GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

R5.60 WINDHOEK — 10 October 1990 No. 90

CONTENTS

Government Notice

MINISTRY OF JUSTICE

No. 59 1990

RULES OF THE HIGH COURT OF NAMIBIA

The Judge-President has under section 39 of the High Court Act, 1990 (Act 16 of 1990), with the approval of the President, made the rules for the conduct of the proceedings of the High Court of Namibia as set out in the Annexure.

ANNEXURE

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"(4) the ultimate responsibility for ensuring that all copies of the record on appeal are in all respects properly before the court shall rest on the appellant or, where the accused is the appellant, on the accused or his or her attorney."

Definitions

1. In these rules and attached forms, unless the context otherwise indicates -

accused includes, for the purposes of rules 51, 52 and 55, a person whose acquittal is appealed against by the Prosecutor-General or other prosecutor as the case may be;.

'**Act**' means the High Court Act, 1990 (Act 16 of 1990):

'**action**' means a proceeding commenced by summons or by writ in terms of rule 9;

'**civil summons**' means a civil summons as defined in the Act;

'**combined summons**' means a summons with a statement of claim annexed thereto in terms of sub-rule (2) of rule 17;

'**counsel'** means a legal practitioner admitted, enrolled and entitled to practice as such in the Court;

'**court**' means the High Court of Namibia;

'**court day**' means any day other than a Saturday, Sunday or Public Holiday, and only court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of court;

'**deliver**' means serve copies on all parties and file the original with the registrar;

'**judge**' means a judge of the court sitting otherwise than in open court;

'**Judge-President**' means the Judge-President of the High Court;

'**party**' or any reference to a plaintiff or other litigant in terms, includes his or her counsel as the context may require;

'**Prosecutor-General**' means the Prosecutor-General appointed in terms of Article 88(1) of the Namibian Constitution;

'**registrar**' means the registrar appointed in terms of section 30 of the Act and shall include a deputy- and assistant registrar appointed in terms of the said section;

'**sheriff**' means the sheriff appointed in terms of section 30 of the Act and shall include an additional sheriff, a deputy sheriff, and an assistant to a deputy sheriff appointed in terms of the said section;

'**Supreme Court**' means the Supreme Court of Namibia;

Sittings of the Court and Vacations

2. (1) Notice of the terms and sessions of the court prescribed by the Judge-President in terms of section 39 (2) of the Act shall be published in the Gazette and a copy thereof shall be affixed to the public notice-board at the office of the registrar.

(2) If the day prescribed for the commencement of a civil term or a criminal session is not a court day, the term or session shall commence on the next succeeding court day and, if the day prescribed for the end of a term or session is not a court day, the term or session shall end on the court day preceding.

(3) The periods between the said terms shall be vacations, during which, subject to the provisions of sub-rule (4), the ordinary business of the court shall be suspended, but at

least one judge shall be available on such days to perform such duties as the Judge-President shall direct.

(4) During and out of term such judges shall sit on such days for the discharge of such business as the Judge-President may direct.

(5) If it appears convenient to the presiding judge, the court may sit at any place or at a time other than a time prescribed in terms of these rules or any rules under section 39 of the Act, and may sit at any time during vacation.

Registrar's Office Hours

3. Except on Saturdays, Sundays and Public Holidays, the offices of the registrar shall be open from 9 a.m. to 1 p.m. and from 2 p.m. to 4 p.m., save that, for the purpose of issuing any process or filling any document, other than a notice of intention to defend, the offices shall be open from 9 a.m. to 1 p.m., and from 2 p.m. to 3 p.m. and the registrar may in exceptional circumstances issue process and accept documents at any time, and shall do so when directed by the court or a judge.

Service

4. (1)(a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (b) any document initiating application proceedings shall be

effected by the sheriff in one or other of the following manners, namely –

(i) by delivering a copy thereof to the said person personally: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;

(ii) by leaving a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than 16 years of age, and for the purposes of this paragraph when a building, other than an hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;

(iii) by delivering a copy thereof at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over him or her;

(iv) if the person so to be served has chosen a *domicilium citandi*, by delivering or leaving a copy thereof at the *domicilium* so chosen;

(v) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within Namibia, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;

(vi) by delivering a copy thereof to any agent who is duly authorized in writing to accept service on behalf of the person upon whom service is to be effected;

(vii) where any partnership, firm or voluntary association is to be served, service shall be effected in the manner referred to in paragraph (ii) at the place of business of such partnership, firm or voluntary association and if such partnership, firm or voluntary association has no place of business, service shall be effected on a partner, the proprietor or the chairman or secretary of the committee or other managing body of such association as the case may be, in one of the manners set forth in this rule;

(viii) where a regional or local authority or any other statutory body is to be served, service shall be effected by delivering a copy to the chairperson or secretary or chief administrative officer or his or her assistant or deputy or in any manner provided by law; or

(ix) if two or more persons are sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon each of them in any manner set forth in this rule.

(b) Where the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings.

(c) Service shall be effected as near as possible between the hours of 7 a.m. and 7 p.m.: Provided that no service of any civil summons, order or notice and no proceedings or act required in any civil action, except the issue or execution of a warrant of arrest, shall be validly effected on a Sunday unless the court or a judge otherwise directs.

(d) It shall be the duty of the sheriff or other person serving the process or documents to explain the nature and contents thereof to the person upon whom service is being effected and to state in his or her return or affidavit or on the signed receipt that he or she has done so.

(2) If it is not possible to effect service in any manner aforesaid, the court may, upon the application of the person wishing to cause service to be effected, give directions in regard thereto, and where such directions are sought in regard to service upon a person known or believed to be within Namibia, but whose whereabouts therein cannot be ascertained, the provisions of sub-rule (2) of rule 5 shall, *mutatis mutandis*, apply.

(3) Service of any process of the court or of any document in a foreign country shall be effected-

(a) by any person who is, according to a certificate of-

(i) the head of any Namibian diplomatic or consular mission, any person in the administrative or professional division of the public service at a Namibian diplomatic or consular

mission or any Namibian foreign service officer grade VII;

(ii) any foreign diplomatic or consular officer attending to the service of process or documents on behalf of Namibia in such country;

(iii) any diplomatic or consular officer of such country serving in Namibia; or

(iv) any official signing as or on behalf of the head of the department dealing with the administration of justice in that country, authorized under the law of such country to serve such process or document; or

(b) by any person referred to in sub-paragraph (i) or (ii) of paragraph (a), if the law of such country permits him or her to serve such process or document or if there is no law in such country prohibiting such service and the authorities of that country have not interposed any objection thereto.

(4) Service of any process of the court or of any document may, notwithstanding the provisions of sub-rule 3, also be effected -

(a) in the Republic of South Africa by a sheriff as defined in any rule of court regulating the conduct of proceedings of the various Provincial and Local Divisions of the Supreme Court of South Africa and who is authorized to serve the process of that Court;

(b) in Australia, Botswana, Finland, France, Hong Kong, Lesotho, Malawi, New Zealand, Spain, Swaziland, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe by an attorney, solicitor, notary public or other legal practitioner in the country concerned who is under the law of that country authorized to serve process of court or documents.

(5)(a) Unless the official language or one of the official languages of the foreign country concerned is English or unless the court for sufficient reasons otherwise directs, any process of court or document to be served in such country shall be accompanied by a sworn translation thereof into an official language of that country or part of that country in which the process or document is to be served, together with a certified copy of the process or document and such translation.

(b) Any process of court or document to be served as provided in sub-rule [3], shall be delivered to the registrar together with revenue stamps to the value of R50 fixed thereto: Provided that no revenue stamps shall be required where service is to be effected on behalf of the Government of Namibia.

(c) Any process of court or document delivered to the registrar in terms of paragraph [b] shall, after defacement of the revenue stamps affixed thereto, be transmitted by him or her together with the translation referred to in paragraph [a], to the Permanent Secretary for Foreign Affairs or to a destination indicated by the Permanent Secretary for Foreign Affairs, for service in the foreign country concerned, and the registrar shall satisfy himself or herself that the process of court or document allows a sufficient period for service to be effected in good time.

(6) Service of any process of court or any document in Namibia shall be proved -

(a) where service has been effected by the sheriff, by the return of service of such sheriff;

(b) where service has not been effected by the sheriff, nor in terms of sub-rule [3] or [4], by an affidavit of the person who effected service, or in case of service on an attorney or a member of his or her staff, the Government of Namibia or any Minister, or any other officer of such Government, in his or her capacity as such, by the production of a signed receipt therefore.

(6A)(a) The document which serves as proof of service shall, together with the served process of court or document, without delay be furnished to the person at whose request service was effected.

(b) The person referred to in paragraph [a] shall file each such document on behalf of the person who effected service with the Registrar when –

(i) he or she sets the matter in question down for any purpose;

(ii] it comes to his or her knowledge in any manner that the matter is being defended;

(ii) the registrar requests filing;

(iv) his or her mandate to act on behalf of the party is terminated in any manner."

(7) Service of any process of court or document in the Republic of South Africa shall be proved -

(a) where such service has been effected by a sheriff in terms of paragraph (a) of subrule (4), by the return of service of such sheriff;

(b) where such service has been effected by any other person, in the manner prescribed in subrule (8).

(8) Subject to the provisions of subrule [7], service of any process of court or document in a foreign country, shall be proved-

(a) by a certificate of the person effecting service in terms of paragraph [a] of sub-rule [3] or sub-rule [4] in which he or she identifies himself or herself, states that he or she is authorized under the law of that country to serve process of court or documents therein and that the process of court or document in question has been served as required by law of that country and sets forth the manner and the date of such service: Provided that the certificate of a person referred to in sub-rule [4] shall be duly authenticated; or

(b) by a certificate of a person effecting service in terms of paragraph [b] of sub-rule [3] in which he or she states that the process of court or document in question has been served by him or her, setting forth the manner and date of such service and affirming that the law of the country concerned permits him or her to serve process of court or documents or that there is no law in such country prohibiting such service and that the authorities of the country have not interposed any objection thereto.

(9) In every proceeding in which the State or a Minister or Deputy Minister, in his or her official capacity, is the defendant or respondent the summons or notice instituting such proceeding may be served at the office of the Government Attorney.

(10) Whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as to it seems meet.

(11) Whenever a request for the service on a person in Namibia of any civil process or citation is received from a State, territory or court outside Namibia and is transmitted to the registrar in terms of section 29(2) of the Act, the registrar shall transmit to the sheriff or a deputy-sheriff or any person appointed by a judge of the court for service of such process or citation -

(a) two copies of the process or citation to be served; and

(b) two copies of a translation in English of such process or citation if the original is in any other language.

(12) Service shall be effected by delivering to the person to be served one copy of the process or citation to be served and one copy of the translation (if any) thereof in accordance with the provisions of this rule.

(13) After service has been effected the sheriff or the deputy-sheriff or the person appointed for the service of such process or citation shall return to the registrar one copy of the process or citation together with-

(a) proof of service, which shall be by affidavit made before a magistrate, justice of the peace or commissioner of oaths by the person by whom service has been effected and verified, in the case of service by the sheriff or a deputy-sheriff, by the certificate and seal of office of such sheriff or, in the case of service by a person appointed by a judge of the court by the certificate and seal of office of the registrar; and

(b) particulars of charges for the cost of effecting such service.

(14) The particulars of charges for the cost of effecting service under sub-rule (11) shall be submitted to the taxing officer of the court, who shall certify the correctness of such charges or other amount payable for the cost of effecting service.

(15) The registrar shall, after effect has been given to any request for service of civil process or citation, return to the Permanent Secretary for Justice -

(a) the request for service referred to in sub-rule (11);

(b) the proof of service together with a certificate in accordance with Form 'J' of the Second Schedule duly sealed with the seal of the court for use out of its jurisdiction; and

(c) the particulars of charges for the cost of effecting service and the certificate, or copy thereof, certifying the correctness of such charges.

Edictal Citation

5. (1) Save by leave of the court no process or document whereby proceedings are instituted shall be served outside Namibia.

(2) Any person desiring to obtain such leave shall make application to the court setting forth concisely the nature and

extent of his or her claim, the grounds upon which it is based and upon which the court has jurisdiction to entertain the claim and also the manner of service which the court is asked to authorize, and if such manner be other than personal service, the application shall further set forth the last-known whereabouts of the person to be served and the inquiries made to ascertain his or her present whereabouts, and upon such application the court may make such order as to the manner of service as to it seems meet and shall further order the time within which notice of intention to defend is to be given or any other step that is to be taken by the person to be served, and where service by publication is ordered, it may be in a form as near as may be in accordance with Form 1 of the First Schedule, approved and signed by the registrar.

(3) Any person desiring to obtain leave to effect service outside Namibia of any document other than one whereby proceedings are instituted, may either make application for such leave in terms of sub-rule (2) or request such leave at any hearing at which the court is dealing with the matter, in which latter event no papers need be filed in support of such request, and the court may act upon such information as may be given from the bar or given in such other manner as it may require, and may make such order as to it seems meet.

Applications

6. (1) Every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion shall be addressed to both the registrar and such person, otherwise it shall be addressed to the registrar only.

(3) Every petition shall conclude with the form of order prayed and be verified upon oath by or on behalf of the petitioner.

(4)(a) Every application brought *ex parte* (whether by way of petition or upon notice to the registrar supported by an affidavit as aforesaid) shall be filed with the registrar and set down, before noon on the court day but one preceding the day upon which it is to be heard, and if brought upon notice to the registrar, such notice shall set forth the form of order sought, specify the affidavit filed in support thereof, request him or her to place the matter on the roll for hearing, and be as near as may be in accordance with Form 2(a) of the First Schedule.

(b) Any person having an interest which may be affected by a decision on an application being brought *ex parte* may deliver notice of an application by him or her for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which he or she desires to be heard, whereupon the registrar shall set such application down for hearing at the same time as the application first mentioned.

(c) At the hearing the court may grant or dismiss either of or both such applications as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicant or otherwise as to it seems meet.

(5)(a) Every application other than one brought *ex parte* shall be brought on notice of motion as near as may be in accordance with Form 2(b) of the First Schedule and true copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.

(c) In such notice the applicant shall appoint an address within 8 kilometres of the office of the registrar at which he or she will accept notice and service of all documents in such proceedings, and shall set forth a day, not less than 5 days after service thereof on the

respondent, on or before which such respondent is required to notify the applicant, in writing, whether he or she intends to oppose such application, and shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 7 days after service on the said respondent of the said notice.

(c) If the respondent does not, on or before the day mentioned for that purpose in such notice, notify the applicant of his or her intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar notice of set-down before noon on the court day but one preceding the day upon which the same is to be heard.

(d) Any person opposing the grant of an order sought in the notice of motion shall:

(i) within the time stated in the said notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint an address within 8 kilometres of the office of the registrar at which he or she will accept notice and service of all documents;

(ii) within 14 days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents; and

(iii) if he or she intends to raise any question of law only he or she shall deliver notice of his or her intention to do so, within the time stated in the preceding sub-paragraph setting forth such question.

(e) Within 7 days of the service upon him or her of the affidavit and documents referred to in subrule (5)(d)(ii) the applicant may deliver a replying affidavit, and the court may in its discretion permit the filing of further affidavits.

(f) Where no answering affidavit, or notice in terms of sub-paragraph (iii) of paragraph (d) is delivered within the period referred to in sub-paragraph (ii) of paragraph (d) the applicant may within 4 days of the expiry thereof apply to the registrar to allocate a date for the hearing of the application, and where an answering affidavit is delivered the applicant may apply for such allocation within 4 days of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within 4 days of the expiry of the period referred to in paragraph (e) and where

such notice is delivered the applicant may apply for such allocation within 4 days after delivery of such notice, and if the applicant fails to apply within the appropriate period aforesaid, the respondent may do so immediately upon the expiry thereof, and notice in writing of the date allocated by the registrar shall forthwith be given by applicant or respondent, as the case may be, to the opposite party.

(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as to it seems meet with a view to ensuring a just and expeditious decision, and in particular, but without affecting the generality of the aforegoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or her or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

(h) The provisions of paragraphs (c) and (f) shall *mutatis mutandis* apply to petitions.

(6) The court, after hearing an application whether brought *ex parte* or otherwise, may make no order thereof (save as to costs if any) but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.

(7)(a) Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action, and in the latter event Rule 10 shall apply *mutatis mutandis*.

(b) The periods prescribed with regard to applications shall apply *mutatis mutandis* to counter-applications: Provided that the court may on good cause shown postpone the hearing of the application.

(8) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 24 hours' notice.

(9) A copy of every application to court in connection with the estate of any person deceased, or alleged to be a prodigal, or under any legal disability, mental or otherwise, shall, before such application is filed with the registrar, be submitted to the Master for consideration and report, and if any person is to be

suggested to the court for appointment as curator to property, such suggestion shall likewise be submitted to the Master for report: Provided that the provisions of this subrule shall not apply to any application under rule 57 except where that rule otherwise provides.

(10) The provisions of subrule (9) shall further apply to all applications for the appointment of administrators and trustees under deeds or contracts relating to trust funds or to the administration of trusts set out by testamentary disposition.

(11) Notwithstanding the aforegoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge.

(12)(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as to it seems meet.

(b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances

which he or she avers render the matter urgent and the reasons why he or she claims that he or she could not be afforded substantial redress at a hearing in due course.

(13) In any application against any Minister, Deputy Minister, officer or servant of the State, in his or her capacity as such, or the State, the respective periods referred to in paragraph (b) of sub-rule (5), or for the return of a *rule nisi*, shall be not less than 15 days after the service of the notice of motion, or the *rule nisi*, as the case may be, unless the court shall have specially authorised a shorter period.

(14) Rules, 10, 11, 12, 13 and 34 shall *mutatis mutandis* apply to all applications.

(15) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client, and the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in his or her case if it be not granted.

Power of Attorney

7. (1) Before summons is issued in any action at the instance of the plaintiff's attorney, the attorney shall file with the registrar a power of attorney to sue, and such power of attorney

shall state, generally the nature of the particular action authorized to be instituted, the nature of the relief to be claimed therein and the names of the party to be sued.

(2) Where notice of intention to defend is filed with the registrar by an attorney the latter shall *pari passu* file a power of attorney authorizing him or her to defend.

(3)(a) The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him or her to appeal and such power of attorney shall be filed together with the application for a date of hearing.

"(b) Counsel appearing on behalf of any party, other than a party who has caused the appeal to be set down, or who instructed another counsel to so appear, shall, before the hearing thereof, file with the registrar a power of attorney authorising him or her to so at."

(4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law: Provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power: Provided further that where a resolution is produced as proof of such

authority, the original thereof shall be filed *pari passu* with the power of attorney, unless a general resolution has been filed with the registrar, in which event a certified copy or such general resolution shall be filed *pari passu* with the power of attorney.

(5) No power of attorney shall be required to be filed by the Attorney-General or Government Attorney or any attorney instructed, in writing, or by telegram by or on behalf of the Attorney-General or Government Attorney in any matter in which the Attorney-General is acting in his or her capacity as such by virtue of any provision of the Namibian Constitution or the Government Attorney is acting in his or her capacity as such by virtue of any provision of the Proclamation on the Government Attorney, 1982 (Proclamation R161 of 1982).

Provisional Sentence

8. (1) Where by law any person may be summoned to answer a claim made for provisional sentence, proceedings shall be instituted by way of a summons as near as may be in accordance with Form 3 of the First Schedule, calling upon such person to pay the amount claimed or failing such payment to appear personally or by counsel upon a day named in such summons not being less than 15 days after the service upon him or her of such summons, to admit or deny his or her liability: Provided that in the event of such person denying his or her liability, he or she shall –

(a) not less than 5 days before the aforesaid date, file with the registrar a notice of intention to defend the action and serve a copy thereof on plaintiff's attorney, in which notice he or she shall give his or her full residential or business address, and shall also appoint an address, not being a post office box or *poste restante*, within 8 kilometres of the office of the registrar for the service on him or her thereat of all documents in such action; and

(b) not less than 3 days before the aforesaid date, file with the registrar an opposing affidavit and serve a copy thereof on plaintiff's attorney, in which affidavit he or she shall set forth the grounds of his or her defence to the plaintiff's claim, and in particular state whether he or she admits or denies his or her signature to the document upon which the claim is founded or whether he or she admits or denies the signature or authority of his or her agent.

(2) Such summons shall be issued by the registrar and the provisions of sub-rules (3) and (4) of rule 17 shall *mutatis mutandis* apply.

(3) Copies of all documents upon which the claim is founded shall be annexed to the summons and served with it.

(4) The plaintiff shall set down the case for hearing before noon on the court day but one preceding the day upon which it is to be heard if no notice of intention to defend the action referred to in subrule (1) has been delivered.

(5) In the event of a notice of intention to defend the action referred to in subrule (1) having been delivered -

(a) the plaintiff may deliver a replying affidavit within 5 days of the service upon him or her of the opposing affidavit;

(b) the hearing of the case shall, notwithstanding the provisions of subrule (1), not be on the date named in the summons, but shall be on a date allocated by the registrar upon application to him or her by the plaintiff, or failing such application by the plaintiff within 5 days after the expiry of the period referred to in paragraph (a), by the defendant, and the plaintiff or the defendant, as the case may be, shall forthwith set the case down for hearing and give written notice thereof to the opposite party.

(6) If at the hearing the defendant admits his or her liability or if he or she has previously filed with the registrar an admission of liability signed by himself or herself and witnessed by an attorney acting for him or her and not acting for the opposite

party, or, if not so witnessed, verified by affidavit, the court may give final judgment against him or her.

(7) The court may hear oral evidence as to the authenticity of the defendant's signature, or that of his or her agent, to the document upon which the claim for provisional sentence is founded or as to the authority of the defendant's agent.

(8) Should the court refuse provisional sentence it may order the defendant to file a plea within a stated time and may make such order as to the costs of the proceedings as to it may seem just, and thereafter the provisions of these rules as to pleading and the further conduct of trial actions shall *mutatis mutandis* apply.

(9) The plaintiff shall on demand furnish the defendant with security *de restituendo* to the satisfaction of the registrar, against payment of the amount due under the judgment.

(10) Any person against whom provisional sentence has been granted may enter into the principal case only if he or she shall have satisfied the amount of the judgment of provisional sentence and taxed costs, or if the plaintiff on demand fails to furnish due security in terms of sub-rule (9).

(11) A defendant entitled and wishing to enter into the principal case shall, within 2 months of the grant of provisional sentence, deliver notice of his or her intention to do so, in which event the

summons shall be deemed to be a combined summons and he or she shall deliver a plea within 10 days thereafter, and failing such notice or such plea the provisional sentence shall *ipso facto* become a final judgment and the security given by the plaintiff shall lapse.

Arrest

9. (1) No civil process whereby any person may be arrested or held to bail in order to compel his or her appearance to answer any claim and to abide the judgement of the court thereon shall be sued out against any person where the cause of action is not of the value of R1000 or upwards, exclusive of any costs.

(2) In all cases where any person may be arrested or held to bail, the process shall be by writ of arrest addressed to the sheriff or his or her deputy and to the officer commanding the gaol and signed as is required in the case of a summons and shall, as hear as may be, in accordance with Form 4 of the First Schedule.

(3) The writ of arrest when delivered to the registrar for signature shall be accompanied by an affidavit sworn by the plaintiff or his or her agent.

(4) The affidavit shall contain a true description of the person making the same, setting forth his or her place of residence, and

a statement of the sum due to the plaintiff, and the cause of the claim and where incurred, or in the case of the unlawful detention of any movable property, the value and description thereof: Provided that if the plaintiff sues as executor or administrator of any deceased person, or as a trustee of an insolvent estate, or in any similar representative capacity, it shall be sufficient in any such affidavit to aver that the said defendant is indebted as stated, as appears by the books or documents in the possession of the deponent and as the deponent verily believes, and the affidavit shall further contain an allegation that the plaintiff has no or insufficient security for his or her demand, specifying the nature and extent of the security, if any, and that a sum or value of R1000 or upwards remains wholly unsecured, and if the said claim is one for damages, that the said plaintiff has sustained damage to an amount of R1000 or upwards.

(5) In all cases the affidavit shall contain an allegation that the deponent believes that the defendant is about to depart, or is making preparations to depart, from Namibia and shall state fully the grounds for such belief.

(6) The writ of arrest and affidavit shall be filed by the registrar, and the defendant or his or her attorney shall be at liberty at all reasonable times and without charge to peruse and copy them.

(7) Where any sum of money or a specific thing is claimed, it shall be set forth in the writ of arrest, and the costs of issuing any such writ shall be endorsed thereon by the registrar, and the sheriff or his or her deputy shall, upon an arrest made by virtue thereof, give to the defendant a copy of the same, together with copies of the affidavit aforesaid and any documents upon which the claim is founded, which copies shall be furnished by the plaintiff: Provided that where a warrant of arrest has been telegraphically transmitted the original warrant shall be sent by the first post to the place where such person has been arrested or detained and shall be accompanied by a copy thereof and a copy of the affidavit in terms of sub-rules (4) and (5), and after the arrival of the warrant at the place where such person has been arrested or detained, a copy of the original warrant and affidavit shall forthwith be served upon him or her.

(8) If on arrest the defendant or anyone on his or her behalf gives to the sheriff or his or her deputy adequate security by bond or obligation of the said defendant and of another person residing and having sufficient means within Namibia that the defendant will appear according to the exigency of the said writ, and will abide the judgment of the court thereon, or if the said defendant pays or delivers to the sheriff or his or her deputy the sum of money or thing mentioned in the said writ, together with the costs endorsed thereon and costs of the execution of the writ as prescribed, the sheriff or his or her deputy shall permit the defendant to go free of the said writ of arrest, and the bond or obligation to be given to the sheriff or his or her deputy under

this rule shall be as near as may be in accordance with Form 5 of the First Schedule: Provided that the personal bond of the defendant without a surety shall be sufficient for the purposes of this rule if accompanied by a deposit of the amount or thing claimed and costs as aforesaid, such deposit being referred to in the bond as one of the conditions thereof.

(9) If the defendant at any time after his or her arrest satisfies the claim contained in the writ, including the costs and charges endorsed thereon, and the costs of the execution of the writ or is he or she gives a bond or obligation in terms of sub-rule (8), he or she shall be entitled to immediate release.

(10) If a bond or obligation has been given by or on behalf of the defendant, in terms of sub-rule (8), the plaintiff shall proceed with his or her action as if there had been no arrest, and save in those cases where summons has already been issued, the writ of arrest and affidavit shall stand as a combined summons in the action.

(11) Any person arrested shall be entitled to anticipate the day of appearance and to apply to the court for his or her release, upon giving notice to the plaintiff and to the registrar.

(12) If the sheriff or his or he deputy takes from the party arrested any bond or obligation by virtue of any writ, he or she shall, as soon as practicable, assign to the plaintiff such bond or

obligation, by an endorsement thereon under his or her hand, as near as may be in accordance with Form 6 of the First Schedule.

(13) If on the return day or anticipated return day the defendant admits the whole or a part of the plaintiff's claim, the court may hear the parties and in its discretion give final judgment against him or her for the amount admitted, whereupon he or she shall be released.

(14) If the defendant has not satisfied or admitted the plaintiff's claim and has not given security as aforesaid, the plaintiff may, on the return or anticipated return day, apply for confirmation of the arrest, whereupon the court, unless sufficient cause to the contrary is shown, shall confirm such arrest and order the return of the defendant to prison, and shall make such further order as to it seems meet for the speedy termination of the proceedings.

(15) If in any such proceedings judgment is given against the defendant, he or she shall be entitled to his or her release.

Joinder of Parties and Causes of Action

10. (1) Any number of persons, each of whom has a claim, whether jointly, jointly and severally, separately or in the alternative, may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of such persons proposing to join as plaintiffs would, if he or she

brought a separate action, be entitled to bring such action, provided that the right to relief of the persons proposing the same question of law or fact which, if separate actions were instituted, would arise on such action, and provided that there may be a joinder conditionally upon the claim of any other plaintiff failing.

(2) A plaintiff may join several causes of action in the same action.

(3) Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action.

(4) In any action in which any causes of action or parties have been joined in accordance with this rule, the court at the conclusion of the trial shall give such judgment in favour of such of the parties as shall be entitled to relief or grant absolution from the instance, and shall make such order as to costs as shall to it seem to be just, provided that without limiting the discretion of the court in any way-

(a) the court may order that any plaintiff who is unsuccessful shall be liable to any other party,

whether plaintiff or defendant, for any costs occasioned by his or her joining in the action as plaintiff;

(b) if judgment is given in favour of any defendant or if any defendant is absolved from the instance, the court may order -

(i) the plaintiff to pay such defendant's costs, or

(iii) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his or her pro rata share of the costs of the successful defendant, he or she shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess, and the court may further order that, if the successful defendant is unable to recover the whole or any part of his or her costs from the unsuccessful defendants, he or she shall be entitled to recover from the plaintiff such part of his or her costs as he or she

cannot recover from the unsuccessful defendants;

(d) if judgment is given in favour of the plaintiff against more than one of the defendants, the court may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his or her *pro rata* share of the costs of the plaintiff he or she shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess.

(5) Where there has been a joinder of causes of action or of parties, the court may on the application of any party at any time order that separate trials be held either in respect of some or all of the causes of action or some or all of the parties, and the court may on such application make such order as to it seems meet.

Consolidation of Actions

11. Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon-

(a) the said actions shall proceed as one action;

(b) the provisions of rule 10 shall *mutatis mutandis* apply with regard to the action so consolidated; and

(c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.

Intervention of Persons as Plaintiffs or Defendants

12. Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or defendant, and the court may upon such application make such order, including any order as to cost, and give such directions as to further procedure in the action as to it may seem meet.

Third Party Procedure

13. (1) Where a party in any action claims –

(a) as against any other person not a party to the action (in this rule called a "third party") that such party is entitled, in respect of any relief claimed against him or her, to a contribution or indemnification from such third party, or

(b) any question or issue in the action is substantially the same as a question or issue which has arisen between such party and the third party, and should properly be determined not only as between any parties to the action but also as between such parties and the third party or between any of them,

such party may issue a notice, hereinafter referred to as third party notice, as near as may be in accordance with Form 7 of the First Schedule hereto, which notice shall be served by the sheriff.

(2) Such notice shall state the nature and grounds of the claim of the party issuing the same, the question or issue to be determined, and any relief or remedy claimed, and in so far as the statement of the claim and the question or issue are concerned, the rules with regard to pleadings and to summonses shall *mutatis mutandis* apply.

(3)(a) The third party notice shall be served before the close of pleadings in the action in connection with which it is issued.

(b) After the close of pleadings, such notice may only be served with the leave of the court.

(c) The third party notice shall be accompanied by a copy of all pleadings filed in the action up to the date of service of the notice.

(4) If the third party intends to contest the claim set out in the third party notice he or she shall deliver notice of intention to defend, as if to a summons, and immediately upon receipt of such notice, the party who issued the third party notice shall inform all other parties accordingly.

(5) The third party shall, after service upon him or her of a third party notice, be a party to the action and, if he or she delivers notice of intention to defend, shall be served with all documents and given notice of all matters as a party.

(6) The third party may plead or except to the third party notice as if he or she were a defendant to the action, and he or she may also, by filing a plea or other proper pleading, contest the liability of the party issuing the notice on any ground notwithstanding that such ground has not been raised in the action by such latter party: Provided however that the third party shall not be entitled to claim in reconvention against any person other than the party issuing the notice save to the extent that he or she would be entitled to do so in terms of rule 24.

(7) The rules regard to the filing of further pleadings shall apply to third parties as follows, namely-

(a) in so far as the third party's plea relates to the claim of the party issuing the notice, the said party shall be regarded as the plaintiff and the third party as the defendant;

(b) in so far as the third party's plea relates the plaintiff's claim the party shall be regarded as a defendant and the plaintiff shall file pleadings as provided by the said rules.

(8) Where a party to an action has against any other party (whether either such party became a party by virtue of any counter-claim by any person or by virtue of a third party notice or by any other means) a claim referred to in subrule (1), he or she may issue and serve on such other party a third party notice in accordance with the provisions of this rule, and save that no further notice of intention to defend shall be necessary, the same procedure shall apply as between the parties to such notice and they shall be subject to the same rights and duties as if such other party had been served with a third party notice in terms of sub-rule (1).

(9) Any party who has been joined as such by virtue of a third party notice may at any time make application to the court for the separation of the trial of all or any of the issues arising by virtue of such third party notice and the court may upon such application make such order as to it seems meet, including an order for the separate hearing and determination

of any issue on condition that its decision on any other issue arising in the action either as between the plaintiff and the defendant or as between any other parties, shall be binding upon the applicant.

Proceedings by and against Partnerships, Firms and Associations

14. (1) In this rule-

'association' means any unincorporated body of persons, not being a partnership;

'firm' means a business, including a business carried on by a body corporate, carried on by the sole proprietor thereof under a name other than his or her own;

'plaintiff' and **'defendant'** include applicant and respondent;

'relevant date' means the date of accrual of the cause of action;

sue and '**sued'** are used in relation to actions and applications.

(2) A partnership, a firm or an association may sue or be sued in its name.

(3) A plaintiff suing a partnership need not allege the names of the partners, and if he or she does, any error or omission or inclusion shall not afford a defence to the partnership.

(4) Sub-rule (3) shall apply *mutatis mutandis* to a plaintiff suing a firm.

(5)(a) A plaintiff suing a firm or a partnership may at any time before or after judgment deliver to the defendant a notice calling for particulars as to the full name and residential address of the proprietor or of each partner, as the case may be, as at the relevant date.

(b) The defendant shall within 10 days deliver a notice containing such information.

(c) Concurrently with the said statement the defendant shall serve upon the persons referred to in paragraph (a) a notice as near as may be, *mutatis mutandis*, in accordance with Form 8 of the First Schedule and deliver proof by affidavit of such service.

(d) A plaintiff suing a firm or a partnership and alleging in the summons or notice of motion that any person was at the relevant date the proprietor or a partner, shall notify such person accordingly by delivering a

notice as near as may be, *mutatis mutandis*, in accordance with Form 8 of the First Schedule.

(e) Any person served with a notice in terms of paragraph (c) or (d) shall be deemed to be a party to the proceedings, with the rights and duties of a defendant.

(f) Any party to such proceedings may aver in the pleadings or affidavits that such person was at the relevant date the proprietor or a partner, or that he or she is estopped from denying such status.

(g) If any party to such proceedings disputes such status, the court may at the hearing decide that issue *in limine*.

(h) Execution in respect of a judgment against a partnership shall first be levied against the assets thereof, and, after such excussion, against the private assets of any person held to be, or held to be estopped from denying his or her status as, a partner, as if judgment had been entered against him or her.

(6) Sub-rule (5) shall apply *mutatis mutandis* to a defendant sued by a firm or a partnership.

(7) If a partnership is sued and it appears that since the relevant date it has been dissolved, the proceedings shall nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners, as if sued individually.

(8) Sub-rule (7) shall apply *mutatis mutandis* where it appears that a firm has been discontinued.

(9)(a) A plaintiff suing an association may at any time before or after judgment deliver a notice to the defendant calling for a true copy of its current constitution and a list of the names and addresses of the officebearers and their respective offices as at the relevant date.

(b) Such notice shall be complied with within 10 days.

(c) Paragraphs (a) and (b) shall apply *mutatis mutandis* to a defendant sued by an association.

(10) Paragraphs (d), (e), (f), (g) and (h) of sub-rule (5) shall apply *mutatis mutandis* when -

(a) a plaintiff alleges that any member, servant or agent of the defendant association is liable in law for its alleged debt;

(b) a defendant alleges that any member, servant or agent of the plaintiff association will be responsible in

law for the payment of any costs which may be awarded against the association.

(11) Sub-rule (7) shall apply *mutatis mutandis* in regard to the continuance of the proceedings against any member, servant or agent referred to in paragraph (a) of sub-rule (10).

(12) Sub-rule (6) of rule 21 shall apply *mutatis mutandis* in the circumstances set out in paragraphs (a) and (b) of sub-rule (5) and in sub-rule (9) of this rule.

Change of Parties

15. (1) No proceedings shall terminate solely by reason of the death, marriage or other change of status of any party thereto unless the cause of such proceedings is thereby extinguished.

(2) Whenever by reason of an event referred to in sub-rule (1) it becomes necessary or proper to introduce a further person as a party in such proceedings (whether in addition to or in substitution for the party to whom such proceedings relate) any party thereto may forthwith by notice to such further person, to every other party and to the registrar, add or substitute such further person as a party thereto, and subject to any order made under sub-rule (4), such proceedings shall thereupon continue in respect of the person thus added or

substituted as if he or she had been a party from the commencement thereof and all steps validly taken before such addition or substitution shall continue of full force and effect: Provided that save with the leave of the court granted on such terms (as to adjournment or otherwise) as to it may seem meet, no such notice shall be given after the commencement of the hearing of any opposed matter: Provided further that the copy of the notice served on any person joined thereby as a party to the proceedings shall (unless such party is represented by an attorney who is already in possession thereof), be accompanied in application proceedings by copies of all notices, affidavits and material documents previously delivered, and in trial matters by copies of all pleadings and like documents already filed of record, such notice, other than a notice to the registrar, shall be served by the sheriff.

(3) Whenever a party to any proceedings dies or ceases to be capable of acting as such, his or her executor, curator, trustee or similar legal representative, may by notice to all other parties and to the registrar intimate that he or she desires in his or her capacity as such thereby to be substituted for such party, and unless the court otherwise orders, he or she shall thereafter for all purposes be deemed to have been so substituted.

(4) The court may upon a notice of application delivered by any party within 20 days of service of notice in terms of sub-rule (2) and (3), set aside or vary any addition or substitution of a party thus affected or may dismiss such application or confirm

such addition or substitution, on such terms, if any, as to the delivery of any affidavits or pleadings, or as to postponement or adjournment, or as to costs or otherwise, as to it may seem meet.

Representation of Parties

16. (1) If an attorney acts on behalf of any party in any proceedings, he or she shall notify all other parties of his or her name and address.

(2)(a) Any party represented by an attorney in any proceedings may at any time, subject to the provisions of rule 40, terminate such attorney's authority to act for him or her, and thereafter act in person or appoint another attorney to act for him or her therein, whereupon he or she shall forthwith give notice to the registrar and to all other parties of the termination of his or her former attorney's authority and if he or she has appointed a further attorney so to act for him or her, of the latter's name and address, and the further attorney so appointed shall forthwith file with the registrar a power of attorney authorizing him or her to so act.

(b) If such party does not appoint a further attorney, such party shall in the notice of termination of his or her former attorney's authority also notify all other

parties of an address within 8 kilometres of the office of the registrar for the service on him or her of all documents in such proceedings.

(3) Upon receipt of a notice in terms of sub-rule (1) or (2) the address of the attorney or of the party, as the case may be, shall become the address of such party for the service upon him or her of all documents in such proceedings, but any service duly effected elsewhere before receipt of such notice shall, notwithstanding such change, for all purposes be valid, unless the court orders otherwise.

(4)(a) Where an attorney acting in any proceedings for a party ceases so to act, he or she shall forthwith deliver notice thereof to such party, the registrar and all other parties: Provided that notice to the party for whom he or she acted may be given by registered post.

(b) After such notice, unless the party formerly represented within 10 days after the notice, himself or herself notifies all other parties of a new address for service as contemplated in sub-rule (2), it shall not, be necessary to serve any documents upon such party unless the court otherwise orders: Provided that any of the other parties may before receipt of the notice of his or her new address for service of

documents, serve any documents upon the party who was formerly represented.

(c) The notice to the registrar shall state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them.

(d) The notice to the party formerly represented shall inform the said party of the provisions of paragraph (b).

Summons

17. (1) Every person making a claim against any other person may, through the office of the registrar, sue out a summons or a combined summons as near as may be in accordance with Form 9 or Form 10 of the First Schedule addressed to the sheriff directing him or her to inform the defendant *inter alia* that, if he or she disputes the claim, and wishes to defend he or she shall-

(a) within the time stated therein, give notice of his or her intention to defend;

(b) thereafter, if the summons is a combined summons, within 20 days after giving such notice, deliver a plea

(with or without a claim in reconvention), an exception or an application to strike out.

(2) In every case where the claim is not for a debt or liquidated demand there shall be annexed to the summons a statement of the material facts relied upon by the plaintiff in support of his or her claim, which statement shall *inter alia* comply with rules 18 and 20.

(3) Every summons shall be signed by the attorney acting for the plaintiff and shall bear an attorney's address, within 8 kilometres of the office of the registrar, or, if no attorney is acting, it shall be signed by the plaintiff, who shall in addition append an address within 8 kilometres of the office of the registrar at which he or she will accept service of all subsequent documents in the suit, and shall thereafter be signed and issued by the registrar and made returnable by the sheriff to the court through the registrar.

(4) Every summons shall set forth -

(a) the name (including where possible the first name or initials) by which the defendant is known to the plaintiff, his or her residence or place of business and, where known, his or her

occupation and, if he or she is sued in any representative capacity, such capacity, and the summons shall also state the defendant's sex and, if a female, her marital status;

(b) the full names, sex and occupation and the residence or place of business of the plaintiff, and where he or she sues in a representative capacity, such capacity, and if the plaintiff is a female the summons shall state her marital status;

(c) the cause of action and the relief claimed.

Rules relating to Pleadings generally

18. (1) A combined summons, and every other pleading except a summons, shall be signed by an advocate and an attorney, or if a party sues or defends personally, by such party.

(2) The title of the action describing the parties thereto and the number assigned thereto by the registrar, shall appear at the head of each pleading, provided that where the parties are numerous or the title lengthy and abbreviation is reasonably possible, it shall be so abbreviated.

(3) Every pleading shall be divided into paragraphs (including sub-paragraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct averment.

(4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

(5) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he or she shall not do so evasively, but shall answer the point of substance.

(6) A party who in his or her pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.

(7) It shall not be necessary in any pleading to state the circumstances from which an alleged implied term can be inferred.

(8) Where a party suing for restitution of conjugal rights, divorce or judicial separation has been guilty of

adultery, he or she shall state the date and place of such adultery in his or her summons and pray for condonation thereof.

(9) A party to matrimonial proceedings relying on constructive desertion, shall in his or her pleadings set out the particulars thereof.

(10) A plaintiff suing for damages shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof: Provided that a plaintiff suing for damages for personal injury shall specify the nature and extent of the injuries, and the nature, effects and duration of the disability alleged to give rise to such damages, and shall as far as practicable state separately what amount, if any, is claimed for -

(a) medical costs and hospital and other similar expenses;

(b) pain and suffering;

(c) disability in respect of –

(i) the earning of income (stating the earnings lost to date and the estimated future loss);

(ii) the enjoyment of amenities of life (giving particulars).

Notice of Intention to Defend

19. (1) The defendant in every civil action shall be allowed 10 days after service of summons on him or her within which to deliver a notice of intention to defend, either personally or through his or her attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.

(2) In actions against the State or against any Minister, Deputy Minister, officer or servant of the State, in his or her official capacity, the time allowed for delivery of notice of intention to defend shall not be less than 20 days after service of summons, unless the court has specially authorized a short period.

(3) When a defendant delivers notice of intention to defend, he or she shall therein give his or her full residential or business address, and shall also appoint an address, not being a post office box or *poste restante*, within 8 kilometres of the office of the registrar for the service on him or her thereat of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where

by any order or practice of the court personal service is required.

(4) A party shall not by reason of his or her delivery of notice of intention to defend be deemed to have waived any right to object to the jurisdiction of the court or to any irregularity or impropriety in the proceedings.

(5) Notwithstanding the provisions of sub-rules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in sub-rule (2), but before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.

Declaration

20. (1) In all actions in which the plaintiff's claim is for a debt or liquidated demand and the defendant has delivered notice of intention to defend, the plaintiff shall, except in the case of a combined summons, within 15 days after his or her receipt thereof, deliver a declaration.

(2) The declaration shall set forth the nature of the claim, the conclusions of law which the plaintiff shall be

entitled to deduce from the facts stated therein, and a prayer for the relief claimed.

(3) Where the plaintiff seeks relief in respect of several distinct claims founded upon separate and distinct facts, such claims and facts shall be separately and distinctly stated.

Further Particulars

21. (1) A party may, before delivering any pleading in answer to a pleading delivered to him or her and for the purpose of enabling him or her to plead thereto or tender an amount in settlement, deliver a notice within 15 days of receipt of such pleading or of the delivery of a notice of intention to defend, as the case may be, calling for only such further particulars as may be strictly necessary for either purpose aforesaid.

(2)(a) Particulars so required shall be delivered within 15 days of receipt of the request which, together with the reply thereto, shall form part of the pleadings.

(b) The request for further particulars and the reply thereto shall, save where the party is litigating in person, be signed by an advocate and an attorney.

(3) The party receiving the further particulars shall have 15 days from receipt thereof within which to deliver a further pleading.

(4) After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him or her to prepare for trial, and such request shall be complied with within 10 days after receipt thereof.

(5) The request for further particulars for trial and the reply thereto shall, save where the party is litigating in person, be signed by an attorney.

(6) If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.

(7) The court shall at the conclusion of the trial *mero motu* consider whether the further particulars were strictly necessary, and shall disallow all costs of and flowing from any unnecessary request or reply, or both, and may order either party to pay the costs thereby wasted, on an attorney and client basis or otherwise.

Plea

22. (1) Where a defendant has delivered notice of intention to defend, he or she shall within 20 days after the service upon him or her of a declaration or within 20 days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.

(2) The defendant shall in his or her plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he or she relies.

(3) Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted, and if any explanation or qualification of any denial is necessary, it shall be stated in the plea.

(4) If by reason of any claim in reconvention, the defendant claims that on the giving of judgment on such claim, the plaintiff's claim will be extinguished either in whole or in part, the defendant may in his or her plea refer to the fact of such claim in reconvention and request that judgment in respect of the claim or any portion thereof which would be extinguished by such claim in reconvention, be postponed until judgment on the claim in reconvention, and judgment on the claim shall,

either in whole or in part, thereupon be so postponed unless the court, upon the application of any person interested, otherwise orders, but the court, if no other defence has been raised, may give judgment for such part of he claim as would not be extinguished, as if the defendant were in default of filing a plea in respect thereof, or may, on the application of either party, make such order as to it seems meet.

Exceptions and Applications to Strike Out

23. (1) Where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may set it down for hearing in terms of paragraph (f) of subrule (5) of rule 6: Provided that where a party intends to take an exception that a pleading is vague and embarrassing he or she shall within the period allowed as aforesaid by notice afford his or her opponent an opportunity of removing the cause of complaint within 14 days: Provided further that the party excepting shall within 10 days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver his or her exception.

(2) Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the matter aforesaid, and may set

such application down for hearing in terms of paragraph (f) of sub-rule (5) of rule 6, but the court shall not grant the same unless it is satisfied that the applicant will be prejudiced in the conduct of his or her claim or defence if it be not granted.

(3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.

(4) Wherever any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary.

Claim in Reconvention

24. (1) A defendant who counterclaims shall, together with his or her plea, deliver a claim in reconvention setting out the material facts thereof in accordance with rules 18 and 20 unless the plaintiff agrees, or if he or she refuses, the court allows it to be delivered at a later stage, and the claim in reconvention shall be set out either in a separate document or in a portion of the document containing the plea, but headed 'Claim in Reconvention', and it shall be unnecessary to repeat therein the names or descriptions of the parties to the proceedings in convention.

(2) If the defendant is entitled to take action against any other person and the plaintiff, whether jointly and severally,

separately or in the alternative, he or she may with the leave of the court proceed in such action by way of a claim in reconvention against the plaintiff and such other persons, in such manner and on such terms as the court may direct.

(3) A defendant who has been given leave to counterclaim as aforesaid, shall add to the title of his or her plea a further title corresponding with what would be the title of any action instituted against the parties against whom he or she makes claim in reconvention, and all further pleadings in the action shall bear such title, subject to the proviso to sub-rule (2) of rule 18.

(4) A defendant may counterclaim conditionally upon the claim or defence in convention failing.

Replication and Plea in Reconvention

25. (1) Within 15 days after the service upon him or her of a plea and subject to sub-rule (2) hereof, the plaintiff shall where necessary deliver a replication to the plea and a plea to any claim in reconvention, which plea shall comply with rule 22.

(2) No replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading shall be necessary, and issue shall be deemed to be joined and pleadings closed in terms of paragraph (b) of rule 29.

(3) Where a replication or subsequent pleading is necessary, a party may therein join issue on the allegations in the previous pleading, and to such extent as he or she has not dealt specifically with the allegations in the plea or such other pleading, such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined.

(4) A plaintiff in reconvention may, subject to the provisions *mutatis mutandis* of sub-rule (2), be delivered by the respective parties within 10 days after the previous pleading delivered by the opposite party, and such pleadings shall be designated by the names by which they are customarily known.

Failure to Deliver Pleadings – Barring

26. Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 25 shall be *ipso facto* barred, and if any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may by notice served upon him or her require him or her to deliver such pleading within 5 days after the day upon which the notice is delivered, and any party failing to deliver the pleading referred to in the notice within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and be *ipso facto* barred: Provided that for the purposes of this rule the days between 16 December and

15 January, both inclusive shall not be counted in the time allowed for the delivery of any pleading.

Extension of Time and Removal of Bar and Condonation

27. (1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.

(2) Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these rules.

(3) The court may, on good cause shown, condone any non-compliance with these rules.

(4) After a *rule nisi* has been discharged by default of appearance by the applicant, the court or a judge may revive the rule and direct that the rule so revived need not be served again.

Amendments to Pleadings and Documents

28. (1) Any party desiring to amend any pleading or document other than an affidavit, filed in connection with any proceeding, may give notice to all other parties to the proceeding of his or her intention so to amend.

(2) Such notice shall state that unless objection in writing to the proposed amendment is made within 10 days the party giving the notice will amend the pleading or document in question accordingly.

(3) If no objection in writing be so made, the party receiving such notice shall be deemed to have agreed to the amendment.

(4) If objection is made within the said period, which objection shall clearly and concisely state the grounds upon which it is founded, the party wishing to pursue the amendment shall within 10 days after the receipt of such objection, apply to court on notice for leave to amend and set the matter down for hearing, and the court may make such order thereon as to it seems meet.

(5) Whenever the court has ordered an amendment or no objection has been made within the time prescribed in sub-rule (2), the party amending shall deliver the amendment within the

time specified in the court's order or within 5 days after the expiry of the time prescribed in sub-rule (2), as the case may be.

(6) When an amendment to a pleading has been delivered in terms of this rule, the other party shall be entitled to plead thereto or amend consequentially any pleading already filed by him or her within 15 days of the receipt of the amended pleading.

(7) A party giving notice of amendment shall, unless the court otherwise orders, be liable to pay the costs thereby occasioned to any other party.

(8) The court may during the hearing at any stage before judgment grant leave to amend any pleading or document on such terms as to costs or otherwise as to it seems meet.

(9) Where any amendment is made it shall be made on a separate page to be added in an appropriate place to the pleading or the document amended.

Close of Pleadings

29. Pleadings shall be considered closed-

(a) if either party has joined issue without alleging any new matter, and without adding any further pleading;

(b) if the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed;

(c) if the parties agree in writing that the pleadings are closed and such agreement is filed with the registrar; or

(d) if the parties are unable to agree as to the close of pleadings, and the court upon the application of a party declares them closed.

Irregular Proceedings

30. (1) A party to a cause in which an irregular step or proceeding has been taken by any other party may, within 15 days after becoming aware of the irregularity, apply to court to set aside the step or proceeding: Provided that no party who has taken any further step in the cause with knowledge of the irregularity shall be entitled to make such application.

(2) Application in terms of sub-rule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged.

(3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the

parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.

(4) Until a party has complied with any order of court made against him or her in terms of this rule, he or she shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

(5) Where a party fails to comply timeously with a request made or notice given pursuant to these rules, the party making the request or giving the notice may notify the defaulting party that he or she intends, after the lapse of 10 days to apply for an order that such notice or request be complied with, or that the claim or defence be struck out, and failing compliance within the 10 days, application may be made to court and the court may make such order thereon as to it seems meet.

Judgment on Confession and by Default

31. (1) Save in actions of divorce, restitution of conjugal rights, judicial separation or nullity of marriage, a defendant may at any time confess in whole or in part the claim contained in the summons. Such confession shall be signed by the defendant personally and his or her signature shall either be witnessed by counsel acting for him, not being the counsel acting for the plaintiff, or be verified by affidavit, and furnished to the plaintiff, whereupon the plaintiff may apply in writing

through the registrar to a judge for judgment according to such confession.

(2)(a) Whenever a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in sub-rule (4) for default judgment and the court may, where the claim is for a debt or liquidated demand, without hearing evidence, and in the case of any other claim, after hearing evidence, grant judgment against the defendant or make such order as to it seems meet.

(b) A defendant may within twenty (20) days after he or she has knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may upon good cause shown and upon the defendant furnishing to the plaintiff security for the payment of the costs of the default judgment and of such application to a maximum of R200 set aside the default judgment on such terms as to it seems meet.

(3) Where a plaintiff has been barred from delivering a declaration the defendant may set the action down as provided in sub-rule (4) and apply for absolution from the instance or, after adducing evidence, for judgment, and the court may make such order thereon as to it seems meet.

(4) The proceedings referred to in sub-rules (2) and (3) shall be set down for hearing before noon on the day but one preceding the day on which the matter is to be heard upon not less than five (5) days' notice to the party in default: Provided that no notice of set down need be given to any party in default of delivery of notice of intention to defend.

"(5)(a) Wherever a defendant is in default of delivery of notice of intention to defend an action where each of the claims is for a debt or liquidated demand, the plaintiff, if he or she wishes to obtain judgment by default, may file with the registrar a written application for judgment against such defendant, instead of following the procedure prescribed by sub-rule (2),

(b) The registrar may -

(i) grant judgment as requested;

(ii) grant judgment for part of the claim only or on amended terms;

(iii) refuse judgment wholly or in part;

(iv) postpone the application for judgment on such terms as he or she may consider just;

(v) request or receive oral or written submissions;

(vi) require that the matter be set down for hearing in open court.

(c) The registrar shall record any judgment granted or direction given by him.

(d) Any party dissatisfied with a judgment granted or direction given by the registrar may, within 20 days

after he or she has acquired knowledge of such judgment or direction, set the matter down for reconsideration by the court.

(e) The registrar shall -

(i) if the value of the claim as stated in the summons, apart from any consent to jurisdiction, is within the jurisdiction of the magistrate's court, and unless the plaintiff claims costs on the counsel and client scale, other than by virtue of an undertaking by the defendant under a written agreement to pay costs on that scale, grant judgment for costs on the appropriate scale in undefended actions in the magistrate's court plus the deputy sheriff's fees, or, if he or she is satisfied that the defendant has so undertaken to pay costs on the counsel and client scale, grant judgment for costs on the scale, plus the deputy sheriff's fees;

(ii) in other cases, unless the application for default judgment requires costs to be taxed or the registrar requires a decision on costs from the court, grant judgment for costs in an amount of N$800.00 plus the deputy sheriff's fees.

(f) Where, as contemplated in subparagraph (ii) of paragraph (e), the plaintiff claims costs on the

counsel and client scale, other than by virtue of an undertaking by the defendant under a written agreement to pay costs on that scale, the registrar shall refer such claim to a judge for decision and enter the judgment for costs in accordance with that decision.

Summary Judgment

32. (1) Where the defendant has delivered notice of intention to defend, the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only-

(a) on a liquid document;
(b) for a liquidated amount in money;
(c) for delivery of specified movable property; or
(d) for ejectment,

together with any claim for interest and costs.

(2) The plaintiff shall within 15 days after the date of delivery of notice of intention to defend, deliver notice of such application, accompanied by an affidavit made by himself or herself or by any other person who can swear positively to the facts verifying the cause of action and the amount, if any, claimed and stating that in his or her opinion there is no *bona fide* defence to the action and that notice of intention to defend has been delivered solely for the purpose of delay, and if the

claim is founded on a liquid document a copy of the document shall be annexed to such affidavit, and such notice of application shall state that the application will be set down for hearing on a stated day not being less than 10 days from the date of the delivery thereof.

(3) Upon the hearing of an application for summary judgment the defendant may-

(a) give security to the plaintiff to the satisfaction of the registrar for any judgment including costs which may be given; or

(b) satisfy the court by affidavit (which shall be delivered before noon on the court day but one preceding the day on which the application is to be heard) or with the leave of the court by oral evidence of himself or herself or of any other person who can swear positively to the fact that he or she has a bona fide defence to the action, and such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefore.

(4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in sub-rule (2), nor may either party cross-examine any person who gives evidence *viva voce* or on affidavit: Provided that the court

may put to any person who gives oral evidence such questions as it considers may elucidate the matter.

(5) If the defendant does not find security or satisfy the court as provided in paragraph (b) of sub-rule (3), the court may enter summary judgment for the plaintiff.

(6) If on the hearing of an application made under this rule it appears-

(a) that any defendant is entitled to defend and any other defendant is not so entitled; or

(b) that the defendant is entitled to defend as to part of the claim,

the court shall-

(i) give leave to defend to a defendant so entitled thereto and give judgment against the defendant not so entitled; or

(ii) give leave to defend to the defendant as to part of the claim and enter judgment against him or her as to the balance of the claim, unless he or she shall have paid such balance to the plaintiff or into court in terms of rule 34; or

(iii) make both orders mentioned in sub-paragraphs (i) and (ii).

(7) If the defendant finds security or satisfies the court as provided in sub-rule (3), the court shall give leave to defend, and the action shall proceed as if no application for summary judgment had been made.

(8) Leave to defend may be given unconditionally or subject to such terms as to security, time for delivery of pleadings, or otherwise, as the court deems fit.

(9) Where delivery of a declaration is required by these rules and the court, when giving leave to defend in terms of this rule, has not made an order for the delivery of such declaration within a specified time, such declaration shall be delivered within 20 days of the date leave to defend has been given.

(10) The court may at the hearing of such application make such order as to costs as to it may seem just: Provided that if-

(a) the plaintiff makes an application under this rule, where the case is not within the terms of sub-rule (1) or where the plaintiff, in the opinion of the court, knew that the defendant relied on a contention which would entitle him or her to leave to defend, the court may order that the action be stayed until the plaintiff

has paid the defendant's costs, and may further order that such costs be taxed as between attorney and client; and

(b) in any case in which summary judgment was refused and in which the court after trial gives judgment for the plaintiff substantially as prayed, and the court finds that summary judgment should have been granted had the defendant not raised a defence which in its opinion was unreasonable, the court may order the plaintiff's costs of the action to be taxed as between attorney and client.

Special Cases and Adjudication upon Points of Law

33. (1) The parties to any dispute may, after institution of proceedings, agree upon a written statement of facts in the form of a special case for the adjudication of the court.

(2)(a) Such statement shall set forth the facts agreed upon, the questions of law in dispute between the parties and their contentions thereon, and such statement shall be divided into consecutively numbered paragraphs and there shall be annexed thereto copies of documents necessary to enable the court to decide upon such questions, and it shall be signed by an advocate and an attorney on behalf of each party or, where a party sues or defends personally, by such party.

(b) Such special case shall be set down for hearing in the manner provided for trials or opposed applications, whichever may be more convenient.

(c) If a minor or person of unsound mind is a party to such proceedings the court may, before determining the questions of law in dispute, require proof that the statements in such special case so far as concerns the minor or person of unsound mind are true.

(3) At the hearing thereof the court and the parties may refer to the whole of the contents of such documents and the court may draw any inference of fact or of law from the facts and documents as if proved at a trial.

(4) If it appears to the court *mero motu* or on the application of any party that there is, in any pending action, a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the trial of such question in such manner as it may deem fit, and may order that all further proceedings be stayed until such question has been disposed of: Provided that in an action for any damages arising from any motor vehicle accident, under any law, the court may on application of any party, order that any questions of liability for and the amount of any damages be decided separately unless it appears that the questions cannot conveniently be so decided.

(5) When giving its decision upon any question in terms of this rule the court may give such judgment as may upon such decision be appropriate, and may give any direction with regard to the hearing of any other issues in the proceeding which may be necessary for the final disposal thereof.

(6) If the question in dispute is one of law and the parties are agreed upon the facts, the facts may be admitted and recorded at the trial, and the court may give judgment without hearing any evidence.

Offer to Settle

34. (1) If any action in which a sum of money is claimed, either alone or with any other relief, the defendant may at any time unconditionally or without prejudice make a written offer to settle the plaintiff's claim, and such offer shall be signed either by the defendant himself or herself or by his or her attorney if the latter has been authorized thereto in writing.

(2) Where the plaintiff claims the performance of some act by the defendant, the defendant may at any time tender, either unconditionally or without prejudice to perform such act, and unless such act must be performed by the defendant personally, he or she shall execute an irrevocable power of attorney authorizing the performance of such act which he or she shall deliver to the registrar together with the tender.

(3) Any party to an action who may be ordered to contribute towards an amount for which any party to the action may be held liable, or any third party from whom relief is being claimed in terms of rule 13, may, either unconditionally or without prejudice, by way of an offer of settlement-

(a) make a written offer to that other party to contribute either a specific sum or in a specific proportion towards the amount to which the plaintiff may be held entitled in the action; or

(b) give a written indemnity to such other party, the conditions of which shall be set out fully in the offer of settlement.

(4) One of several defendants, as well as any third party from whom relief is claimed, may, either unconditionally or without prejudice, by way of an offer of settlement make a written offer to settle the plaintiff's or defendant's claim or tender to perform any act claimed by the plaintiff or defendant.

(5) Notice of any offer or tender in terms of this rule shall be given to all parties to the action and shall state -

(a) whether the same is unconditional or without prejudice as an offer of settlement;

(b) whether it is accompanied by an offer to pay all or only part of the costs of the party to whom the offer or tender is made, and further that it shall be subject to such conditions as may be stated therein;

(c) whether the offer or tender is made by way of settlement of both claim and costs or of the claim only;

(d) whether the defendant disclaims liability for the payment of costs or for part thereof, in which case the reasons for such disclaimer shall be given, and the action may then be set down on the question of costs alone.

(6) A plaintiff or party referred to in sub-rule (3) may within 15 days after the receipt of the notice referred to in sub-rule (5), or thereafter with the written consent of the defendant or third party or order of court, on such conditions as may be considered to be fair, accept any offer or tender, whereupon the registrar, having satisfied himself or herself that the requirements of this sub-rule have been complied with, shall hand over the power of attorney referred to in sub-rule (2) to the plaintiff or his or her attorney.

(7) In the event of a failure to pay or to perform within 10 days after delivery of the notice of acceptance of the offer or tender, the party entitled to payment or performance may, on 5

days' written notice to the party who has failed to pay or perform apply through the registrar to a judge for judgment in accordance with the offer or tender as well as for the costs of the application.

(8) If notice of the acceptance of the offer or tender in terms of sub-rule (6) or notice in terms of sub-rule (7) is required to be given at an address other than that provided in rule 19(3), it shall be given at an address, which is not a post office box or *poste restante*, within 8 kilometres of the office of the registrar at which such notice must be delivered.

(9) If an offer or tender accepted in terms of this rule is not stated to be in satisfaction of a plaintiff's claim and costs, the party to whom the offer or tender is made may apply to the court, after notice of not less than 5 days, for an order for costs.

(10) No offer or tender in terms of this rule made without prejudice shall be disclosed to the court at any time before judgment has been given, and no reference to such offer or tender shall appear on any file in the office of the registrar containing the papers in the said case.

(11) The fact that an offer or tender referred to in this rule has been made may be brought to the notice of the court after judgment has been given as being relevant to the question of costs.

(12) If the court has given judgment on the question of costs in ignorance of the offer or tender and it is brought to the notice of the registrar, in writing, within 5 days after the date of judgment, the question of costs shall be considered afresh in the light of the offer or tender: Provided that nothing in this sub-rule contained shall affect the court's discretion as to an award of costs.

(13) Any party who, contrary to this rule, personally or through any person representing him or her, discloses such an offer or tender to the judge or the court shall be liable to have costs given against him or her even if he or she is successful in the action.

(14) This rule shall apply *mutatis mutandis* where relief is claimed on motion or claim in reconvention or in terms of rule 13.

Discovery, Inspection and Production of Documents

35. (1) Any party to any action may require any other party thereto, by notice in writing, to make discovery on oath within 20 days of all documents and tape recordings relating to any matter in question in such action (whether such matter is one arising between the party requiring discovery and the party required to make discovery or not) which are or have at any time been in the possession or control of such other party, and such notice shall

not, save with the leave of a judge, be given before the close of pleadings.

(2) The party required to make discovery shall within 20 days or within he time stated in any order of a judge make discovery of such documents on affidavit as near as may be in accordance with Form 11 of the First Schedule, specifying separately-

(a) such documents and tape recordings in his or her possession or that of his or her agent other than the documents and tape recordings mentioned in paragraph (b);

(b) such documents and tape recordings in respect of which he or she has a valid objection to produce;

(c) such documents and tape recordings which he or she or his or her agent had but no longer has in his or her possession at the date of the affidavit, and a document shall be deemed to be sufficiently specified if it is described as being one of a bundle of documents of a specified nature, which have been initialed and consecutively numbered by the deponent, and statements of witnesses taken for purposes of the proceedings, communications between counsel and another counsel instructed by him or her between counsel and another counsel

instructed by him or her pleadings, affidavits and notices in the action shall be omitted from the schedule.

(3) If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him or her to make the same available for inspection in accordance with sub-rule (6), or to state on oath within 10 days that such documents are not in his or her possession, in which event he or she shall state their whereabouts, if known to him or her.

(4) A document or tape recording not disclosed as aforesaid may not, save with the leave of the court granted on such terms as to it may seem meet, be used for any purpose at the trial by the party who was obliged but failed to disclose it, provided that any other party may use such document or tape recording.

(5)(a) Where an authorized insurer or appointed agent as contemplated in any law relating to motor vehicle accidents, is a party to any action for damages arising from any motor vehicle accident under any such law, any party thereto may obtain discovery in the manner provided in paragraph (d) of this sub-rule

against the driver or owner (as defined in any such law) of the vehicle insured by the said insurer or agent as the case may be.

(b) The provisions of paragraph (a) shall apply *mutatis mutandis* to the driver of a motor vehicle owned by any person, State or Government in respect of which the provisions of any law referred to in paragraph (a) are not applicable.

(c) Where the plaintiff sues as a cessionary, the defendant shall *mutatis mutandis* have the same rights under this rule against the cedent.

(d) The party requiring discovery in terms of paragraph (a), (b) or (c) shall do so by notice as near as may be in accordance with Form 12 of the First Schedule.

(6) Any party may at any time by notice as near as may be in accordance with Form 13 of the First Schedule require any party who has made discovery to make available for inspection any documents or tape recordings disclosed in terms of sub-rules (2) and (3), and such notice shall require the party to whom notice is given to deliver to him or her within 5 days a notice as near as may be in accordance with Form 14 of the First Schedule, stating a time within 5 days from the delivery of such latter notice when documents or tape recordings may be inspected at the office of his or her attorney or, if he or she is not

represented by an attorney, at some convenient place mentioned in the notice, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade, business or undertaking, at their usual place of custody, and the party receiving such last-mentioned notice shall be entitled at the time therein stated, and for a period of 5 days thereafter, during normal business hours and on any one or more of such days, to inspect such documents or tape recordings and to take copies or transcriptions thereof, and a party's failure to produce any such document or tape recording for inspection shall preclude him or her from using it at the trial, save where the court on good cause shown allows otherwise.

(7) If any party fails to give discovery as aforesaid or, having been served with a notice under sub-rule (6), omits to give notice of a time for inspection as aforesaid or fails to give inspection as required by that sub-rule, the party desiring discovery or inspection may apply to a court, which may order compliance with this rule and, failing such compliance, may dismiss the claim or strike out the defence.

(8) Any party to an action may after the close of pleadings give notice to any other party to specify in writing particulars of dates and parties of or to any document or tape recording intended to be used at the trial of the action on behalf of the party to whom notice is given, and the party receiving such notice shall not less than 15 days before the date of trial deliver a notice-

(a) specifying the dates of and parties to and the general nature of any such document or tape recording which is in his or her possession; or

(b) specifying such particulars as he or she may have to identify any such document or tape recording not in his or her possession, at the same time furnishing the name and address of the person in whose possession such document or tape recording is.

(9) Any party proposing to prove documents or tape recordings at a trial may give notice to any other party requiring him or her within 10 days after the receipt of such notice to admit that those documents or tape recordings were properly executed and are what they purported to be, and if the party receiving the said notice does not within the said period so admit, then as against such party the party giving the notice shall be entitled to produce the documents or tape recordings specified at the trial without proof other than proof (if it is disputed) that the documents or tape recordings are the documents or tape recordings referred to in the notice and that the notice was duly given, and if the party receiving the notice states that the documents or tape recordings are not admitted as aforesaid, they shall be proved by the party giving the notice before he or she is entitled to use them at the trial, but the party not admitting them may be ordered to pay the costs of their proof.

(10) Any party may give to any other party who has made discovery of a document or tape recording notice to produce at the hearing the original of such document or tape recording, not being a privileged document or tape recording, in such party's possession, and such notice shall be given not less than 5 days before the hearing but may, if the court so allows, be given during the course of the hearing, and if any such notice is so given, the party giving the same may require the party to whom notice is given to produce the said document or tape recording in court and shall be entitled, without calling any witness, to hand in the said document, which shall be receivable in evidence to the same extent as if it had been produced in evidence by the party to whom notice is given.

(11) The court may, during the course of any proceeding, order the production by any party thereto under oath of such documents or tape recordings in his or her power or control relating to any matter in question in such proceeding as the court may think meet, and the court may deal with such documents or tape recordings, when produced, as it thinks meet.

(12) Any party to any proceeding may at any time before the hearing thereof deliver a notice as near as may be in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to produce such document or tape recording for his or her inspection and to permit him or her to make a copy or transcription thereof, and any party failing to

comply with such notice shall not, save with the leave of the court , use such document or tape recording in such proceeding provided that any other party may use such document or tape recording.

(13) The provisions of this rule relating to discovery shall *mutatis mutandis* apply, in so far as the court may direct, to applications.

(14) After appearance to defend has been entered, any party to any action may, for purposes of pleading, require any other party to make available for inspection within 5 days a clearly specified document or tape recording in his or her possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof.

(15) For the purposes of rules 35 and 38 a tape recording includes a sound track, film, magnetic tape, record or any other material on which visual images, sound or other information can be recorded.

Inspections, Examinations and Expert Testimony

36. (1) Subject to the provisions of this rule any party to proceedings in which-

(a) damages or compensation in respect of alleged bodily injury is claimed;

(b) damages resulting from the death of another person is claimed,

shall have the right to require any party claiming such damage or compensation, whose own state of health is relevant for the determination thereof, to submit to medical examination.

(2) Any party requiring another party to submit to such examination shall deliver a notice specifying the nature of the examination required, the person or persons by whom, the place where and the date (being not less than 15 days from the date of such notice) and time when it is desired that such examination shall take place, and requiring such other party to submit himself or herself for examination then and there, and such notice shall state that such other party may have his or her own medical adviser present at such examination, and shall be accompanied by a remittance in respect of the reasonable expense to be incurred by such other party in attending such examination, and such expense shall be tendered on the scale as if such person were a witness in a civil suit before the court: Provided that -

(a) if such other party is immobile, the amount to be paid to him or her shall include the cost of his or her travelling by motor vehicle and, where required, the reasonable cost of a person attending upon him or her;

(b) where such other party will actually lose his or her salary, wage or other remuneration during the period of his or her absence from work, he or she shall in addition to the aforementioned expenses be entitled to receive an amount not exceeding R15 per day in respect of the salary, wage or other remuneration which he or she will actually lose;

(c) any amounts paid by a party as aforesaid shall be costs in the cause unless the court otherwise directs.

(3) The person receiving such notice shall within 5 days after the service thereof notify the person delivering it in writing of the nature and grounds of any objection which he or she may have in relation to -

(a) the nature of the proposed examination;

(b) the person or persons by whom the examination is to be conducted;

(c) the place, date or time of the examination;

(d) the amount of the expenses tendered to him or her;

and shall further-

(i) in the case of his or her objection being to the place, date or time of the examination, furnish an alternative date, time or place, as the case may be; and

(ii) in the case of the objection being to the amount of the expenses tendered, furnish particulars of such increased amount as may be required,

and should the person, receiving the notice, not deliver such objection within the said period of 5 days, he or she shall be deemed to have agreed to the examination upon the terms set forth by the person giving the notice, and should the person, giving the notice, regard the objection raised by the person receiving it as unfounded in whole or in part he or she may on notice make application to a judge to determine the conditions upon which the examination, if any, is to be conducted.

(4) Any party to such an action may at any time by notice in writing require any person claiming such damages to make available in so far as he or she is able to do so to such party within 10 days any medical reports, hospital records, X-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages, and to provide copies thereof upon request.

(5) If it appears from any medical examination carried out either by agreement between the parties or pursuant to any notice given in terms of this rule, or by order of a judge, that any

further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of such damages, any party may require a second and final medical examination in accordance with the provisions of this rule.

(6) If it appears that the state or condition of any property of any nature whatsoever whether movable or immovable, may be relevant with regard to the decision of any matter at issue in any action, any party may at any stage give notice requiring the party relying upon the existence of such state or condition of such property or having such property in his or her possession or under his or her control to make it available for inspection or examination in terms of this sub-rule, and may in such notice require that such property or a fair sample thereof remain available for inspection or examination for a period of not more than 10 days from the date of receipt of the notice.

(7) The party called upon to submit such property for examination may require the party requesting it to specify the nature of the examination to which it is to be submitted, and shall not be bound to submit such property thereto if this will materially prejudice such party by reason of the effect thereof upon such property, and in the event of any dispute whether the property should be submitted for examination, such dispute shall be referred to a judge on notice delivered by either party stating that the examination is required and that objection is

taken in terms of this sub-rule, and in considering any such dispute the judge may make such order as to him or her seems meet.

(8) Any party causing an examination to be made in terms of sub-rules (1) and (6) shall-

(a) cause the person making the examination to give a full report in writing of the results of his or her examination and the opinions that he or she formed as a result thereof on any relevant matter;

(b) after receipt of such report and upon request furnish any other party with a complete copy thereof; and

(c) bear the expense of the carrying out of any such examination: Provided that such expense shall form part of such party's costs.

(9) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witnesses any person to give evidence as an expert upon any matter upon which the evidence of expert witness may be received unless he or she shall-

(a) not less than 15 days before the hearing, have delivered notice of his or her intention so to do; and

(b) not less than 10 days before the trial, have delivered a summary of such expert's opinion and his or her reasons therefor.

(10)(a) No person shall, save with the leave of the court or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless he or she shall not less than 15 days before the hearing have delivered a notice stating his or her intention to do so, offering inspection thereof and requiring the party receiving notice to admit the same within 10 days after receipt of the notice.

(b) If the party receiving the notice fails within the said period so to admit, the said plan, diagram, model or photograph shall be received in evidence upon its mere production and without further proof thereof, and if such party states that he or she does not admit them, the said plan, diagram, model or photograph may be proved at the hearing and the party receiving the notice may be ordered to pay the cost of their proof.

Curtailment of Proceedings

37. (1) An attorney desirous of obtaining a date for the hearing of an action shall as soon as possible after the close of

pleadings and before requesting such date in writing request the attorneys acting for all other parties to such action to attend a conference at a mutually convenient time with the object of reaching agreement as to possible ways of curtailing the duration of such trial and in particular as to all or any of the following matters, namely:

(a) the possibility of obtaining admissions of fact and of documents;

(b) the holding of any inspection or examination;

(c) the making of any discovery of documents;

(d) the exchange between parties of the reports of experts;

(e) the giving of any further particulars reasonably required for the purposes of trial;

(f) the plans, diagrams, photographs, models, and the like, to be used at the trial;

(g) the consolidation of trials;

(h) the quantum of damages;

(i) the preparation and handing in at the trial of copies of correspondence and other documents in the form of a paged bundle with copies for the bench and all parties.

(2) At the conclusion of such conference the attorneys shall draw up and sign a minute of the matters which they have discussed or agreed upon and deliver it to the registrar together with the request for a date for the hearing of the action.

(3) When a party has refused or failed to attend such conference, the other party may on notice to such party apply to a judge for leave to obtain a date for the hearing of the action from the registrar and the judge may make such order as to him or her seems meet.

(4) When giving judgment in the action the court may make an order for the payment by a party of any portion of the costs when such party has refused or failed to attend such conference.

Procuring Evidence for Trial

38. (1) Any party, desiring the attendance of any person to give evidence at a trial, may as of right, without any prior proceeding whatsoever, sue out from the office of the registrar one or more subpoenas for that purpose, each of which subpoenas shall contain the names of not more than 4 persons,

and service thereof upon any person therein named shall be effected by the sheriff in the manner prescribed by rule 4, and the process for subpoenaing such witnesses shall be, as nearly as may be, in accordance with Form 16 in the First Schedule, and if any witness has in his or her possession or control any deed, instrument, writing or thing which the party requiring his or her attendance desires to be produced in evidence, the subpoena shall specify such document or thing and require him or her to produce it to the court at the trial.

(2) The witnesses at the trial of any action shall be examined *viva voce*, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.

(3) A court may, on application on notice in any matter where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before or during the trial before a commissioner of the court, and permit any party to any such matter to use such deposition in evidence on such terms, if any, as to it seems meet, and in

particular may order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or the furnishing of any particulars in the action.

(4) Where the evidence of any person is to be taken on commission before any commissioner within Namibia, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.

(5) Unless the court ordering the commissioner directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before the commissioner in terms of an order granted under sub-rule (3), shall be adduced upon oral examination in the presence of the parties, their advocates and attorneys, and the witness concerned shall be subject to cross-examination and re-examination.

(6) A commissioner shall not decide upon the admissibility of evidence tendered, but shall note any objections made and such objections shall be decided by the court hearing the matter.

(7) Evidence taken on commission shall be recorded in such manner as evidence is recorded when taken before a court and the transcript of any shorthand record or record taken by mechanical means duly certified by the person transcribing the same and by the commissioner shall constitute the record of the

examination: Provided that the evidence before the commissioner may be taken down in narrative form.

(8) The record of the evidence shall be returned by the commissioner to the registrar with his or her certificate to the effect that it is the record of the evidence given before him or her, and shall thereupon become part of the record in the case.

Setting Down of Defended Cases

39. (1) Whenever-

(a) an exception has been filed to any pleadings; or

(b) the parties have stated a special case for the opinion of the court on a question of law; or

(c) an order has been granted in terms of sub-rule (4) of rule 33 that a question of law has been raised for the opinion of the court,

any of the parties concerned may apply to the registrar to set the case down for argument.

(2) Whenever in cases, not carried on by default, the pleadings have been closed, the plaintiff may apply to the registrar to set the case down for trial: Provided that, if he or she fails to do so within 30 days after the date on which the

pleadings have been closed or a set-down has been withdrawn in terms of subrule (6), either the defendant or the plaintiff may so apply: Provided further that in calculating the said period of 30 days, the period from 15 December to 15 January shall be excluded.

(3) At least 48 hours' notice of the date and hour when application will be made to the registrar under subrule (1) or (2) shall be given by the applicant to all the other parties concerned, who shall be entitled to attend before the registrar and to state any objections they may have to the day proposed by the applicant for set-down.

(4) When a party applies to the registrar to set down a case for a particular day, he or she may notify the registrar that he or she is prepared to have the case tried or argued at an earlier date if an earlier date should become available through the withdrawal of a case or otherwise, and the registrar shall then decide whether an earlier hearing will prejudice the other party to the case, and if he, or she decides that it will not, he or she shall then fix what period of notice of such earlier hearing will be reasonably required by all the parties, and thereafter it shall be competent for the registrar to set down the case for an earlier date, subject to his or her giving the parties the notice so fixed.

(5) It shall be competent for the parties, whether a case is set down or not, to agree in writing that they will be prepared

to have the case heard at short notice and to specify in such agreement what notice they will require, and upon such agreement being notified to the registrar by the parties, he or she shall place the case upon a roll of cases that may be heard upon short notice and he or she may thereafter set the case down for hearing for any day, subject to his or her giving the parties the notice agreed upon.

(6) Whenever a case has been set down the party who sets it down shall forthwith give written notice of such set-down to the other party, and thereafter the party who sets the case down may withdraw such set-down only with the written consent of the other party or on paying the wasted costs incurred by the other party.

(7) When a set-down has been withdrawn the attorney of the party who set the case down shall immediately thereupon give notice thereof to the registrar, and in the case of a matter set down for trial shall file with the registrar an affidavit setting forth the day on, and hour at which the agreement to withdraw was concluded.

(8) Nothing in this rule contained shall be construed as dispensing with the requirements of rule 33(2)(c) in regard to a special case when the interests of minors or persons of unsound mind may be affected.

Trial

40. (1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his or her claim so far as the burden of proof lies upon him or her and judgment shall be given accordingly, in so far as he or she has discharged such burden: Provided that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.

(2) When a defendant has by his or her default been barred from pleading, and the case has been set down for hearing, and the default duly proved, the defendant shall not, save where the court in the interests of justice may otherwise order, be permitted, either personally or by an advocate, to appear at the hearing.

(3) If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant shall be entitled to an order granting absolution from the instance with costs, but may lead evidence with a view to satisfying the court that final judgment should be granted in his or her favour and the court, if so satisfied, may grant such judgment.

(4) The provisions of subrules (1) and (2) shall apply to any person making any claim (whether by way of claim in reconvention or third party notice or by any other means) as if he or she were a plaintiff, and the provisions of subrule (3) shall

apply to any person against whom such a claim is made as if he or she were a defendant.

(5) Where the burden of proof is on the plaintiff, he or she or one advocate for the plaintiff may briefly outline the facts intended to be proved and the plaintiff may then proceed to the proof thereof.

(6) At the close of the case for the plaintiff, the defendant may apply for absolution from the instance, in which event the defendant or one advocate on his or her behalf may address the court and the plaintiff or one advocate on his or her behalf may reply, and the defendant or his or her advocate may thereupon reply on any matter arising out of the address of the plaintiff or his or her advocate.

(7) If absolution from the instance is not applied for or has been refused and the defendant has not closed his or her case, the defendant or one advocate on his or her behalf may briefly outline the facts intended to be proved and the defendant may then proceed to the proof thereof.

(8) Each witness shall, where a party is represented, be examined, cross-examined or re-examined as the case may be by only one (though not necessarily the same) advocate for such party.

(9) If the burden of proof is on the defendant, he or she or his or her advocate shall have the same rights as those according to the plaintiff or his or her advocate by subrule (5).

(10) Upon the cases on both sides being closed, the plaintiff or one or more of the advocates on his or her behalf may address the court and the defendant or one or more advocates on his or her behalf may do so, after which the plaintiff or one advocate only on his or her behalf may reply on any matter arising out of the address of the defendant or his or her advocate.

(11) Either party may apply at the opening of the trial for a ruling by the court upon the onus of adducing evidence, and the court after hearing argument may give a ruling as to the party upon whom such onus lies: Provided that such ruling may thereafter be altered to prevent injustice.

(12) If there be one or more third parties or if there be defendants to a claim in reconvention who are not plaintiffs in the action, any such party shall be entitled to address the court in opening his or her case and shall lead his or her evidence after the evidence of the plaintiff and of the defendant has been concluded and before any address at the conclusion of such evidence, and save in so far as the court shall otherwise direct, the defendants to any counter-claim who are not plaintiffs shall first lead their evidence and thereafter any third parties shall lead their evidence in the order in which they became third

parties, and if the onus of adducing evidence is on the claimant against the third party or on the defendant to any claim in reconvention, the court shall make such order as may seem convenient with regard to the order in which the parties shall conduct their cases and address the court, and in regard to their respective rights of reply, and the provisions of subrule (11) shall *mutatis mutandis* apply with regard to any dispute as to the onus of adducing evidence.

(13) Where the onus of adducing evidence on one or more of the issues is on the plaintiff and that of adducing evidence on any other issue is on the defendant, the plaintiff shall first call his or her evidence on any issues in respect of which the onus is upon him or her, and may then close his or her case, and the defendant, if absolution from the instance is not granted, shall, if he or she does not close his or her case, thereupon call his or her evidence on all issues in respect of which such onus is upon him or her.

(14) After the defendant has called his or her evidence, the plaintiff shall have the right to call rebutting evidence on any issues in respect of which the onus was on the defendant: Provided that if the plaintiff shall have called evidence on any such issues before closing his or her case he or she shall not have the right to call any further evidence thereon.

(15) Nothing in subrules (13) or (14) contained shall prevent the defendant from cross-examining any witness called

at any stage by the plaintiff on any issue in dispute, and the plaintiff shall be entitled to re-examine such witness consequent upon such cross-examination without affecting the right given to him or her by subrule (14) to call evidence at a later stage on the issue on which such witness has been cross-examined, and the plaintiff may further call the witness so re-examined to give evidence on any such issue at a later stage.

(16) A record shall be made of -

(a) any judgment or ruling given by the court;

(b) any evidence given in court;

(c) any objection made to any evidence received or tendered;

(d) the proceedings of the court generally (including any inspection in loco and any matter demonstrated by any witness in court); and

(e) any other portion of the proceedings which the court may specifically order to be recorded.

(17) Such record shall be kept by such means as to the court seems appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.

(18) The shorthand notes so taken or any mechanical record shall be certified by the person taking the same to be correct and shall be filed with the registrar, and it shall not be necessary to transcribe them unless the court or a judge so directs or a party appealing so requires, and if and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing them and the transcript, the shorthand notes and the mechanical record shall be filed with the registrar, and the transcript of the shorthand notes or mechanical record certified as correct shall be deemed to be correct unless the court otherwise orders.

(19) Any party to any matter in which a record has been made in shorthand or by mechanical means may apply in writing through the registrar to a judge to have the record transcribed if an order to that effect has not already been made, and such party shall be entitled to a copy of any transcript ordered to be made upon payment of the prescribed fees.

(20) If it appears convenient to do so, the court may at any time make any order with regard to the conduct of the trial as to it seems meet, and thereby vary any procedure laid down by this rule.

(21) Every stenographer employed to take down a record and every person employed to make a mechanical record of any proceedings shall be deemed to be an officer of the court and

shall, before entering on his or her duties, take the following oath:

> "I, AB, do swear that I shall faithfully, and to the best of my ability, record in shorthand, or cause to be recorded by mechanical means, as directed by the judge, the proceedings in any case in which I may be employed as an officer of the Court, and that I shall similarly, when required to do so, transcribe the same or, as far as I am able, any shorthand notes, or mechanical record made by any other stenographer or person employed to make such mechanical record."

(22) By consent the parties to trial shall be entitled, at any time before trial, on written application to a judge through the registrar, to have the cause transferred to the magistrate's court: Provided that the matter is one within the jurisdiction of the latter court whether by way of consent or otherwise.

(23) The judge may, at the conclusion of the evidence in trial actions, confer with the advocates in his or her chambers as to the form and duration of the addresses to be submitted in court.

(24) Where the court considers that the proceedings have been unduly prolonged by the successful party by the calling of unnecessary witnesses or by excessive examination or cross-

examination, or by over-elaboration in argument, it may penalize such party in the matter of costs.

In Forma Pauperis

41. (1)(a) A person who desires to bring or defend proceedings *in forma pauperis*, may apply to the registrar who, if it appears to him or her that he or she is a person such as is contemplated by paragraph (a) of sub-rule (2), shall refer him or her to an attorney and at the same time inform the Law Society of Namibia accordingly.

(b) Such attorney shall thereupon inquire into such person's means and the merits of his or her cause and upon being satisfied that the matter is one in which he or she may properly act *in forma pauperis*, he or she shall request the said society to nominate an advocate who is willing and able to act, and upon being so nominated such advocate shall act therein.

(c) Should such attorney or advocate thereafter become unable so to act, the registrar or the said society, as the case may be, may, upon request, nominate another practitioner to act in his or her stead.

(2) If when proceedings are instituted there be lodged with the registrar on behalf of such person-

(a) an affidavit setting forth fully his or her financial position and stating that, excepting household goods, wearing apparel and tools of trade, he or she is not possessed of property to the amount of R1 000 and will not be able within a reasonable time to provide such sum from his or her earnings;

(b) a statement signed by counsel referred to in paragraph (a) of sub-rule (1) or, where applicable, by such counsel and any second counsel nominated in terms of paragraph (b) of that sub-rule, that being satisfied that the person concerned is unable to pay fees he or she or they, as the case may be, is or are acting for the said person gratuitously in the proceedings to be instituted by him or her; and;

(c) a certificate of *probabilis causa* by the said advocate, the registrar shall issue all process and accept all documents in the said proceedings for the aforesaid person without fee of office.

(3) All pleadings, process and documents filed of record by a party proceeding *in forma pauperis* shall be headed accordingly.

(4) The registrar shall maintain in his or her office a roster of attorneys, and in referring persons desirous of bringing or defending proceedings *in forma*

pauperis to practitioners in terms of sub-rule (1), he or she shall do so as far as possible in rotation.

(5) Every counsel by whom the statement referred to in sub-rule (2)(b) has been signed shall act gratuitously for the said person in the said proceedings, and shall not be at liberty to withdraw, settle or compromise such proceedings, or to discontinue his or her or their assistance without the leave of the judge, who may in the latter event give direction as to the appointment of a substitute or substitutes, as the case may be; and

(6) When a person sues or defends *in forma pauperis* under process issued in terms of this rule, his or her opponent shall, in addition to any other right he or she may have, have the right at any time to apply to the court on notice for an order dismissing the claim or defence or for an order debarring him or her from continuing *in forma pauperis*, and upon the hearing of such application the court may make such order thereon, including any order as to costs, as to it seems meet.

(7) If upon the conclusion of the proceedings a litigant *in forma pauperis* is awarded costs, his or her attorney may include in his or her bill of costs such fees and disbursements to which he or she would ordinarily

have been entitled, and upon receipt thereof, in whole or in part, he or she shall pay out in the following order of preference; namely, first, to the registrar, such amount in revenue stamps as would have been due in respect of his or her fees of office; second, to the deputy sheriff, his or her charges for the service and execution of process; third, to himself or herself and the counsel instructed by him or her their fees as allowed on taxation, *pro rata* if necessary.

2. Withdrawal, Settlement, Discontinuance, Postponement and Abandonment

42. (1)(a) A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings, in any of which events he or she shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs, and the taxing master shall tax such costs on the request of the other party.

(b) A consent to pay costs referred to in paragraph (a), shall have the effect of an order of court for such costs.

(c) If no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to court on notice for an order for costs.

(2) Any party in whose favour any decision or judgment has been given, may abandon such decision or judgment either in whole or in part by delivering notice thereof and such judgment or decision abandoned in part shall have effect subject to such abandonment, and the provisions of sub-rule (1) relating to costs shall *mutatis mutandis* apply in the case of a notice delivered in terms of this sub-rule.

(3) If in any proceedings a settlement or an agreement to postpone or withdraw is reached, it shall be the duty of the attorney for the plaintiff or applicant immediately to inform the registrar accordingly.

(4) Unless such proceedings have been withdrawn, any party to a settlement which has been reduced to writing and signed by the parties or their legal representatives but which has not been carried out, may apply for judgment in terms thereof on at least 5 days' notice to all interested parties.

Matrimonial Matters

43. (1) This rule, with the exclusion of sub-rule (9), shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) Maintenance *pendente lite*;

(b) a contribution towards the costs of a pending matrimonial action;

(c) interim custody of any child;

(d) interim access to any child.

(2) The applicant shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the ground therefor, together with a notice to the respondent as near as may be in accordance with Form 17 of the First Schedule, and the statement and notice shall be signed by the applicant or his or her attorney and shall give an address for service within 8 kilometres of the office of the registrar and shall be served by the sheriff.

(3) The respondent shall within 10 days after receiving the statement deliver a sworn reply in the nature of a plea, signed and giving an address as aforesaid, in default of which he or she shall be *ipso facto* barred.

(4) As soon as possible thereafter the registrar shall bring the matter before the court for summary hearing, on 10 days' notice to the parties, unless the respondent is in default.

(5) The court may hear such evidence as it considers necessary and may dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision.

(6) The court may, on the same procedure, vary its decision in the event of a material change taking place in the circumstances of either party or a child, or the contribution towards costs proving inadequate.

(7) Unless the court otherwise directs counsel in a case under this rule shall not charge a fee –

(a) of more than N$450 for appearance if the claim is defended or N$200 if it is undefended;

(b) of more than N$450 for any other services rendered in connection with the claim.; and

(9) When an undefended divorce action is postponed the action may be continued before another court notwithstanding that evidence has been given.

Variation and Rescission of Orders

44. (1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary –

(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefore upon notice to all parties whose interests may be affected by any variation sought.

(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.

Execution – General and Movables

45. (1) The party in whose favour any judgment of the court has been pronounced may, at his or her own risk, sue out of the office of the registrar one or more writs for execution thereof as near as may be in accordance with Form 19 of the First Schedule: Provided that, except where by judgment of the court immovable property has been specially declared executable, no such process shall be issued against the immovable property of any person until a return shall have been made of any process which may have been issued against his or her movable

property, and the registrar perceives therefrom that the said person has not sufficient movable property to satisfy the writ.

(2) No process of execution shall be issued for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the taxing mater or agreed to in writing by the party concerned in a fixed sum: Provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed subject to due taxation thereafter: Provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated, not lodged with the deputy-sheriff before the day of the sale, such costs shall be excluded from his or her account and plan of distribution.

(3) Whenever by any process of the court the deputy-sheriff is commanded to levy and raise any sum of money upon the goods of any person, he or she shall forthwith himself or herself or by his or her assistant proceed to the dwelling-house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached), and there -

(a) demand satisfaction of the writ and, failing satisfaction;

(b) demand that so much movable and disposable property be pointed out as he or she may deem

sufficient to satisfy the said writ, and failing such pointing out;

(c) search for such property,

and any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of sub-rule (5), shall be taken into the custody of the deputy-sheriff: Provided-

(i) that if there is any claim made by any other person to any such property seized or about to be seized by the deputy-sheriff, then, if the plaintiff gives the deputy-sheriff an indemnity to his or her satisfaction to save him or her harmless from any loss or damage by reason of the seizure thereof, the deputy-sheriff shall retain or shall seize, as the case may be, and make an inventory of and keep the said property; and

(ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the deputy-sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him or her, unless his or her whereabouts are unknown.

(4) The deputy-sheriff shall file with the registrar any process with a return of what he or she has done thereon, and shall

furnish a copy of such return and inventory to the party who caused such process to be issued.

(5) Where any movable property has been attached by the deputy-sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the deputy-sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, unless the said attachment shall sooner have been legally removed, whereupon the deputy-sheriff shall leave the said property attached and inventoried on the premises where it was found, and the deed of suretyship shall be as near as may be in accordance with Form 20 of the First Schedule.

(6) If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the deputy-sheriff shall remove the said goods to some convenient place of security or keep possession thereof on the premises where they were seized, the expense whereof shall be recovered from the judgment debtor and defrayed out of the levy.

(7) Where any movable property is attached as aforesaid the deputy-sheriff shall where practicable and subject to rule 58 sell it by public auction to the highest bidder after due advertisement by him or her in 2 suitable newspapers circulating in the district in which the property has been attached and after the expiration of not les than 15 days from the time of seizure thereof, and

where perishables are attached as aforesaid, they may with the consent of the execution debtor or upon the execution creditor indemnifying the deputy-sheriff against any claim for damages which may arise from such sale, be sold immediately by the deputy-sheriff concerned in such manner as to him or her seems expedient.

(8) If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided:

(a) Where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when-

(i) notice has been given by the deputy-sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security, as the case may be, and

(ii) the deputy-sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note, bond or other security, as the case may be, and

(iii) in the case of a registered lease or any registered right, notice has been given to the registrar of deeds.

(b) Where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the deputy-sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution, and the deputy-sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of the said interest.

(c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid-

(i) the attachment shall only be complete when -

(aa) notice of the attachment has been given in writing by the deputy-sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in

immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered; and

(bb) the deputy-sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he or she has been unable, despite diligent search, to obtain possession of the writing or document;

(ii) the deputy-sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

(9) Attachment of property subject to a lien shall be effected *mutatis mutandis* in accordance with the provisions of sub-paragraph (b) of sub-rule (8).

(10) Where property subject to a real right of any third person is sold in execution such sale shall be subject to the rights of such third person unless he or she otherwise agrees.

(11)(a) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with the deputy-sheriff before the day of the sale in execution shall rank *pro rata* in the distribution of proceeds of the goods sold, in the order of preference referred to in paragraph (c) of sub-rule (14) of rule 46.

(b) If there should remain any surplus, the deputy-sheriff shall pay it over to the judgment debtor; and the deputy-sheriff shall make out and deliver to him or her an exact account, in writing of his or her costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and if upon taxation any sum shall be disallowed, the deputy-sheriff shall refund such sum to the judgment debtor.

(12)(a) Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment by him or her to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro tanto*, of the debt attached.

(b) In the event of the garnishee refusing or neglecting to comply with any such notice, the sheriff shall forthwith notify the judgment creditor and the judgment creditor may call upon the garnishee to appear before the court to show cause why he or she should not pay to the sheriff the debt due, or so much thereof as may be sufficient to satisfy the writ, and if the garnishee does not dispute the debt due, or claimed to be due by him or her to the party against whom execution is issued, or he or she des not appear to answer to such notice, then the court may order execution to issue, and it may issue accordingly, without any previous writ or process, for the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the writ.

(c) If the garnishee disputes his or her liability in part, the court may order execution to issue in respect of so much as may be admitted, but if none be admitted then the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner *mutatis mutandis* in which any issue or question in any action may be tried or determined, or the court may make any such other order in the premises as may be just.

(d) Nothing in these rules as to the attachment of debts in the hands of a garnishee shall affect any cession, preference,

or retention claimed by any third person in respect of such debts.

(e) The costs connected with any application for the attachment of debts, and the proceedings arising from or incidental thereto, shall be in the discretion of the court.

(f) Where the sheriff is of opinion that applications to the court or orders with respect to a garnishee will probably cost more than the amount to be recovered thereunder, he or she may sell such debts, after attachment, by auction, in the same way as any other movable property, or may cede the same at the nominal amount thereof to the judgment creditor with his or her consent.

(g) Payment of the amount due under and in respect of any writ, and all costs and the like, incidental thereto, shall entitle the person paying to a withdrawal thereof.

(h) Whenever a court gives judgment for payment of a sum of money against a party (hereinafter called 'the debtor') the court may forthwith investigate whether the debtor is able to satisfy the judgment and for that purpose may require the debtor's attendance to give evidence on oath, and to produce such documents as the court may direct, and allow the judgment creditor to adduce such evidence as the court may think fit.

(i) Whenever a return has been made to a writ of execution, that the officer charged with the execution has been unable to find sufficient property subject to attachment to satisfy the amount of the writ, or whenever a judgment debt remains wholly or in part unsatisfied after the expiration of 20 days from the date of the judgment, the judgment creditor may by notice call upon the judgment debtor to appear before the court on a day fixed by such notice, and to produce such documents as may reasonably be necessary, in order that the court may investigate his or her financial position, and any debtor who, having been served with such notice, fails without good cause to appear, may be personally attached for contempt of court, and whenever the debtor appears pursuant to such notice the court may proceed as set forth in the preceding paragraph.

(j) Whenever the court is of opinion that a debtor is able to satisfy a debt by instalments out of his or her earnings, it may make an order for payment of such debt by instalments, and whenever an order has been made for payment by instalments and the debtor makes default in such payment, any salary, earnings, or emoluments due or accruing to such debtor to the extent of arrears may, without further notice to the debtor, but subject to the rights of the garnishee, be attached under the provisions of paragraph (a).

(k) Any writ issued for the attachment of salary, earnings, or emoluments shall remain in force and may be executed periodically as such salary, earnings, or emoluments accrue to the debtor, until the same is satisfied.

Execution – Immovables

46. (1) A writ of execution against immovable property shall contain a full description of the nature and situation (including the address) of the immovable property to enable it to be traced and identified by the deputy-sheriff, and shall be accompanied by sufficient information to enable him or her to give effect to sub-rule (3) of this rule.

(2) An attachment shall be made by the deputy-sheriff of the district in which the property is situated or by the deputy-sheriff of the district in which the office of the registrar of deeds or other officer charged with the registration of such property is situated, upon a writ as near as may be in accordance with Form 21 of the First Schedule.

(3) The mode of attachment of immovable property shall be by notice in writing by the deputy-sheriff served upon the owner thereof, and upon the registrar of deeds or other officer charged with the registration of such immovable property, and if the property is in the occupation of some person other than the owner, also upon such occupier, and any such notice as aforesaid shall be served by means of a registered letter, duly

prepaid and posted addressed to the person intended to be served.

(4) After attachment, any sale in execution shall take place in the district in which the attached property is situated and be conducted by the deputy-sheriff of such district: Provided that the sheriff in the first instance and subject to the provisions of paragraph (b) of sub-rule (8) may on good cause shown authorize such sale to be conducted elsewhere and by another deputy-sheriff, and upon receipt of written instructions from the execution creditor to proceed with such sale, the deputy-sheriff shall ascertain and record what bonds or other encumbrances are registered against the property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(5) No immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless-

(a) the execution creditor has caused notice, in writing, of the intended sale to be served by registered post upon the preferent creditor, if his or her address is known and, if the property is rateable, upon the regional or local authority concerned calling upon them to stipulate within 10 days of a date to be stated a reasonable reserve price or to agree in

writing to a sale without reserve, and has provided proof to the deputy-sheriff that the preferent creditor has so stipulated or agreed, or

(b) the deputy-sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) of this sub-rule within the time stated in such notice.

(6) The deputy-sheriff may by notice served upon any person require him or her to deliver up to him or her forthwith all documents in his or her possession or control relating to the debtor's title to the said property.

(7)(a) The deputy-sheriff shall appoint a day and place for the sale of such property, such day being, except by special leave of a magistrate, not less than one month after service of the notice of attachment.

(b) The execution creditor shall, after consultation with the deputy-sheriff, prepare a notice of sale containing a short description of the property, its situation and street number, if any, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the deputy-sheriff,

and he or she shall furnish the deputy-sheriff with as many copies of the notice as the latter may require.

(c) the deputy-sheriff shall indicate 2 suitable newspapers circulating in the district in which the property is situated and require the execution creditor to publish the said notice once in each of the said newspapers, not less than 5 days and not more than 10 days and in the *Gazette* not later than 2 weeks before the date appointed for the sale and to furnish him or her, not later than the day prior to the date of the sale, with one copy of each of the said newspapers and with the number of the *Gazette* in which the notice appeared.

(d) Not less than 10 days prior to the date of the sale, the deputy-sheriff shall forward by registered post a copy of the notice of sale referred to in paragraph (b) above to every judgment creditor who had caused the said immovable property to be attached and to every mortgage thereof whose address is known.

(e) Not less than 10 days prior to the date of the sale, the deputy-sheriff shall affix one copy of the notice on the notice-board of the magistrate's court of the district in which the property is situated, or if the property be situated in the district in which the court out of which the writ issued is situated, then on the notice-

board of such court, and one copy at or as near as may be to the place where the said sale is actually to take place.

(8)(a) The conditions of sale shall, not less than 30 days prior to the date of the sale, be prepared by the execution creditor as near as may be in accordance with Form 22 of the First Schedule, and the said conditions shall be submitted to the deputy-sheriff to settle them, and the execution creditor shall thereafter supply the deputy-sheriff with 2 copies of the conditions of sale, one of which shall lie for inspection by interested parties at his or her office.

(b) Any interested party may, not less than 10 days prior to the date of the sale, upon 24 hours' notice to the execution creditor and the bondholders apply to the magistrate of the district in which the property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereof including an order as to costs, as to him or her may seen meet.

(9) The execution creditor may appoint an attorney to attend to the transfer of the property when sold in execution.

(10) Immovable property attached in execution shall be sold by the deputy-sheriff by public auction.

(11) If the purchaser fails to carry out any of his or her obligations under the conditions of sale the sale may be cancelled by a judge summarily on the report of the deputy-sheriff after due notice to the purchaser, and the property may again be put up for sale, and the purchaser shall be responsible for any loss sustained by reason of his or her default, which loss may, on the application of any aggrieved creditor whose name appears on the deputy-sheriff's distribution account, be recovered from him or her under judgment of the judge pronounced summarily on a written report by the deputy-sheriff, after such purchaser shall have received notice in writing that such report will be laid before the judge for such purpose; and, if he or she is already in possession of the property, the deputy-sheriff may, on 10 days' notice, apply to a judge for an order ejecting him or her or any person claiming to hold under him or her therefrom.

(12) Subject to the provisions of sub-rule (5), the sale shall be without reserve and upon the conditions stipulated under sub-rule (8), and the property shall be sold to the highest bidder.

(13) The deputy-sheriff shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.

(14)(a) The deputy-sheriff shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, but upon receipt thereof he or she shall forthwith pay into the deposit account of the magistrate of the district all moneys received in respect of the purchase price.

(b) The deputy-sheriff shall as soon as possible after the sale prepare in order of preference, as hereinafter provided, a plan of distribution of the proceeds and shall forward a copy of such plan to the registrar of the court, and immediately thereafter the deputy-sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for 15 days from a date mentioned at his or her office and at the office of the registrar, and unless such parties shall signify, in writing, their agreement to the plan, such plan shall so lie for inspection.

(c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference, namely -

(i) the claims of preferent creditors ranking in priority in their legal order of preference; and thereafter

(ii) the claims of other creditors whose writs have been lodged with the deputy-sheriff in the order of preference appearing from sections 96 and 99 to 103 (inclusive) of the Insolvency Act, 1936 (Act 24 of 1936) as amended.

(d) Any interested person objecting to such plan shall, within 5 days of the expiry of the period referred to in paragraph (b) of this sub-rule give notice in writing to the deputy-sheriff and all other interested persons of the particulars of his or her objection and shall bring such objection before a judge for review on 10 days' notice to the deputy-sheriff and the said persons.

(e) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as to him or her seems meet.

(f) If -

(i) no objection be lodged to such plan; or

(ii) the interested parties signify their concurrence therein.

(iii) the plan is confirmed or amended on review, the magistrate shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser and on the request of the deputy-sheriff, pay out in accordance with the plan of distribution, and if the address of a payee is not known the amount due to him or her shall be paid into the Guardian's Fund established under any law relating to the administration of estates.

Security for costs

47. (1) A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.

(2) If the amount of security only is contested the registrar shall determine the amount to be given and his or her decision shall be final.

(3) If the party from whom security is demanded contests his or her liability to give security or if he or she fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within 10 days of the demand or the registrar's decision, the other party may apply to court on notice for an

order that such security be given and that the proceedings be stayed until such order is complied with.

(4) The court may, if security be not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as to it may seem meet.

(5) Any security for costs shall, unless the court otherwise directs, or the parties otherwise agree, be given in the form, amount and manner directed by the registrar.

(6) The registrar may, upon the application of the party in whose favour security is to be provided and on notice to interested parties, increase the amount thereof if he or she is satisfied that the amount originally furnished is no longer sufficient, and his or her decision shall be final.

(7) Notwithstanding anything contained in these rules a person to whom legal aid is rendered by or under any law is not compelled to give security for the costs of the opposing party, unless the court directs otherwise.

Review of Taxation

48. (1) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within 15 days

after the *allocatur* require the taxing master to state a case for the decision of a judge, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation and shall embody any finding of facts by the taxing master: Provided that, save with the consent of the taxing master, no case shall be stated where the amount, or the total of the amounts, which the taxing master has disallowed or allowed, as the case may be, and which the party dissatisfied seeks to have allowed or disallowed respectively, is less than R250.

(2) The taxing master shall supply a copy of the case to each of the parties, who may within 10 days after receipt thereof submit contentions in writing thereon, including grounds of objection not advanced at the taxation, in respect of any item or part of an item which was objected to before the taxing master or disallowed *mero motu* by the taxing master, and thereafter the taxing master shall frame his or her report and shall supply a copy thereof to each of the parties, who may within 10 days after receipt thereof submit contentions in writing thereon to the taxing master, who shall forthwith lay the case together with the contentions of the parties thereon, his or her report and any contentions thereon before a judge, who may then decide the matter upon the case and contentions so submitted, together with any further information which he or she may require from the taxing master, or may decide it after hearing, if he or she deems fit, the parties or their advocates or attorneys in his or her chambers, or he or she may refer the case for decision to the court, and any further information to be supplied by the taxing

master to the judge shall be supplied by him or her to the parties who may within 15 days after the receipt thereof submit contentions in writing thereon to the taxing master, who shall forthwith lay such further information together with any contentions of the parties thereon before the judge.

(3) The judge or court so deciding may make such order as to the costs of the case as he or she or it may deem fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge or court as and for costs.

Civil Appeals from the Court

49. (1)(a) When leave to appeal of the court is required, it may on a statement of the grounds therefore be requested at the time of the judgment or order.

(b) When leave to appeal of the court is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefore shall be furnished within 15 days after the date of the order appealed against: Provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within 15 days after such later date: Provided further

that the court may, upon good cause shown, extend the aforementioned periods of 15 days.

(c) When in giving an order the court declares that the reasons for the order will be furnished to any of the parties on application, such application shall be delivered within 10 days after the date of the order.

(d) The application mentioned in paragraph (b) above shall be set down on a date arranged by the registrar who shall give written notice thereof to the parties.

(e) Such application shall be heard by the judge who presided at the trial or, if he or she is not available, by another judge of the court.

(2) Notice of appeal to the full court shall be delivered within 20 days after the date upon which the judgment was given or order was made: Provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such notice may be delivered within 20 days after such later date;

(3) The notice of appeal to the full court shall state whether the whole or party only of the judgment or order is appealed against and if only part of such judgment or order is appealed against, it shall state which part and shall further

specify the finding of fact or ruling of law appealed against and the grounds upon which the appeal is founded.

(4) A notice of cross-appeal in an appeal referred to in sub-rule (3) shall be delivered within 10 days after delivery of the notice of appeal and the provisions of these rules with regard to appeals shall *mutatis mutandis* apply to cross-appeals.

(5) The full court may, in the event of an appeal to it and upon good cause shown, extend any period mentioned in subrules (2) and (4).

(6)(a) Within 60 days after delivery of a notice of appeal to the full court, an appellant shall make written application to the registrar for a date for the hearing of such appeal and shall at the same time furnish him or her with his or her full residential address and the name and address of every other party to the appeal and if the appellant fails to do so a respondent may within 10 days after the expiry of the said period of 60 days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which he or she may have noted, and if no such application is made by either party the appeal and cross-appeal shall be deemed to have lapsed: Provided that a respondent shall have the right to apply for an order for his or her wasted costs.

(b) The full court may, on application of the appellant or cross-appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed.

(7)(a) At the same time as the application for a date for the hearing of an appeal in terms of subrule (6)(a) of this rule, the appellant shall file with the registrar 4 copies of the record on appeal and shall furnish 2 copies to the respondent, and the registrar shall further be provided with a complete index and copies of all papers, documents and exhibits in the case, except formal and immaterial documents: Provided that such omissions shall be referred to in the said index: Provided further that, if the necessary copies of the record are not ready at that stage, the registrar may accept an application for a date of hearing without the necessary copies if –

(i) the application is accompanied by a written agreement between the parties that the copies of the record may be handed in late; or

(ii) failing such agreement, the appellant delivers an application together with an affidavit in which the reasons for his or her omission to hand in the copies of the record in time are set out and in which is indicated that an application for condonation of the omission will be made at the hearing of the appeal.

(b) The 2 copies of the record to be served on the respondent shall be served at the same time as the filing of the aforementioned 4 copies with the registrar.

(c) After delivery of the copies of the record, the registrar shall assign a date for the hearing of the appeal or for the application for condonation and appeal, as the case may be, and shall set the appeal down for hearing on the said date and shall give the parties at least 20 days' notice in writing of the date so assigned.

(d) If the party who applied for a date for the hearing of the appeal neglects or fails to file or deliver the said copies of the record within 40 days after the acceptance by the registrar of the application for a date of hearing in terms of subrule (7)(a) the other party may approach the full court for an order that the application has lapsed.

(8)(a) Copies referred to in subrule (7) shall be clearly typed on A.4 standard paper in double spacing, paginated and bound and in addition every tenth line of every page shall be numbered.

(b)(i) With the written consent of the parties any exhibit or other portion of the record which has no

bearing on the point in issue on appeal may be omitted from the record.

(ii) If a portion has been so omitted from the record, the written consent signed by or on behalf of the parties and noting the omission shall be filed, together with the incomplete record, with the registrar.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii) the court hearing the appeal may at any time request the complete original record and take cognizance of everything appearing therein.

(9) By consent of the parties, exhibits and annexures having no bearing on the point at issue in the appeal and immaterial portions of lengthy documents may be omitted, and such consent, setting out what documents or parts thereof have been omitted shall be signed by the parties and shall be included in the record on appeal, and the full court may order that the whole of the record be placed before it.

(10) When the decision of an appeal turns exclusively on a point of law, the parties may agree to submit such appeal to the full court in the form of a special case, in which event copies shall be submitted of only such portions of the record as may be necessary for a proper decision of the appeal: Provided that the

full court may require that the whole of the record of the case be placed before it.

(11) Where an appeal has been noted to the full court, the operation and execution of the order in question shall be suspended, pending the decision of such appeal, unless the court which gave such order, on the application of a party, otherwise directs.

(12) If the order referred to in subrule (11) is carried into execution by order of the court the party requesting such execution shall, unless that court otherwise orders, before such execution enter into such security as the parties may agree or the registrar may decide for the restitution of any sum obtained upon such execution, and the registrar's decision shall be final.

(13) Unless the respondent waives his or her right to security, the appellant shall, before lodging copies of the record on appeal with the registrar, enter into good and sufficient security for the respondent's costs of appeal, and in the event of failure by the parties to agree on the amount of security, the registrar shall fix the amount and his or her decision shall be final.

(14) The provisions of subrules (12) and (13) shall not be applicable to the Government of Namibia.

(15) Not later than 15 days before the appeal is heard by the full court the appellant shall deliver a concise and succinct statement of the main points (without elaboration) which he or she intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not later than 10 days before the appeal is heard the respondent shall deliver a similar statement, and three additional copies shall in each case be filed with the registrar.

(16) In the case of appeals to the full court in terms of the provisions of a statute in which the procedure to be followed is laid down, this rule is applicable as far as provision is made for matters not regulated by the statute.

(17) Notwithstanding the provisions of this rule the Judge-President or in his or her absence, the senior available judge, may, in consultation with the parties concerned, direct that a contemplated appeal to the full court shall be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him or her seems meet.

Criminal Proceedings

50. (1) The process for summoning an accused to answer any indictment shall be by writ sued out by the chief clerk to the Prosecutor-General who presents the indictment, or in the case

of a private prosecution by the prosecutor or his or her attorney, and shall be directed to the deputy-sheriff.

(2) When any person committed for sentence under the provisions of section 140 of the Criminal Procedure Act, 1977 (Act 51 of 1977), is indicted before the court he or she may be brought up for sentence at any sitting for criminal business of the court.

(3) The Prosecutor-General or other prosecutor or his or her attorney shall endorse on, or annex to, every indictment and every copy of any indictment delivered to the deputy-sheriff for service thereof, a notice of trial, which notice shall specify the court before which, and the particular session and time when, he or she will bring the accused to trial on the said indictment.

(4) The Prosecutor-General or other prosecutor or his or her attorney shall deliver to the deputy-sheriff for service the writ, a copy of the indictment and notice of trial or, if there are more than one accused, as many writs and copies of the indictment and notice of trial as there are accused, and in the case of a private prosecution the prosecutor or his or her attorney shall at the same time hand to the deputy-sheriff his or her lawful costs and charges for serving the same.

(5) The subpoena or process for procuring the attendance of any person before the court to give evidence in any criminal case or to produce any books, documents or things,

shall be sued out of the office of the registrar, by the chief clerk to the Prosecutor-General (or where the prosecution is at the instance of a private party, by himself or herself or his or her attorney); and the same shall be delivered to the deputy-sheriff, at his or her office, for service thereof, together with so many copies of the subpoena or process as there are persons to be served.

(6) The subpoena shall be served upon the witness -

(a) personally; or

(b) at his or her residence or place of business or employment by delivering it to some person thereat who is apparently not less than 16 years of age and apparently residing or employed thereat.

(7) The person serving the subpoena shall, if required by the person upon whom it was served, exhibit to him or her the original.

(8) If the person to be served with a subpoena keeps his or her residence or place of business closed so as to prevent the service of the subpoena, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

(9) When a court imposes upon any person whatsoever a fine for contempt of court for default in appearance or otherwise, and such fine is not duly paid, the registrar of the court shall furnish the deputy sheriff with particulars of such fine and deliver to him or her a completed warrant, and the deputy sheriff, immediately on such warrant being delivered to him or her, shall execute it.

(10) An application under section 149 of the Criminal Procedure Act, 1977 (Act 51 of 1977), to change the place of trial in criminal proceedings may be made to the court, upon notice, by or on behalf of the Prosecutor-General or the accused, and the court may thereupon make such order thereon as to it seems meet.

(11) Any process or document referred to in this rule may be served by a member of a police force referred to in section 329 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(12) The provisions of sub-rules 16, 17, 18, 19 and 21 of rule 39 shall apply *mutatis mutandis* to all proceedings in criminal cases.

Criminal Appeals to the Full Court

51. (1)(a) If leave to appeal to the full court has been granted in terms of sections 316 or 316 as applied by section 316 A(2), up to and including 319 of the Criminal Procedure Act, 1977 (Act 51

of 1977), the accused shall within 10 days of such leave being granted make available to the registrar and the Prosecutor-General in writing, his or her full residential and postal addresses and the address of his or her legal representative if he or she is represented.

(c) In the case of an appeal in terms of section 315(3) of the Criminal Procedure Act, 1977 (Act 51 of 1977), to the full court, the registrar shall, subject to the provisions of section 316(5)(b) of the said Act, prepare 4 additional copies of the case record or parts thereof, as the case may be, and shall furnish the State with the number it requires and, on payment of the prescribed fee, shall furnish the accused with the number he or she requires: Provided that if the registrar is of the opinion that the accused is too poor to pay the prescribed fee, such copies may be furnished without payment of any fee, in which case the registrar's decision shall be final.

(2) An appeal to the full court shall be set down by the registrar on a date assigned by him or her with written notice to the Prosecutor-General and the accused or his or her legal representative.

(3) Not later than 20 days before the appeal is heard the appellant shall deliver one copy of a concise and succinct statement of the main points (without elaboration) which he or she intends to argue on appeal as well as the authorities to be

tendered in support of each point to the respondent and 4 copies to the registrar.

(4) Not later than 10 days before the appeal is heard the respondent shall deliver one copy of his or her heads of argument as well as a list of the authorities to be tendered in support of each point to the appellant and 4 copies to the registrar.

(5) Where too short notice of the hearing of an appeal is given and where it was possible for the appellant to deliver his or her heads of argument at least 20 days before the date of hearing of the appeal, he or she shall deliver it as soon afterwards as possible.

(6) The registrar shall then attach the heads of argument to the case records which are to be supplied to the judges of the full court.

(7) The ultimate responsibility for ensuring that all copies of the record on appeal and all the necessary exhibits are in all respects properly before the court shall rest on the appellant or, where the accused is the appellant, on the accused or his or her attorney.

Criminal Appeals to the Supreme Court

52. (1) Whenever –

(a) an accused has been granted leave to appeal in terms of section 316 of the Criminal Procedure Act, 1977 (Act 51 of 1977); or

(a) (bis) the Prosecutor-General or other prosecutor has been granted leave to appeal in terms of Sec 316 as applied by Sec 316 A (2 of the said Act; or

(b) an accused has noted an appeal in terms of section 318 of the said Act; or

(c) the court has reserved a question of law arising on the trial of an accused in terms of section 319 of the said Act -

(i) the registrar of the court which tried the accused shall lodge with the registrar of the Supreme Court 6 copies of the record (one of which shall be certified by the first-named registrar) of the proceedings in the trial court and deliver such number of copies to the State as may be considered necessary: Provided that instead of the whole record, with the consent of the accused and the State, copies (one of which shall be certified by the first named registrar) may be transmitted of such parts of the record as may be agreed upon by the accused and the State to be sufficient in which event the

Supreme Court may nevertheless call for copies of the whole record;

(ii) the accused shall be entitled, on payment of the prescribed fees, to obtain from the registrar of the court which tried him or her such number of copies of the record or parts of the record (as the case may be) as may be necessary for his or her purpose: Provided that if he or she is unable by reason of poverty to pay the prescribed fees he or she shall be entitled to obtain the same without payment of any fees.

(2) Any question arising as to the accused's inability to pay the prescribed fees shall be decided by the registrar, and the registrar's decision shall be final.

(3) If leave to appeal in a criminal case is granted by the court the registrar shall without delay notify the registrar of the Supreme Court of that fact.

(4) The provisions of rule 51(1)(a) shall apply *mutatis mutandis* if leave to appeal to the Supreme Court has been granted by that court and the accused has not already made available the particulars required in terms of that rule to the persons referred to therein.

Reviews

53. (1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairman of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected-

(a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside; and

(b) calling upon the magistrate, presiding officer, chairman or officer, as the case may be, to despatch, within 15 days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he or she is by law required or desires to give or make, and to notify the applicant that he or she has done so.

(2) The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and

circumstances upon which applicant relies to have the decision or proceedings set aside or correct.

(3) The registrar shall make available to the applicant the record despatched to him or her as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with 2 copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies, and the costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

(4) The applicant may within 10 days after the registrar has made the record available to him or her, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his or her notice of motion and supplement the supporting affidavit.

(5) Should the presiding officer, chairman or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he or she shall-

(a) within 15 days after receipt by him or her of the notice of motion or any amendment thereof deliver notice to the applicant that he or she intends so to

oppose and shall in such notice appoint an address within 8 kilometres of the office of the registrar at which he or she will accept notice and service of all process in such proceedings; and

(b) within 30 days after the expiry of the time referred to in sub-rule (4) hereof, deliver any affidavits he or she may desire in answer to the allegations made by the applicant.

(6) The applicant shall have the rights and obligations in regard to replying affidavits set out in rule 6.

(7) The provisions of rule 6 as to set down of applications shall *mutatis mutandis* apply to the set down of review proceedings.

Civil Appeals from the Magistrate's Courts

54. (1) An appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed.

(2) The prosecution of an appeal shall *ipso facto* operate as the prosecution of any cross-appeal which has been duly noted.

(3) If a cross-appeal has been noted, and the appeal lapses, the cross-appeal shall also lapse, unless application for a date of hearing for such cross-appeal is made to the registrar within 20 days after the date of the lapse of such appeal.

(4)(a) The appellant shall, within 40 days of noting the appeal, apply to the registrar in writing and with notice to all other parties for the assignment of a date for the hearing of the appeal and shall at the same time make available to the registrar in writing his or her full residential and postal addresses and the address of his or her attorney if he or she is represented.

(b) In the absence of such an application by the appellant, the respondent may at any time before the expiry of the period of 60 days referred to in subrule (1) apply for a date of hearing in like manner.

(c) Upon receipt of such an application from appellant or respondent, the appeal shall be deemed to have been duly prosecuted.

(5)(a) Upon receipt of such application, the registrar shall forthwith assign a date of hearing, which date shall be at least 40 days after the receipt of the said application, unless all parties consent in writing to an earlier date: Provided that the registrar shall not

assign a date of hearing until the provisions of subrule (7) (a), (b) and (c) have been duly complied with.

(b) The registrar shall forthwith give the applicant written notice of the date of hearing, whereupon the applicant shall forthwith deliver a notice of set down and in writing give notice thereof to the clerk of the court from which the appeal emanated.

(6) A notice of set down of a pending appeal shall *ipso facto* operate as a set down of any cross-appeal and *vice versa*.

(7)(a) The applicant shall simultaneously with the lodging of the application for a date for the hearing of the appeal referred to in subrule (4) lodge with the registrar 2 copies of the record: Provided that where such an appeal is to be heard by more than 2 judges, the applicant shall, upon the request of the registrar, lodge a further copy of the record for each additional judge.

(b) Such copies shall be clearly typed on A.4 standard paper referred to in rule 62 (2) in double spacing, and the pages thereof shall be consecutively numbered, and in addition every tenth line on each page shall be numbered.

(c) The record shall contain a correct and complete copy of the pleadings, evidence and all documents necessary for the hearing of the appeal, together with an index thereof, and the copies lodged with the registrar shall be certified as correct by the attorney or party lodging the same or the person who prepared the record.

(d) The party lodging the copies of the record shall not less than 15 days prior to the date of the hearing of the appeal also furnish each of the other parties within 2 copies thereof, certified as aforesaid.

(8)(a) Save in so far as these effect the merits of an appeal, subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect, and other documents of a formal nature shall be omitted from the copies of the record prepared in terms of the aforegoing subrule, and a list thereof shall be included in the record.

(c) By consent of parties, exhibits having no bearing on a point at issue in an appeal and immaterial portions of lengthy documents may likewise be omitted from such copies, in which event a written consent, setting forth what documents, or portions thereof, as the case may be, have been omitted, and signed by or on behalf of the parties shall be filed with the registrar

when such copies are lodged: Provided that the Court hearing the appeal may at all times refer to the original record and take cognisance of all matters appearing therein.

(9) Not less than 15 days before the appeal is heard the appellant shall deliver one copy of a concise and succinct statement of the main points (without elaboration) which he or she intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not less than 10 days before the appeal is heard the respondent shall deliver a similar statement, and three additional copies shall be lodged with the registrar in each case.

(10) Notwithstanding the provisions of this rule the Judge-President may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him or her seems meet.

Criminal Appeals from the Magistrate's Courts

55. (1) An appeal by an accused against a conviction, sentence or order made by a magistrate's court in a criminal matter in which the prosecution has been at the public instance, or an appeal by the Prosecutor-General or other prosecutor against a decision, sentence or order of a magistrate's court in such a matter, shall be set down by the registrar on notice to the

appellant and the respondent, or, where the appellant or respondent is the accused, to the accused or his or her attorney for hearing on such day in term time or vacation as the Judge-President may appoint for such matters.

(2) An appeal against a conviction, decision, sentence or order of a magistrate's court in any other criminal matter shall be set down for hearing by the registrar on notice to all parties in accordance with such directions as he or she may receive from the Judge-President from time to time.

(3) Notwithstanding anything to the contrary in any law contained, a notice may be served on the appellant or respondent, as the case may be, or his or her attorney referred to in subrule (1) or (2) by sending it by registered post, addressed to such appellant or respondent or his or her attorney at an address appearing on the notice of appeal or at any address which the appellant or respondent or his or her attorney has subsequently furnished to the registrar in writing.

(4) The ultimate responsibility for ensuring that all copies of the record on appeal are in all respects properly before the court shall rest on the appellant or, where the accused is the appellant, on his or her attorney.

(5) Not less than 5 days before the appeal is heard the appellant shall deliver a concise statement of the main points (without elaboration) which he or she intends to argue on

appeal, as well as a list of the authorities to be tendered in support of each point, and not less than 3 days before the appeal is heard the respondent shall deliver a similar statement, and three additional copies shall in each case be filed with the registrar.

Admission of Advocates

56. (1) Subject to the provisions of rule 6 in so far as they are not inconsistent with the provisions of this rule, a person applying to be admitted and authorised to practice as a legal practitioner shall at least 30 days before the day on which his or her application is to be heard by the court-

(a) give written notice to the registrar of the date on which the application is to be made;

(b) deliver to the registrar the original and a copy of all the documents in support of the application and an affidavit stating whether he or she has at any time been struck off the roll kept in relation to legal practitioners or suspended from practice by the court;

(c) serve a copy of the documents and affidavit referred to in paragraph (a), on the Secretary of the Law Society of Namibia.

(2) If the applicant at any time prior to the hearing of the application delivers to the registrar any documents or declarations, other than the documents or affidavit referred to in paragraph (b) of sub-rule (1), he or she shall forthwith serve a copy thereof on the Secretary of the Law Society of Namibia.

Delunatico Inquirendo, Appointment of curators in respect of Persons under Disability and Release from curatorship.

57. (1) Any person desirous of making application to the court for an order declaring another person (hereinafter referred to as 'the patient') to be of unsound mind and as such incapable of managing his or her affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator *ad litem* to such patient.

(2) Such application shall be brought *ex parte* and shall set forth fully-

(a) the grounds upon which the applicant claims *locus standi* to make such application;

(b) the grounds upon which the court is alleged to have jurisdiction;

(c) the patient's age and sex, full particulars f his or her means, and information as to his or her general state of physical health;

(d) the relationship (if any) between the patient and the applicant, and the duration and intimacy of their association (if any);

(e) the facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his or her affairs;

(f) the name, occupation and address of the respective persons suggested for appointment by the court as curator *ad litem*, and subsequently as curator to the patient's person or property, and a statement that these persons have been approached and have intimated that, if appointed, they would be able and willing to act in these respective capacities.

(3) The application shall, as far as possible, be supported by-

(a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponent's own knowledge concerning the patient's mental condition, and if such person is related to the patient, or has

any personal interest in the terms of any order sought, full details of such relationship or interest, as the case may be, shall be set forth in his or her affidavit; and

(b) affidavits by at least 2 medical practitioners, one of whom shall, where practicable, be an alienist, who have conducted recent examinations of the patient with a view to ascertaining and reporting upon his or her mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinions found by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the same and whether the patient is in their opinion incapable of managing his or her affairs, and such medical practitioners shall, as far as possible, be persons unrelated to the patient, and without personal interest in the terms of the order sought.

(4) Upon the hearing of the application referred to in sub-rule (1), the court may appoint the person suggested or any other suitable person as curator *ad litem*, or may dismiss the application or make such further or other order thereon as to it may seem meet and in particular on cause shown, and by reason of urgency, special circumstances or otherwise, dispense with any of the requirements of this rule.

(5) Upon his or her appointment the curator *ad litem*, shall without delay interview the patient, and shall also inform him or her of the purpose and nature of the application unless after consulting a medical practitioner referred to in paragraph (b) of sub-rule (3) he or she is satisfied that this would be detrimental to the patient's health, and he or she shall further make such inquiries as the case appears to require and thereafter prepare and file with the registrar his or her report on the matter to the court, at the same time furnishing the applicant with a copy thereof, and in his or her report the curator *ad litem* shall set forth such further facts (if any) as he or she has ascertained in regard to the patient's mental condition, means and circumstances and he or she shall draw attention to any consideration which in his or her view might influence the court in regard to the terms of any order sought.

(6) Upon receipt of the said report the applicant shall submit the same, together with copies of the documents referred to in sub-rules (2) and (3) to the Master of the court for consideration and report to the court.

(7) In his or her report the Master shall, as far as he or she is able, comment upon the patient's means and general circumstances, and the suitability or otherwise of the person suggested for appointment as curator to the person or property of the patient, and he or she shall further make such recommendations as to the furnishing of security and rendering of accounts by, and the powers to be conferred on, such curator

as the facts of the case appear to him or her to require. The curator *ad litem* shall be furnished with a copy of the said report.

(8) After the receipt of the report of the Master, the applicant may, on notice to the curator *ad litem* (who shall if he or she thinks fit inform the patient thereof), place the matter on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind and as such incapable of managing his or her affairs and for the appointment of the person suggested as curator to the person or property of the patient or to both.

(9) At such hearing the court may require the attendance of the applicant, the patient, and such other persons as it may think fit, to give such evidence *viva voce* or furnish such information as the court may require.

(10) Upon consideration of the application, the reports of the curator *ad litem* and of the Master and such further information or evidence (if any) as has been adduced *viva voce*, or otherwise, the court may direct service of the application on the patient or may declare the patient to be of unsound mind and incapable of managing his or her own affairs and appoint a suitable person as curator to his or her person or property or both on such terms as to it may seem meet, or it may dismiss the application or generally make such order (including an order that the costs of such proceedings be defrayed from the assets of the patient) as to it may seem meet.

(11) Different persons may, subject to due compliance with the requirements of this rule in regard to each, be suggested and separately appointed as curator to the person and curator to the property of any person found to be of unsound mind and incapable of managing his or her own affairs.

(12) The provisions of sub-rules (1), (2) and (4) to (10) inclusive shall in so far as the same are applicable thereto, also apply *mutatis mutandis* to any application for the appointment by the court of a curator under the provisions of section 19 of the Mental Health Act, 1973 (Act 18 of 1973) to the property of a person detained as or declared mentally disordered or defective, or detained as a mentally disordered or defective prisoner or as a President's decision patient and who is incapable of managing his or her affairs.

(13) Save to such extent as the court may on application otherwise direct, the provisions of sub-rules (1) to (11) shall, *mutatis mutandis*, apply to every application for the appointment of a curator *bonis* to any person on the ground that he or she is by reason of some disability, mental or physical, incapable of managing his or her own affairs.

(14) Every person who has been declared by a court to be of unsound mind and incapable of managing his or her affairs, and to whose person or property a curator has been appointed, and who intends applying to court for a declaration that he or she is no longer of unsound mind and incapable of managing his

or her affairs or for release from such curatorship, as the case may be, shall give 15 days' notice of such application to such curator and to the Master.

(15) Upon receipt of such notice and after due consideration of the application and such information as is available to him or her, the Master shall, without delay, report thereon to the court, at the same time commenting upon any aspect of the matter to which, in his or her view, its attention should be drawn.

(16) The provisions of sub-rules (14) and (15) shall also apply to any application for release from curatorship by a person who has been discharged under section 37 of the Mental Health Act, 1973 (Act 18 of 1973) from detention in an institution, but in respect of whom a curator *bonis* had been appointed by the court under section 19 of the said Act.

(17) Upon the hearing of any application referred to in sub-rules (14) and (16) the court may declare the applicant as being no longer of unsound mind and as being capable of managing his or her affairs, order his or her release from such curatorship, or dismiss the application, or *mero motu* appoint a curator *ad litem* to make such inquiries as it considers desirable and to report to it, or call for such further evidence as it considers desirable and postpone the further hearing of the matter to permit of the production of such report, affidavit or evidence, as the case may be, or postpone the matter *sine die*

and make such order as to costs or otherwise as to it may seem meet.

Interpleader

58. (1) Where any person, in this rule called 'the applicant', alleges that he or she is under any liability in respect of which he or she is or expects to be sued by 2 or more parties making adverse claims, in this rule referred to as 'the claimants', in respect thereto, the applicant may deliver a notice, in terms of this rule called an 'interpleader notice', to the claimants, and in regard to conflicting claims with respect to property attached in execution, the deputy-sheriff shall have the rights of an applicant and an execution creditor shall have the rights of a claimant.

(2)(a) Where the claims relate to money the applicant shall be required, on delivering the notice mentioned in sub-rule (1), to pay the money to the registrar who shall hold it until the conflicting claims have been decided.

(b) Where the claims relate to a thing capable of delivery the applicant shall tender the subject-matter to the registrar when delivering the interpleader notice or take such steps to secure the availability of the thing in question as the registrar may direct.

(c) Where the conflicting claims relate to immovable property the applicant shall place the title deeds thereof, if available to him or her, in the possession of the registrar when delivering the interpleader notice and shall at the same time hand to the registrar an undertaking to sign all documents necessary to effect transfer of such immovable property in accordance with any order which the court may take or any agreement of the claimants.

(3) The interpleader notice shall-

(a) state the nature of the liability, property of claim which is the subject-matter of the dispute;

(b) call upon the claimants within the time stated in the notice, not being less than 14 days from the date of service thereof, to deliver particulars of their claims; and

(c) state that upon a further date, not being less than 15 days from the date specified in the notice for the delivery of claims, the applicant will apply to court for its decision as to his or her liability or the validity of the respective claims.

(4) There shall be delivered together with the interpleader notice an affidavit by the applicant stating that-

(a) he or she claims no interest in the subject-matter in dispute other than for charges and costs;

(b) he or she does not collude with any of the claimants;

(c) he or she is willing to deal with or act in regard to the subject-matter of the dispute as the court may direct.

(5) If a claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his or her claim within the time stated or, having delivered such particulars, fails to appear in court in support of his or her claim, the court may make an order declaring him or her and all persons claiming under him or her barred as against the applicant from making any claim on the subject-matter of the dispute.

(6) If a claimant delivers particulars of his or her claim and appears before it, the court may-

(a) then and there adjudicate upon each claim after hearing such evidence as it deems fit;

(b) order that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant;

(c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant;

(d) if it considers that the matter is not a proper matter for relief by way of interpleader notice dismiss the application;

(e) make such order as to costs, and the expenses (if any) incurred by the applicant under paragraph (b) of sub-rule (2), as to it may seem meet.

(7) If an interpleader notice is issued by a defendant in an action, proceedings in that action shall be stayed pending a decision upon the interpleader, unless the court upon an application made by any other party to the action otherwise orders.

Sworn Translators

59. (1) Any person of full age may be admitted and enrolled by the court as a sworn translator in the official language of Namibia and in any other language upon satisfying the court as to his or her competency.

(2) No person shall be admitted and enrolled as a sworn translator unless his or her proficiency in the language which he

or she intends to translate has been duly certified in writing, after examination, held not more than 6 months before the date of his or her application by a competent sworn translator of not less than 7 years' standing: Provided that, if there be no sworn translator of sufficient standing within Namibia, the court may appoint as examiner any person whom it considers to be duly qualified to hold such examination.

(3) Any person admitted and enrolled under sub-rule ( ) shall before commencing to exercise the functions of his or her office take an oath or make an affirmation which shall be subscribed by him or her, in the form set out below, namely-

> I.....(full name) do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as a translator of the High Court of Namibia faithfully and correctly translate, to the best of my knowledge and ability, any document into the official language of the Republic of Namibia from any other language in respect of which I have been admitted and enrolled as a translator.

(4) Any such oath or affirmation shall be taken or made before a judge admitting and enrolling the translator and the judge concerned shall at the foot thereof endorse a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

Translation of Documents

60. (1) If any document in a language other than the official language of Namibia is produced in any proceedings, it shall be accompanied by a translation certified to be correct by a sworn translator.

(2) A translation so certified by a sworn translator shall be deemed *prima facie* to be a correct translation and admissible as such upon its production.

(3) If no sworn translator is available or if, in the opinion of the court, it would not be in the interests of justice to require a sworn translation, whether by reason of the expense, inconvenience or delay involved, the court may, notwithstanding the provisions of sub-rule (1), admit in evidence a translation certified to be correct by any person who it is satisfied is competent to make such translation.

Interpretation of Evidence

61. (1) Where evidence in any proceedings is given in any language with which the court or a party or his or her representative is not sufficiently conversant, such evidence shall be interpreted by a competent interpreter, sworn to interpret faithfully and to the best of his or her ability in the languages concerned.

(2) Before any person is employed as an interpreter the court may, if in its opinion it is expedient to do so, or if any party on reasonable grounds so desires, satisfy itself as to the competence and integrity of such person after hearing evidence or otherwise.

(3) Where the services of an interpreter are employed in any proceedings, the costs (if any) of interpretation shall, unless the court otherwise orders, be costs in the cause: Provided that where the interpretation of evidence given in the official language of Namibia is required by the representative of a party, such costs shall be at such party's expense.

Filing, Preparation and Inspection of Documents

62. (1) Where a matter has to be heard by more than one judge, a copy of all pleadings, important notices, annexures, affidavits and the like shall be filed for the use of each additional judge.

(2) All documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blueblack ink on one side only of paper of good quality and of A4 standard size, and a document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.

(3) Stated cases, petitions, affidavits, grounds of appeal and the like shall be divided into concise paragraphs which shall be consecutively numbered.

(4) An applicant or plaintiff shall not later than 3 days prior to the hearing of the matter collate, and number consecutively, and suitably secure, all pages of the documents delivered and shall prepare and deliver a complete index thereof.

(5) Every affidavit filed with the registrar by or on behalf of a respondent shall, if he or she is represented, on the first page thereof bear the name and address of the attorney filing it.

(6) The registrar may reject any document which does not comply with the requirements of this rule.

(7) Any party to a cause, and any person having a personal interest therein, with leave of the registrar on good cause shown, may at his or her office, examine and make copies of all documents in such cause.

Authentication of Documents Executed Outside Namibia for Use Within Namibia

63. (1) In this rule, unless inconsistent with the context-

(a) '**document**' means any deed, contract, power of attorney, affidavit or other writing, but does not include an affidavit or solemn or attested declaration

purporting to have been made before an officer prescribed by section 8 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963);

(b) '**authentication**' means, when applied to a document, the verification of any signature thereon.

(2) Any document executed in any place outside Namibia shall be deemed to be sufficiently authenticated for the purpose of use in Namibia if it be duly authenticated at such foreign place by the signature and seal of office-

(a) of the head of a Namibian diplomatic or consular mission or a person in the administrative or professional division of the public service serving at a Namibian diplomatic, consular or trade office abroad or a Namibian foreign service officer grade VI, or an honourary Namibian consul general, honourary consul, vice-consul, honourary vice-consul or honourary trade commissioner; or

(b) of a consul-general, consul, vice-consul or sonsular agent of the United Kingdom or any other person acting in any of the aforementioned capacities or a pro-consul of the United Kingdom.

(c) of any Government authority of such foreign place charged with the authentication of documents under the law of that foreign country; or

(d) of any notary public or other person in such foreign place who shall be shown by a certificate of any person referred to in paragraph (a), (b, or (c) or of any diplomatic or consular officer of such foreign country in Namibia to be duly authorized to authenticate such document under the law of that foreign country; or

(e) of a commissioned officer of the Namibian Defence Force as defined in section 1 of the Defence Act, 1957 (Act 44 of 1957), in the case of a document executed by any person on active service.

(3) If any person authenticating a document in terms of sub-rule (2) has no seal of office, he or she shall certify thereon under his or her signature to that effect.

(4) Notwithstanding anything in this rule contained-

(a) any court of law or public office may accept a sufficiently authenticated document which is shown to the satisfaction of such court or the officer in charge of such public office to have been actually signed by the person purporting to have signed such document.

(b) no authentication shall be required in respect of any affidavit or solemn or attested declaration which have been made in the Republic of South Africa before a commissioner of oaths appointed as such in terms of any law of the Republic of South Africa.

(5) No power of attorney, executed in Lesotho, Botswana or Swaziland, and intended as an authority to any person to take, defend or intervene in any legal proceedings in a magistrate's court within Namibia shall require authentication: Provided that any such power of attorney shall appear to have been duly signed and the signature to have been attested by 2 competent witnesses.

Destruction of Documents

64. (1) In any matter which has not been adjudicated upon the court or a judge, and has not been withdrawn, the registrar may, subject to the provisions of the Archives Act, 1987 (Act 4 of 1987), after the lapse of 3 years from the date of the filing of the last document therein, authorize the destruction of the documents filed in his or her office relating to such matter.

(2) Records of minutes of evidence and proceedings in criminal cases shall be transferred to an archives depot as contemplated in section 5 of the Archives Act, 1987 (Act 4 of 1987), 30 years after disposal of such cases.

Commissioners of the Court

65. (1) Every person duly appointed as a commissioner of the High Court of Namibia for taking affidavits in any place outside Namibia shall, by virtue of such appointment, become a commissioner of the court.

(2) A commissioner of oaths appointed as such in terms of any law of the Republic of South Africa shall be deemed to be a duly appointed commissioner of the High Court of Namibia for the taking of affidavits or solemn or attested declarations within his or her area of appointment in the Republic of South Africa.

Superannuation

66. (1) After the expiration of 3 years from the day whereon a judgment has been pronounced, no writ of execution may be issued unless the debtor consents to the issue of the writ or unless the judgment is revived by the court on notice to the debtor, but in such case no new proof of the debt shall be required, and in the case of judgment for periodic payments, the 3 years shall run, in respect of any payment, from the due date thereof.

(2) Writs of execution of a judgment once issued remain in force, and may, subject to the provisions of section 11(a)(ii) of the Prescription Act, 1969 (Act 68 of 1969), at any time be executed without being renewed until judgment has been satisfied in full.

Tariff of Court Fees

67. The court fees payable in respect of the court are the fees contained in the Third Schedule hereto: Provided that no fee shall be levied on a document whereby an *in forma pauperis* action is instituted.

Tariff for Deputy Sheriffs

68. (1) The fees and charges contained in the Fourth Schedule hereto shall be chargeable and allowed to deputy sheriffs: Provided that no fees shall be charged for the service of process *in forma pauperis* proceedings (but the necessary disbursements for the purpose of such service may be recovered).

(2) Where there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his or her expense.

(3) Where any dispute arises as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing master of the court.

Fees of Counsel Generally

69.(1) Save where the court authorises fees consequent upon the employment of one counsel by another, only the fees of one counsel shall be allowed as between party and party in the following matters:

(a) Any undefended action for divorce or claim under rule 43;

(b) any unopposed application for judgment by default, summary judgment or for provisional sentence;

(c) any unopposed application for leave to sue by way of edict or for substituted service;

(d) any unopposed application for admission to practice and to be enroled as a legal practitioner or to be enroled as a sworn translator;

(e) any unopposed application for the postponement or adjournment of proceedings, the removal of any matter from the roll, the confirmation, discharge or extension of a restitution order or return date of a *rule nisi*;

(f) any unopposed application for sequestration or voluntary surrender of an estate, liquidation of a

company or corporation or the rehabilitation of a person's estate;

(g) any unopposed application for rescission of any judgment;

(h) any claim for a sum not exceeding N$5 000.00 with or without any claim for ancillary relief;

(i) any claim for delivery of property, movable or immovable, of a value not exceeding N$5 000.00;

(j) any claim for ejectment from premises where the value of the right of occupation to the occupier does not exceed N$5 000.00; and

(k) any appeal or review from the Magistrates Court.

(2) Save where the court authorises the fees consequent upon the employment of more than one counsel by another to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one such counsel by another shall be allowed as between party and party in matters other than those contemplated in sub-rule (1).

(3) Where fees in respect of the employment of more than one counsel employed by another are allowed in a party and

party bill of costs, the fees to be permitted in respect of any such additional employed counsel shall not exceed one half of those allowed in respect of the first employed counsel.

(4) The taxation of the fees of counsel employed by another as between party and party shall be allowed by the taxing master as he or she considers reasonable, due regard being had to the other provisions of this sub-rule, the time necessarily taken, the complexity of the matter, the nature of the subject matter in dispute, the amount in dispute, the seniority of counsel employed, the fees ordinarily allowed for like services prior to the promulgation of this rule and any other factors which he or she considers relevant.

(5) The provisions of this rule shall not apply to the employment of one counsel by another where the counsel so employed -

(a) is an employee or a partner or a member of the same legal practice, partnership or company and practising in the same town as the counsel who employed him or her;

(b) is the correspondent in the legal proceedings concerned at the seat of the High Court of another counsel practising in another town."

Taxation and Tariff of Fees of Attorneys

70. (1) Subject to the provisions of rule 69, the taxing master shall be competent to tax any bill of costs for services actually rendered by counsel in connection with litigious work and such bill shall be taxed, subject to the provisions of sub-rules (5) and (8), in accordance with the provisions contained in the Sixth Schedule hereto: Provided that the taxing master shall not tax costs in instances where some other officer is empowered to do so.

(2) At the taxation of any bill of costs the taxing master may call for such books, documents, papers or accounts as in his or her opinion are necessary to enable him or her properly to determine any matter arising from such taxation.

(3) With a view to awarding the party who has been awarded an order for costs a full indemnity for all cots reasonably incurred by him or her in relation to his or her claim or defence and to ensure that all such costs shall be borne by the party against whom such order as been awarded, the taxing master shall, on every taxation, allow all such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an

advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.

(4) The taxing master shall not proceed to the taxation of any bill of costs unless he or she is satisfied that the party liable to pay the same has received due notice as to the time and place of such taxation and notice that he or she is entitled to be present thereat: Provided that such notice shall not be necessary-

(a) if the party against whom costs have been awarded has not appeared at the hearing either in person or through his or her legal representative;

(b) if the person liable to pay costs has consented in writing to taxation in his or her absence; and

(c) for the taxation of writ and postwrit bills.

(5)(a) The taxing master shall be entitled, in his or her discretion, at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

(b) In computing the fee to be allowed in respect of items 1, 2, 3, 6, 7 and 8 of Section A; 1, 2 and 6 of Section B and 2, 3, 4 and 7 of Section C of the Sixth Schedule, the taxing master shall take into account the time necessarily taken, the complexity of the matter, the nature of the subject

matter in dispute, the amount in dispute and any other factors which he or she considers relevant.

(6)(a) In order to diminish as far as possible the costs arising from the copying of documents to accompany the briefs of advocates, the taxing master shall not allow the costs of any unnecessary duplication in briefs.

(b) Fees may be allowed by the taxing master in his or her discretion as between party and party for the copying of any document which, in his or her view, was reasonably required for any proceedings.

(7) Fees for copying shall be disallowed to the extent by which such fees could reasonably have been reduced by the use of printed forms in respect of bonds, credit agreements or other documents.

(8) Where, in the opinion of the taxing master, more than one counsel referred to in rule 69(5) have necessarily been engaged in the performance of any of the services covered by the tariff, each such counsel shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him or her.

(9) A folio shall contain 100 words or part thereof and 4 figures shall be counted as a word.

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Repeal of Rules

71. Government Notices R.48 of 1965, r.235 of 1966, R.27 and R.2004 of 1967, R.3553 of 1969, R.2021 of 1971, R.1985 of 1972, R.480 of 1973, R.2477 of 1976, R.1535 of 1980, AG.21 of 1983, AG.78 of 1984, AG. 108 of 1985, AG.175 of 1988 and AG.57 of 1989, are hereby repealed.

FIFTH SCHEDULE

Tariff of Maximum Fees for Advocates on Party and Party Basis in Certain Civil Matters

1. Written advice and memoranda in the course of litigation R150.00

2. Drawing pleadings and stated cases, settling a statement of claim in a combined summons or third party notice R150.00

3. Advice on evidence R150.00

4. Consultations on trial, to settle affidavits, stated cases, etc., and receive instructions and/or furnish advice, informal inspections with attorney and/or client prior to hearing, etc., (per hour) R100.00

5. Settling notice of motion, affidavit, etc., where consultation not held R150.00

6. Appearances in court-

   (a) First day of hearing:

      (i) Opposed applications R250.00

      (ii) Exceptions or motions to strike out R250.00

      (iii) Stated cases R250.00

(iv) Trials R450.00

(v) Appeals from magistrates' courts including review of proceedings thereof R450.00

(b) Subsequent days: A refresher (without the necessity of a refresher brief) in an amount per day to be allowed in the discretion of the taxing master, but not to exceed two-thirds of the fees allowed on taxation in respect of the first day.

(c) (i) Attending court to note a reserved judgment R75.00

(ii) Attending court to note a reserved judgment, including argument as to terms of order, whether as to costs or otherwise, and an application for leave to appeal R250.00

(d) Attending court on formal unopposed postponement R75.00

(e) Fee in lieu for first day's hearing when case settled or withdrawn or postponed at the instance of any party:

(i) not more than 2 days prior to the date of hearing..... Fee otherwise allowable on taxation for

		first day's hearing.
(ii)	not less than 3 days and not more than 10 days prior to the date of hearing....	Two-thirds of fee under (i).
(iii)	not less than 8 days and not more than 21 days prior to the date of hearing	Half the fee under (i).

SIXTH SCHEDULE

Tariff of Fees of Attorneys

R. c

A- Taking instructions

1. To institute or defend any proceeding.....25.00 to 225.00

2. For advice on evidence or on commission
.....15.00 to 75.00

3. For case on opinion, or for advocate's guidance in preparing pleadings, including exceptions
.....A fee equivalent to the fee allowed under item 2 of Section D for drafting the document.

4. For statement of witness..... 25.00 110.00

5. To set down cause, issue subpoena or writ or any other simple instructions..... 6.00

6. To draft a petition or affidavit.....A fee equivalent

to one half of the fee allowed under item 7 of section D for drafting the document: Provided that in cases where no affidavit is actually drawn the taxing master shall allow a fee in his or her discretion, but not less than 22.50

7. To note an appeal.....22.50

8. To prosecute or defend an appeal, exclusive of the perusal of the record.....25.00 – 65.00

B – Attendance and Perusal

1. Attending the receipt of and perusing, and considering -

(a) any summons, petition, affidavit, pleading, advocate's advice and drafts, report, or important letter, notice or document per folio..... 3.50

(b) any formal letter, record, stock sheets in voluntary surrenders, judgments or any other material document not elsewhere specified (per folio)..... 1.25

subject to a minimum fee of.....2.25

2. Attending the receipt of an considering any plan or exhibit or other material document in respect of which the basis of remuneration set out in item 1 of this section cannot be applied..... 5.00 to 65.00

3. Making searches in offices of record, per half-hour or part thereof-

   (a) by an attorney..... 33.00

   (b) by a clerk..... 10.00

4. Sorting out, arranging and paginating papers for pleading, advice on evidence or brief on trial or appeal, per half-hour or part thereof.....10.00

5. Attending to give or take disclosure, per half-hour or part thereof

   (a) by an attorney.....22.50 to 45.00

   (b) by a clerk.....10.00

6. Attending on witness to obtain particulars of his or her claim and to settle same.....10.00

7. Attending to bespeak and thereafter to procure translation.....10.00

8. Other attendances including telephone calls other than formal telephone calls..... 6.00 to 65.00

NOTE – The fees allowed under this Section shall be in addition to such fees as may be allowed for instructions under Section A. In computing the fees chargeable for perusal of documents in connection with instructions under items A1 and A6, the number of words in all

documents to be perused, should be added together and the total divided by 100.

C – Attendance (Formal)

1. To serve or deliver (other than by post) any necessary document or letter or despatch any telegram.....4.50

2. To sue out any process or file any document.....4.50

3. To set down causes for trial.....4.50

4. To search for any return.....4.50

5. On receipt of notice of intention to defend.....4.50

6. On advocate, eg with brief or to make appointment.....4.50

7. On signature of powers of attorney to sue or defend... 4.50

8. Other formal attendances, including telephone calls... 4.50

9. Attending receipt of a formal acknowledgement.....2.85

D – Drafting and Drawing

1. Any entry in the chamber book, where used,

including all attendances..... 9.00

2. Instructions for case on opinion, for advocate's guidance in preparing pleadings, including further particulars and requests for same, including exceptions (per folio)..... 7.00

3. Instructions to advocate for advice on evidence for brief on trial or on commission (per folio).....7.00

4. Instructions to advocate for argument in respect of all classes of pleading: Provided that a fee for drafting instructions on motion, petition, exception or appeal, shall only be allowed in discretion of the taxing master (per folio)..... 4.50

5. Statements of witnesses (per folio)..... 7.00

6. (a) Powers of attorney to sue or defend (per folio).....7.00

(b) Formal notices and subpoenas (per folio)..... 3.50

7. (a) A petition affidavit, any notice (except a formal notice), summons, further particulars requested and furnished for trial, writs of execution, arrest or attachment and any other important document not otherwise provided for (per folio)..... 15.00

(b) A formal affidavit of non-return in restitution suits, verifying affidavits, affidavits of service and other formal affidavits (per folio)..... 4.50

8. (a) Letter or telegram per folio..... 2.50 to 7.00

(b) Copy or telegram per folio..... 0.50

9. Drawing index to brief (per folio).....3.50

10. Short brief..... 4.50

NOTE 1 – In computing the number of folios of any document referred to in items 2, 3, 4, 5 and 7 of this Section, the taxing master shall deduct, but treat as annexures where relevant, any portions consisting of quotations from other documents and papers.

NOTE 2 – The charges allowed in this Section for drafting and drawing do not, save in the case of items, 1, 6, 8 and 10 include making the first fair copy, which shall be charged for under item 1 of Section F.

E – Appearance, Conference and Inspection

1. (a) Attendance by attorney when an advocate is

employed in court or before a judge or before a commissioner or referee or at an inspection directed by the Court –

(i) to note judgment only -

(aa) by an attorney..... 33.00

(bb) by a clerk..... 10.00

(ii) otherwise per half-hour or part thereof.....45.00 to 70.00

(b) Appearance by attorney without an advocate before a judge on request by the judge, or before a commissioner or referee, per half-hour or part thereof.....45.00 to 70.00

The above rates of remuneration shall not be applicable in respect of the time spent in travelling or waiting, but the taxing master shall, in respect of time necessarily so spent, allow such additional remuneration not exceeding R70 per diem as he or she in his or her discretion may deem fair and reasonable, and shall also allow a reasonable amount to cover the cost of necessary conveyance.

2. Attendance of attorney's articled clerk to assist a contested proceeding -.....10.00

(i) if advocate employed, per hour or part thereof.....

(ii) if advocate not employed, per hour or part thereof.....10.00

(iii) when assisting attorney, per diem if necessary.....45.00

3. Any conference or consultation with advocate with or without witnesses and on pleadings including exceptions and particulars to pleadings, applications, petitions affidavits, testimony and on any other matter which the taxing officer may consider necessary, per half-hour or part thereof.....45.00 to 70.00

4. (a) Any conference or consultation with client, witness or opposite party, and any other conference or consultation which the taxing officer may consider necessary, per half-hour or part thereof.....45.00 to 70.00

(b) Attending conference in terms of Rules 37, per half-hour or part thereof -

(i) by an attorney.....45.00 to 70.00

(ii) by a clerk.....22.50 to 35.00

5. Any inspection *in situ*, or otherwise, per half-hour or part thereof

(a) by an attorney.....45.00 to 70.00

(b) by a clerk..... 22.50 to 35.00

The above rates of remuneration shall not be applicable in respect of time spent in travelling but the taxing master shall in respect of time necessarily so spent allow additional remuneration not exceeding R50 per service and shall also allow the reasonable cost of necessary conveyance.

6. Evidence: Such just and reasonable charges and expenses as may, in the opinion of the taxing master, have been properly incurred in procuring the evidence and attendance of witnesses whose fees have been allowed on taxation: Provided that the qualifying expenses of a witness shall not be allowed without an order of court or the consent of all interested parties.

F – Miscellaneous

1. (a) Briefing and copying: for making typewritten copies for the court, counsel or attorney, or for service or for any other necessary purpose, the charge shall be for the first copy at the rate of 75c per folio (including the first copy of any document drafted in respect of which a charge is recoverable under items 2, 3, 4, 5, 7 and 9 of Section D of this tariff) and for further copies, per folio.....0.50

(b) For making typewritten copies of the record in a civil appeal from a magistrate's court the charge shall be as set out above.

(c) Where any of the above copies are made other than by typewriter, the charge shall be, for the first copy, 75c per page, for the next 4 copies, 30c per page, and for further copies, per page... 0.25

2. For giving a written opinion (as between attorney and client).....15.00 to 150.00
3. General: Inclusive fee for consultations and discussions with client or advocate not otherwise provided for..... 22.50 to 125.00

G – Bill of Costs

In connection with a bill of costs for service rendered by an attorney, an attorney shall be entitled to charge:

1. For drawing the bill of costs, making the necessary copies and attending settlement, 5 per cent on the first R500 or portion thereof, 2½ per cent on the second R500 or portion thereof, and 1 per cent on the amount in excess of R1 000 of the amount of the attorney's fees, either as charged in the bill if not taxed, or as allowed on taxation.

2. In addition thereto, if recourse is had to taxation for arranging and attending taxation and obtaining consents to taxation, 5 per cent on the first R500 or portion thereof, and 2½ per cent on the second R500 or portion thereof, and 1½ per cent on the amount in excess of R1 000 of the fees allowed.

NOTE:

(1) The minimum fee under each item of this Section shall be R7.50

(2) The fee under each item of this Section shall be calculated on the same amount.

H – Notarial Charges

1. Noting of bills of exchange and promissory notes:

(a) Attending to present note or bill and noting answer..... 7.00

(b) Letter or notice to maker, drawer or endorser, each.....2.50

(c) Copy to keep.....0.50

(d) Paid for conveyance.....

(e) Copy each letter or document to annex to protest, if necessary (per folio)..... 0.70

(f) Protest in duplicate..... 7.00

(g) Paid in stamps.....

(h) Certificate of presentation in duplicate..... 7.00

(i) Copy documents to annex, if necessary (per folio).....0.70

(j) Paid stamps.....

2. Charges for services rendered by a notary public other than those above set forth shall be assessed upon the same scale as is allowed to attorneys.