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Summary of Practice Manual Amendments [as at 16 October 2018]

9.0 ALLOCATION OF COURTS

1. During Court Term:

1.1 Unopposed Motion Court

Two courts will sit on Monday to Thursday.

1.2 Summary Judgement Applications Court

One Court will sit on Tuesday and Thursday

1.3 Rule 43 and Divorce Court

One Court will sit on Tuesday and Thursday

1.4 Opposed Interlocutory Applications (Trial Related) and Certification Court

One Court will sit every Tuesday to hear Opposed Interlocutory Applications that are trial related. The Judge on that roll will deal with Certification matters on Monday, Wednesday and Thursday

1.5 The Judge President or the Deputy Judge President may, in terms of the term roll or, where it is required during the court term, increase or decrease the number of courts referred to in 1.1, 1.2, 1.3 and 1.4.

9.9 UNOPPOSED MOTIONS

9.9.1 Definitions

1.1 For purposes of this directive 'unopposed motions' shall include:

all motions and applications in which the respondent has failed to deliver an answering affidavit and has not given notice of an intention only to raise a question of law (Rule 6(5)(d)(iii) or a point *in limine*; and Unopposed summary judgments applications (not more than 30 per day), ~~and Rule 43s are to be heard on a separate roll (the SJ roll). The Judge hearing these matters may roll over the hearing of a matter to another day in the week. Convenience of counsel will be taken into account.~~

1.2 Opposed summary judgment applications (not more than five (5) per day, are to be heard on a separate roll (the SJ roll). The Judge hearing these matters may roll over the hearing of a matter to another day in the week. Convenience of counsel will be considered; and

1.3 Unopposed and Opposed Rule 43 applications are to be heard on a separate roll with unopposed divorces (the Divorce roll). The Judge hearing these matters may roll over the hearing of a matter to another day in the week. Convenience of counsel will be considered; and

1.4 General opposed Interlocutory applications, not more than three (3) (excluding, opposed exceptions, interlocutory interdicts, applications in terms of chapter 6.5.2 are to be heard in the unopposed motion roll; and

1.5 reference below to unopposed motions refer to 1.1 to 1.4 above, unless specifically referenced.

1.6 reference is also made to 9.10, 9.12 and 9.13 below, which deals separately with general opposed Interlocutory, Summary Judgment and Rule 43 applications.

Final Enrolment (UNOPPOSED MOTIONS)

12. Unopposed motions may not be finally enrolled later than noon **four clear court days preceding the day on which the matter is to be heard. This requirement will be strictly enforced.**

9.10 OPPOSED AND UNOPPOSED INTERLOCUTORY APPLICATIONS IN TERMS OF 6.5.2 AND THOSE FOR WHICH A TRIAL DATE HAS BEEN ALLOCATED. (EXCLUDING OPPOSED EXCEPTIONS AND INTERLOCUTORY INTERDICTS)

1. ~~Opposed interlocutory~~ **These** applications are set down **by noon** on the previous Thursday for the Tuesday of every week during term. ~~and~~ **The Presiding Judge will on the Tuesday at a roll call indicate when the respective matters will be heard during that week.** ~~A separate roll exists for these applications, which are to be heard on a Tuesday before a specified Judge. These applications are applications in terms of 6.5.2 and those for which a trial date has been allocated.~~ **Not more than five (5) opposed and fifteen (15) unopposed applications will be enrolled per day.**
2. **All other opposed interlocutory applications are to be enrolled on the unopposed motion roll and in terms of the provisions of this Practice Manual which regulate the enrolment of unopposed motions. A maximum of 3 opposed interlocutory applications will be enrolled per day and an application in this category may not exceed the hearing duration of an hour. An opposed interlocutory application which exceeds the hearing duration of an hour must be enrolled on the opposed motion roll.**
3. Interlocutory applications do not include opposed exceptions and opposed interim or interlocutory interdicts. These applications are to be enrolled for hearing on the opposed Roll.
4. The notice of set down for an opposed interlocutory application shall be accompanied by heads of argument and the applicant's practice note, which shall set out:
 - 4.1 the name of the parties, the case number and its number on the Roll (if known);
 - 4.2 the name, telephone number (including cell-phone number) and email address of counsel for each party;
 - 4.3 the nature of the motion;
 - 4.4 the issues that fall for determination and counsels' contentions in respect of those issues.
 - 4.5 the duration of the matter, which shall not exceed an hour.
5. The respondent shall file a similar practice note and Heads of argument, by 10am on the Monday proceeding the Tuesday on which the matter is to be heard.

6. The supervisor will be obliged to allow the parties to comply with the provisions of paragraphs 4 and 5 above.

9.12 SUMMARY JUDGMENTS ROLL

Only Opposed Summary Judgment applications (as defined above) with a duration of not more than one hour **will be enrolled on this roll. A maximum of 5 opposed Summary Judgment applications are to be enrolled per day.** Matters of a duration longer than one hour may not be enrolled on the SJ Roll. These applications are to be enrolled for hearing on the opposed motion court Roll. Summary Judgment applications are set down for Tuesdays and Thursdays of each week of term. Matters for Tuesday must be set down by the previous Thursday and matters for a Thursday by the previous Friday. The presiding Judge will on each Tuesday and Thursday at roll call indicate when the respective matters will be heard.

1. In the SJ court, the plaintiff must paginate and index the application before it is served and filed.
2. If the defendant files an opposing affidavit in terms of Rule 32(3)(b), such affidavit and annexures must be paginated, and an updated index must be served and filed by the defendant at the time the opposing affidavit is delivered.
3. No opposed summary judgment application will be heard unless the plaintiff ensures that all the relevant papers (i.e. the summons, notice of intention to defend, application for summary judgment and any affidavits filed) are indexed and paginated and a practice note is filed.
4. The practice note shall set out:
 - 4.1 The names of the parties and the case number;
 - 4.2 The names, telephone numbers (including cell-phone numbers) and email addresses of all counsel and attorneys in the application (if known);
 - 4.3 The nature of the application and relief sought;
 - 4.4 A succinct summary of the main issues to be determined in the application. Each main issue should be stated separately;
 - 4.5 A summary of the respective contentions in respect of the main issues and the authorities relied on;
 - 4.6 An estimate of the probable duration of the motion.

5. Where a summary judgment application is opposed, a detailed and specific affidavit resisting summary judgment, must be filed 4 (four) days before the hearing. Both parties shall deliver short heads of argument by no later than 13h00 on the court day preceding the hearing of the application. Such heads of argument shall be delivered directly to the Registrar of the Judge on whose roll the matter appears.
6. If the defendant fails to deliver heads of argument as required, the plaintiff will be entitled to proceed with the application provided that it has complied with the provisions of 1 to 4 above. In such event the Court may direct that the defendant's heads of argument be delivered within a specified time and that the wasted costs, if any, be borne by the defendant or its legal representative.
7. If the plaintiff fails to deliver heads of argument as required, the application may not proceed, unless such failure is occasioned by the late delivery of an opposing affidavit by the defendant, the court may direct that the matter proceed or that costs occasioned in postponing the application be borne by the plaintiff or its legal representative, if the failure was not occasioned by the defendant's default. In such circumstances the Court may direct that the costs occasioned in postponing the application be borne by the plaintiff or its legal representative.
8. ~~The parties will be entitled to file, and the supervisor will be obliged to receive and put on the file, opposing affidavits, indices, practice notes and heads of argument in spite of a summary judgment application having been finally enrolled.~~

9.13 ~~RULE 43 APPLICATIONS AND UNOPPOSED DIVORCES~~ / DIVORCE COURT

1. **All Rule 43 applications are to be enrolled on a separate roll with unopposed divorces ("the Divorce roll"). The roll comprises of a maximum of five (5) opposed Rule 43s, five (5) unopposed Rule 43 applications and not more than 30 unopposed divorce matters.**
2. The Divorce Court will sit on Tuesday and Thursday.
3. Every Rule 43 application set down for hearing shall be accompanied by a practice note, which must accompany the notice of set down. The practice note shall be delivered by counsel for each party directly to the registrar of the Judge hearing the matter by no later than 13h00 two court days preceding the hearing of the application.
4. That practice note must set out the following information:
 - 1.1 The name, telephone number (including cell-phone number) and email address of the counsel for each party;

1.2 A comparative table detailing the relief sought by each party in respect of maintenance and/or the regime to regulate care and contact with minor children, clearly distinguishing –

1.2.1 items of relief which are agreed or common cause.

1.2.2 items of relief that are in dispute.

1.2.3 items of relief sought by the applicant that are in competition with items of counter relief sought by the respondent;

1.2.4 The information shall be set out so that the competing propositions are immediately in juxtaposition to facilitate proper and swift comparison, and to enable the Judge to identify exactly what is controversial; and

1.2.5 The duration of the matter **which may not exceed 1 hour.**

5. Opposed Rule 43 applications which exceed a hearing duration of an hour must be enrolled on the opposed motion roll.

6. The supervisor will be obliged to allow the parties to comply with the provisions contained herein.

7. If an opposed matter is erroneously placed on the Roll of unopposed matters, the clerk of the Judge on whose roll the matter appears must, on instruction from the Judge, hand the court file to the clerk of the senior opposed motion court Judge, who will deal therewith as the Judge sees fit.