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REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE JUDICIARY

No. 10

2017

AMENDMENT OF 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, I -

- (a) amend the Practice Directions as set out in the Schedule; and
- (b) determine that the amendments to the Practice Directions come into operation on 1 January 2017.

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

Windhoek, 16 January 2017

SCHEDULE

Definitions

1. In these practice directions “the Practice Directions” means the Practice Directions published under Government Notice No. 67 of 9 May 2014.

Amendment of Practice Directions

2. The Practice Directions are amended by the substitution for the word “sub paragraph” wherever it occurs of the word “paragraph”.

Amendment of PD 3 of Practice Directions

3. PD 3 is amended by-

(a) the substitution for paragraph (2) of the following paragraph:

“(2) Subject to paragraph 3, the court has one administrative recess for the dispatch of business, including criminal reviews, commencing on 10 December in each year and ending on the 15 January the following year, inclusive of both dates.”.

(b) the addition after paragraph (2) of the following paragraphs:

“(3) There are seven administrative breaks in every year as set out in paragraph (5).

(4) During the administrative breaks referred to in paragraph (2), a case or matter may not be set down for hearing, except a matter set down for judicial case management or a matter set down on the residual court roll referred to in PD 57 of the Practice Directions.

(5) The administrative breaks referred to in paragraph (3) are, inclusive of both dates, from -

- (a) 20 February to 5 March;
- (b) 9 April to 15 April;
- (c) 20 May to 2 June;
- (d) 9 July to 15 July;
- (e) 20 August to 2 September;
- (f) 9 October to 15 October; and
- (g) 20 November to 2 December.”.

Amendment of PD 36 of Practice Directions

4. PD 36 is amended by the insertion after paragraph (1) of the paragraph:

“(1A) Legal practitioners are encouraged, in terms of rule 115(1), to apply from the bar for leave to appeal at the time of delivery of the judgment or giving of the order, and

judges are encouraged to entertain such applications without having to arrange a separate hearing in terms of rule 115(5) read with paragraph (2) of this PD and without filing heads of argument or any other documents.”.

Amendment of PD 56 of Practice Directions

5. PD 56 is amended by the addition after paragraph (10) of the following paragraphs:

“(11) A roll call of all civil matters set down on the floating roll, fixed roll or for continuation of trial as civil partly heard matter in the main division of the High Court will be held in open court on the Friday before the set down date at 08h30.

(12) Legal Practitioners appearing for the roll call in the cases referred to in paragraph (11) and set down for the following week are required to address the court on any:

- (a) change in circumstances which requires an application for a postponement of the trial;
- (b) ongoing settlement negotiations ;
- (c) conflict of interest of a judge in the Main Division; and
- (d) other issue relevant to the set down.

(13) The Judge President or in his absence the Deputy Judge President may for purpose of the trial, re-assign any case, except for a matter set down for continuation of trial, referred to in paragraph (11) to another judge and if the matter is re-assigned to another judge for purpose of trial and does not proceed to trial, that matter must be returned back to the judge previously managing the case for further conduct.”.

Amendment of PD 57 of Practice Directions

6. PD 57 is amended by the addition after paragraph (4) of the following paragraphs:

“(5) An opposed interlocutory application or any other opposed application ancillary to the main case in the matter which has not been docket allocated to a managing judge, including applications for reinstatement of appeal and condonation for late filing of an appeal, will be heard by the judge presiding in the Motion Court at the end of the Motion Court roll to which it is set down.

(6) Heads of argument in applications referred to in paragraph (5) must be filed not less than three days prior to the specific Motion Court to which it is set down.”.

Substitution of PD 58 of Practice Directions

7. The following Practice Direction is substituted for PD 58:

“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 as two separate sessions on Fridays at 10h00.

(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) enroll the matter on the applicable First Motion Court or Second Motion Court roll not later than 12h30 of the eighth court day prior to the applicable motion court, if the matter has not previously been postponed to the applicable First Motion Court roll or Second Motion Court roll;
 - (b) complete and file Annexure “9” when checking the files for the First Motion Court or Second Motion Court and 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;
 - (c) when seeking an order of the court other than a postponement order, file the proposed order on the court file when checking the files for the First Motion Court or Second Motion Court; and
 - (d) index and check the file for correctness and completeness in preparation for and convenience of the court, which is to be done between the hours 09h00 and 12h30 on the seventh court day prior to the applicable motion court.
- (4) Where a case is initiated through the electronic case management and filing system of the court, the legal practitioner is required to perform all actions mentioned in paragraph (3) -
- (a) by completing the required fields on the system in order for the system to generate Annexure “9” and enrolling the matter on the First Motion Court roll or Second Motion Court roll by not later than 16h00 of the eighth court day prior to the applicable motion court roll; or
 - (b) if the matter is on the roll due to a previous postponement by the court, by completing and filling Annexure “9” as a pdf document on the electronic case and checking the electronic file by not later than 16h00 of the eighth court day prior to the applicable motion court.
- (5) The actual date and time reflected on the electronic case management and filing system of the court for enrolling the matter on the applicable First Motion Court or Second Motion Court, are the date and time for simultaneously checking the court file and the enrollment on the First Motion Court roll or Second Motion Court roll.
- (6) If Annexure “9” has not been filed, the presiding judge may not hear the matter and the matter must be struck from the roll with a possible order as to costs.
- (7) A legal practitioner seeking an order of the court in First or Second Motion Court is required to furnish the court with a proposed draft order -
- (a) by filing such proposed order of record when checking the files for the First Motion Court or Second Motion Court; or
 - (b) where the case is initiated on the electronic case management system of the court, filing a draft order in Microsoft word format on the system prior to enrolling the matter on the applicable court roll, and in the event of the matter having previously been postponed to the specific roll, by filing the proposed draft order no later than 16h00 on the eighth court day prior to the applicable motion court day.

- (8) If the order made by the presiding judge is different from the proposed order referred to in paragraph (7), the legal practitioner must -
- (a) furnish the court with a draft order that reflects the order made by the presiding judge for him or her to approve and file the order with the registrar before noon on the day following the day on which the court made the order; and
 - (b) forward the draft order electronically in Microsoft word format to the email addresses appearing on the day roll; or
 - (c) where the case is initiated on the electronic case management system of the court, file a draft order in Microsoft word format on the system, which draft order is to be filed before noon on the day following the day on which the court made the order.
- (9) 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) admission of legal practitioners;
 - (d) admission of sworn translators;
 - (e) non-docket allocated interlocutory applications;
 - (f) applications for condonation in respect of civil and labour appeal matters;
 - (g) applications for re-instatement of civil and labour appeal matters; and
 - (h) post-judgment applications, including applications declaring immovable property specifically executable.
- (10) Second Motion Court matters consist of all undefended actions which have not been docket allocated, including judgment by consent and judgment by default, excluding actions for divorce or annulment of marriage”.”

Substitution of PD 59 of Practice Directions

8. The following Practice direction is substituted for PD 59:

“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) if the matter has not been previously postponed to the applicable Undefended Matrimonial Court roll, enroll the matter on the applicable Undefended Matrimonial Court roll not later than 12h30 on the eighth court day prior to the applicable motion court;
 - (b) complete and file Annexure “9”, when checking the files for the Undefended Matrimonial Court, and 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;
 - (c) ensure that when checking the file for the Undefended Matrimonial Court the original summons, particulars of claim, return of service and a certified copy of the marriage certificate are on the court file;
 - (d) ensure that when checking the files for the Undefended Matrimonial Court a true copy of the settlement agreement, if any, is placed on the court file for consideration by the court;
 - (e) in seeking an order of the court other than a final order of divorce, ensure that when checking the files for the Undefended Matrimonial Court, a proposed order is filed on the court file;
 - (f) in seeking a final order of divorce from the court and in the event of the order incorporating a settlement agreement between the parties, ensure that when checking the files for the Undefended Matrimonial Court the original settlement agreement which the parties will request the court to incorporate into the final order of divorce, is placed on the court file and a draft order is filed, which order must clearly state or specifically deal with -
 - (i) whether the entire agreement is or if not the entire agreement, the paragraphs or specific items of the settlement agreement are incorporated into the final order of divorce;
 - (ii) issues of division of matrimonial property;
 - (iii) custody and control of minor children;
 - (iv) maintenance for minor children, maintenance for spouses; and
 - (v) other ancillary matters;
 - (g) where a case is initiated through the electronic case management and filing system of the court and subparagraph (f) applies, file the draft order in accordance with paragraph (7)(b) and the signed and sealed settlement agreement in pdf-format on the electronic file prior to actions taken in paragraph (4); and
 - (h) index and check the file for correctness and completeness of the process for the convenience of the court, which is to be done between the hours 09h00 and 12h30 on the seventh court day prior to the Undefended Matrimonial Court.
- (4) Where a case is initiated through the electronic case management and filing system of the court, the legal practitioner is required to perform all the actions mentioned in paragraph (3) by -

- (a) filing the marriage certificate in pdf-format on the electronic file, if the filling is not yet done at the time of initiating the case in the High Court;
- (b) completing the required fields on the system in order to system generate Annexure “9” and to enroll the matter on the Undefended Matrimonial Court roll not later than 16h00 on the eighth court day prior to the applicable motion court; or
- (c) completing and filing Annexure “9” as a pdf document on the electronic case system and check the electronic file not later than 16h00 on the eighth court day prior to the applicable motion court, in the event of the matter being on the roll due to a previous postponement by the court.

(5) The actual date and time reflected on the electronic case management and filing system of the court for enrolling the matter on the applicable Undefended Matrimonial Court roll, are the date and time for simultaneously checking the court file and the enrollment on the Undefended Matrimonial Court roll.

(6) If Annexure “9” has not been filed, the presiding judge may not hear the matter and the matter must be struck from the roll with a possible order as to costs.

(7) A legal practitioner seeking an order of the court in the Undefended Matrimonial Court is required to furnish the court with a proposed draft order -

- (a) by filing such proposed order of record when checking the files for the Undefended Matrimonial Court;
- (b) where the case is initiated on the electronic case management system, by filing the draft order in Microsoft word format on the system prior to enrolling the matter on the applicable court roll; or
- (c) in the event of the matter having previously been postponed to the specific roll by filing the proposed draft order,

not later than 16h00 on the eighth court day prior to the applicable Undefended Matrimonial Court.

(8) If the order made by the presiding judge differs from the proposed order referred to in paragraph (7), the legal practitioner must -

- (a) furnish the court with a draft order that reflects the order made by the presiding judge for him or her to approve and filing it with the registrar before noon on the day following the day on which the court made the order; and
- (b) forward the draft order electronically in Microsoft word format to the email addresses appearing on the day roll; or
- (c) where the case is initiated on the electronic case management system of the court, file a draft order in Microsoft word format on the electronic file, before noon on the day following the day on which the court made the order.

(9) 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; and
 - (e) division of the joint estate in the matrimonial cause.
- (10) Where a case is initiated through the electronic case management and filing system of the court, the party appearing in court or, if represented, the legal practitioner must -
- (a) have the original marriage certificate or if the original is not available a certified copy of the marriage certificate; and
 - (b) if a settlement agreement has been signed, have the original settlement agreement available in court,
- and rule 135(10) applies to the safekeeping of the original document.”.

Amendment of PD 61 of Practice Directions

9. PD 61 is amended by the addition after paragraph (8) of the following paragraphs:

“(9) In order to assist in the prompt disposal of interlocutory applications and applications for leave to appeal, Judges are encouraged to make orders without detailed reasoned judgments, unless there is a clear need to give full reasons, especially in cases where the court order -

- (a) is not potentially precedent setting;
 - (b) does not require the interpretation of a rule, statute or common law; and
 - (c) can be made in summary form.
- (10) Paragraph (9) is also applicable to the following applications:
- (a) application for leave to appeal;
 - (b) application for postponement;
 - (c) application to amend pleadings;
 - (d) application to vary a case management order;
 - (e) application for summary judgment;
 - (f) application for joinder;
 - (g) application for consolidation of actions;
 - (h) application for upliftment of bar, extension of time, relaxation or condonation;
 - (i) application for irregular proceedings; and

(j) application concerning security for costs.

(11) An order made in terms of paragraph (10)(a) in an application for leave to appeal to the Supreme Court must be accompanied by Annexure “11” to the Practice Directions, completed and signed by the Judge who made the order.

Substitution of Annexure 10 of Practice Directions

10. The following Annexure is substituted for Annexure “10”:

“ANNEXURE “10”

GUIDELINES FOR DELIVERY OF JUDGMENTS IN THE HIGH COURT

NO.	NATURE OF CASE	TIME FOR DELIVERY NOT EXCEEDING
1.	Opposed Motions: involving the constitutionality of legislation or common law	8 Months
2.	Review Applications	6 Months
3.	Other Opposed Motions	6 Months
4.	Urgent Applications	15 Court Days
5.	Interlocutory and ancillary applications other than those mentioned under items 6 and 7 of this Annexure, including interim and pending matrimonial matters	15 Court Days: Ordinarily only an order to be made, unless reasons requested in writing in which event reasons to be provided within 20 Court Days from the date of such request. Where possible PD 61(9) should apply.
6.	Exception & Strike Out	15 Court Days
7.	Applications for summary judgment, irregular proceedings or security for costs	15 Court Days
8.	An application referred to in item 6 or 7 of this Annexure involving a complex question of law	30 Court Days, subject to approval obtained in terms of item 23
9.	Rescission	30 Court Days
10.	Special Pleas	30 Court Days
11.	Simple Trial Actions (Civil)	4 Months
12.	Complex Trial Actions (Civil)	8 Months, subject to approval obtained in terms of item 23
13.	Application for Absolution from the Instance	4 Months
14.	Criminal: Trial-within-a-Trial	20 Court Days
15.	Simple Criminal Trial Judgment	4 Months
16.	Complex Criminal Trial Judgment	12 Months, subject to approval obtained in terms of item 23
17.	Criminal Sentence	20 Court Days
18.	Bail application	10 Court Days
19.	Bail Appeals	20 Court Days
20.	Civil, Criminal and Labour Appeals	6 Months
21.	Application for Leave to Appeal, if not dealt with in the summary way provided for in PD 61(9) to (11)	10 Court Days
22.	Reasons in respect of any matter	20 Court Days

23.	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. Written approval by the Judge President clearly stating the period allowed for delivery of the particular judgment must be obtained prior to reservation of the judgment, or if not possible as soon as possible after judgment has been reserved and the original written permission is to be kept by the judge and copies are to be provided to the Registrar and all parties involved.
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Insertion of Annexure “11” in Practice Directions

11. The Practice Directions are amended by the insertion after Annexure “10” of the following Annexure :

“ANNEXURE “11”

**IN THE HIGH COURT OF NAMIBIA
(TO THE SUPREME COURT OF NAMIBIA)**

Case Title:	Case No:
	Division of Court:
Heard / tried before (<i>insert name of Judge</i>):	Date of hearing / Judgment:
Result on merits (attach order):	
The order:	
Reasons for decision (to be completed by the Judge):	

1. 2. 3. 4. 5.	
Judge's signature:	Note to the parties:
	The reason(s) hereby provided should be lodged together with any Petition made to the Chief Justice of the Supreme Court

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