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**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
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**RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE  
ORANGE FREE STATE PROVINCIAL DIVISION OF THE HIGH COURT OF  
SOUTH AFRICA**

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**RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE  
ORANGE FREE STATE PROVINCIAL DIVISION OF THE HIGH COURT OF  
SOUTH AFRICA**

**1. Definitions**

In these rules unless the context otherwise indicates –

'court' shall mean the Orange Free State Provincial Division of the High Court of South Africa;

'finalise', for the purposes of Rule 3.3(a), shall mean that in respect of each case appearing on the provisional term list all the parties to a particular case shall agree upon a date of trial, failing which the registrar shall be obliged at the said meeting to assign such date of trial as the registrar deems reasonable in the circumstances, which date may be in a later term;

'uniform rules' shall mean the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa, promulgated by Government Notice R48, dated 12 January 1965, as amended;

and a word or expression to which a meaning has been assigned in the uniform rules shall bear that meaning.

**2. Sittings of the Court and Administrative Recesses**

- 2.1 There shall be four terms in each year. The judge president shall, by notice in the Government Gazette published not later than 30 September of each year, fix the dates of such terms and administrative recesses in respect of the ensuing calendar year.
- 2.2 The periods intervening between the said terms shall be periods of administrative recess during which the ordinary business of the court shall be suspended, but one or more officers of the registrar's office shall attend daily for the dispatch of all necessary business. One of the judges will attend at chambers during such administrative recess on any day for which in urgent cases attendance may be specially desired to hear and decide all applications and motions including interdicts and orders for summary redress.
- 2.3 All courts shall commence at 9h30, save that applications for leave to appeal will as a rule be set down for hearing at 9h00.

**3. Setting down of Defended Cases for Trial**

- 3.1 When the pleadings in any trial action have been closed, the plaintiff, or if the plaintiff fails to do so within two weeks of the close of the pleadings, the defendant, may apply for a trial date by entering the required particulars in the register kept by the registrar and such plaintiff or defendant or their attorney shall within three days deliver a notice in writing to the opposite party that this has been done.

- 3.2 The registrar shall compile a list, known as the provisional term list, of cases to be tried in each term during each civil term and shall enter therein in the chronological order in which the entries were effected in terms of subrule (1), so many cases for trial on specific dates as the registrar considers can be tried during the term to which the list relates.
- 3.3 (a) The registrar shall publish the provisional term list not later than four months prior to the first day of the term to which the list relates. The said list shall be finalised at a meeting held in the registrar's office within four weeks of its publication as aforesaid.
- (b) Within seven days of finalisation of the provisional term list as aforesaid, the party applying for the date of trial shall formally set the matter down for hearing by delivering a notice of set-down and in the event of that party failing to do so, any other party to the said proceedings may within three days deliver such notice of set-down. In the event of no party delivering a notice of set-down within the aforementioned period, the case shall be removed from the term list and the registrar shall be free to reallocate such date or dates to any other case next on the awaiting-trial case appearing on the register.
- (c) In the event of any matter on the list being settled or removed from the list, the registrar may allocate such date or dates falling vacant to the next available awaiting-trial case appearing on the register.
- (d) No notice of set-down shall be delivered in terms of this rule less than three months prior to the date of hearing without the consent of the opposite party.

#### **4. Indexing and Pagination of Civil Cases set down for Trial**

- 4.1 The pleadings in a civil trial shall be indexed, paginated and bound by the party setting the case down not less than three weeks before the date of set-down.
- 4.2 The pleadings bundle shall contain:
- (i) Summons and particulars of claim or declaration
  - (ii) Plea
  - (iii) Replication and duplication (if any)
  - (iv) The minutes of the Rule 37 conference

in that order.

There may be a second indexed bundle containing notices and interlocutory applications.

- 4.3 Where expert notices have been filed, there shall be a separate indexed and paginated bundle containing expert notices and summaries.

**5. Pre-trial conference**

- 5.1 In addition to the matters mentioned in Uniform Rule 37, the pre-trial minute shall contain a statement detailing what the important issues in the action are which have to be adjudicated.
- 5.2.1 A party may request that a pre-trial conference be held before a judge in terms of Uniform Rule 37(8), and such party must then request the registrar in writing to ask the presiding judge (if already appointed) or any other judge designated by the judge president, to convene and hold such conference.
- 5.2.2 A request to hold such special pre-trial conference will only be acceded to in exceptional circumstances and after full reasons have been furnished.

**6. Settlement of trial or withdrawal from the Roll**

- 6.1 A case may be withdrawn from the roll of cases for trial on such conditions as may be agreed upon between the parties, by addressing a notice in writing, signed by all the parties or their attorneys, to the registrar.
- 6.2 Subject to the provisions of subrule (1), a case may be withdrawn from the roll only with the consent of the court and on such terms as to the court may seem just.
- 6.3 Whenever a case is settled out of court, or the parties agree to postpone it, the attorney for the party who placed the case on the roll shall forthwith notify the registrar of such fact and shall file, as soon as possible thereafter, a notice of withdrawal or postponement.
- 6.4 Where an order by agreement is sought in a matter on the roll of cases for trial for which no judge has yet been assigned, such matter shall be placed before the duty judge who shall dispose of it.

**7. Motion Court**

- 7.1 In and out of term every Thursday, (or if such Thursday is not a court day, then the next succeeding court day), is reserved for hearing of applications, motions, provisional and default cases.
- 7.2 All applications, notices of set-down, affidavits and all other documents for the motion court on Thursday must be filed with the registrar before 12 noon on the Friday immediately preceding the motion day, or, if such Friday is a public holiday, on the court day immediately preceding such holiday.
- 7.3 All opposed applications shall be set down in term every Thursday. Out of term opposed applications may be heard as a matter of urgency on Thursday or any other day as directed by the judge president or in the discretion of the presiding judge.

- 7.4 All opposed applications must be indexed, paginated and bound at the time of set-down.
- 7.5 All unopposed matters are called in the sequence in which they appear on the roll prepared by the registrar, provided that divorces are only called after the applications have been disposed of, provided further that senior counsel will be entitled to call all their unopposed applications and divorces in order of their seniority before all other legal representatives.
- 7.6 If a legal practitioner appears in two opposed applications on a motion court day, and if those two opposed applications are not heard by the same judge, the application heard by the senior judge will be heard first, unless such senior judge has made another arrangement.
- 7.7 A legal practitioner who appears in the unopposed motion court will also be entitled to appear in opposed rule 43 applications.
- 7.8 No legal representative will be permitted on a motion court day to appear in both unopposed applications (including divorces) and in opposed applications.
- 7.9 No legal representative may appear in more than two opposed applications and a legal representative appearing in two opposed applications, shall not be entitled to appear in a Rule 43 application.
- 7.10 A legal representative appearing in only one opposed motion shall be entitled to appear in not more than three Rule 43 applications.
- 7.11 Where an opposed application will, in terms of an agreement between the parties, be postponed or become unopposed because of a settlement or other reason, the following position pertains:
- (a) The judge who was to have heard the application shall be informed of the agreement by the attorneys of the parties immediately personally or via the judge's secretary.
  - (b) The application will be called before this judge in court (before the other opposed matters) at 9h30, unless an order is granted in chambers.
  - (c) The legal representatives who would have appeared in the matter, and who do not have other opposed cases, are, after the aforesaid agreement, no longer subject to the provisions relating to opposed matters set out above.
- 7.12 Where an attorney has an unopposed application of such nature that he requires (because of the importance or ambit thereof) that it be dealt with by a particular counsel, the attorney requests the judge president by means of a letter (delivered together with the notice of set down) to set down the application in the court for opposed applications and it is then deemed to be an opposed application for purposes of this rule.
- 7.13 Where a legal representative is in terms of these rules entitled to appear in two courts, such legal representative must ensure that such appearances/instructions do not have the effect that the proceedings in

any of the courts are delayed because of such appearances/instructions.

- 7.14 Where the parties to an opposed divorce case conclude a deed of settlement, such deed of settlement should normally be made available to the family advocate to consider and approve the arrangements regarding custody of the minor children concerned.

#### **8. Default Judgments**

- 8.1 Where declaring property executable or eviction is requested the practice note issued by the Supreme Court of Appeal in **Standard Bank of SA Ltd v Saunderson and Others** 2006(2) SA 264 (SCA) at 277D-E must be complied with.
- 8.2 Where damages are claimed by default, oral evidence is normally required, but the trial judge may accept evidence by way of affidavit if circumstances justify it.

#### **9. Sequestrations**

- 9.1 All cash amounts paid by or on behalf of the respondent in an application for compulsory sequestration or by an applicant for voluntary surrender must be paid into the Guardian's Fund and the Master's report must state whether that has in fact been done.
- 9.2 No application for a final sequestration order will be heard unless the Master's report which shall be obtained specifically for such application, has been placed before the court.

**Note:** The Master insists that the provisions of section 19(1) of the Insolvency Act regarding an inventory be properly complied with by Sheriffs, and such inventory must therefore be furnished to the Master as soon as possible. The Master will not issue a report before such inventory has been provided to him. If the absence of such inventory has the effect that the rule nisi is not confirmed, an explanation for the absence will have to be provided and a suitable costs order can be considered.

- 9.3 Every rule nisi in a compulsory sequestration application shall be returnable after four weeks, unless the court otherwise directs.
- 9.4.1 All applications for provisional sequestration and voluntary surrender will be approached by this Court on the basis that the costs of sequestration and administration will amount to R20 000. (This amount may be adjusted from time to time.)
- 9.4.2 If the applicant is of the opinion that those costs will be less in a particular matter, an estimate thereof must be attached to the application papers and that estimate must be placed before the Master, who shall provide comments thereon to the Court.
- 9.5 In applications for rehabilitation all curators shall furnish a copy of their reports to both the Master and the Court, even if they have nothing to

bring to the attention of the Master or the Court. In other words, even where they have nothing to report on, they must bring that fact to the attention of the Master or the Court.

#### **10. Exceptions and Interpleaders**

Exceptions and Interpleaders shall be set down for hearing on a Friday. Heads of argument in interpleaders must be filed no later than 15h00 on the Tuesday preceding the day of hearing, and in terms of Rule 13.4 with regard to exceptions.

#### **11. Rule 43 Applications**

11.1 Rule 43 applications are set down for hearing at 9h30 and are normally heard from 14h15.

11.2 Both parties and their attorneys must be present at court on the morning of the hearing and attempt to resolve the disputes between the parties, and, if possible, to settle the divorce action, in which case the court before which the Rule 43 application was set down, shall hear the divorce action.

11.3 If the matter has not been settled by 14h15, the Rule 43 will be argued forthwith.

11.4 The judge presiding at the Rule 43 application may agree that the matter be called before 14h15 if both legal representatives are available and no other court is inconvenienced.

#### **12. Appeals and Reviews**

12.1 During term every Monday is reserved for the hearing of appeals and reviews: Provided that criminal appeals and reviews may also be set down for hearing during recess periods upon the instructions of the judge president.

12.2 Reviews are normally heard by two judges.

#### **13. Heads of argument**

##### **13.1 Criminal Appeals from Magistrates' Court**

Pursuant to the provisions of Rule 51(4) of the Uniform Rules of Court the periods within which heads of argument are to be delivered in all criminal appeals from the magistrates' court are: -

- (a) by the appellant not less than 15 court days before the appeal is heard; and
- (b) by the respondent not less than 10 court days before the appeal is heard.

##### **13.2 Civil Appeals from Magistrates' Court**

Uniform Rule of Court 50(9) applies. [15 and 10 days respectively.]

### 13.3 Opposed Motions

Heads of argument in all opposed applications, except Rule 43 applications, must be filed with the registrar no later than 15h00 on the Tuesday immediately preceding the motion day, or, if such Tuesday is a public holiday, on the court day immediately preceding such holiday.

### 13.4 Reviews under Rule 53 and Exceptions

Heads of argument in all Rule 53 reviews and exceptions must be filed at the registrar:

- (a) by the applicant/excipient not less than 15 court days before the date of hearing; and
- (b) by the respondent not less than 10 court days before the date of hearing.

### 13.5 Full Bench Civil and Criminal Appeals

Uniform Rules 49(15) [15 and 10 days] and 49A(3) and (4) [20 and 5 days] respectively apply.

### 13.6 Format

All heads of argument shall be clearly and legibly printed in black, double-spaced, on one side only of good quality A4 size white paper.

## 14. Striking off the Roll

- 14.1 If a matter is struck off the roll on the ground of non-appearance of a party, it is regarded as finally disposed of and can be reinstated upon presentation of an explanation under oath as to why there was no appearance.
- 14.2 Once an Appeal has been struck off the roll, the registrar returns the record to the clerk of the court.
- 14.3.1 In all criminal appeals where the appellant's heads of argument have not been handed in on the date when the *dies* therefore have expired, the state may request that the appeal be struck off the roll because of such failure.
- 14.3.2 An application for striking off does not affect the discretion of the court to deal with the appeal and/or an application for condonation, which includes hearing the appeal or deciding it by virtue of the Court's inherent review powers.
- 14.3.3 Where the state has applied for the striking off of an appeal, but thereafter an application for condonation of the appellant's failure is filed and/or where heads of argument are then filed by the appellant, the state also has to file heads of argument, even though the appellant's heads of argument were not timeously filed.
- 14.3.4 Where the state has applied for the striking off of the appeal and where no condonation application and/or heads of argument were filed by the



appellant, the state is not obliged to file heads of argument unless the presiding judge requests the state to do so.

**15. Bail Appeals**

- 15.1 All bail appeals are urgent and are finalised as soon as possible.
- 15.2 Upon receipt of a bail appeal the registrar places it before the duty judge who shall dispose of it
- (a) by hearing it himself; or
  - (b) by placing it on the roll for hearing as soon as possible, after consultation with the judge president.
- 15.3 The duty judge decides whether and when heads of argument have to be filed.

**16. Applications for Leave to Appeal from the High Court in Civil Matters**

- 16.1 It is the duty of the applicant for leave to appeal to obtain a copy of the judgment against which the application is brought and to take all steps necessary to prosecute the appeal.
- 16.2 The judgment must be filed with the registrar by the applicant not later than one month after the application has been filed.
- 16.3 As soon as the judgment has been filed with the registrar, the registrar must within one week request suitable dates from the judge involved and thereafter arrange a date suitable to all and the matter must be set down by the applicant in accordance therewith.
- 16.4 Applications for leave to appeal will be set down for hearing at 9h00 on a Friday, or any other day and time that the judge agrees to.

**17. Applications for Leave to Appeal from the High Court in Criminal Matters**

- 17.1 Where the registrar receives an application for leave to appeal within the time allowed under section 316(1)(b) of the Criminal Procedure Act 51 of 1977 (14 ordinary days after the passing of sentence) the normal procedure follows.
- 17.2 Where an appellant lodges an application for leave to appeal in person, the registrar transmits that application to the Legal Aid Board which then, after requesting a date, sets the application down for hearing in consultation with the DPP.
- 17.3 Applications for leave to appeal are set down for hearing at 9h00 on a Friday, or any other day and time that the judge agrees to.

**18. Dress code**

When legal practitioners appear in the High Court, they must be dressed in accordance with the following guidelines:

**A. Counsel**

Counsel's robes and bib. Men wear dark trousers. Ladies wear a dark skirt or long trousers and appropriate shoes (not sandals).

**B. Attorneys**

Attorney's robes. Men wear a dark suit, white shirt and conservative tie. Ladies wear a white blouse with a collar and a dark skirt or long trousers and appropriate shoes (not sandals).

**19. Repeal**

Government Notice R3290 of 12 September 1969 and all its amendments and all practice directions issued prior to the date on which these amended rules come into operation, are hereby repealed.