX MONTHS FROM DATE OF SERVICE NO FURTHER STEPS IN THE PROSECUTION OF THE ACTION WERE TAKEN

**UNDEFENDED MATRIMONIAL COURT, FIRST MOTION COURT AND SECOND MOTION COURT RETURN**

**NEXT MOTION COURT DATE:** \_\_\_\_\_

Applicant/Plaintiff: .....

Case No: .....

Respondent/Defendant: .....

Please provide the following information:

1. Was the matter previously postponed, or return of conjugal rights the Rule previously extended? If so, provide the reason.

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

2. Will the matter be postponed or the rule extended again? If so, state the reason.

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

3. What relief, if any, will be applied for?

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

4. Will the matter be opposed or not? .....

5. Are the Papers in order? .....

6. Is it necessary for the presiding judge to read the papers? .....

7. Name of legal practitioners who will appear during the motion court. ....

8. Date of admission as a legal practitioner of person who will appear in court. ....

9. Name and surname of person checking the file .....

Signature .....

Date .....

## ANNEXURE "10"

**GUIDELINES FOR THE DELIVERY OF JUDGMENT IN THE HIGH COURT**

<b>NO.</b>	<b>NATURE OF CASE</b>	<b>TIME FOR DELIVERY</b>
1.	Opposed Motions: involving declaration of unconstitutionality of legislation, common law or other conduct	8 Months
2.	Review Applications	8 Months
3.	Other Opposed Motions	6 Months
4.	Urgent Applications	3 Weeks
5.	Interlocutory Applications, including interim and pending matrimonial matters	2 Weeks: Ordinarily only an order to be made, unless reasons requested in writing in which event reasons to be provided within 4 weeks from the date of such request.
6.	Exception AND Strike Out	2 weeks
7.	Rescission	2 weeks
8.	Special Pleas	4 weeks
9.	Simple Trial Actions (Civil)	4 Months
10.	Complex Trial Actions (Civil)	8 Months
11.	Application for Absolution from the Instance	4 Months
12.	Criminal: Trial Within A Trial	4 weeks
13.	Simple Criminal Trials	4 Months
14.	Complex Criminal Trials	12 Months
15.	Criminal Sentence	2 weeks
16.	Bail application	1 week
17.	Bail Appeals	4 Weeks
18.	Civil, Criminal and Labour Appeals	6 Months
19.	Application for Leave to Appeal	2 Weeks
20.	Reasons	4 weeks
21.	Exceptionally, on account of the special complexity of the matter or circumstances warranting different consideration, a matter will, in consultation between the presiding Judge and the Judge-President, be treated differently from what is stated in the guidelines.	