

## AMENDMENTS TO PRACTICE DIRECTIVE 9.4

### (HEADS OF ARGUMENT IN OPPOSED MOTIONS)

Underlined portions (in red) indicate the amendments or additions):

“9.4. The following practice direction is in force in regard to opposed motions both in Pietermaritzburg and Durban:

9.4.1. The applicant, excipient or plaintiff in opposed motions, exceptions and provisional sentence proceedings shall not less than ten clear court days before the day of the hearing deliver concise heads of argument (which shall be no longer than five pages (“the short heads”)) and not less than seven clear court days before the hearing the respondent or defendant shall do likewise. The heads should indicate the issues, the essence of the party’s contention on each point and the authorities sought to be relied upon. The parties may deliver fuller, more comprehensive heads of argument provided these are delivered simultaneously with the short heads. Except in exceptional circumstances, and on good cause shown, the parties will not be permitted to deliver additional heads of argument.

The heads of argument shall be delivered under cover of a typed note indicating:

- a. the name and number of the matter;
- b. the nature of the relief sought;
- c. the issue or issues that require determination;
- d. the incidence of the onus of proof;
- e. a brief summary (not more than 100 words) of the facts that are common cause or not in dispute;
- f. whether any material dispute of fact exists and list of such disputed facts;
- g. a list reflecting those parts of the papers, in the opinion of counsel, are necessary for the determination of the matter;
- h. a brief summary (not more than 100 words) of the argument;
- i. a list of those authorities to which particular reference will be made;
- j. in appropriate cases the applicant, excipient or plaintiff must annex to the note a chronology table, duly cross-referenced, without argument;
- k. if the respondent or defendant disputes the correctness of the chronology table in a material respect, the respondent's or defendant's heads of argument must have annexed thereto the respondent's or defendant's version of the chronology table.

9.4.2. By no later than noon three court days before the day of

hearing the applicant, excipient or plaintiff shall notify the registrar in writing whether the matter will be argued, and if not what alternative relief (for example postponement, referral to evidence, etc) will be sought, in which case the notification shall be accompanied by a draft setting out the Order to be sought.

9.4.3. Unless condonation is granted on good cause shown by way of written application, failure on the part of the applicant, excipient or plaintiff to comply with the provisions of paras 9.4.1. and 9.4.2. hereof will result in the matter being struck from the roll with an appropriate order as to costs; and failure on the part of the respondent or defendant to comply with the said provisions will result in the court making such order as it deems fit, including an appropriate order as to costs.

9.4.4. If any of the aforesaid matters is of such a nature – by reason of the volume of the record or the research involved or otherwise – that the judge allocated to hear the matter would, in order to prepare for the hearing, reasonably need to receive the papers earlier than he or she would normally do, the applicant, excipient or plaintiff (as the case may be) shall notify the Registrar in writing to that effect not less than ten clear court days before the day of the hearing. Failure to do so could result in the matter not being heard on the allocated

day. Practitioners are advised to use their own discretion in interpreting this sub-rule but in the ordinary course it ought to apply to all matters where the record exceeds approximately 200 pages (including annexures).

9.4.5. The papers in all opposed motions shall be secured in separate conveniently-sized and clearly identified volumes of approximately 100 pages each. Each volume shall be secured at the top left-hand corner in a manner that shall ensure that the volume will remain securely bound upon repeated opening and closing and that it will remain open without any manual or other restraint. Ring binders and lever-arch files are to be avoided if at all possible.

9.4.6. Counsel are reminded of the dicta in *Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938 (SCA) at 955 B-F. Harms JA said:

'[37] There also appears to be a misconception about the function and form of heads of argument. The Rules of this Court require the filing of main heads of argument. The operative words are 'main', 'heads' and 'argument'. 'Main' refers to the most important part of the argument. 'Heads' means 'points', not a dissertation. Lastly, 'argument' involves a process of reasoning which must be set out in the heads. A recital of the facts and quotations from authorities do not amount to argument. By way of a reminder I wish to quote from *Van der Westhuizen NO v United Democratic Front* 1989 (2) SA 242 (A) at 252B--G:

"There is a growing tendency in this Court for counsel to incorporate quotations from the evidence, from the Court *a quo's* judgment and from the authorities on which they rely, in their heads of argument. I have no doubt that these quotations are intended for the convenience of the Court but they seldom serve that purpose and usually only add to the Court's burden. What is more important is the effect which this practice has on the costs in civil cases. . . . Superfluous matter should therefore be omitted and, although all quotations can obviously not be eliminated, they should be kept within reasonable bounds. Counsel will be well advised to bear in mind that Rule 8 of the Rules of this Court requires no more than the *main heads* of

argument. . . . The heads abound with unnecessary quotations from the record and from the authorities. They reveal, moreover, another disturbing feature which is that the typing on many pages does not cover the full page. . . . Had the heads been properly drawn and typed I do not think more than 20 pages would have been required. The costs cannot be permitted to be increased in this manner and an order will therefore be made to ensure that the respondent does not become liable for more than what was reasonably necessary.”

[38] Practitioners should note that a failure to give proper attention to the requirements of the practice note and the heads might result in the disallowance of part of their fees.’

9.4.7. Counsel’s names and contact details, including cell phone numbers, must appear on the heads of argument. “