TABLE OF CONTENTS

PREFACE TO THE REVISED EDITION - 2012

Due to shortcomings in the 2011 edition of the Practice Manual as well as Developments in the law and requirements of practice, it was necessary to issue practice directive No. 1 of 2011. It also became necessary to include new directives in chapters 15.3, 15.4 and 15.7. In order to improve access to court to the media and the public at large, it was necessary to amend Chapter 12. Further editorial amendments were made.

This Manual supersedes all previous manuals and directives and will come into effect on 1 July 2012.

_____

W J van der Merwe
Deputy Judge President
North Gauteng High Court, PRETORIA

Dated: 30 March 2012

6.8 HEARING DURATION

1. A trial is designated:-

   1.1 "a special trial" if it is anticipated that it will last 10 (ten) or more days; and
   1.2 "of long duration" if it is anticipated that it will last less than 10 (ten) but more than 5 (five) days.

2. If any party to a trial is of the view that a trial qualifies as a special trial, that party shall deliver a written application to the office of the Judge President for the allocation of a special trial date. The letter must set out:-

   2.1 the names of the parties to the trial and the case number;
   2.2 the nature of the dispute;
   2.3 an estimate of the probable duration of the trial ; and
   2.4 that a pre-trial conference in terms of rule 37 has been held and a copy of the relevant minute must be annexed to the letter.

3. The Judge President shall inform the parties in writing of the date allocated for the trial upon receipt of the letter that complies with 2 above.

4. After being informed of the trial date as set out in 3 above, all the parties to the trial must comply with Transvaal Rule 7(5).

5. If any party to a trial is of the view that a trial will be of long duration, that party shall deliver at least 10 (ten) days before the trial date a letter to the office of the Deputy Judge President.

   The letter must set out:-

   5.1 the names of the parties to the trial and the case number;
   5.2 the nature of the dispute;
   5.3 an estimate of the probable duration of the trial; and
   5.4 that a pre-trial conference has been held and a copy of the relevant minute must be annexed to the letter.

8.1.1 the case number;
8.1.2 the names of the parties;
8.1.3 the total number of volumes in the record;
8.2.4 the volume number of the particular volume;
8.1.5 the court appealed from;
8.1.6 the names, addresses and telephone numbers of the parties' legal representatives.

8.2 The first volume of the record shall contain an index of the evidence, documents and exhibits. The index must identify each document and exhibit.

8.3 Unless it is essential for the determination of the appeal, and the parties agree thereto in writing, the record shall not contain –

8.3.1 the opening address to the court *a quo*;
8.3.2 argument at the conclusion of the application or trial;
8.3.3 discovery affidavits and notices in respect thereof;
8.3.4 identical duplications of any document contained in the record;
8.3.5 documents that were not proved or admitted in the court *a quo*.

8.4 If it will facilitate the hearing of the appeal, or if requested by the presiding judge in the appeal, the parties shall prepare a core bundle of documents relevant to the determination of the appeal. This bundle should be prepared in chronological sequence and must be paginated and indexed.

8.5 In the event of a party failing to comply with any of the aforegoing, the court may make *mero motu*, or on application of any party to the appeal, make a punitive cost order.

9. If the appellant decides to abandon or not to proceed with the appeal or the respondent decides not to oppose the appeal any longer, the registrar must be notified thereof immediately. The legal representative of the party who fails to notify the registrar as aforesaid may be called upon by the judges presiding to explain his/her failure. The judges presiding may take such steps against the legal representative as they regard appropriate.

10. Failure to file the heads of argument timeously will, as a general rule, only be condoned in exceptional circumstances. Error or oversight by counsel and legal representatives or the latters' employees will rarely be regarded as exceptional circumstance.

8.2 APPEALS

1. Criminal appeals are enrolled by the Director of Public Prosecutions.

2. When giving notice of the set down of a criminal appeal, the Director of Public Prosecutions shall, when the appeal is against conviction, specify the date by which the appellant's heads of argument must be delivered and the date by which the respondent's heads must be delivered. The Director of Public Prosecutions may, in his/her discretion or on the direction of the Judge President or of the Deputy Judge President, where the appeal is against sentence only, specify the dates by which heads of arguments are to be delivered by the respective parties.

3. Failure to file the heads of argument timeously will, as a general rule, only be condoned in exceptional circumstances. Error or oversight by counsel and legal representatives or the latters' employees will rarely be regarded as exceptional circumstances.

4. Where heads of argument have been required by the Director of Public Prosecutions, the Director of Public Prosecutions must in turn file heads of argument not later than five (5) court days before the date upon which the appeal is enrolled for hearing.

5. The presiding judge in the criminal appeal, the Judge President or the Deputy Judge President may direct that the heads of argument be delivered earlier than the dates referred to above.

6. Counsels' names, contact details, including cell phone numbers, must appear on the heads of argument.

7. If counsel intend to rely on authority not referred to in their heads of argument, copies thereof should be available for the judges hearing the appeal and counsel for each party. The same should apply where counsel intend to rely on unreported judgments.

8. In regard to the content of their heads of argument counsel are reminded of the *dicta* in *Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938 SCA AT 955 B-F.

CHAPTER 12 MEDIA COVERAGE OF COURT PROCEEDINGS

12.1 In the practice notice reported at 2009(3) SA.1 (SCA) the Supreme Court of Appeal issued guidelines to standardise the procedure where permission is requested to film or record court proceedings.

12.2 These guidelines have been amended to meet the requirements of the North Gauteng High Court, Pretoria.

12.3 The guidelines, as amended, are annexed hereto as Annexure "A" 12.

13.9 ENROLMENT

1. Unopposed Motions

1.1 For purposes of this directive "unopposed motions" shall include *ex parte*, unopposed, summary judgment and rule 43 applications as well as unopposed divorces.

1.2 For practical reasons the enrolment of unopposed motions will require two steps: provisional enrolment and final enrolment.

Provisional enrolment

1.3 For purposes of provisional enrolment, the registrar will prepare and at all times have available a blank register for each court day. The blank register will be in accordance with annexures "A" 13.9, "B" 13.9 and "C" 13.9 attached hereto. The register will be kept available at a location designated by the registrar.

1.4 A person seeking to enrol a matter shall do so by entering on the register for the appropriate day, in the next available space on the register under the appropriate heading (application, rule 43 or divorce) the case number, the parties' names, the nature of the application, the name of the applicants' attorneys, the name of the person enrolling the matter and his or her contact details.

1.5 No more than 180 applications (which include summary judgment applications), 9 rule 43 applications and 60 divorces may be enrolled on any court day provided that during recess the respective numbers shall be 120, 6 and 40.

1.6 When the court grants a rule *nisi* or postpones a matter, it shall be the responsibility of the applicant or his attorney to provisionally enter the matter on the register for the appropriate day before the rule is granted or the matter is postponed.

1.7 No entry may be removed from the provisional register.

1.8 When the register for a particular day is full, the registrar shall remove and keep the register in a safe place until the day after the date to which the register applies.

Final Enrolment

1.9 Only matters that have been provisionally enrolled for a particular date may be finally enrolled for that date.

1.10 Unopposed motions may only be finally enrolled when the papers are ready, paginated and indexed where applicable, and the matter is ripe for hearing.

1.11 Unopposed motions may not be finally enrolled later than noon on the court day but two preceding the day on which the matter is to be heard.

1.12 For the purpose of final enrolment, the registrar shall make available a secure location ("the location") under supervision of a person designated by the registrar ("the supervisor"). The supervisor shall at the location oversee the final enrolment process.

1.13 In the location, the registrar shall make available suitable space where the files for each motion court day can be stored.

1.14 A matter is finally enrolled by handing over the court file, ready for hearing, to the supervisor in the manner prescribed in this directive.

1.15 The person finally enrolling a matter shall enter on the cover of the court file the relevant date and the number from the register where it had been enrolled provisionally.

1.16 When the court file is handed to the supervisor, both the supervisor and the person finally enrolling the matter must sign next to the date and number entered on the cover of the court file, as proof of final enrolment.

1.17 The court file of a matter finally enrolled shall be left with the supervisor in the secure location.

1.18 The supervisor shall keep the respective files for each motion court day separately. The files shall be kept in the order that they have been received for final enrolment.

1.19 A party who has finally enrolled a matter may not after final enrolment, without the leave of the court, file any further documents other than a notice of removal, a notice of withdrawal, a notice of postponement, a notice granting leave to defend to a defendant in a summary judgment application, a practice note and an official document or report.

1.20 Parties who are in terms of the rules entitled to file documents in matters that have been finally enrolled shall do so by handing the document/s to the supervisor who shall stamp it and file it in the appropriate file.

1.21 It shall be the responsibility of the registrar to prepare a motion court roll from the files of matters that have been finally enrolled and have been kept, ready for hearing, in the secure location. No matter that has not been enrolled provisionally for that day, may be on the motion court roll for a particular day. No matter that has not been finally enrolled as set out herein may appear on the motion court roll for a particular day.

1.22 The unopposed motions finally enrolled for each day shall be distributed evenly between the motion courts.

1.23 No more than 60 applications, 3 rule 43 applications and 20 divorces may be enrolled before any one court.

1.24 Any matter on the roll in excess of the numbers mentioned in paragraph 21 above, will be postponed *sine die*.

1.25 The court postponing matters under paragraph 22 above may, in its discretion and after hearing the official concerned, order the supervisor or the registrar who has prepared the roll to pay the costs of the postponement.

2. Opposed Motions

2.1 A party to an opposed motion may apply to the registrar to allocate a date for the hearing of that application in terms of rule 6(5)(f) of the Uniform Rules of Court only, if, in addition:

(a) The papers have been indexed and paginated; and

(b) The heads of argument have been served and filed.

2.2 On completion of the index it must be served immediately on the other party. The index must indicate prominently on the front page the date on which it was completed.

2.3 The applicant must serve and file heads of argument within 15 days from the date of completion of the index and the respondent must serve and file heads of argument within 10 days from the date on which the applicant's heads of argument are served. The party filing heads of argument must ensure that the registrar records on the court file the date of receipt of the heads of argument.

2.4 If any of the parties fail to file the heads of argument as provided for in 2.3 above, the other party who has served and filed heads of argument will be

entitled to apply for the allocation of a date for hearing as provided for in 2.1 above. The party applying for a date for hearing in terms of this paragraph must state in the application that the other party has failed to timeously file heads of argument.

2.5 If the application, for any reason, is not to proceed on the date allocated, the parties must notify the registrar thereof immediately.

13.23 SUMMARY JUDGMENTS

1. 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.

3.

3.1 No summary judgment application (whether unopposed or opposed) will be heard unless the plaintiff:-

3.1.1 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

3.1.2 files a practice note, which, in the case of an unopposed application, must also briefly outline the issues and refer to the relevant legislation and case law; and

3.1.3 where the application is opposed, files short heads of argument which demonstrate why the defendant/s, has/have not set out a *bona fide* defence.

3.2 Where a defendant has filed an opposing affidavit before the close of the roll the defendant must file short heads of argument which demonstrate why summary judgement cannot be granted.

3.3 Where the defendant fails to file heads of argument the application will not be postponed unless there are exceptional circumstances requiring a postponement, but the court may take an appropriate costs order whatever the outcome of the application.

4. 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.

5. The plaintiff will be entitled and the supervisor will be obliged to allow the plaintiff to comply with the provisions of paragraph 3.1 above.

10.3 On the first court day after any of the files referred to in 10.1.2 above have been utilized, the judge's clerk shall inform the registrar of the names of the parties and the allocated case number.

10.4 On the Friday morning at the conclusion of the week during which the designated judge heard the urgent applications, the judge's clerk must return the cellular telephone, the unused numbered files and the aforesaid stamp to the registrar.

11. The memorandum to practitioners titled:-

"Procedure in the Pretoria urgent motion court" dated 12 February 2007, annexed hereto as annexure "A" 13.24, is applicable and of full force and effect and must be complied with together with the aforegoing.

CHAPTER 15 - PARTICULAR APPLICATIONS

15.1 Anton Pillar type orders

15.2 Admission of advocates

15.3 Applications by the Law Society to suspend Attorneys or strike them off the roll and / or to impose other sanctions

15.4 Applications in terms of Section 295 of the Childrens Act 38 of 2005 for the confirmation of a surrogacy agreement

15.5 Cancellation of sales in execution

15.6 Change to the matrimonial regime

15.7 Class Actions

15.8 Curator *bonis*

15.9 Curator *ad Litem*

15.10 Eviction where the Prevention of illegal eviction from and Unlawful Occupation of Land Act 1998 (No 19 of 1998), applies

15.11 Provisional sentence

15.12 Rehabilitation

15.13 Removal or amendment of restrictions on land use

15.14 Sequestrations and voluntary surrender of estates.

15.3 APPLICTIONS BY THE LAW SOCIETY TO SUSPEND ATTORNEYS OR STRIKE THEM OFF THE ROLL AND/OR TO IMPOSE OTHER SANCTIONS

1. This directive will be applicable in addition to the other directives governing opposed and unopposed applications.

2. Because of the role which the court plays in disciplinary matters involving attorneys, and, in particular, in terms of section 22 of the Attorneys Act 53 of 1979, and because of the potential harm for the attorneys' clients, these applications usually involve a degree of urgency which depends upon the misconduct, its seriousness and other relevant circumstances. Where the matter is urgent and must be heard urgently it will be heard by one or both judges sitting in the urgent motion court or, as directed by the Deputy Judge President on representations made to him/her by the Law Society's legal representatives.

3. Unless the Deputy Judge President otherwise directs, the senior judge sitting in the urgent motion court, will decide whether the application will be heard by one or both judges in that court and at what time and on what date.

4. Where the Council of the Law Society is of the view that an attorney is no longer a fit and proper person to continue to practice as an attorney, the relief in the notice of motion must be formulated as final relief and in a manner that does not limit the Court to exercise its discretion in favour of either suspension or removal from the roll or any other sanction the court may impose. Annexure A 15.3 sets out the preferred formulation of the relief sought. Depending on the circumstances of the case, the court may make a final or an interim order.

5. Where appropriate, notices of motion and draft orders must make provision for the appointment of a curator, the curator's powers and ancillary relief.

6. Where the Council of the Law Society is of the view that, notwithstanding the unprofessional conduct of the attorney, he/she is still to be regarded as a fit and proper person to continue to practice, but that the Law Society must place the facts before the Court and seek the imposition of a sanction which the Law Society is not able to impose itself (e.g. a suspension) the Law Society must in its founding affidavit set out all the facts, circumstances and considerations for its view and the sanction which it seeks to be imposed by the Court.

7. It is the duty of the Law Society's attorney to ensure that the papers are bound, paginated and indexed ready for the hearing.

8. In all urgent applications brought by the Law Society its legal representatives must file practice notes and appropriately concise heads of argument.

9. In all matters which are to be heard in the ordinary course (i.e. not in the urgent motion court), after the *dies induciae* have expired, the Law Society's legal representatives must deliver the complete record (i.e. the notice of motion, founding affidavits and whatever other affidavits have been bound, indexed and paginated) to the Deputy Judge President to determine the date of hearing and the judges to hear the application.

10. Where the matter is heard in the ordinary course (i.e. not in the urgent motion court) heads of argument by the Law Society must be filed at least fifteen (15) clear court days before the date of the hearing and (if the matter is opposed) heads of argument by the respondent must be filed at least ten (10) clear days before the date of hearing or within such other time periods which the Deputy Judge President may direct.

The applicant's attorney must notify the respondent of these dates when the notice of set down is delivered.

11. Where the Court hearing an application decides to refer the application for oral evidence or for trial, this directive does not preclude the court from making any appropriate order, including an interim order for the suspension of the attorney.

12. Any matter referred for the hearing of oral evidence must be referred to the Deputy Judge President to allocate a date for hearing by a full bench.

13. Where an application has been referred to trial, the Law Society's attorneys must apply, immediately after the close of pleadings, to the Deputy Judge President to allocate a trial date. The application must set out the following:

13.1 Where a preferential trial date is sought, the degree of urgency supported by a brief motivation for such a preferential date.

13.2 The time period for the filing of discovery affidavits when they have not been delivered by the parties.

13.3 Whether it is foreseen that expert evidence will be lead by any of the parties and the time period within which a summary of the expert's evidence must be filed if it has not yet been filed.

13.4 The date before which a pre-trial conference must be held and the date before which the minute of the pre-trial conference must be filed.

14 At least seven dates before submitting the application to the Deputy Judge President, the Law Society must provide the respondent's attorneys with their views and call upon the respondent's attorney to provide the Law Society's attorneys within five (5) days with their comments regarding the proposed dates.

The Law Society's attorney's letter must be accompanied by the comments of the respondent's attorneys.

15. This directive does not preclude the respondent from applying for a trial date in which event paragraph 13 will apply *mutatis mutandis.*

16. Upon receiving an application for a trial date, the Deputy Judge President will allocate a date for the hearing and, if necessary, will issue directives regarding the filing of affidavits, expert notices and summaries and a pre-trial conference.

17. If any of the parties are not able to comply with any dates regarding the delivery of discovery affidavits, the delivery of expert notices and summaries and a pre-trial conference, the parties must approach the Deputy Judge President forthwith to determine when the matter can be heard. The Deputy Judge President may extend the time periods or issue any other directive which will expedite the finalisation of any pre-trial procedures.

18. In the event of non-compliance with any directive of the Deputy Judge President, the Deputy Judge President may direct that the parties appear on any specific date at the roll call of trial matters for him/her to determine the cause for non-compliance with the directive and may order that the matter be postponed with an appropriate costs order or issue any other appropriate directive.

19. Where a matter has been referred for oral evidence or for trial, unless the Deputy Judge President directs otherwise, the Law Society's attorney must bind, index and paginate all the papers at least fifteen (15) court days before the date allocated for the hearing of the matter and deliver the papers duly bound, indexed and paginated to the registrar at least ten (10) court days before the date of the hearing.

15.4 APPLICATIONS IN TERMS OF SECTION 295 OF THE CHILDRENS ACT 38 OF 2005 FOR THE CONFIRMATION OF A SURROGACY AGREEMENT

1. The contents of affidavits should meet the requirements set out in ex parte W H and others 2011(6)SA514(NGP)

2. The following directives must be complied with regarding the enrolment of applications for the confirmation of a surrogacy agreement in order to protect the identities of the parties involved:

   2.1. Any party who seeks to bring an application will cause same to be issued by the registrar in the ordinary course.

   2.2. The court file must thereafter immediately be brought to the office of the Deputy Judge President, together with a letter explaining the facts and that the application is brought in terms of s 295 of Act 38 of 2005 and requesting a date for hearing. In the event that there exists any urgency in the hearing of the matter that must be set out in the letter as well.

   2.3. The Deputy Judge President will then give further directions as to how the matter shall be heard in due course, including the allocation of the judge for the hearing of the matter.

   2. 4. Any consideration as to a hearing in camera must be addressed to the judge allocated to hear the matter once the parties are notified of the relevant date of hearing.

Attention is drawn to the judgments in - IN RE: Surrogate Motherhood Agreements 2011(6)SA22 (GSJ) and E.P. WH 2011(6)SA514(NGP)

15.5 CANCELLATION OF SALES IN EXECUTION

1. If an application in terms of rule 46(11) is unopposed it is dealt with by the judge before whom it comes in chambers. If the application is opposed the application will be heard in open court.

2. The notice of motion must *inter alia* be served on the purchaser against whom relief is sought. The notice of motion must inform the purchaser of the time within which and the manner in which the applicant and the registrar must be informed of the purchaser's intention to oppose the relief sought, if any.

3. If no intention to oppose the relief sought is filed, the applicant must depose to an affidavit stating that fact. The affidavit must be placed in the court file before the application comes before the judge.

15.6 CHANGE TO THE MATRIMONIAL REGIME

1. The application is commenced by publication in the *Government Gazette* of a notice substantially in the form of annexure "A" 15.4 hereto.

2. The report of the Registrar of Deeds must be obtained before such advertisement is placed.

3. At least (3) three weeks before the hearing date a copy of the notice referred to in paragraph 1 must be forwarded to each creditor by registered post and must be accompanied by a letter, a copy of which must be placed before the court, which states -

   3.1 on which date, at what time and to which court application will be made;

   3.2 the full names of the spouses, their identity numbers and their residential addresses and places of employment in the preceding 12 months;

   3.3 the effect of the proposed order;

   3.4 that a creditor whose interests will be prejudicially affected by the change of marital regime may appear at the hearing to oppose the granting of the order.

4. The name, address, amount owing to, and the cause of action of each contingent and other creditor must be set out in the application. Proof of compliance with paragraph 1, 2 and 3 must be proved at the hearing of the application by the filing of a supplementary affidavit.

15.7 CLASS ACTIONS

1. A party referred to in **section 38 of the Constitution** (Enforcement of Rights) which intends approaching the Court for relief whilst acting in terms of **section 38(b), (c) and (d)** is required to:

   1.1 Seek prior leave from the Court to embark on such representative basis;

   1.2 Set out fully its interest to act on a representative basis, and where applicable, details of its mandate.

   1.3 Give sufficient notice to all affected parties so that they can associate or disassociate themselves from the proposed litigation.

15.8 CURATOR BONIS

1. At the first hearing of the application for the appointment of a curator *bonis*, the only relief granted is the appointment of a curator *ad litem*. All other relief is postponed *sine die* pending receipt of the curator *ad litem*'s and the master's report.

2. The application is re-enrolled after the aforementioned reports have come to hand.

3. Save in exceptional circumstances, which must be established on affidavit, an application for the appointment of a curator *bonis* will not be heard if the aforementioned reports have not been filed in the court file.

4. The consent of both the curator *ad litem* and the proposed curator *bonis* must be annexed to the application.

15.9 CURATOR AD LITEM

1. Where the appointment of a curator *ad litem* is sought to assist a litigant in the institution or conduct of litigation, the applicant must establish the experience of the proposed curator *ad litem* in the type of litigation which the litigant wishes to institute or conduct and also of the curator *bonis* who is proposed to attend to the patient's affairs and person.

2. A consent to act by the proposed curator *ad litem* must be annexed to the application.

3. In order to preclude giving notice of the application to the prospective defendant, the applicant should seek that the costs of the application be reserved for determination in the contemplated trial.

4. The order sought should only permit the proposed curator to settle the action with the approval of a judge.

5. Where the curator *ad litem* requires the approval of the court to settle the action, the curator *ad litem* and plaintiff's counsel may approach the Deputy Judge President for the allocation of a judge in chambers to approve the settlement.

15.10 EVICTION WHERE THE PREVENTION OF ILLEGAL EVICTIONS AND UNLAWFUL OCCUPATION OF LAND ACT, 19 OF 1998, APPLIES

1. The application for eviction must be a separate application. The procedure to be adopted (except in urgent applications) is as follows:-

   1,1 The notice of motion must follow Form 2(a).

   1.2 The notice of motion must allow not less than five days from date of service of the application for delivery of a notice of intention to oppose.

   1.3 The notice of motion must give a date when the application will be heard in the absence of a notice of intention to oppose.

2. After the eviction application has been served and no notice of intention to oppose has been delivered or if a notice of intention to oppose has been delivered at a stage when a date for the hearing of the application has been determined, the applicant may bring an *ex parte* interlocutory application authorizing a section 4(2) notice and for directions on service.

3. When determining a date for the hearing of an eviction application, sufficient time must be allowed for bringing the *ex parte* application, for serving the section 4(2) notice and for the 14 day notice period to expire.

4. If the eviction application is postponed in open court on a day of which notice in terms of section 4(2) was duly given, and if the postponement is to a specific date, it will not be necessary to serve another section 4(2) notice in respect of the latter date.

5. The local, provincial or national authorities that may be affected by an eviction order must be clearly identified.

15.11 PROVISIONAL SENTENCE

1. Proof of presentation of a negotiable instrument is unnecessary unless presentation is disputed or the court requires proof thereof.

2. The original liquid document upon which provisional sentence is sought must be handed to the court when the provisional sentence is sought.

15.12 REHABILITATION

1. An application for rehabilitation will not be read by the presiding judge if the master's report is not in the court file. The presiding judge will only accept the master's report from the bar in exceptional circumstances made out in an affidavit.

2. If the applicant avers that a contribution paid by a creditor has been repaid to the creditor, adequate proof thereof must be provided.

3. The applicant, as is required by section 127 of Act 24 of 1936, must state what dividend was paid by the creditors. It is not acceptable to attempt to comply with this requirement by attaching the distribution account which the presiding judge is expected to analyse and interpret.

4. As the date of the hearing of an application for rehabilitation has been advertised, any postponement of the application will be to a specific date.

15.13 REMOVAL OR AMENDMENT OF RESTRICTIONS ON LAND USE

1. Applications dealt with in this section are based upon the premise that the consent of the holder of the right that is sought to be cancelled or the conditions under which it was granted are sought to be amended, does not object to the application, as is discussed in, *inter alia*, *Ex parte Gold* 1956 (2) SA 642 (T) and *Ex parte Glenrand (Pty) Ltd* 1983 (3) SA 203 (W).

2. If follows that the court should be convinced that the holder of the right in question has knowledge of the application. There should accordingly be service on all interested parties concerned. Service under rule 4(2) of the Rules of Court is authorised by way of exception to the ordinary methods of service. Full and cogent reasons should be advanced in support of a request under the sub-rule.

2. The fact that it might be difficult or costly to ascertain particulars of the persons concerned, and to effect service on them, is not the most important consideration. The nature and extent of the curtailment of the rights of affected persons and the need to ensure that they are made aware of the application, is of greater importance. It follows that the court might distinguish between persons directly or indirectly affected by such applications, and differentiated service might be authorised.

3. When the application is presented to court –

    4.1 It must be proved that the application together with a request to report was served in good time upon the Registrar of Deeds, any Township Board that might be involved and, where applicable, a local authority that is able to comment upon-

        4.1.1. the correctness of the facts relied upon by the applicant;

        4.1.2 the identity of persons who may have a legal interest or whose refusal of consent could constitute adequate reason to refuse the application; and

        4.1.3 the optimal method of notifying interested parties.

    4.2 A plan or map must be attached as an annexure to the report (if necessary extending beyond the relevant township in which the property is situated) that will assist the court to ascertain which owners or users (of roads or rights) have an interest sufficiently strong to warrant their being given notice of the application

15.14 SEQUESTRATION AND VOLUNTARY SURRENDER OF ESTATES

1. In an application for sequestration, unless leave to proceed by way of substituted service has been granted, personal service of the application must be effected on the respondent.

2. Unless the court directs otherwise in terms of section 11(2) of Act 24 of 1936, the provisional order of sequestration must be served on the respondent personally.

3. If an extension of a provisional order of sequestration is sought, the party seeking such an extension must deliver an affidavit motivating such an extension.

4. If the applicant fails to establish that the application is not a so-called "friendly" sequestration the following will apply:

    4.1 Sufficient proof of the existence of the debt which gives rise to the application must be provided. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.

    4.2 The respondent's assets must be valued by a sworn appraiser on the basis of what the assets will probably realize on a forced sale. Mere opinions, devoid of reasoning as to what the assets will probably realize, will not be regarded as compliance herewith. The valuation must be made on oath and the appraiser must be qualified as any other expert witness.

    4.3 Where the applicant seeks to establish advantage to creditors by relying on the residue between immovable property valued as aforesaid and the amount outstanding on a mortgage bond registered over the immovable property, proof of the amount outstanding on the mortgage bond at the time of the launching of the application is required, together with an accurate exposition of the rate of interest charged by the bondholder at the time of signature of the notice of motion. Provision must be made for any interest that will be charged on the balance outstanding of the debt secured by the bond until the date of hearing, to be added to the amount owing to the bondholder when the matter is heard.

    4.4 Where the applicant seeks to establish advantage to creditors by relying on a sum of money paid into an attorney's trust account to establish benefit for creditors, an affidavit by the attorney must be attached to the application in which he/she confirms that the money has been paid into his/her trust account and will be retained there until the appointment of a trustee.

The source of the funds paid into the attorney's trust account must be clearly disclosed under oath by the person providing the money.

4.5 In establishing advantage to creditors the following sequestration and administration costs will be assumed in an uncomplicated application:

4.5.1 Cost of application – R6 000.
Cost of application if correspondent utilized – R8 000 (if the applicant's attorney of record has agreed to limit, fees proof thereof must be provided).

4.5.2 The aforementioned costs are assumed to increase by R 700 for every postponement of the application or if the provisional order has to be furnished to all known creditors, the aforementioned costs are assumed to increase by R 700.

4.5.3 The cost of administration, subject to a minimum of R2 500 are:

4.5.3.1 1% plus VAT on cash or money in a financial institution;
4.5.3.2 3% plus VAT on immovable property and shares; and
4.5.3.3 10% plus VAT on movable property including book debts.

4.5.4 Other administration costs include sheriff fees (Schedule 3 of Act 24 of 1936) and the costs of security.

4.5.5 The aforementioned costs do not include the costs of the realization of the asset. The cost must be established. Unless evidence to the contrary is placed before the court, it will be assumed that the cost of the realization of immovable property is 6% of the selling price plus advertising charges.

4.5.6 Regard being had to the costs set out in paragraph 4.5.5, the applicant must in the application set out a calculation indicating the probable dividend to concurrent creditors, which shall not be less than 20c in the Rand, unless extraordinary circumstances exist.

4.5.7 If the court hearing an application is doubtful whether the free residue in an insolvent estate will be sufficient to render a dividend of 20c in the Rand to concurrent creditors, it may order any shortfall of such dividend to be supplemented from the applicant's attorney's taxed fees in order to ensure that proven concurrent creditors receive at least 20% of their claims.

18.1 ABSOLUTION FROM THE INSTANCE

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

PLAINTIFF

and

DEFENDANT

HAVING read the documents filed of record, having heard counsel and having considered the matter:-

THE COURT ORDERS THAT:

1. Absolution from the instance be granted to the defendant.
2. The plaintiff is ordered to pay the costs of the action.

BY THE COURT

_____
REGISTRAR

ANNEXURE "A" 12

1. Any party who wishes to film or record proceedings must notify the registrar of its intention at least 24 hours beforehand. The registrar will then establish from the presiding judge whether there is any particular objection to the request.

2. Any party who wishes to object to any filming or recording must raise its objections in writing.

3. The court may on good cause in any particular case withdraw the leave or change the conditions.

4. Equipment limitations:

    4.1 Video: two cameras may be used at a time and the locations of the cameras are not to change while the court is in session.

    4.2 Audio: the media may install their own audio-recording system provided this is unobtrusive and does not interfere with the proceedings. Individual journalists may bring tape recorders into the courtroom for the purposes of recording the proceedings but changing of cassettes is not permitted while the court is in session.

    4.3 Still cameras: only two photographers are allowed, and the locations are not to change and no changing of lenses or film is permitted while the court is in session.

    4.4 All camera, video and audio equipment must be in position at least 15 minutes before the start of proceedings and may be moved or removed only when the court is not in session. Cameras, cables and the like are not to interfere with the free movement within the court.

    4.5 Lighting: no movie lights, flash attachments or artificial lighting devises are permitted during court proceedings.

    4.6 Operating signals: no visible or audible light or signal may be used on any equipment.

5. Pooling arrangements:

5.1 Only one media representative may conduct each of the audio-, video and still-photography activities.

5.2 This media representative is to be determined by the media themselves and is to operate an open and impartial distribution scheme, in terms of which the footage, sound or photographs would have to be distributed in a 'clean" form, that is, with no visible logos, etc, to any other media organization requesting same and would also be archived in such a manner that it remains freely available to other media.

5.3 If no agreement can be reached on these arrangements, no expanded media coverage may take place.

6. Rules regarding behaviour of media representatives:

6.1 Conduct must be consistent with the decorum and dignity of the court.

6.2 No identifying names, marks, logos or symbols should be used on any equipment or clothing worn by media representatives.

6.3 All representatives (including camera crew) must be appropriately dressed.

6.4 Equipment must be positioned and operated to minimize any distraction while the court is in session.

6.5 Equipment must not be placed in or removed from the court room.

6.6 No film, video tape, cassette tape or lens may be changed.

7. There is an absolute bar on:

7.1 audio recordings or close-up photography of bench discussions.

7.2 audio recordings or close-up photography of communication between legal representatives or between clients and their legal representative.

7.3 close-up photographs or filming of judges, lawyers or parties in court.

7.4 recordings (whether video or audio) being used for commercial or political advertising purposes thereafter.

8. Extracts from recorded proceedings:-

8.1 Any extracts of proceedings recorded in accordance with the above guidelines may be used, subject to section 8.2;

8.2 The presiding judge may on objection by any party or *mero motu*, on good cause shown, and after hearing submissions from any interested media organisation, impose reporting restrictions on the broadcasting of the extracts of the testimony of witnesses.

9. Failure to comply with these instructions may lead to contempt of court proceedings.

5.3.3 That the respondent or his representative is entitled to inspect items in the sheriff's possession for the purpose of satisfying themselves that the inventory is correct.

1. The sheriff is ordered to immediately make a detailed inventory of all items attached and to provide the registrar of this court, the applicant's attorney, and the respondent with a clear copy thereof.

7. The sheriff is ordered to inform the respondent that the execution of this order does not dispose of all the relief sought by the applicant and to simultaneously serve the notice of motion and explain the nature and exigency thereof.

8. The costs of this application are reserved for determination in the further proceedings foreshadowed in this application save that –

8.1 if the applicant does not institute those legal proceedings within three weeks of the date of this order, either party may, on not less than 96 hours' notice to the other, apply to this honourable court for an order:

8.1.1 determining liability for those costs and determining what must be done about removed items and any copies thereof;

8.1.2 any other party effected by the grant or execution of this order may on no less than 96 hours' notice apply to this honourable court for an order determining liability for the costs of such party and determining what must be done about any item removed from any such party or any copy thereof.

Note: In some situations the following may also be appropriate:

6. The respondent and any other adult person in charge of the premises at which this order is executed are further directed to disclose to the sheriff of the above honourable court the whereabouts of any document or item falling within the categories of documents and items referred to in 1.1 above, whether at the premises at which this order is executed or elsewhere to the extent that the whereabouts are known to such person(s).

10. In the event that any document or item is disclosed to be at premises other than the premises mentioned in paragraph 1 of this order, the applicant may approach this court *ex parte* for leave to permit execution of this order at such other premises.

ANNEXURE "A" 15.3

IN THE NORTH GAUTENG HIGH COURT – PRETORIA
REPUBLIC OF SOUTH AFRICA

Case number:

In the application of:

THE LAW SOCIETY OF THE NORTHERN PROVINCES
(Incorporated as the Law Society of the Transvaal)

Applicant

and

Respondent

NOTICE OF MOTION

Be pleased to take notice that the Law Society of the Northern Provinces, incorporated as the Law Society of the Transvaal (applicant) intends applying to this Honourable Court for an order in the following terms:

1. That the name of _____(respondent) be struck from the roll of attorneys of this Honourable Court, alternatively be suspended in his practice as an attorney on such terms and conditions as this Honourable Court deems appropriate.

2. That respondent hands and delivers his certificate of enrolment as an attorney to the Registrar of this Honourable Court.

3. That in the event of the respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.

4. That the respondent be prohibited from handling or operating on his trust accounts as detailed in paragraph 5 hereof.

5. (Prayers 5 and further provide for the standard and usual detailed order in order to appoint a curator and the further ancillary relief and costs.)

6. That further and/or alternative relief be granted to applicant.

AND that the accompanying founding affidavit of _____ the President of applicant, will be used in support thereof.

TAKE FURTHER NOTICE that applicant has appointed the offices of its attorneys, _____ (name and address) at which it will accept notice and service of all process in these proceedings.

TAKE FURTHER NOTICE that if respondent intends opposing this application, he/she is required:

(a) to notify applicant's attorneys in writing thereof within 5 (five) days after service of this application.

(b) within 15 (fifteen) days of notifying applicant of this intention to appose the application to deliver his/her answering affidavit (if any) together with any relevant documents.

AND FURTHER that respondent is required to appoint in such notification an address as contemplated in rule 6(5)(d) at which he/she will accept notice and service of all documents in these proceedings.

IF NO SUCH NOTICE OF INTENTION TO OPPOSE is given, the application will be set down for hearing on a date to be allocated by the Registrar.

DATED at PRETORIA on _____

_____Name
Attorneys for the Applicant
PRETORIA
Tel:
Ref:

TO: The Registrar of the High Court
PRETORIA

AND TO: Respondent
(Address for Service)

SERVICE BY SHERIFF

APPENDICES

The Companies Amendment Act 2011 (Act No 3 of 2011 was assented to by the President on 19 April 2011. This Act amended the Companies Act 2008 (Act No 71 of 2008) ("the 2008 Act"), extensively.

On 26 April 2011 in terms of Proclamation No 32, 2011 published in *Government Gazette* No 34239 the President determined that the 2008 Act shall come into force on 1 May 2011.

The courts are still to interpret and apply the provisions of the 2008 Act. Before that has been done no directives will be included in this practice manual dealing with Company and Close Corporation matters as a practice manual is not intended to direct the courts how to deal with new Acts. The practice manual rather informs practitioners how acts or parts thereof are interpreted or applied by the courts. In due course consideration will be given to the inclusion of chapters in this practice manual dealing with company matters.

The 2008 Act repeals the Companies Act 1973 (Act No 61 of 1973) ("the 1973 Act "), save for the transitional arrangements set out in schedule 5 of the 2008 Act. Section 9 of schedule 5 provides for the continued application of the 1973 Act to winding-up and liquidation applications.

Appendix I will therefore deal with applications for the liquidation of companies.
Appendix II will deal with enquiries in terms of section 417 of the 1973 Act.

The National Credit Act 2005, (No 34 of 2005) is at present receiving much attention from the courts. The National Credit Act 2005 will be dealt with in Appendix III. As the case law develops on the National Credit Act the appendix will be updated.

In the judgment in the case of *Elsie Gundwana v Steko Development CC and others*, case CCT 44/10 delivered on 11 April 2011, The Constitutional Court declared "that it is unconstitutional for a registrar of a High Court to declare immovable property specially executable when ordering default judgment under rule 31(5) of the Uniform Rules of Court to the extent that this permits the sale in execution of the house of a person." Urgent measures were taken by the courts to deal with a substantial number of applications for default judgments which had previously been dealt with by the registrar. (See Appendix IV)

On 24 December 2010 rule 46(1)(a)(ii) of the Uniform Rules of Court were amended to provide that where immovable property of a judgment debtor has been declared specially executable and it is the primary residence of such judgment debtor, no writ of execution against such immovable property shall issue unless the court, having considered all the relevant circumstances, orders execution against such property.

A full court was constituted in this division to consider the factors to be taken into account by a court when performing its judicial oversight functions in applications for sales in execution of mortgaged immovable property. See First Rand Bank Ltd vs Folscher and another and similar matters, 2011(4)SA 314(GNP). See also Nedbank Ltd vs Fraser and another and four other cases, 2011 (4) SA 363 (GSJ) and Standard Bank of South Africa Ltd vs Bekker and another and four similar cases, 2011 (6) SA 111 (WCC).

APPENDIX III - PROCEEDINGS INSTITUTED IN TERMS OF THE NATIONAL CREDIT ACT OF 2005

1. In any proceedings instituted in terms of the National Credit Act 34 of 2005 in respect of any claim to which the provisions of sections 127, 129 or 131 of the Act apply, the summons or particulars of claim or, in motion proceedings, the founding affidavit, must contain sufficient allegations or averments to enable the court to be satisfied that the procedures required by those sections, read with section 130 (1) and (2) of the Act, as may be applicable to the claim have been complied with before the institution of the proceedings. The attention of practitioners is drawn to paragraphs 33 to 37 and paragraph 50 to 58 of the judgment in *Rossouw and Another vs FirstRand Bank Ltd* 2010 (6) SA 439 (SCA).

2. In order to satisfy the court of the matters referred to in section 130(3) of the Act, an affidavit by the credit provider must be filed when judgment is applied for.

3. Attention is drawn to the judgment in Collett vs First Rand Bank Ltd 2011 (4) SA 508 (SCA).

4. Attention is further drawn to the as yet unreported judgments in this division in Changing Tides 17 (Pty) Ltd vs D C J Grobler and another, case no. 9226/2010 (Murphy J) and Toyota Financial Services and another vs First Rand Bank Ltd vs C C Owens, Case No. 31752/2011 (Legodi J).

10. No more than 50 matters may be enrolled before any one court.

11. No application for a default judgment and no application for the authorisation of the issuing of a writ of execution may be enrolled on the ordinary motion court rolls. The applications referred to will be heard by the court/s constituted in terms of this Appendix until further notice.

12. In the notice of set down reference must be made to the date of service, the date on which the *dies induciae* expired as well as the relief sought.

13. A draft court order in duplicate indicating that the orders were granted by the court and ready for signature by the registrar must be filed in the court file.

14. If the issue of summons is preceded by a notice in terms of s 129 of the National Credit Act 34 of 2005, such notice is to include a notification to the debtor that, should action be instituted and judgment be obtained against him or her, execution against the debtor's primary residence will ordinarily follow and will usually lead to the debtor's eviction from such home.

15. In addition to the aforegoing, the guidelines laid down in the judgment in First Rand Bank Ltd vs Folscher and Another, and similar matters 2011(4)SA314(GNP), and the judgments referred to therein must be followed.