

JOINT RULES OF PRACTICE FOR THE HIGH COURTS OF THE EASTERN CAPE PROVINCE

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(Updated as per: Provincial Notice 109 of 2018 – 01 July 2018)
JOINT RULES OF PRACTICE FOR THE HIGH COURTS OF THE EASTERN CAPE PROVINCE (THE PROVINCIAL DIVISIONS CURRENTLY¹ KNOWN AS THE CISKEI DIVISION, THE EASTERN CAPE DIVISION AND THE TRANSKEI DIVISION)

Save for Rule D12 of the Transkei Practice Manual of July 2002 and Transkei Practice Notice No 1 of 2003 which will remain in force for the time being, all other previous rules of practice for the above three Divisions are withdrawn with effect from 1 January 2008 from which date the following rules will apply. [This court notice was amended by Court Notice 1 of 2009 with effect from 1 September 2009². These amendments are included.]

1 PRE-TRIAL CONFERENCE

a) The conference in terms of Uniform Rule 37 should be regarded as an ongoing procedure which, having been convened, does not end but will stand adjourned until the commencement of the trial, with either party being free to reconvene it from time to time on reasonable notice.

b) The minute of the conference is to contain a full record of the matters discussed at every stage, and must include not only those matters on which agreement has been reached but also the requests of one party and the replies of the other relating to matters where there is no agreement. However, as a general rule, the minute should not include requests for particulars or replies to interrogatories. Attention is also drawn to rule 2(d) below.

c) If the parties are in agreement that specific issues in a case be tried separately, this fact must be stated in the minute. The parties are required to state further which issue in their opinion should be tried first. The court is not necessarily bound by any such agreement.

¹ Since the Renaming of High Courts Act No 30 of 2008, which came into operation on 1 March 2009, the High Courts in the Eastern Cape Province are called the Eastern Cape High Court, Bisho; the Eastern Cape High Court, Grahamstown; the Eastern Cape High Court, Mthatha; and the Eastern Cape High Court, Port Elizabeth.

² Joint Rules of Practice were further amended by Court Notice 1 of 2010 by the insertion of Rule 14A and an amendment of Rule 23. These amendments (i.e. Rule 14A and Rule 23(v)) are effective from 2nd August 2010.

d) The minute of every stage of the conference shall be prepared by the attorney of record of the plaintiff (or applicant, if the matter is an application referred to oral evidence) and shall be signed by the respective attorneys on behalf of the parties, and filed with the registrar as soon as possible thereafter.

e) Attention is drawn to the provisions of Uniform Rules 37(3)(a) and 37(7) which require the conference to be held no later than six weeks prior to the date of the hearing and the original minute to be filed not less than five weeks before the hearing. These rules will be strictly enforced and, should they not be complied with, the trial judge will have the discretion to refuse to hear a matter.

f) In the event of any party failing or refusing or neglecting to attend a pre-trial conference after due notice thereof has been given, a minute to that effect shall be prepared and filed by the party or parties that did attend.

g) On the morning of the hearing, where both parties are represented, the practitioners appearing for the parties must report in chambers to the judge hearing the trial to present a signed copy of any further conference minutes and in order to hear any suggestions the judge may have which could curtail the duration of the trial.

h) Where not satisfied that the letter and the spirit of Uniform Rule 37 have been complied with, the judge may (where applicable) order the matter to stand down for hearing after the following matter on the roll, subject to a proper compliance with the rule.

i) The content of the pre-trial minutes may be material to the exercise of the court's discretion in regard to costs.

j) Lists of matters to be discussed at the conference passed between the parties under Uniform Rule 37(4) are not to be filed of record.

2 EXPERT EVIDENCE

- a) The time periods stipulated in Uniform Rules 36(9)(a) and (b) must be adhered to and, in the absence of agreement between the parties, the Court will only on good cause shown condone any departure therefrom.
- b) The summary of the evidence to be given by an expert witness must contain at least sufficient information to enable the other party to determine the extent to which he agrees or disagrees with the evidence of such expert witness.
- c) Any party will be entitled to request and be furnished with an amplification of the summary of expert evidence delivered by the other party to the extent necessary to achieve the purpose referred to in sub-rule 2 (b) above.
- d) Where practicable, a summary of the points of agreement and disagreement between the experts giving evidence for the parties should be incorporated in the minutes Rule 37. Those minutes should also state whether the parties have agreed or disagreed to exchange the reports of their expert witnesses.

3 PAGINATION AND INDEXES

- a) In respect of defended trials, opposed motions, exceptions, applications to strike out, pleas in bar, special pleas, stated cases and appeal cases, the papers are to be secured, paginated and indexed as required by Uniform Rule 62(4), not later than 5 days prior to the hearing of the matter: Provided that in all matters enrolled for hearing on the opposed motion court roll the papers shall be secured, paginated and indexed not later than 8 days prior to the hearing of the matter. This requirement will be strictly enforced.
- b) For purposes of sub-rule (a), opposed motions shall include opposed return days of rules *nisi* opposed motions shall include opposed return days of rule *nisi* opposed provisional sentence matters, Rule 43 applications, applications for leave to appeal, and applications for summary judgment in which the defendant's affidavit is filed not later than 5 days prior to the hearing.

c) In an opposed summary judgment application where the defendant's affidavit is filed later than 5 days prior to the hearing, the papers should immediately be indexed and paginated once such an affidavit is filed.

d) In all unopposed motion court matters consisting of 20 pages or more, the provisions of Uniform Rule 62(A) shall be strictly enforced and the papers are to be secured, indexed and paginated by the time the roll closes.

e) Note that in terms of Uniform Rule 28(9), pages containing amendments to pleadings must be filed in the appropriate place in substitution for the original pages.

f) The pleadings as they were prior to amendment thereof, must also be filed either at the end of the "*pleading index*" or under a "*miscellaneous documents index*".

g) The index must contain sufficient information to enable the Court to identify every document without having to refer to the document itself. For example "*Notice in terms of Rule 36(9)(a)*" will not be sufficient. The item should read "*Plaintiff's Notice dated in terms of Rule 36(9)(a) in respect of Dr X, Orthopaedic Surgeon*". Similarly "*Annexure A*" is insufficient. It should read e.g. "*Annexure A - letter dated from plaintiff's attorney to defendant's attorney*".

h) Where additional documents are filed after the indexing has been completed, the additional documents must be paginated following the original pagination and a supplementary index filed in which the additional documents are listed.

i) The rule regarding description of documents in the index will apply to all opposed matters, including civil and criminal proceedings.

4 SETTLEMENTS, POSTPONEMENTS AND WITHDRAWALS

a) It is the duty of the attorney for the plaintiff or applicant to inform the registrar without delay if a settlement or an agreement to postpone or withdraw any proceedings is reached – see Uniform Rule 41(3).

b) It shall be the duty of the attorney of record for plaintiff/applicant to inform the registrar in writing where a particular issue of substance raised in the proceedings is not to be pursued.

c) If it is agreed that an opposed application or action is to be postponed, with or without an order in respect of the wasted costs, it will not be necessary for all parties to the proceedings to be represented. It will be sufficient if the legal representative for one of the parties appears and produces a letter or some other document recording the agreement of the other party to the order sought.

d) If an opposed action, application or appeal is settled and the parties desire that their settlement agreement be made an order of court, both parties should be present when the order is made unless one of them files a notice of withdrawal of his or her opposition. In the event of a party not appearing, documentary proof of its agreement to the order sought will have to be produced.

5 PRACTITIONERS BRIEFED TO APPEAR IN THE CONSTITUTIONAL COURT OR SUPREME COURT OF APPEAL

a) Where a practitioner is engaged in a civil or criminal trial in any division of this Court, and such trial clashes with a brief which the practitioner holds to appear in the Constitutional Court in Johannesburg or the Supreme Court of Appeal in Bloemfontein, the trial in the division of this Court will stand down until the day following the practitioner's appearance in such court.

b) This rule will apply to opposed trials only and the trial judge and the opposing party must be given timeous notice of the fact and date of the appearance by the practitioner in the higher court.

c) In the event of the practitioner concerned being led by a senior, the provisions of this rule shall only apply with the leave of the trial judge having been obtained. Such leave will only be granted in exceptional cases as, in general, the senior will be expected to merely excuse the junior from the trial to enable him/her to appear in the other court.

6 PRACTITIONERS ACTING AT THE REQUEST OF THE COURT OR ON LEGAL AID INSTRUCTIONS

a) Practitioners acting at the request of the Court or upon legal aid instructions in High Court criminal trials will be allowed to retain their briefs to appear in respect of unopposed applications and unopposed trials to be heard in the Motion Court at the same centre. Attempts must be made by them to arrange to have their matters heard at or near the start of the Motion Court roll.

b) Practitioners acting at the request of the Court or upon a legal aid instruction in a High Court criminal trial will not be allowed to retain other clashing briefs for appearances in other courts without the consent of the judge before whom they are appearing. Such consent will normally not be given unless it is sought before the start of the trial.

c) Relief under this rule is not a matter of right and is subject at all times to the discretion of the judge concerned.

7 WITHDRAWAL OF ATTORNEYS

a) Uniform Rule 16 (4) (a) provides that an attorney ceasing to act for a party must forthwith give notice thereof to such party, to the registrar, and to all other parties. An attorney so ceasing to act should state in writing exactly what steps he has taken to advise his former client of that fact, and whether he can say that his former client has received such notification and is aware of his rights and obligations and of the possible consequences if he fails further to comply with the requirements of the rule.

b) Where a date of hearing has already been allocated at the time the attorney withdraws, the notice of withdrawal should state whether and in what manner the client has been informed of the date of hearing.

c) As an officer of the court, it is a matter of an attorney's duty not to withdraw at so late a stage that a matter which has been set down for hearing cannot proceed on the

allocated date. In the event of the late withdrawal of an attorney occasioning a postponement, the judge may require the attorney concerned to explain on affidavit why he or she did not withdraw earlier and, if no satisfactory explanation is forthcoming, the attorney may be ordered to pay any wasted costs occasioned by the late withdrawal *de bonis propriis*.

8 HEADS OF ARGUMENT

a) Heads of argument are to be filed in all opposed motions, including opposed return days of rules *nisi*, opposed provisional sentence matters, exceptions, applications to strike out, pleas in bar, special pleas, stated cases and appeal cases. Excluded from this rule are Rule 43 applications, applications for summary judgment and applications for leave to appeal.

b) Notwithstanding the provisions of sub-rule (a), heads of argument shall be filed where an application for summary judgment has been postponed for argument pursuant to the defendant's opposition.

c) Heads of argument as envisaged in these rules are also to be filed by the applicant if the papers in any unopposed matter comprise 100 pages or more. In such cases, the heads are to be filed by the time the motion court roll closes i.e. by no later than 12 noon on the day but one immediately preceding the Motion Court.

d) Heads of argument:

- i) Shall consist of a concise and succinct statement of the main points which will be argued and should not contain unnecessary elaboration;
- ii) In particular, shall not contain lengthy quotations from either the record or from authorities to which reference will be made;
- iii) Are not to refer in general to the record and authorities but to the specific pages and paragraphs of relevance;

- iv) Shall be accompanied by a list of the authorities to be quoted in support of the argument; and
 - v) Shall, if any such authority is not readily available, be further accompanied by copies of the text to which reference is made - particularly in the case of unreported decisions, where a copy of the entire judgment should be attached.
- e) In the case of all civil appeals and opposed motions enrolled for hearing on the opposed motion court roll, heads of argument for the appellant or applicant are to be filed at least 15 court days before the hearing of the appeal or application and those for the respondent at least 10 court days before the hearing of the appeal or application – see Uniform Rules 49 (15) and 50 (9).
- f) In the case of criminal appeals to the Full Court from the decision of a judge of this division, the heads of argument for the appellant are to be filed at least 20 court days before the hearing of the appeal and those for the respondent at least 5 court days before the hearing of the appeal - see Uniform Rules 49A(3) and (4).
- g) In the case of criminal appeals from a magistrate's court:
- i) Where the record is less than 200 pages, the heads of argument for the appellant must be filed at least 15 court days before the hearing of the appeal and those for the respondent at least 5 court days before the hearing of the appeal;
 - ii) Where the record exceeds 200 pages, the appellant's heads of argument are to be filed at least 20 court days before the hearing and those of the respondent at least 5 court days before the hearing.
- h) In the case of any matters referred to in sub-rules 8 (a) and 8 (b) which are enrolled for hearing on the unopposed motion court roll, heads of argument for the applicant must be filed at least 5 court days before the hearing of the application and those of the respondent at least 3 court days before such hearing.

i) If, by reason of urgency or short notice, the periods set out above cannot be complied with, heads of argument must be filed by all parties as soon as is reasonably possible.

9 AMENDMENTS TO NOTICES OF APPEAL

a) In appeals from a magistrate's court, a party who wishes to amend a notice of appeal must give notice of such intention to the respondent and to the presiding officer of the court a quo as soon as possible.

b) Unless good cause to the contrary is shown, a party will not be permitted to amend the notice of appeal if notice of intention to apply for such amendment is given less than ten (10) court days before the hearing of the appeal.

c) The respondent must notify the registrar and the other parties to the appeal as soon as possible whether or not such application for the amendment of the notice of appeal will be opposed.

d) These rules will apply *mutatis mutandis* to cross-appeals.

10 APPLICATIONS FOR LEAVE TO APPEAL

a) Applications for leave to appeal shall be heard on dates to be arranged by the legal representatives of the parties in consultation with the judge who is to hear the application.

b) Within 10 court days of the application for leave to appeal being filed, the legal representatives of the parties are to approach the judge who is to hear the application in order to attempt to arrange a mutually convenient date for the matter to be heard.

c) In the event of the judge concerned not being approached within the aforementioned period of 10 days or such longer period to which the judge may agree,

or in the event of it not being possible to determine a date convenient for all concerned within such period as the judge may deem to be reasonable, the judge will determine a date and give the parties at least 10 court days notice thereof.

d) Once the date for the hearing of the application for leave to appeal has been determined, the registrar will issue a notice of set down stipulating the date and time of the hearing and deliver a copy thereof to each party.

11 SERVICE BY WAY OF PUBLICATION

a) A summons or order of Court to be served by way of publication in a newspaper or other publication must be published in the language of the newspaper or other publication unless otherwise ordered. Where the newspaper or publication is published in more than one language, priority is to be given to the language in which the order is issued.

b) As proof of the publication of an order in a newspaper, the whole page of the newspaper should be filed, identified by way of a filing notice. If only a cutting of the order is produced, the date and newspaper in which it was published should be proved by way of an affidavit wherein it shall be further explained why the whole page is not available.

12 URGENT APPLICATIONS³

a) In urgent applications:

- (i) “The practitioner who appears for the applicant must sign a certificate of urgency which is to be filed of record before the application papers are placed before the judge and in which the reasons for urgency are fully set out. In this regard, sufficient particularity is to be set out in the

³ Court Notice 1 of 2012 amends the Joint Rules of Practice by the substitution of Rule 12(a)(i), deletion of Rule 12(b) and insertion of Rule 15A. These amendments are effective from 22nd February 2012. These amendments are effective from 22nd February 2012.

certificate for the question of urgency to be determined solely therefrom and without perusing the application papers. The certificate of urgency will be placed before the judge who will make a determination solely from that certificate as to whether or not the matter is sufficiently urgent to be heard at any time other than the normal motion court hours. Should he or she determine that it is sufficiently urgent, he or she will then give directions as to the time and place, when and where the application is to be heard.”

(ii) Details of why the applicant alleges a matter is urgent should also be set out in the founding papers. (Court Notice 1/2012 para 1)

b) ... deleted⁴ (Court Notice 1/2012 para 2)

13 ORDERS FOR PROVISIONAL SEQUESTRATION OR LIQUIDATION

a) Notice of an application for a provisional order of sequestration against any debtor must be served on the debtor if –

i) the application is founded on an act of insolvency referred to in sub-section 8(e) or (h) of Act 24 of 1936 and is not supported by documentary evidence in proof thereof, or

ii) the application is based on an allegation that the debtor is in fact insolvent, and that allegation is not supported by documentary evidence emanating from the debtor or his authorized agent.

b) Provisional sequestration orders or provisional winding-up orders should be served and published in an appropriate newspaper within 10 court days of it being granted. In the event of such order not having been served or published within that time, an explanation on affidavit for the delay will be required.

⁴ Court Notice 1 of 2012 amends the Joint Rules of Practice by deletion of Rule 12(b)

14 THE APPOINTMENT OF CURATORS

- a) In applications for the appointment of a curator *bonis*, as a general rule the only order made at the first hearing will be for the appointment of a curator *ad litem*.
- b) A written consent to act as curator *ad litem* must be attached to the papers.
- c) The order appointing a curator *ad litem* should contain a directive entitling the curator to settle the litigation only with the approval of a judge.
- d) Generally, persons to be appointed as curators *ad litem* should be either advocates or attorneys.

14A. DEFAULT JUDGMENT

- a) In all applications for default judgment where the creditor seeks an order declaring specially hypothecated immovable property executable, the creditor shall aver in an affidavit filed simultaneously with the application for default judgment:
 - i) The amount of the arrears outstanding as at the date of the application for default judgment. (Court Notice 1/2010 para 1)
 - ii) Whether the immovable property which it is sought to have declared executable was acquired by means of or with the assistance of a State subsidy. (Court Notice 1/2010 para 1)
 - iii) Whether, to the knowledge of the creditor, the immovable property is occupied or not. (Court Notice 1/2010 para 1)
 - iv) Whether the immovable property is utilised for residential purposes or commercial purposes. (Court Notice 1/2010 para 1)
 - v) Whether the debt which is sought to be enforced was incurred in order to acquire the immovable property sought to be declared executable or not. (Court Notice 1/2010 para 1)
- b) All applications for default judgment where the creditor seeks an order declaring specially hypothecated immovable property executable, where the amount claimed falls

within the jurisdiction of the magistrate's court, shall be referred by the Registrar for consideration by the Court in terms of Rule 31(5)(b)(vi). (Court Notice 1/2010 para 1)

c) A warrant of execution which is presented to the Registrar for issue, pursuant to an order made by the Registrar declaring immovable property executable, shall contain a note advising the debtor of the provisions of Rule 31(5)(d). (Court Notice 1/2010 para 1)

15 MISCELLANEOUS MOTION COURT RULES

a) Draft orders are to be filed or handed in from the Bar in any matter in which the relief sought is materially different from that set out in the notice of motion or notice of set down.

b) The registrar shall, on days allocated for the hearing of opposed applications, place no more than 8 opposed matters on the roll. This rule shall in no way restrict an opposed matter being heard as a matter of urgency.

c) Opposed applications for summary judgment, Rule 43 applications and uncontested opposed matters under rule 15(k) shall not be considered as opposed applications for purposes of sub-rule (b) above, and shall be placed on the roll of unopposed matters. (Court Notice 1/2009 para1)

d) Exceptions may be set down as opposed applications.

e) An attorney who deposes to an affidavit of a strictly formal nature (for e.g. to identify the newspaper cutting of a published order) may, in the discretion of the judge, appear to move the application. However, if any fact alleged in the affidavit is disputed or if the affidavit cannot be regarded as strictly formal, it would be inappropriate for the attorney to so appear.

f) As a general rule, notice must be given to the Registrar of Deeds in all applications for authority or for an order involving the performance of any act in a deeds

registry (including an application for a change in matrimonial regime) before the Court is called upon to issue an order, even in the form of a rule nisi.

g) In all cases in which a curator, trustee or administrator who is to be appointed is required to provide security to the satisfaction of the Master, the order should provide that the appointment is not to be effective until such security has been furnished and that the order may not be uplifted until the Master has certified that the required security has been lodged.

h) All applications for judgment by default in which a defendant has entered appearance to defend or where the court is to exercise Admiralty jurisdiction under Act 105 of 1983, are to be heard in open court and will not be dealt with by the registrars.

i) Subject to rule 16(c) below, no opposed applications will be heard during a recess without good cause or sufficient urgency being shown.

j) In Port Elizabeth, unopposed motions and divorces are to be enrolled for Tuesdays while opposed motions are to be enrolled for Thursdays.

k) (i) In all matters where a notice of opposition has been delivered but no answering affidavit or notice in terms of rule 6(5)(d)(iii) of the Uniform Rules has been delivered within the period prescribed in terms of the Uniform Rules, the applicant must apply for the matter to be set down on the unopposed roll, and the registrar must set the matter on the unopposed roll under the caption "UNCONTESTED OPPOSED MATTERS". (Court Notice 1/2009 para 2)

(ii) Notice in writing of the allocated date of hearing must be given to the respondent by the applicant three (3) court days before the allocated date of hearing. (Court Notice 1/2009 para 2)

15A OPPOSED MOTIONS⁵

a) The parties to an opposed motion shall not later than 8 days before the hearing of the matter file a Practice Note which shall set out –

- (i) the names of the parties to the application, the case number and its number on the roll;
- (ii) the name of each party's legal representative appearing, whom they represent and their cellular and landline numbers;
- (iii) a description of the nature of the dispute;
- (iv) the issue (s) to be decided;
- (v) the relief sought by the party on whose behalf the representative completing the practice note appears;
- (vi) the principal authorities to be relied upon; and
- (vii) an estimate of the probable duration of the application.

(aA) The set down of opposed motions shall, notwithstanding Eastern Cape Rule 3(6), be effected in terms of Rule 6 (5) (f) of the Rules of Court. Eastern Cape Rule 3 shall otherwise apply, *mutatis mutandis*, to all opposed motion proceedings and opposed provisional sentence matters.

b) A failure on the part of a practitioner to comply with sub-rule (a) above shall entitle the court hearing the matter to make any appropriate order including an order disallowing the party or its representative to recover a portion of its costs.

(bA) The registrar shall deliver the case file in an opposed matter enrolled for hearing on the opposed motion court roll to the allocated judge on the Friday in the week but one prior to the hearing of the matter.

⁵ Court Notice 1 of 2012 amends the Joint Rules of Practice by insertion of Rule 15A

16 UNIFORM RULE 43 APPLICATIONS

- a) Although heads of argument are generally not required in Uniform Rule 43 applications – compare sub-rule 8(a) above – this does not preclude a judge in the exercise of his discretion requiring the parties to file heads in any application brought under the rule and determining when each party will file his or her heads.
- b) Once a respondent in Uniform Rule 43 proceedings has either delivered his or her reply under Uniform Rule 43(3) or been *ipso facto* barred, the applicant may immediately apply for a hearing by way of a notice addressed to the registrar who, if not having already done so, shall comply with the provisions of Uniform Rule 43(4) forthwith.
- c) Opposed rule 43 applications may be set down for hearing during court recesses.

17 CHAMBER BOOK

The Chamber Book may only be used for -

- a) Applications for bail where the Director of Public Prosecutions consents to the order.
- b) Orders, by consent, for welfare reports in matrimonial matters and for family advocate reports.
- c) Orders, by consent, removing divorce matters from the High Court to the Divorce Court.
- d) Matters in which an order, judgment or direction is sought from a judge which may be granted otherwise than in open court as provided in the Uniform Rules of Court.
- e) Applications by the Master under s 90 of the Administration of Estates Act No 66 of 1965 as read with s 96(2) of that Act sanctioning payments out of the Guardian's Fund, subject to the proviso that the judge may direct the Master under such latter section to proceed by way of formal application or motion.

18 CIRCUIT LOCAL DIVISIONS

- a) Save for in East London, no opposed motions may be set down for hearing in a circuit local division.

- b) Subject to the provisions of sub-rule 18(c), below, opposed applications may be set down for hearing in the Motion Court of the East London Circuit Local Division which shall be convened at 09h30 on the second and fourth Tuesday of each month. The roll of opposed applications in that court will commence immediately after the completion of the unopposed roll.

- c) No application, opposed or unopposed, may be enrolled for hearing in the East London Circuit Local Division where a *quorum* of two or more judges will be required (see rule 19 below).

- d) No bail appeals or applications for the admission, suspension, striking-off or readmission of a legal practitioner will be heard in a circuit local division.

19 QUORUM OF THE COURT

- a) One judge will hear:
 - i) Exceptions;

 - ii) Quasi-judicial reviews, for example the review of a decision taken by a liquor-licensing board or of the disciplinary decision of a jockey-club, voluntary association, or school board etc;

 - iii) Bail appeals (which will ordinarily be heard by the duty judge who may also determine in an appropriate case that the matter should be heard by two judges);

 - iv) The unopposed admission, suspension or striking-off of a legal practitioner;

- v) The re-admission of a legal practitioner whose name was removed from the roll at his or her own request;
 - vi) Any other matter not specified in these rules as necessary to be heard by two or more judges.
- b) Two judges will hear:
- i) Appeals from the Magistrate's Court;
 - ii) Reviews from the Magistrate's Court;
 - iii) The interpretation of Wills;
 - iv) Matters in which an order is sought declaring a document to be the last will of a deceased or whether such document is or should be regarded as a valid will;
 - v) The opposed admission, suspension or striking off of a legal practitioner;
 - vi) Where a legal practitioner whose name has been removed from the roll of attorneys or advocates other than at his or her own request applies for admission or re-admission as an attorney or advocate.
- c) Three judges will hear:
- i) Any appeal from the decision of a single judge;
 - ii) Any matter involving the validity of parliamentary, provincial government or local government elections.
- d) Notwithstanding the above provisions, the Judge President may vary the *quorum* of the court in any given case.

19A BAIL APPEALS

- a) Bail appeals will be heard by one judge, although it may be determined in an appropriate case that the matter should be heard by 2 judges.
- b) In respect of all bail appeals the appellant must first approach the registrar to set the matter down; and the registrar, in turn, must approach the senior judge at the venue where the bail appeal is to be heard to enable such judge to allocate it to a judge who is available to hear the bail appeal, on a date and at a time to be determined by such judge after consultation with the representatives of the parties.

20 CRIMINAL TRIALS

- a) The criminal roll in the High Court is a running roll with the result that, once a trial commences, it will continue until it has been finalised even if the Director of Public Prosecutions, in setting the matter down, has purported to do so for a specific period.
- b) Should the trial not have been finalised by the end of the session for which the presiding judge has been appointed to hear criminal matters, a case will, of necessity, have to be postponed for finalisation at a later date.

21 SOCIAL GRANT APPLICATIONS

- a) All applications in respect of social grants, including matters dealing with internal appeals concerning social grants, must: (Court Notice 1/ 2009 para 3.1)
 - i) Contain the original of any document relied upon for the relief sought. Where the original is not available, a full explanation of the reasons why it is not available is to be given and a certified copy of such document should be provided;
 - ii) Contain proof of receipt by the relevant authority of the original application for the grant or internal appeal, such proof of receipt to include the

- applicant's identity number reflected on the original application, the receipt number and the date upon which the application was made. In the event of the application not containing documentary proof of such receipt by the relevant authority, a full explanation therefore should be set out on affidavit; (Court Notice 1 /2009 para 3.2)
- iii) In addition to any other legal demand that may be required, contain proof of delivery of a written demand for the relief sought to the relevant authority office where the original application was made or internal appeal was lodged, including details of when, how, and to whom demand was made. (Court Notice 1/2009 para 3.3)
 - iv) Be made only after a reasonable time has elapsed for consideration of the relief sought from the relevant authority, and allow a reasonable time for a response to the demand to be forthcoming; (Court Notice 1/2009 para 3.4)
 - v) In addition to any other legally required form of service, be served on the office of the State Attorney.
- b) No social grant application shall be set down for hearing on the motion court roll unless the application has been dealt with by the State Attorney and the applicant as follows:
- i) In respect of all social grant applications served on the State Attorney in a particular week, the State Attorney must arrange a telephone or other kind of conference with the particular department concerned before the end of the week following that in which the applications were served on the State Attorney, for the purpose of obtaining instructions in respect of each individual case raised in the applications;
 - ii) The State Attorney must inform the applicants or their attorneys in writing by 12 noon on the Wednesday following upon the week in which such conferences were held of the outcome in respect of each individual case raised in the applications;

- iii) The notice of set down must be accompanied by a certificate by the applicants or their attorneys, certifying that the requirements set out in sub-rules (i) and (ii) have been complied with.
- c) Where agreement is reached under the provisions of sub-rule (b), above, that any application will not be disposed of on its merits during the following week, such application shall only be enrolled on a date when the merits of the matter are to be determined. Accordingly, postponements agreed to, for whatever reason, in the process set out in sub-paragraph (b) above must be dealt with informally in that process and not by placing the matter on the motion court roll for that purpose.
- d) Where agreement is reached in the said process on the disposal of any application on its merits, written confirmation of the agreement signed on behalf of all parties must be filed together with the notice of set down and the certificate referred to in sub-rule (b)(iii), above.
- e) For the benefit of the taxing master, when any agreement on costs is reached in social grant applications, such agreement must record in writing the number of similar applications agreed to in the same manner in that week in respect of each firm of attorneys representing the applicants in those applications.

22 DRESS CODE

The Court dress for attorneys who are entitled to appear in the High Court in this division will be as follows:

- a) Male Attorneys
 A White Shirt
 A Bib
 Dark trousers
 Dark shoes
 Black or dark jacket or coat of similar nature
 Attorney's gown

- b) Female Attorneys
 - White blouse with collar
 - A bib
 - Black or navy skirt/pants
 - Dark shoes
 - Attorney's gown

23 GENERAL

- a) Save for exhibits, all documents filed in any court process should be clearly typed in double spacing on pure white A4 paper of good quality, and each page provided with a clear margin of at least 30 mm on the left side.
- b) Documents are to be typed in black ink only, preferably in the Times New Roman or Arial fonts, sizes 12 or 14.
- c) In regard to pleadings, the attention of practitioners is drawn to the provisions of Uniform Rule 18(3) which must be followed.
- d) Documents filed with the registrar should reflect the telephone numbers, address and e-mail address (if available) of the filing attorney.
- e) In any case in which a pleading, affidavit or any other document which has been sent by way of telefax is filed of record, the original of such document should thereafter be filed as soon as possible.
- f) In the preparation of appeal records, affidavits (and typed or printed annexures thereto), pleadings, typed notices, prepared judgments and all other documents in typed or printed form, need not be retyped but merely photocopied.
- g) Photostat copies of documents in appeal records are acceptable if they are legible. However particular care should be taken to ensure that all documents in the judges' records to which reference will be made during the course of argument are clearly legible.

- h) A typed copy of any document in an appeal record which is not clear and legible should be prepared and bound into the record. All handwritten documents are to be copied and typed versions thereof prepared and included immediately thereafter in the record.
- i) Photostat copies of photographs will generally be acceptable in the judges' records, provided that at least one set of the original photographs is also available in the file.
- j) All appeal records, affidavits and any other documents which are secured by way of staples or any other metallic devices, may only be lodged with the registrar or handed in from the Bar once the staples or securing devices have been properly and securely covered by tape or some other acceptable covering material.
- k) In all divorce proceedings where maintenance for minor children is sought, a court will, in general, order the payment of a definite sum or sums of money only and will not, in general, order the payment of a definite sum or sums of money only and will not, in addition thereto, in the absence of special circumstances or agreement between the parties, make an order for the payment of unspecified amounts such as school fees and medical expenses.
- l) In matters in which summons is issued after leave has been obtained to sue by way of edictal citation or substituted service, a copy of the order authorising service in that manner is to be included in the court file.
- m) In all cases in which judgment by default is sought against the State (which will include applications where the State has failed to timeously file either a notice of opposition or its opposing papers) a notice of set down is to be served on the State Attorney at least five days prior to the hearing.
- n) Save for matters in which substituted service has been authorised, personal service of process will be required in divorce actions, applications for sequestration and contempt of court proceedings.

- o) Where an attorney acts in terms of Act 62 of 1995 and performs the functions of an advocate referred to in the Uniform Rules of Court by the signing of a combined summons, a pleading, a request for further particulars or a reply thereto:
 - i) He/she should indicate that he/she is acting as an attorney who has been granted the right of appearance in the High Court in terms of the said Act; and
 - ii) Where he or she is also a member of the firm of attorneys acting for the litigant, such pleading or document should be signed twice, both as the attorney acting in terms of Act 62 of 1995 and as the litigant's attorney.
- p) All returns of service are to be signed by the person who effected service and hearsay returns are, in the absence of special circumstances, not acceptable.
- q) The business of all Courts in the Division shall commence at 09h30.
- r) The first day of each term will be set aside for a judge's meeting.
- s) In any matter in which the parties are of the view that by reason of the urgency or some other good cause a preferential date should be afforded for the hearing of the matter, the judge-president may be approached through the registrar to attempt to arrange a convenient date. It will be in the judge-president's discretion to either allocate a preferential date or to refuse to do so.
- t) Once a court file has been delivered to a judge allocated to hear a matter, no legal practitioner or member of the Registrar's staff may have access thereto without the leave of the judge concerned.
- u) "Court days" in this rule are as defined in the Uniform Rules of Court.
- v) Every page of any affidavit, including annexures thereto, must be initialled by the deponent and the commissioner of oaths, except for the page on which they sign in full. (Court Notice 1/2010 para 2)

24 Headings of Court Processes⁶

The Superior Courts Act, 10 of 2013 (“the Act”) was promulgated on 12 August 2013. It came into operation on 23 August 2013 as proclaimed by Proclamation R36 of 2013 dated 22 August 2013.

A single High Court has been constituted for the entire country, thereby necessitating a change to all court documents. In that regard the following practice directives⁷ shall issue:

1. In Grahamstown all Court processes etc shall be headed:
“IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GRAHAMSTOWN”

2. In Port Elizabeth all Court processes etc shall be headed:
“IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH”

3. In Bhisho all Court processes etc shall be headed:
“IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, BHISHO”

4. In Mthatha all Court processes etc shall be headed:
“IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, MTHATHA”

⁶ Court Notice 1 of 2013 amends the Joint Rules of Practice by insertion of Rule 24 into the rules, this insertion has been necessitated as a result of the promulgation of the Superior Court Act 10 of 2013 (“the Act”).

See also the Norms and Standards issued by the Chief Justice on 28 February 2014 - Government Notice No: 148 and Government Gazette no: 37390 dated 28 February 2014; section 8(3); 50 of the Act

Of importance section 51 of the Act stipulates that the rules applicable to the Constitutional Court, Supreme Court of Appeal and the various High Courts immediately before the commencement of this section remain in force to the extent that they are not inconsistent with this Act, until repealed or amended.

⁷ These rules of practice are to be implemented with effect from 30 October 2013. Dated 30th of October 2013