

CHAPTER 9 MOTION COURT

- 9.1 Allocation of courts
- 9.2 Index
- 9.3 Binding of papers
- 9.4 Pagination
- 9.5 Briefing of counsel
- 9.6 Calling of the roll of unopposed matters in courts 2 and 3
- 9.7 Closure of the motion court roll
- 9.8 Concise heads of argument
- 9.9 Enrolment
- 9.10 Enrolment of application after notice of intention to oppose
- 9.11 Errors on the unopposed roll
- 9.12 Hearing of opposed matters
- 9.13 Long duration
- 9.14 Matters not on the roll
- 9.15 Postponements
- 9.16 Practice note
- 9.17 Preparation of papers
- 9.18 Service
- 9.19 Settlement
- 9.20 Settlement agreements and draft orders
- 9.21 Stale service
- 9.22 Striking from the roll
- 9.23 Supplementary roll
- 9.24 Urgent applications

9.1 ALLOCATION OF COURTS

1. During Court Term

Six Courts are allocated for the hearing of opposed and unopposed motion matters each week.

1.1 Court 1

1.1.1 This Court is presided over by the senior motion court judge for the week.

1.1.2 This Court is available for the hearing of opposed matters.

1.1.3 This court commences sitting on the Monday at 10h00 and sits until 13h00. It resumes sitting on Tuesday at 10h00 and terminates its sitting on Friday at 16h00.

1.1.4 The Judge presiding in this court allocates the opposed matters which are to be heard on the Monday on the preceding Friday from 13h00.

1.1.5 The Judge presiding in this court allocates the balance of the opposed roll on the Monday from 13h00.

1.2 Court 2

1.2.1 This court hears the following unopposed matters on the Tuesday of each week:

1.2.1.1 Sequestration applications.

1.2.1.2 Return days of provisional orders of sequestration.

1.2.1.3 Voluntary surrender of estates.

1.2.1.4 Rehabilitations.

1.2.1.5 Winding-up applications.

1.2.1.6 Return days of provisional orders of winding-up.

1.2.1.7 Provisional sentence.

1.2.1.8 All applications in terms of the Insolvency Act and the Companies Act

1.2.2 This court hears opposed motion matters, as allocated to it by the senior motion court judge, from Wednesday at 10h00 until Friday at 16h00.

1.3 Court 3

1.3.1 This court hears the following unopposed motion matters on the Tuesday of each week:

1.3.1.1 All other applications (excluding summary judgment, default judgments (subject to the provisions of Rule 31) and Rule 43 applications)

1.3.1.2 All other applications (excluding summary judgment and Rule 43 applications)

1.3.2 This court hears opposed motion matters, as allocated to it by the senior motion court judge, from Wednesday at 10h00 until Friday at 16h00.

1.4 Court 4

1.4.1 This court hears the following motion matters on the Tuesday and Wednesday of each week:

1.4.1.1 Summary judgment applications (unopposed and opposed).

1.4.1.2 Rule 43 applications (unopposed and opposed).

1.4.1.3 Default Judgments (subject to provisions of Rule 31)

1.4.2 Unless specifically so directed by the Deputy Judge President, this court is not available for the hearing of motion matters on Thursday or Friday of the week.

1.5 Court 5

1.5.1 This court hears opposed and unopposed motion matters allocated to it by the senior motion court judge.

1.5.2 This court commences sitting on Monday at 10h00 and terminates its sitting on Friday at 16h00.

1.6 Court 6

1.6.1 This court hears both opposed and unopposed urgent applications that have not been allocated to any of the other motion courts on the ordinary roll.

1.6.2 This court is available from 16h00 on the Friday preceding the motion court week and terminates its sitting on the following Friday at 16h00.

2. During Court Recess

Three courts are allocated for the hearing of opposed and unopposed motion matters each week.

2.1 Court 2

2.1.1 This court hears the matters referred to in para. 1.2.1 and 1.4.1.1 on the Tuesday of each week.

2.1.2 Save as provided for in para. 1.4.1.1 no opposed matters are heard.

2.1.3 Only opposed summary judgment applications without complexity will be heard during recess.

2.2 Court 3

2.2.1 This court hears the matters referred to in para. 1.3.1 and 1.4.1.2 on the Tuesday of each week.

2.2.2 Save as provided for in para. 1.4.1.2 no opposed matters are heard.

2.2.3 Only opposed rule 43 applications without complexity will be heard during recess.

2.3 Court 6

2.3.1 This court hears both opposed and unopposed urgent applications.

2.3.2 This court is available from 16h00 on the Friday preceding the motion court week and terminates its sitting on the following Friday at 16h00, save for the last week of recess. In the last week of recess the court terminates on Monday, at 08h00.

3. In all the motion courts, whether in term or in recess, matters not completed on the designated day will stand over until the next day for completion.

9.2 INDEX

2. Prior to the hearing of the application (and preferably simultaneous with the notice of set down) the applicant must deliver a complete index of all documentation before the court for the determination of the application.
3. The index should briefly describe each affidavit and annexure as a separate item.
4. This practice is equally applicable to unopposed applications.

9.3 BINDING OF PAPERS

1. Prior to the set down of the application the applicant must ensure that all the documentation before the court for the determination of the application is properly bound.
2. In binding the application, care must be taken to preclude that the method of binding hinders the turning of pages.
3. The documentation should not be bound in volumes of more than 100 pages each.

9.4 PAGINATION

1. The applicant must paginate the notice of motion, founding affidavit and annexures thereto and the replying affidavit, if any, and annexures thereto, prior to serving the documents on the other party.
2. The respondent must likewise paginate the answering affidavit and annexures thereto prior to serving the documents on the other party.
3. The respondent must commence pagination of the answering affidavit and annexures thereto by utilising the next chronological number following the last such number utilised by the applicant. The applicant must commence pagination of the replying affidavit and annexures thereto by utilising the next chronological number following the last such number utilised by the respondent.
4. Where there are multiple respondents represented by different attorneys each such respondent is released from the obligation referred to in paragraphs 2 and 3 above. In that event the obligation to paginate all the affidavits is on the applicant.
5. Additional documents generated during the application (eg. returns of service, reports, etc.) must be indexed, paginated and placed in an "Additional Documents Bundle."
6. Notwithstanding paragraphs 2 and 3 above, the applicant must ensure that prior to the hearing of the application it is properly paginated. In the event that the respondent failed to comply with para 2 above, the applicant may seek a punitive cost order against the respondent in respect of the pagination of the answering affidavit and annexures.
7. As is apparent from paragraph 1 above, this practice is applicable to opposed and unopposed applications.

9.5 BRIEFING OF COUNSEL

1. Legal representatives must ensure that counsel are briefed timeously to enable counsel to file practice notes and short heads of argument and to generally comply with the requirements of the practice manual in respect of the motion court.
2. The fact that counsel has not been briefed timeously will normally not be accepted as a reasonable explanation for the failure of counsel to comply with the requirements of the practice manual.

9.6 CALLING OF THE ROLL OF UNOPPOSED MATTERS IN COURTS 2 AND 3

1. Courts 2 and 3 commence sitting at 09h30 on the Tuesday of each week during the court term for the hearing of the matters referred to in paragraph 2 below.
2. Counsel who are briefed in matters enrolled to be heard in courts 1, 4, 5 and 6 on the Tuesday at 10h00 may call their motion matters in court 2 and court 3 from 09h30 on the Tuesday. To this end, prior to the commencement of court 2 and court 3 at 09h30, those counsel are to hand to the clerks of the judges presiding in the relevant court a list reflecting -
 - 2.1 counsel's name;
 - 2.2 the name and number of the matters counsel wishes to have called in that court;
 - 2.3 the number of the other court or courts in which counsel is to appear on the Tuesday at 10h00 as well as the name and roll number of the matters in the other courts.

As soon as practicable after their use, the clerks of the judges presiding in courts 2 and court 3, must hand the list to the clerk of the senior motion court judge.

3. From 10h00, and after the matters referred to in paragraph 2 have been completed, the calling of the roll in court 2 and court 3 will commence.
4. Prior to the calling of the roll as set out in paragraph 3 above, the secretary of the presiding judge will invite counsel to call matters which are to be removed from the roll or postponed, including applications in which rule nisi's have been granted and in which the return date is to be extended, to be called.
5. Thereafter the roll will be called in each court. In court 2 matters will be called consecutively according to their number on the roll. In court 3 the roll will be called page by page and counsel may call the matters in which they appear, which are reflected on the relevant page.
6. It is emphasised that court 2 has precedence over court 3. Counsel must ensure that all their matters in court 2 have been called before attending court 3.
7. Accordingly, if a matter is called in court 2 and there is no appearance, the presiding judge may there and then strike the matter from the roll.
8. Once court 2 has completed its roll, the clerk of the presiding judge of court 2 will inform the clerk of the presiding judge in court 3 thereof. Thereafter the matters in court 3 will be called consecutively according to their number on the roll. If a matter is called in court 3 after court 2 has completed its roll and there is no appearance, the presiding judge may there and then strike the matter from the roll.

9. If a matter has to stand down after it has been called, it must stand down until the roll has been called once, unless the presiding judge indicates otherwise.

9.7 CLOSURE OF THE MOTION COURT ROLL

1. The motion court roll closes at noon on the preceding Thursday. If the Thursday is a public holiday, the roll closes at noon on the last preceding working day.
2. After the closure of the roll, the parties to a motion are not entitled to access to the court file and may not insert or remove documents from it. Such leave must be sought at the first calling of the matter and must be supported by an affidavit.
3. Access to the court file must not be sought from the relevant judge nor from the relevant judge's clerk.

9.8 CONCISE HEADS OF ARGUMENT

1. Concise heads of argument, rarely longer than 5 pages, must be attached to the practice note (see paragraph 9.16 below) deposited by each party.
2. The heads should indicate the issues that fall for determination and counsel's contentions in respect of those issues. Reference to the authorities relied upon for those contentions should be set out.
3. If concise heads of argument were deposited for a previous hearing of the matter and the issues for determination have not changed, concise heads of argument need not be filed again. The practice note must indicate that reliance will be placed on the concise heads of argument which was filed previously.
4. At the hearing of the matter further heads of argument may be handed in.
5. The practice note and heads of argument should also be served on the other side or at least be exchanged with the opposing counsel.

9.9 ENROLMENT

1. The motion court roll for a particular week closes at 12h00 on the Thursday preceding the week. If the Thursday is a public holiday the roll closes one day earlier.
2. In order to enrol a matter in the motion court, the form referred to as J118, must be properly completed. A specimen J118 form is annexed hereto marked "A". The J118 must not be altered in any respect.
3. When completing the J118 particular attention must be given to the indication of whether the matter is opposed or unopposed and the designation of the type of matter. If the matter does not fall within any of the type of matters set out on the J118, the designation "O" for other must be utilised. In addition to inserting an "O" alongside "Case type (see OPTIONS)", the type of the matter must be set out in the open block under the heading "(OPTIONS)".
4. If at the time of enrolment it is known that the matter is not proceeding on its merits, the J118 must be endorsed with the words "NOT PROCEEDING ON MERITS" in the block alongside "U" (unopposed) / (opposed)".
5. If the J118 is utilised to enrol an application for default judgment, the following must appear in a document attached to the J118:
 - 5.1 The date of service of the summons.
 - 5.2 The dies induciae allowed in the summons.
 - 5.3 The date when the dies induciae lapsed.
 - 5.4 A statement that no notice of intention to defend was given.
 - 5.5 The precise relief sought.
6. If the J118 is utilised to enrol an application for summary judgment, the following information must appear in a document attached to the J118:
 - 6.1 The date of delivery of the notice of intention to defend.
 - 6.2 The date on which the application for summary judgment was delivered.
 - 6.3 If applicable, a statement that no opposing affidavit was filed.
 - 6.4 The precise relief sought.
7. If the J118 is utilised to enrol an action for provisional sentence, the following information must appear in a document attached to the J118:
 - 7.1 The date of service of the provisional sentence summons.
 - 7.2 A statement that no opposing affidavit was filed.
 - 7.3 The precise relief sought.

8. If the J118 is utilised to enrol an application in which notice of intention to oppose was given but no answering affidavit was filed, the following information must appear in a document attached to the J118:
 - 8.1 The date on which notice of intention to oppose was given.
 - 8.2 The date by which the answering affidavit had to be filed.
 - 8.3 A statement that no answering affidavit was filed.

9. If the J118 is utilised to enrol any other unopposed application, except an ex parte application, the following information must appear in a document attached to the J118:
 - 9.1 The date of service of the application.
 - 9.2 The date by when notice of intention to oppose was to be given.
 - 9.3 A statement that no notice of intention to oppose was given.

10. It is emphasised that the J118 must be utilised to enrol the matter irrespective of any notice of set down or notice of motion that may have been utilised in the matter. Any such notice of set down or notice of motion must indicate that the matter will be heard at 9h30 or so soon thereafter as the matter may be heard.

ANNEXURE A

J118

*		Case # (year first, eg. 92/1236)
*		Date of hearing
*		U (unopposed) / OP (opposed)
*		Case type (see OPTIONS)
*		NAMES OF PARTIES
*		(-Surname, then initials - 1st plaintiff and 1st defendant only)
*		Pigeon hole number

OPTIONS

FAMILY LAW	PAYMENT	VARIOUS	SOLVENCY
E – DIVORCE	D – DEFAULT JUDGMENT	T – INTERLOCUTORY	R –REHABILITATION
N – RULE 43	S – SUMMARY JUDGMENT	I – INTERDICT	B – SURRENDER
C – CUSTODY	P – PROVISIONAL JUDGMENT	H – REVIEW	PS – PROV. SEQUESTRATION
F – INTERDICT	O – OTHER (specify)	V – DECLARATORY	FS – FINAL SEQUESTRATION
		O – OTHER (specify)	FL – FINAL LIQUIDATION
			PL – PROV. LIQUIDATION

NOTICE OF SET DOWN
SOUTH GAUTENG HIGH COURT, JOHANNESBURG

To The Registrar

Kindly set the above matter down in accordance with
the above information.

SIGNED ON THE ____ DAY OF _____.

SIGNATURE

(Any addition information must be stated on a second page)

9.10 ENROLMENT OF APPLICATION AFTER NOTICE OF INTENTION TO OPPOSE GIVEN

1. Where the respondent has failed to deliver an answering affidavit and has not given notice of an intention to only raise a question of law (rule 6 (5)(d)(iii)) or a point in limine, the application must not be enrolled for hearing on the opposed roll.
2. Such an application must be enrolled on the unopposed roll. In the event of such an application thereafter becoming opposed (for whatever reasons), the application will not be postponed as a matter of course, but will be referred to the senior motion court judge for direction.
3. The notice of set down of such an application must be served on the respondent or the respondent's attorney of record.
4. In the event of the application being enrolled on the opposed roll, in the absence of urgency and an acceptable explanation on affidavit for the incorrect enrolment of the application, the application will be removed from the roll.

9.11 ERRORS ON THE UNOPPOSED ROLL

1. If an unopposed matter is placed by the registrar on the roll of the wrong court, the matter will normally not be transferred to the roll of the correct court. The matter will be dealt with by the judge on whose roll the matter appears.
2. If an urgent application is enrolled in the wrong court, the application may be referred to the urgent court with the leave of the judge in whose court it was erroneously enrolled.
3. If an opposed matter is erroneously placed on the roll of unopposed matters, the clerk of the judge on whose roll the matter appears, must on instruction from the judge, hand the court file to the clerk of the senior motion court judge. The matter will then be allocated for hearing in the normal course.

9.12 HEARING OF OPPOSED MATTERS

1. Enrolment

- 1.1. All opposed matters are enrolled for hearing on the Tuesday of the chosen motion court week for hearing at 10h00 or so soon thereafter as the matter may be heard.
- 1.2. The opposed motions are heard by courts 1, 2, 3 and 5 as set out in “allocation of courts” or any other court as designated by the senior motion court judge and as directed by the Deputy Judge President.

2. Hearing of opposed matters on the Monday

- 2.1. By agreement between the parties and notwithstanding para. 1 above parties can, subject to allocation by the senior motion court judge, agree to the hearing of an opposed matter irrespective of its nature on the Monday of the chosen motion court week. In such an event -
 - 2.1.1. all counsel in the matter must deposit a practice note and concise heads of argument in the appropriate box by not later than 13h00 on the preceding Thursday;
 - 2.1.2. it must be stated in each practice note that all the parties have agreed to the matter being heard on the Monday;
 - 2.1.3. the court file must be properly paginated and indexed;
 - 2.1.4. the secretary of the senior motion court judge will advise the respective parties' legal representatives during the Friday afternoon whether it has been possible to allocate the matter for hearing on the Monday and in which court the matter will be heard;
 - 2.1.5. if it was not possible to allocate the matter for hearing on the Monday, the matter will be allocated for hearing on the Tuesday or later in the week depending on the nature of the application.

3. Hearing of opposed matters on the Tuesday

- 3.1. The following opposed matters are heard on the Tuesday irrespective of the consent of the parties:
 - 3.1.1. Applications for and return days of winding-up orders.

- 3.1.2. Applications for judicial management
 - 3.1.3. Applications for and return days of sequestration orders.
 - 3.1.4. Exceptions.
 - 3.1.5. Applications relating to custody and access.
- 3.2. If there is no appearance by the legal representatives of the parties or any of them on the Tuesday in respect of the applications referred to in paragraph 3.1 above, the application may, subject to the discretion of the presiding judge, be struck from the roll or be otherwise dealt with in terms of the rules of court. Any counsel who is required to be in any other court should notify the presiding judge accordingly.
- 3.3. All the parties to the applications referred to in paragraph 3.1 above must deposit a practice note and concise heads of argument in the appropriate box by no later than 13h00 on the preceding Friday.
- 3.4. The court file must be properly paginated and indexed.

4. Hearing of opposed matters on the Wednesday, Thursday and Friday

- 4.1. All other opposed matters will be allocated by the senior motion court judge for hearing in the courts referred to in paragraph 1.2 above on Wednesday, Thursday and Friday of the relevant week.
- 4.2. No matter will be so allocated unless
- 4.2.1. the court file has been properly paginated and indexed;
 - 4.2.2. all the parties to the matter have timeously deposited in the appropriate box their practice notes and concise heads of argument by not later than 13h00 on the preceding Monday.
- 4.3. A printed roll prepared by the secretary of the senior motion court judge will be published by the clerk in the foyer of the High Court and sent electronically to the Johannesburg Bar Council and Attorneys' Association by no later than 09h00 on the Tuesday. The printed roll will indicate, in the event of an allocation having been made, the court to which the matter has been allocated for hearing. Where a matter has not been allocated due to for failure to comply with paragraph 4.2 above or for any other reason, such matter will appear on the roll as unallocated and will be called before the senior motion court judge on Wednesday at 10h00.

5. Basis of allocations of opposed motions

- 5.1. Considerations of urgency (as disclosed in the practice note), estimated duration and efficiency form the basis of allocation.
- 5.2. Where the same counsel appears in more than one matter, it is endeavoured, where practical, to allocate all such matters to the same court. To this end counsel should indicate in their practice notes whether they appear in other matters and give details of such other matters, i.e. the number on the roll and the names of the parties.
- 5.3. Date of when the matter was enrolled may be considered when the matter is allocated.

6. Difficulties with allocation

- 6.1. If a problem is encountered with an allocation of an opposed motion such problem must be raised with the senior motion court judge.
- 6.2. Only the senior motion court judge may change the allocation of a matter.

9.13 LONG DURATION

1. An opposed motion which is expected to require a day or more (including the delivery of an *ex tempore judgment*) may not be enrolled for hearing without the consent of the Deputy Judge President.
2. The consent of the Deputy Judge President for the enrolment of the matter is sought in writing, a copy of which must simultaneously be made available to the other party or parties to the opposed motion and must contain:-
 - 2.1. a short exposition of the nature and complexity of the matter;
 - 2.2. the estimated duration thereof;
 - 2.3. an assurance that all the necessary affidavits have been exchanged (or in exceptional cases an indication of the date by when they will have been exchanged);
 - 2.4. an assurance that the papers have been properly indexed and paginated;
 - 2.5. proposals for the filing of heads of argument by the parties;
 - 2.6. suggestions as to when the application can be heard.

The other party or parties to the opposed motion who wish to make representations in respect thereof may do so in writing.
3. The Deputy Judge President will determine the date of the hearing of the aforesaid opposed motion and furnish such directions as he deems fit in respect thereof.
4. The opposed motion must forthwith be enrolled for hearing in terms of the determination of the Deputy Judge President.

9.14 MATTERS NOT ON THE ROLL

1. Any matters not on the roll must only be brought to the attention of the presiding judge of the court on whose roll the matter ought to have appeared after the roll of that court has been called at least once. At that time the presiding judge's secretary will invite counsel to mention matters not on the roll.
2. Once counsel has determined that a matter is not on the roll and the relevant court file has been located, the court file should be handed to the secretary of the judge presiding over that portion of the roll in which the matter should have appeared. The judge's secretary shall prepare a list of such matters for use by the judge's secretary and the presiding judge.
3. If the matter is not on the roll due to a fault in the registrar's office, the file should be endorsed to that effect by the registrar dealing with enrolment. Once the matter is enrolled, the presiding judge will give directions for the hearing of the matter.
4. If the matter is not on the roll due to an act or omission on the part of the legal representative who was responsible for the enrolment of the application, an affidavit explaining the act or omission by the legal representative must be filed in the court file. In the absence of urgency and prejudice the matter will not be enrolled.

9.15 POSTPONEMENTS

1. A motion, whether opposed or unopposed, will generally not be postponed to a specific date. It will either be postponed *sine die* or removed from the roll.
2. Where a motion has to be postponed to a specific date (eg rehabilitation for which notice has been given) such date, in the absence of urgency, must be to a date at least two weeks hence.
3. Prior to allocation and in respect of unallocated matters, the clerk of the senior motion court judge for the particular week must be informed in person or telephonically immediately it becomes known that an opposed matter is to be postponed.
4. Subsequent to the allocation of an opposed matter to a particular judge for hearing, the clerk of the judge to whom the matter has been allocated, must be informed in person or telephonically immediately it becomes known that a matter is to be postponed.

9.16 PRACTICE NOTE

1. Counsel for each party in a motion which appears on the opposed roll is to deposit a practice note in the designated box, not later than 13h00 on the preceding Thursday, if a hearing on the following Monday is envisaged, by not later than 13h00 on the Friday if a hearing on Tuesday is envisaged and by not later than 13h00 on the Monday in all other cases.
2. The practice note shall set out -
 - 2.1. the name of the parties, the case number and its number on the roll;
 - 2.2. the names and telephone numbers of all counsel in the motion;
 - 2.3. the nature of the motion;
 - 2.4. an indication of the issues to be determined in the application;
 - 2.5. the relief sought at the hearing by the party on whose behalf counsel completing the practice note appear;
 - 2.6. an estimate of the probable duration of the motion;
 - 2.7. if the matter is urgent and if so motivate the urgency;
 - 2.8. whether or not the papers need to be read and, if so, which portions thereof.
3. In the absence of a practice note from the applicant, a motion appearing on the opposed roll will not be dealt with other than for removal from the roll, save in the event of respondent's counsel advancing considerations which are sufficient to persuade the presiding judge to hear the application.
4. A practice note must be deposited as set out in 1 above on each occasion the motion appears on the opposed roll.
5. Concise heads of argument (see 9.8 above) are to be attached to the practice note at the time of depositing thereof.
6. When the day on which the practice note and concise heads are to be deposited falls on a public holiday, such documents shall be deposited on the preceding business day.

9.17 PREPARATION OF PAPERS

1. The original application, the original return of service and other original documents comprising the application must be contained in the court file.

2. If a document or documents attached to the founding or replying affidavit is
 - 2.1 in manuscript and

 - 3.2 not readily legiblethe applicant shall ensure that typed and legible copies of the document or documents are provided.

2. The respondent bears the obligation referred to in the previous sub-paragraph in respect of documents attached to the answering affidavit.

9.18 SERVICE

1. Service is proved by filing in the court file the original return of service which establishes the service. In the absence of an acceptable explanation, returns of service will generally not be accepted from the bar.
2. Where publication in the Government Gazette or newspaper of a court order, notice or other document has to be proved, the full page of the Government Gazette or newspaper containing the relevant order, notice or other document must be filed. The court order, notice or other document must be clearly highlighted. In the absence of an acceptable explanation, proof of publication will generally not be accepted from the bar.
- 3.1 Where service is effected at the registered address of a company or close corporation the Sheriff must state in his return that he or she ascertained that there was a board at the address where service was effected indicating that that address was indeed the registered office of the company or close corporation.
- 3.2 In the absence of such a statement in the return of service, the registered address must be proved by filing in the court file of a form CM22 issued by the registrar of companies.
4. Where service is effected at a domicilium citandi et executandi, the original document wherein the domicilium is chosen must be in the court file.
5. In actions or applications for the imprisonment of the defendant or respondent, personal service of the summons or application must be effected on the defendant or respondent. If notice of the set down of the matter has to be given to the defendant or respondent, personal service of the notice of set down must be effected on the defendant or respondent.
6. When service of any document by registered post is prescribed or authorised (in any action or application), such service is proved by the production of an affidavit by the person who procured the despatch of such document, in which he/she -
 - 6.1 indicates the date of despatch together with the name and address of the addressee;
 - 6.2 describes the document so despatched;
 - 6.3 indicates, if that be the case, that the item in question has not been returned to the sender by the Post Office as being undelivered, and to which he annexes the documentary proof of posting of a registered article issued by the Post Office.

9.19 SETTLEMENT

1. Prior to allocation and in respect of unallocated matters the clerk of the senior motion court judge for the particular week must be informed telephonically immediately it becomes known that a matter has become settled.
2. Subsequent to the allocation of a matter to a particular judge for hearing, the clerk of the judge to whom the matter has been allocated, must be informed telephonically immediately it becomes known that a matter has become settled, or where it has been agreed that the matter is to be postponed.

9.20 SETTLEMENT AGREEMENTS AND DRAFT ORDERS

1. Where the parties to an application have entered into a settlement agreement, a judge will only make such settlement agreement an order of court if
 - 1.1. counsel representing all the parties to the application are present in court and confirm the signature of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court

or

 - 1.2. proof to the satisfaction of the presiding judge is provided as to the identity of the person who signed the settlement agreement and that the parties thereto want the settlement made an order of court.

2. Where the parties to an application have settled the application on the terms set out in a draft order, a judge will only make such draft order an order of court if
 - 2.1. counsel representing all the parties to the application are present in court and confirm that the draft order correctly reflects the terms agreed upon; or
 - 2.2. proof to the satisfaction of the presiding judge is provided that the draft order correctly reflects the terms agreed upon

3. All applications must be accompanied by a draft order reflecting the precise terms of the relief sought. Such draft order must be filed with the registrar at the time of issuing of the application.

9.21 STALE SERVICE

1. Where any unopposed application is made six months after the date on which the application or summons was served, a notice of set down must be served on the defendant or respondent.
2. The notice of set down must set out -
 - 2.1 the date and time at which the relief will be sought;
 - 2.2 the nature of the relief that will be sought.
3. The notice of set down must be served at least five days before the date on which the relief will be sought.

9.22 STRIKING FROM THE ROLL

1. If there is no appearance when a matter is called in court 2 it may there and then be struck from the roll.
2. If there is no appearance when a matter is called in court 3, and court 2 has completed its roll, it may there and then be struck from the roll.
3. In all other matters if there is no appearance when the matter is called, it may there and then be struck from the roll.
4. If a matter has been struck from the roll, counsel in the course of the week in which the matter was struck from the roll, may seek that the matter be re-enrolled. The matter will only be re-enrolled if a proper explanation for non-appearance is given. In appropriate circumstances the explanation must be on oath.
5. If a matter has been struck from the roll it may only be re-enrolled for a subsequent week if simultaneous with the filing of the J118, an affidavit explaining the previous non-appearance is filed.
6. The negligence or ignorance of the provisions of the practice manual of counsel or legal representative will not necessarily constitute an acceptable explanation for the non-appearance.
7. Where the applicant or plaintiff has failed to file a practice note and/or heads of argument where they are required in terms of the practice manual, the relevant matter may be struck from the roll.

9.23 SUPPLEMENTARY ROLL

1. If it is ascertained before 13h00 on the Monday of the motion court week, that a matter has been omitted from the roll due to a fault in the registrar's office, the matter must forthwith be drawn to the attention of the registrar's office.
2. The registrar's office will prepare a supplementary roll in respect of those matters. Matters on the supplementary roll are to be placed before the senior motion court judge.
3. The supplementary motion court roll will be called before the senior motion court judge on Wednesday of the motion court week at 10h00 or so soon thereafter as may be possible.

9.24 URGENT APPLICATIONS

1. A judge is designated for the hearing of urgent applications for each week of the year. For this purpose the week commences on Friday at 16h00 and terminates on the Friday of the next week at 16h00.
2. The normal time for the bringing of an urgent application is 10h00 on the Tuesday of the motion court week.
 - 3.1 If the urgent application cannot be brought at 10h00 on the Tuesday of the motion court week, it may be brought on any other day of the motion court week at 10h00. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on the Tuesday.
 - 3.2 If the urgent application cannot be brought at 10h00 on any day during the motion court week, it may be brought at 11h30 or 14h00 on any day during the motion court week. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on the Tuesday and other than 10h00 of the relevant court day.
 - 3.3 If the application cannot be brought at 10h00 on the Tuesday or at 10h00 on any other court day or at 11h30 or 14h00 on any court day it may be brought at any time during the court day. The applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on the Tuesday and other than at 10h00, 11h30 or 14h00 on any other court day.
 - 3.4 The aforementioned requirements are in addition to the applicant's obligation to set out explicitly the circumstances which render the matter urgent. In this regard it is emphasised that while an application may be urgent, it may not be sufficiently urgent to be heard at the time selected by the applicant.
 - 3.5 The aforementioned practices will be strictly enforced by the presiding judge. If an application is enrolled on a day or at a time that is not justified, the application will not be enrolled and an appropriate punitive cost order may be made.
4. The first paragraph of relief sought in the applicant's notice of motion must be for the enrolment of the application as an urgent application and for the dispensing of the forms and service provided for in the rules of court, to the extent necessary.
 - 5.1 Unless the circumstances are such that no notice of the application is given to the respondent, or unless the urgency is so great that it is impossible to comply therewith, the notice of motion must follow the format of form 2 (a) of the First Schedule to the rules of court and therefore must provide a reasonable time, place and method for the respondent to give notice of intention to oppose the application and must further provide a reasonable time within which the respondent may file an answering affidavit. The date and time selected by the applicant for the enrolment of the application must enable the applicant to file a replying affidavit if necessary.

- 5.2 Deviation from the time periods prescribed by the rules of court must be strictly commensurate with the urgency of the matter as set out in the founding papers.
- 5.3 In cases of extreme urgency, the reasonable time afforded to the respondent to give notice of intention to oppose, is usually not less than 2 hours, excluding the hour between 13h00 and 14h00.
- 6.1 If the facts and circumstances set out in the applicant's affidavits do not -
- 6.1.1 constitute sufficient urgency for the application to be brought as an urgent application and/or
 - 6.1.2 justify the abrogation or curtailment of the time periods referred to in the rule 6(5) and/or
 - 6.1.3 justify the failure to serve the application as required in rule 4 the court will decline to grant an order for the enrolment of the application as an urgent application and/or for the dispensing of the forms and services provided for in the rule. Save for a possible adverse cost order against the applicant the court will make no order on the application.
- 6.2 The aforementioned requirements will be strictly enforced by the presiding judge.
- 7.1 For the purposes of urgent applications ordinary court hours are 10h00 to 11h15, 11h30 to 13h00 and 14h00 to 16h00 of a court day. If a party wishes to bring an urgent application out of ordinary court hours the presiding judge's clerk must be telephoned at her office or on cell number 082 573 5233. The following information must be conveyed to the judge's clerk -
- 7.1.1 The identity of the parties.
 - 7.1.2 Whether or not service has been or will be effected.
 - 7.1.3 Whether or not the application is or is anticipated to be, opposed.
 - 7.1.4 The type of application.
 - 7.1.5 The nature of the relief sought.
 - 7.1.6 Why it is not possible for the application to be heard during ordinary court hours.
 - 7.1.7 When it is anticipated the application will be ripe for hearing.
- 7.2 The judge's clerk will communicate with the judge and thereafter advise the party when and where the application will be heard or what directions the judge has given in regard to the application.
- 7.3 When an urgent application is brought out of ordinary court hours, the applicant must ensure that the order of the court can be typed so that it can be signed by the presiding judge's clerk.
- 7.4 The judge designated for the hearing of urgent applications is not to be contacted directly.
- 7.5 If the judge designated for the hearing of urgent applications directs that the application be heard in court after ordinary court hours the judge's clerk shall telephone -
- 7.5.1 the court stenographer on urgent application duty to arrange the stenographer's attendance in court at the arranged time. The stenographer's telephone number is obtained from LOM on the Friday before 16h00.

- 7.5.2 the security officer on duty at the main entrance of the High Court at telephone number 011 332 8264 to arrange for the admission of the parties to the court and for the parties to be directed to Court 6 E.
- 8.1 When an urgent application is brought for the Tuesday at 10h00 the applicant must ensure that the relevant papers are filed with the registrar by the preceding Thursday at 12h00.
- 8.2 The registrar's office must ensure that the court files of all urgent application set down for the Tuesday at 10h00 are brought to the clerk of the judge hearing the urgent applications by 16h00 on the preceding Friday.
- 8.3 The clerk of the judge hearing urgent applications will prepare a roll in respect of the urgent applications to be heard on the Tuesday at 10h00. The clerk will publish the roll in the foyer of the High Court by no later than 10h00 on the Tuesday.
- 8.4 Where an urgent application is brought for any other time than Tuesday at 10h00, the registrar's office shall ensure that the court file is brought to the clerk of the judge hearing urgent applications as soon as possible. The judge's clerk shall prepare a roll in respect of the urgent applications to be heard on the other days of the week. The clerk will publish the roll in the foyer of the High Court by no later than 09h00 on the day of the hearing.
- 9.1 Save in exceptional circumstances the applicant should not frame the relief sought in the form of a *rule nisi* which has in whole or in part interim effect. Where applicable the urgent relief should be sought pending the determination of the application.
- 9.2 Annexure A to this chapter is an example of the appropriate format of a notice of motion to be utilised in an urgent application.
- 10.1 On the Friday of each week at 16h00 the registrar shall send to the secretary of the judge designated for the hearing of urgent applications for the week commencing at 16h00 on the Friday -
- 10.1.1 the cellular phone provided for the judge's clerk;
- 10.1.2 15 consecutively numbered court files (These files are to be utilised in the event of an urgent application being brought without a court file having been opened by the registrar of the court);
- 10.1.3 an official stamp of the registrar of the High Court. The stamp imprint must include the letters J.S.
- 10.2 On Friday of each week, before 16h00 the clerk of the judge who is to take over the urgent court, must obtain from LOM (Business Solutions) the telephone number of the stenographer on urgent court duty for the urgent court week.

- 10.3 On the first court day after any of the files referred to in 10.1.2 above has been utilised, the judge's clerk shall inform the registrar of the names of the parties and the allocated case number.
- 10.4 On the Friday morning at the conclusion of the week during which the designated judge heard the urgent applications, the judge's clerk must return the cellular telephone, the unused numbered files and the aforesaid stamp to the registrar.