



PROVINCE OF THE EASTERN CAPE
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PROVINSIE OOS-KAAP

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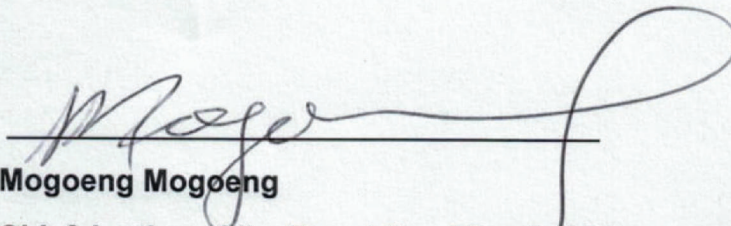
PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 109 OF 2018

**AMENDMENT TO THE JOINT RULES OF PRACTICE FOR THE EASTERN CAPE
DIVISION OF THE HIGH COURT**

By virtue of the powers vested in me by sub-sections 8(3) and 8(5) of the Superior Courts Act 10 of 2013, I, **Mogoeng Mogoeng**, the Chief Justice of the Republic of South Africa, hereby amend the Joint Rules of Practice for the Eastern Cape Division of the High Court which came into operation on 23 August 2013 in the manner and to the extent set out in the Schedule hereto.

The amendment enjoys the support of the Judge President of the Eastern Cape Division of the High Court, and shall come into operation on 01 July 2018.



Mogoeng Mogoeng
Chief Justice of the Republic of South Africa

SCHEDULE

3. PAGINATION AND INDEXES

- (a) In respect of defended trials, opposed motions, exceptions, applications to strike out, pleas in bar, special pleas, stated cases and appeal cases, the papers are to be secured, paginated and indexed as required by Uniform Rule 62 (4), not later than 5 days prior to the hearing of the matter: Provided that in all matters enrolled for hearing on the opposed motion court roll the papers shall be secured, paginated and indexed not later than 8 days prior to the hearing of the matter. This requirement will be strictly enforced.
- (b) For purpose of sub-rule (a), opposed motions shall include opposed return days of rules *nisi* opposed motions shall include opposed return days of rule *nisi* opposed provisional sentence matters, Rule 43 applications, applications for leave to appeal, and applications for summary judgment in which the defendant's affidavit is filed not later than 5 days prior to the hearing.
- (c) In an opposed summary judgment application where the defendant's affidavit is filed later than 5 days prior to the hearing, the papers should immediately be indexed and paginated once such an affidavit is filed.
- (d) In all unopposed motion court matters consisting of 20 pages or more, the provisions of Uniform Rule 62(A) shall be strictly enforced and the papers are to be secured, indexed and paginated by the time the roll closes.
- (e) Note that in terms of Uniform Rule 28(9), pages containing amendments to pleadings must be filed in the appropriate place in substitution for the original pages.
- (f) The pleadings as they were prior to amendment thereof, must also be filed either at the end of the 'pleading index' or under a 'miscellaneous documents index.'
- (g) The index must contain sufficient information to enable the Court to identify every document without having to refer to the document itself. For example 'Notice in terms of Rule 36(9)(a)' will not be sufficient. The item should read 'Plaintiff's Notice dated...in terms of Rule 36(9)(a) in respect of Dr X, Orthopaedic Surgeon. 'Similar Annexure A' is insufficient. It should read e.g 'Annexure A letter dated ...from plaintiff's attorney to defendant's attorney'.
- (h) Where additional documents are filed after the indexing has been completed, the additional documents must be paginated following the original pagination and supplementary index filed in which the additional documents are listed.

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

8 HEADS OF ARGUMENT

- (a) Heads of arguments are to be filed in all opposed motions, including opposed return days of rules *nisi*, opposed provisional sentence matters, exceptions, applications to strike out, pleas in bar, special pleas, stated cases and appeal cases. Excluded from this rule are Rule 43 applications, applications for summary judgment and applications for leave to appeal.
- (b) Notwithstanding the provisions of sub-rule (a), heads of argument shall be filed where an application for summary judgment has been postponed for argument pursuant to the defendant's opposition.
- (c) Heads of argument as envisaged in these rules are also to be filed by the applicant if the papers in any unopposed matter comprise 100 pages or more. In such cases, the heads are to be filed by the time the motion court roll closes i.e. by no later than 12 noon on the day but one immediately preceding the Motion Court.
- (d) Heads of argument:
 - (i) Shall consist of a concise and succinct statement of the main points which will be argued and should not contain unnecessary elaboration;
 - (ii) In particular shall not contain lengthy quotations from either the record or from authorities to which reference will be made;
 - (iii) Are not to refer in general to the record and authorities but to the specific pages and paragraphs of relevance;
 - (iv) Shall be accompanied by a list of the authorities to be quoted in support of the argument; and
 - (v) Shall, if any such authority is not readily available, be further accompanied by copies of the text to which reference is made—particularly in the case of unreported decisions, where a copy of the entire judgment should be attached.
- (e) In the case of all civil appeals and opposed motions enrolled for hearing on the opposed motion court roll, heads of argument for the appellant or applicant are to be filed at least 15 court days before the hearing of the appeal or application and

those for the respondent at least 10 court days before the hearing of the appeal or application – see Uniform Rules 49 (15) and 50 (9).

- (f) In the case of criminal appeals to the Full Court from the decision of a judge this division, the heads of argument for the appellant are to be filed at least 20 court days before the hearing of the appeal and those for the respondent at least 5 court days before the hearing of the appeal-see Uniform Rules 49A (3) and (4).
- (g) In the case of criminal appeals from a magistrate's court:
 - (i) where the record is less than 200 pages, the heads of argument for the appellant must be filed at least 15 court days before the hearing of the appeal; and
 - (ii) where the record exceeds 200 pages, the appellant's heads of argument are to be filed at least 20 court days before the hearing and those of the respondent at least 5 court days before the hearing.
- (h) In the case of any matters referred to in sub-rules 8(a) and 8 (b) which are enrolled for hearing on the unopposed motion court roll, heads of argument for the applicant must be filed at least 5 court days before the hearing of the application and those of the respondent at least 3 court days before such hearing.
- (i) If, by reason of urgency or short notice, the periods set out above cannot be complied with, heads of argument must be filed by all parties as soon as is reasonably possible.

15A *OPPOSED MOTIONS*

- (a) The parties to an opposed motion shall not later than 8 days before the hearing of the matter file a Practice Note which shall set out -
 - (i) the names of the parties to the application, the case number and its number on the roll;
 - (ii) the name of each party's legal representative appearing, whom they represent and their cellular and landline numbers;
 - (iii) a description of the nature of the dispute;
 - (iv) the issue (s) to be decided;
 - (v) the relief sought by the party on whose behalf the representative completing the practice note appears;
 - (vi) the principal authorities to be relied upon; and

(vi) an estimate of the probable duration of the application.

- (aA) The set down of opposed motions shall, notwithstanding Eastern Cape Rule 3 (6), be effected in terms of Rule 6 (5) (f) of the Rules of Court. Eastern Cape Rule 3 shall otherwise apply, mutatis mutandis, to all opposed motion proceedings and opposed provisional sentence matters.
- (b) A failure on the part of a practitioner to comply with sub-rule (a) above shall entitle the court hearing the matter to make any appropriate order including an order disallowing the party or its representative to recover a portion of its costs.
- (bA) The registrar shall deliver the case file in an opposed matter enrolled for hearing on the opposed motion court roll to the allocated judge on the Friday in the week but one prior to the hearing of the matter.

23 GENERAL

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

- (h) A typed copy of any document in an appeal record which is not clear and legible, should be prepared and bound into the record. All handwritten documents are to be copied and typed versions thereof prepared and included immediately thereafter in the record.
- (i) Photostat copies of photographs will generally be acceptable in the judges' records, provided that at least one set of the original photographs is also available in the file.
- (j) All appeal records, affidavits and any other documents which are secured by way of staples or any other metallic devices, may only be lodged with the registrar or handed in from the Bar once the staples or securing devices have been properly and surely covered by tape or some other acceptable covering material.
- (k) In all divorce proceedings where maintenance for minor children is sought, a court will, in general, order the payment of a definite sum or sums of money only and will not, in general, order the payment of a definite sum or sums of money only and will not, in addition thereto, in the absence of special circumstances or agreement between the parties, make an order for the payments of unspecified amounts such as school fees and medical expenses.
- (l) In matters in which summons is issued, after leave has been obtained to sue way of edictal citation or substituted service, a copy of the order authorizing service in that manner is to be included in the court file.
- (m) In all cases in which judgment by default is sought against the State (which will include applications where the State has failed to timeously file either a notice of opposition or its opposing papers) a notice of set down is to be served on the State attorney at least five days prior to the hearing.
- (n) Save for matters in which substituted service has been authorized, personal service of process will be required in divorce actions, applications for sequestration and contempt of court proceedings.
- (o) Where the attorney acts in terms of Act 62 of 1995 and performs the functions of an advocate referred to in the Uniform Rules of Court by signing of a combined summons, a pleading, request for further particular or a reply thereto:
 - (i) he/she should indicate that he/she is acting as an attorney who has been granted the right of appearance in the High Court in terms of the said Act; and

- (ii) where he or she is also a member of the firm of attorney acting for the litigant, such pleading or document should be signed twice, both as the attorney acting in terms of Act 62 of 1995 and as the litigant's attorney.
- (p) All returns of service are to be signed by the person who affected service and hearsay returns are, in the absence of special circumstances, not acceptable.
- (q) The business of all Courts in the Division shall commence at 09h30.
- (r) The first day of each term will be set aside for a judge's meeting.
- (s) In any matter in which the parties are of the view that by reason of the urgency or some other goods cause a preferential date should be afforded for the hearing of the matter, the judge-president may be approached through the registrar to attempt to arrange a convenient date. It will be in the judge-president's discretion to either allocate a preferential date or to refuse to do so.
- (t) Once a court filer has been delivered to a judge allocated to hear a matter, no legal practitioner or member of the Registrar's staff may have access thereto without the leave of the judge concerned.
- (u) 'Court days' in this rule are as defined in the Uniform Rules of Court.
- (v) Every page of any affidavit, including annexures thereto, must be initialed by the deponent and the commissioner of oaths, except for the page on which they sign in full.

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