



GOVERNMENT NOTICE
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 2018

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

**RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE
CHILDREN'S COURTS OF SOUTH AFRICA**

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), read with section 52 of the Children's Act, 2005 (Act No. 38 of 2005), with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE

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CHAPTER 1

Definitions, purpose, application and interpretation of rules

Definitions

1. (1) In these rules and in the forms annexed hereto any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned and, unless the context otherwise indicates—

“**affidavit**” means a written statement containing facts relevant to the issue or dispute, made under oath or affirmation and signed before a commissioner of oaths;

“**applicant**” means a party contemplated in section 15 or section 53 of the Act who approaches the court for assistance or relief;

“**comfort person**” means a person who—

(a) is trusted by the child;

(b) has close relationship with the child;

(c) is not necessarily a party to the proceedings; and

(d) who will provide reassurance and comfort to the child during the proceedings;

“**court**” means the children’s court established in terms of section 42(1) of the Act;

“**ex parte application**” means an application that is brought in which immediate relief is sought without first giving notice of court proceedings to the person against whom an order is sought;

“**general regulations**” means regulations made by the Department of Social Development in terms of the Children’s Act, 2005: General regulations regarding children of 1 April 2010;

“**judgment**” includes an order of court or a finding including a judgment entered or given in the absence of the party;

Specific comment and motivation are requested as to the appropriateness of the definition of “judgment”, or alternative definition be suggested.

“justice regulations” means regulations made by the Department of Justice in terms of the Children’s Act, 2005: Regulations relating to children’s courts and international child abduction of 31 March 2010;

“Legal Aid South Africa” means the national public entity established in terms of the Legal Aid Act, 2014 (Act No. 39 of 2014);

“Magistrates’ Courts Act, 1944” means the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“respondent” means any person against whom relief is sought, or who may be affected by the assistance or relief sought by the applicant, including an interested party and respondent as defined in the Act;

“serve” in relation to any notice, document or other process in terms of the Act, means to serve such notice, document or other process in accordance with the procedure provided for the serving of process in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the rules applying to the proceedings of magistrates’ courts;

“the Act” means the Children’s Act, 2005 (Act No. 38 of 2005).

(2) A Saturday, Sunday or public holiday must not, unless the contrary appears, be reckoned as part of any period calculated in terms of these rules.

Purpose, application and interpretation of rules

2. (1) The purposes of the rules for the court are:

(a) to promote access to the courts and to ensure that the right to have disputes that can be resolved by the application of law by a fair hearing before a court is given effect to;

(b) to give full effect of the objects contained in section 2 and the principles contained in section 6 of the Act;

(c) to enhance the standard of the best interests of the child contemplated in section 7 of the Act; and

(d) to ensure that all matters in court are dealt with expeditiously and are prioritized as contemplated in section 6(4)(b) of the Act.

(2) The court, family advocate, legal practitioner, social worker or other suitably qualified person with like position, having regard to the child's age, maturity and stage of development, as contemplated in section 10 of the Act, must—

(a) give due consideration to the views expressed by the child; and

(b) ensure the child's right to participate in an appropriate way.

(3) These rules prescribe the procedure to be followed in all courts of the Republic of South Africa.

(4) These rules must be interpreted and construed so as to give effect to the following objectives—

(a) the child's best interests are of paramount importance;

(b) to effect the just determination of every court proceeding by ensuring the parties a fair hearing and the recognition and enforcement of their constitutional and other rights under the Act or any other law;

(c) to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay;

(d) to provide for the care, protection and physical and mental development and social well-being of the child subject to the jurisdiction of the court; and

(e) to facilitate expeditious finalisation of all matters concerning the child without delay.

CHAPTER 2

GENERAL

Participation of child

3. (1) The presiding officer must make a determination as provided for in section 61 of the Act and record the reasons for such determination.

(2) The court must, where it is found that the child is able and willing to participate—

(a) provide the child an equal and inclusive opportunity to participate during the proceedings;

(b) inform the child of the child's rights and opportunity to participate in an age appropriate manner;

(c) explain the process and procedure of the children's court in simple language and terms in order for the child to understand and participate in the process;

(d) deal with the child in a transparent, honest and respectful manner;

(e) ensure an informal, child friendly, enabling and safe environment;

(f) take measures to promote child participation in the proceedings, including the appointment of an intermediary, an interpreter as well as allowing a comfort person; and

(g) allocate sufficient time for the hearing taking into consideration that the child needs to rest when tired as well as time to eat and refresh.

(3) If the child is not present, the court must enquire why the child is not present and postpone the enquiry in order to ensure that the child is afforded the opportunity to participate, unless circumstances exist why the matter should proceed in the absence of the child, which must be recorded.

<i>Specific comment and motivation are requested on the procedure to be followed if the child is not present.</i>

Case management

4. (1) The objectives of case management through judicial intervention in the interests of justice are to protect and act in the best interests of the child to address the problems which cause delays in the finalisation of cases.

(2) The presiding officer controls the conduct of the proceedings and must ensure that all applications and enquiries are dealt with judiciously and expeditiously as provided for in section 64(1) or 155(6)(a) of the Act.

(3) Any failure by a party to adhere to these principles may be penalised by way of an adverse costs order.

(4) The same presiding officer must, where reasonably possible, deal with all applications and enquiries in respect of a matter dealing with a specific child.

CHAPTER 3

CLERK OF COURT

Additional functions, powers and duties of clerk

5. In addition to the functions determined by the Act, a clerk must—
- (a) upon receipt of a form provided for in rule 6(1) or (2) open a file and number the matter with a consecutive number for the year;
 - (b) keep and update a register regarding all the matters brought to the court on a form corresponding substantially with Form 1 of Annexure 1;
 - (c) mark every document received afterwards relating to that matter with the number as assigned to the specific matter;
 - (d) file any documentation received on the appropriate file;
 - (e) assist, to the best of his or her ability, any person who requires assistance with the completion of any document relating to the proceedings in the court;
 - (f) perform the duties assigned to him or her in terms of the rules;
 - (g) inform a witness who is subpoenaed by the court in the matter that he or she is entitled to witness fees and ensure that the witness is assisted in this regard, where necessary;
 - (h) perform the duties of the clerk of a civil court insofar as it is necessary to give effect to the provisions of the Act; and
 - (i) keep a register of investigators appointed by the court in terms of section 75(1)(b) of the Act, in which the following must be entered—
 - (i) the full names of the investigator;
 - (ii) the identity number of the investigator, where available;
 - (iii) the address and contact details of the investigator; and

(iv) the matter for which the investigator was appointed.

(2) If a party is not represented by a legal practitioner, the clerk must inform the party that such party may approach Legal Aid South Africa.

(3) The clerk may not refuse to accept an application on the ground that it does not comply with the provisions of any legislation.

(4) The clerk must submit all applications immediately to the presiding officer.

(5) Subject to the provisions of subrule 6(6), the offices of the clerk are open during office hours on any day of the week except on a Saturday, Sunday or public holiday.

CHAPTER 4

CHILDREN'S COURTS

Part 1

Children's Court Proceedings

Bringing matter to court

6. (1) Except where otherwise provided for in these rules or in the Act, all applications must be brought on a form corresponding substantially with Form 2 of Annexure 1.

(2) Subject to the provisions of subrule (1), an application may be brought on notice of motion corresponding substantially with Form 3 of Annexure 1, if the nature of the application does not favour the use of Form 2 of Annexure 1.

(3) Every Form 3 of Annexure 1 must be accompanied by an affidavit setting out the nature of the application, the grounds upon which the application is based and the relief sought, and where available all documents and reports relevant to the application brought to court: Provided that a designated social worker may attach a report instead of an affidavit.

Specific comment and motivation are requested on whether a designated social worker may attach a report instead of an affidavit.

(4) Every application must contain the following details—

(a) the full names and residential, postal or work address of the applicant; cell phone or telephone number, including facsimile or email address if available;

(b) an election of the preferred address at which further documents in the application may be served on the applicant;

(c) the names, gender, date of birth, nationality, residential address and name of school or preschool of the child in respect of whom the application relates, if available;

(d) the names, residential, postal or work address and cell phone or telephone number of the parents or caregivers of the child, including facsimile or email address if available;

(e) the names, residential, postal or work address and cell phone or telephone number of the respondent and, if known, any other person who may be affected by the order sought, including facsimile or email address if known;

(f) a statement as to whether the family advocate, social worker, psychologist or other professional person or body is involved, also giving their full contact details, if available;

(g) the particulars of any pending matter or previous order of any court, either interim or final, relating to the child or parties involved;

(h) if there is an existing court order, full information relating to the change in the circumstances of the case and grounds upon which a relief is sought to change the existing order are based; and

(i) any other relevant factor that may assist the court in considering the application.

(5) Any person against whom an order is sought or having an interest in the matter, may oppose the application sought and file with the clerk an affidavit setting out the grounds upon which the application is opposed.

(6) An application contemplated in these rules may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court is

satisfied that the child may suffer imminent harm to that child's physical, mental or social well-being if the application is not dealt with immediately.

Suggestion and motivation are requested on the alternative wording to the clause "the child may suffer imminent harm to that child's physical, mental or social well-being if the application is not dealt with immediately".

(7) Every application may be accompanied by a supporting affidavit of any person who has knowledge of the matter concerned.

(8) The application and affidavits must be lodged with the clerk who must immediately submit the application and affidavits to the court.

(9) The court must as soon as is reasonably possible consider an application submitted to it, and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.

(10) The presiding officer may—

(a) make any other order provided for in the Act: Provided that where application is made for an *ex parte* order the provisions of rule 7 must be complied with;

(b) order the investigation of the application; and

(c) grant such order as it deems necessary to safeguard and act in the best interests of the child.

(11) The court must allocate a date for the preliminary hearing of the application as provided for in rule 8(1), which date must be within 20 days from the day the matter was referred to the presiding officer.

Suggestion and motivation are requested on the suitable time-frame, if the 20 days period is too short or long.

(12) The court must direct whether the child has to attend the hearing, taking into consideration the child's age, health and personal circumstances.

(13) The court must direct, having regard to the best interests of the child, whether the Form 2 of Annexure 1 or a portion thereof and accompanying affidavits or a portion thereof, in addition to the Form 4 of Annexure 1, must be served on the respondent.

Specific comment and motivation are requested on the appropriateness or otherwise of serving the respondent with the full affidavit or a necessary portion thereof.

***Ex parte* application**

7. (1) An *ex parte* application may be considered if the court is satisfied that—
 - (a) the giving of a notice of court proceedings to the person against whom the order is sought would defeat the purpose of the application; or
 - (b) the degree of urgency is so great that it is in the best interest of the child to dispense with the giving of notice of court proceedings.
- (2) The notice of every *ex parte* application must be accompanied by a form corresponding substantially with Form 3 of Annexure 1.
- (3) An order made against a party on an *ex parte* basis is of a temporary nature and must call upon the party against whom it is made to appear before the court on a specified return date to show cause why the temporary order should not be confirmed.
- (4) A copy of the temporary order and the *ex parte* application on which it was made must be served on the respondent in accordance with the provisions of rule 9.
- (5) Any person against whom an order is granted or who is affected by the order granted *ex parte* may anticipate the return day upon service on the applicant and filing with the clerk of not less than 24 hours' notice.
- (6) The presiding officer must direct and allocate a date for the hearing of the application, which application must be considered as soon as possible.
- (7) The court must direct, having regard to the best interests of the child, whether the Form 2 of Annexure 1 or a portion thereof and accompanying affidavits or a portion thereof, in addition to the Form 4 of Annexure 1, must be served on the respondent.
- (8) Where cause is shown against any order made *ex parte* against a party or a person who is affected by the order, the court may order the applicant or respondent or the deponent to any affidavit on which it was made to attend court for examination or cross-examination.

(9) The temporary order made *ex parte* may be confirmed, discharged or varied by the court on good cause shown by any person affected thereby, and on such terms as the court may deem appropriate.

(10) If after the order of the court the matter is not finally disposed of, the presiding officer must direct the further hearing of the matter as provided for in rule 13.

Attendance of preliminary hearing

8. (1) The clerk must immediately after the court has assigned a date for the preliminary hearing, and at least 10 days before the date of the hearing, notify the parties to attend the court proceedings on a form corresponding substantially with Form 4 of Annexure 1.

(2) The clerk must indicate on the Form 4 of Annexure 1 whether the attendance of the child is required at the hearing.

(3) The notice referred to in subrule (1) must be served as provided for in Rule 9.

Service of process, notices, documents and orders of court

9. (1) Subject to the provisions of rules 6 and 7, all processes, notices, documents and orders of court must be served on the person affected thereby—

(a) personally by a sheriff, a clerk, peace officer or a person authorised by the court;

(b) submitted to a party by registered post;

(c) served or submitted in any other manner as directed by the court; or

(d) served on the chosen facsimile or electronic mail address: Provided that—

(i) if the service is effected by facsimile the person sending the document by facsimile must—

(aa) obtain a transmission verification report as to whether the document was successfully transmitted to the facsimile number of the other person;

(bb) phone the person to whom the document was sent by facsimile to enquire whether the facsimile was received by him or her; and

(cc) file an affidavit evidencing the manner of service.

(ii) if the service is effected by electronic mail the person sending the document by electronic mail must—

(aa) obtain a read report as to whether the document was successfully transmitted to the electronic mail address of the other person;

(bb) phone the person to whom the document was sent by electronic mail to enquire whether the electronic mail was received by him or her; and

(cc) file an affidavit evidencing the manner of service.

(2) Where service of process may be effected by registered post such service must be effected by the clerk sending a copy of a document by registered post in terms of subrule (1)(b) to the person on whom the document is to be served and must require that proof of receipt thereof be returned to him or her by the relevant postal authority.

(3) The applicant may be served with any subsequent document received from the respondent by the clerk by hand, facsimile, post or electronic mail at the address elected by the applicant.

(4) Where service is effected by facsimile or electronic mail, the provisions of Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) shall apply.

(5) Unless directed against the guardian, every application must be served on the guardian and care-giver of the child.

Comment and motivation are requested on the necessity or otherwise of serving the guardian and care-giver of the child.

(6) The court may, if there is reason to doubt whether the process served has come to the actual knowledge of the person to be served, and in the absence

of satisfactory evidence, order such further steps to be taken as it deems appropriate.

(7) 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.

(8)(a) Except as provided in paragraph (b) or in the case of service by post, facsimile or electronic mail, or upon order of court, any process, notice or other document may not be served on a Sunday or public holiday.

(b) Service must be effected as near as possible between the hours of 7:00 and 19:00.

(9) Service of any process of the court or of any document in a foreign country must be effected—

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

(i) the head of any South African diplomatic or consular mission, a person in the administrative or professional division of the public service serving at a South African diplomatic or consular mission or trade office abroad;

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

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

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

(b) by any person referred to in paragraph (a)(i) or (ii), 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.

(10) Service of any process of the court or of any document in Australia, Botswana, Finland, France, Hong Kong, Lesotho, Malawi, New Zealand, Spain, Swaziland, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe may, notwithstanding subrule (15), also be effected by an attorney,

solicitor, notary public or other legal practitioner in the country concerned who is under the law of that country authorised to serve process of court or documents and in the state concerned who is under the law of that state authorised to serve process of court or documents.

(11)(a) Any process of court or document to be served in a foreign country must 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 subrule (15) must be delivered to the clerk.

(c) Any process of court or document delivered to the clerk of the court in terms of paragraph (b) must be transmitted by him or her together with the translation referred to in paragraph (a), to the Director-General of International Relations and Cooperation or to a destination indicated by the Director-General of International Relations and Cooperation, for service in the foreign country concerned, and the clerk of the court must be satisfied that the process of court or document allows a sufficient period for service to be effected in good time.

(12) Service must be proved—

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

(b) where service has not been effected by the sheriff, nor in terms of subrules (9) or (10), by an affidavit of the person who effected service, or in the case of service on an attorney or a member of his or her staff, the Government of the Republic, the Administration of any Province or on any Minister, Premier, or any other officer of such Government or Administration, in his or her capacity as such, by the production of a signed receipt therefor.

(13)(a) The document which serves as proof of service must, 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 at whose request service was effected must file the document which serves as proof of service on behalf of the person who effected service with the clerk 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;

(iii) the clerk requests filing; or

(iv) his or her mandate to act on behalf of a party, if he or she is a legal practitioner, is terminated in any manner.

(14) Service of any process of court or document in a foreign country must be proved—

(a) by a certificate of the person effecting service in terms of subrules (9)(a) or (10) in which such person identifies himself or herself, states that he or she is authorised 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 the 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 subrule (10) must be duly authenticated; or

(b) by a certificate of the person effecting service in terms of subrule (9)(b) 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 that country have not interposed any objection thereto.

(15) Whenever any process has been served within the Republic by a sheriff outside the jurisdiction of the court from which it was issued, the signature of such sheriff upon the return of service must not require authentication by the sheriff.

Edictal citation and substituted service

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

(b) If service of process or document whereby proceedings are instituted cannot be effected in any manner prescribed in rule 9, or if process or a document whereby proceedings are instituted is to be served outside the Republic, the person desiring to obtain leave to effect service may apply for such leave to a presiding officer, who may consider the application in chambers.

(2)(a) Any person desiring to obtain leave in the circumstances contemplated in subrule (1)(b) must make application to the court setting out concisely the nature and extent of the application, the grounds upon which it is based and upon which the court has jurisdiction to entertain the application and also the manner of service which the court is asked to authorise: Provided that if the manner of service is other than personal service, the application must further set forth the last-known whereabouts of the person to be served and the inquiries made to ascertain his or her present whereabouts.

(b) Upon such application the court may make such order as to the manner of service as it deems fit and must further order any other step that is to be taken by the person to be served.

(c) Where service by publication is ordered, it may be in a form corresponding substantially with Form 5 of Annexure 1, approved and signed by the clerk.

(3) Any person desiring to obtain leave to effect service inside or outside the Republic of any document other than one whereby proceedings are instituted, may either make application for such leave in terms of subrule (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 it deems fit.

Deviation from and extension of time period

11. (1) A party to the proceedings in a court, or such party's legal practitioner, may request the court for a deviation from or extension of any period of time prescribed in these rules or in terms of the order or direction of the court, which request must be in writing, stating the reasons for the request and submitting any proof to substantiate his or her reasons.

(2) A court may—

(a) grant a deviation or extension from any period of time prescribed in these rules or in terms of the order or direction of the court, on the conditions that the court deems fit, if any other party—

(i) did not raise any objections; or

(ii) did not respond but that party's rights will not be affected if a deviation from any period of time prescribed in these rules is granted;

(b) refuse a deviation from or extension of any period of time prescribed in these rules or in terms of the order or direction of the court, if any other party—

(i) raises an objection and that party's rights may be affected if a deviation from extension of any period of time prescribed in these rules or in terms of the order or direction of the court is granted; or

(ii) does not respond but that party's rights may be affected if a deviation from extension of any period of time prescribed in these rules or in terms of the order or direction of the court is granted.

Witnesses

12. (1) The clerk may subpoena any person to appear as a witness in a matter before the court at least 10 days before the date of the hearing on a form corresponding substantially with Form 21 of Annexure 1.

(2) A person referred to in section 59(1)(b) or (c) of the Act, who intends to have a witness subpoenaed must, within 15 days before the date of the hearing,

request the clerk to issue a subpoena to that witness, and the clerk must without delay issue the subpoena.

(3) The subpoena referred to in subrule (1) must be—

(a) served personally on a witness by a sheriff, a clerk, peace officer or a person authorised by the presiding officer of the court; or

(b) served or submitted in any other manner as directed by the presiding officer of the court.

Preliminary hearing of application

13. (1) The court must conduct a preliminary hearing to—

(a) gather information and make such order as the court deems necessary to investigate the application;

(b) determine who has to be present at the preliminary hearing;

(c) deal with interim applications and orders;

(d) give such orders, instructions or direction to the clerk, social worker or other professional as the court deems necessary; and

(e) case manage the application in order that it be finalised speedily.

(2) The clerk must by written notice as prescribed in rule 8(1) notify the applicant and respondent at least 10 days before the date of the preliminary hearing to attend the preliminary hearing.

(3) The court must at the preliminary hearing consider and give further direction in respect of—

(a) legal representation of the applicant, respondent and child;

(b) the need for an interpreter to be appointed;

(c) the need for an intermediary to be appointed;

(d) the need for a comfort person to be with the child during the proceedings;

(e) investigation and report by social worker, designated social worker and other professionals;

(f) submission of reports, affidavits and supporting documents;

(g) attendance of any other person at the preliminary hearing;
 (h) exchange of reports and documents;
 (i) consider whether to order a preliminary hearing conference, a Family Group Conference or refer the matter to a lay forum;
 (j) whether there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question;
 or

(k) any other matter relating to the conduct of the matter.

(4) The presiding officer may postpone the matter for periods not exceeding 30 calendar days at a time as provided for in section 64(1) of the Act.

(5) The clerk must notify a person required to attend the proceedings by written notice on a form corresponding substantially with Form 4 of Annexure 1 at least 10 days before the date of the hearing to attend the preliminary hearing.

(6)(a) If it appears to the court of its own accord that there is 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 disposal of such question in such manner as it may deem fit, and

(b) the court must at the request of any party make such order;

unless it appears that the questions cannot conveniently be decided separately.

(7) Once the investigation of the application is finalised and the matter is ready for hearing the presiding officer must allocate a date for the hearing: Provided that where the investigation has been finalised prior to the application being lodged at court and the matter is ready for hearing, the court may dispense with conducting a preliminary hearing and allocate a date for hearing.

Estimation of age

14. (1) A court may, if there is any uncertainty regarding the age of a person who appears to be a child—

(a) request any documentation, evidence or statements relevant to the estimation of the age of that person from any person, body or institution; or

(b) if no documentation, evidence or statements are available, refer that person to a medical practitioner employed by the state for an estimation of that person's age.

(2) The medical practitioner referred to in subrule (1)(b), must complete a form corresponding substantially with Form 6 of Annexure 1.

(3) In the absence of a valid birth certificate, identity document or passport, the court must, on all the available evidence make an estimation of the age and possible date of birth of the person referred to in subrule (1) by using, as a guide—

(a) a form corresponding substantially with Form 6 of Annexure 1, completed by a medical practitioner as provided for in subrule (1)(b); or

(b) a record of immunisation issued by a clinic.

(4) An estimation of age in terms of subrule (3), must be entered into the court record as the estimated age and date of birth of the person.

(5) Where a court makes an estimation of age in terms of subrule (3), a form corresponding substantially with Form 7 of Annexure 1 must be completed and handed to the social worker involved with the matter to be handed in at the Department of Home Affairs to be dealt with in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992) and the Identification Act, 1997 (Act No. 68 of 1997).

Part 2

Investigations, Conferences and Forums

Investigations

15. (1) An order of a court in terms of section 50 of the Act to carry out an investigation or further investigation must be on a form corresponding substantially with Form 8 of Annexure 1.

(2) A person who has been ordered by a court in terms of section 50(1) of the Act to carry out an investigation or further investigation may, for the purpose of performing his or her functions—

(a) question any person who is likely to give material or relevant information about any matter that the court ordered him or her to investigate; and

(b) request a person to identify himself or herself to the satisfaction of the investigator.

(3) An investigator may, in investigating a matter so ordered by a court and with due consideration to expediting the investigation of that matter, request any person to—

(a) meet with him or her at a specific time and place on a specific date; and

(b) provide him or her at the meeting, with information relating to the matter and documentary proof of the information, if applicable.

(4)(a) A request referred to in subrule (2) may be made in the manner the investigator deems fit.

(b) An investigator must keep a written record of—

(i) the manner in which the request referred to in paragraph (a) was made;

(ii) any matter he or she investigates;

(iii) any meetings held with him or her; and

(iv) the outcome of the investigation.

(5) After the investigator has concluded the investigation ordered by a court he or she must compile a written report which must contain the following information:

(a) The matter which was investigated;

(b) the reason for the investigation;

(c) the manner of the investigation; and

(d) the outcome of the investigation.

(6) The investigator must submit the report referred to in subrule (5) to the court within 10 days after the conclusion of the investigation.

Pre-hearing conferences

16. (1) If a court has ordered that a pre-hearing conference as provided for in section 69 of the Act must be held, the court—

(a) must direct who must attend the pre-hearing conference;

(b) must direct who will chair the pre-hearing conference;

(c) may, if necessary, direct that a court interpreter must attend the pre-hearing conference; and

(d) must assign a date for the pre-hearing conference, which must be within 10 days after the order was made;

(2) The clerk must, within three days after an order referred to in subrule (1) is made notify the parties involved on a form corresponding substantially with Form 9 of Annexure 1, of the date, place and time of the pre-hearing conference, and keep record of how the parties were notified.

(3) At a pre-hearing conference the chairperson of the pre-hearing conference must—

(a) give directions in respect of the conduct of the proceedings as he or she deems fit; and

(b) if a party is unrepresented, inform him or her of his or her right to be represented at his or her own expense by a legal representative of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid, and of the institutions which he or she may approach for legal assistance.

(4) The chairperson of a pre-hearing conference must, within five days after the conclusion of the pre-hearing conference, submit to the court a full written report of the pre-hearing conference, containing—

(a) any agreement reached between the parties;

(b) any settlement reached between the parties;

(c) any matters to be dealt with by the court; and

(d) any other matter the chairperson deems necessary.

(5) If a party fails to attend a pre-hearing conference without any good cause, after having been notified thereof as provided for in subrule (2), the chairperson of the pre-hearing conference may—

- (a) proceed with the pre-hearing conference in the absence of that party;
- (b) postpone the pre-hearing conference if that party is likely to make a valuable contribution regarding the best interests of the child in question; or
- (c) refer the matter back to the court for a hearing.

Family group conferences

17. (1) If a court orders that the matter must be referred to a family group conference as provided for in section 70 of the Act for mediation, the court must appoint a person or organisation as provided for in subrule (2), as facilitator of the family group conference.

(2) The facilitator of a family group conference may be any suitably qualified person, including, but not limited to—

- (a) a family advocate;
- (b) a social worker;
- (c) a social service professional;
- (d) a traditional leader;
- (e) a mediator; or
- (f) a legal practitioner.

(3) On receipt of an order provided for in subrule (1) the clerk must, within three days, in the manner determined by the court—

(a) refer the matter to the facilitator by means of a form corresponding substantially with Part A of Form 10 of Annexure 1;

(b) submit all certified copies of all the relevant documentation relating to the matter, to the facilitator;

- (c) retain original documents relating to the matter;
- (d) forward a copy of the referral to the parties; and
- (e) notify the parties of the documents submitted to the facilitator.

(4) After a facilitator has received the documentation as provided for in subrule (3), he or she must convene a family group conference within 10 days but not later than 15 days after receipt of the documentation by—

(a) setting the time, date and place of the conference; and

(b) taking steps to ensure that all persons entitled to attend the conference are notified within a reasonable time, of the time, date and place of the conference.

(5) No notice referred to in subrule (4)(b) needs be given to any person whose whereabouts, after reasonable enquiries, are unknown and failure to notify any person in accordance with that subrule does not affect the validity of the proceedings of a family group conference.

(6) Where a family group conference fails to take place on the time, date and place determined in terms of subrule (4), the facilitator must arrange for an alternative date and notify the persons entitled to attend the family group conference accordingly.

(7) The facilitator must confer with the parties and endeavour to obtain an agreement or settlement in respect of the matter.

(8) Before entering into discussions at a family group conference, and subject to any directions given by the presiding officer of the court, the parties must decide whether the facilitator is to file—

(a) a full report on the conference, including anything that the facilitator considers to be relevant to the matter; or

(b) a report that either sets out any agreement reached by the parties or states only that the parties did not reach agreement on the matter.

(9) The report referred to in subrule (8) and any agreement or settlement reached between the parties must be submitted to the clerk within 15 days after conclusion of the family group conference, who must submit it to the court for the court to make any agreement or settlement reached an order of the court.

(10) If a facilitator refers the matter back to the court for a hearing, that referral must be on a form corresponding substantially with Part B of Form 10 of Annexure 1, stating the reasons why the matter was referred back.

(11) A court must, within five days from the date on which the matter was received back, order that the matter be heard in court and assign a date for the hearing.

(12) The clerk must immediately notify the parties involved in the matter on a form corresponding substantially with Form 4 of Annexure 1 of the date, place and time of the hearing.

Lay forums

18. (1) If a court orders that the matter be referred for mediation to a specified lay forum as provided for in section 71 of the Act, the clerk must, within three days of receipt of the order, in the manner determined by the court—

(a) refer the matter to a specific lay forum by means of a form corresponding substantially with Part A of Form 10 of Annexure 1;

(b) submit certified copies of all the relevant documentation relating to the matter, to the lay forum;

(c) retain original documents relating to the matter;

(d) forward a copy of the referral to the parties; and

(e) notify the parties of the documents submitted to the lay forum.

(2) After a lay forum has received the documentation referred to in subrule (1), that lay forum must within five days, appoint a person to act as chairperson, who must arrange a meeting within 10 days but not later than 15 days after receipt of the documentation by the lay forum by—

(a) setting the time, date and place of the meeting; and

(b) taking steps to ensure that all persons entitled to attend the meeting are notified within a reasonable time, of the time, date and place of the meeting.

(3) No notice referred to in subrule (2)(b) need be given to any person whose whereabouts, after reasonable enquiries, are unknown and failure to notify any person in accordance with that subrule does not affect the validity of the proceedings of a lay forum meeting.

(4) Where a lay forum meeting fails to take place, the chairperson must arrange for an alternative date and notify the persons entitled to attend the lay forum meeting accordingly.

(5) The chairperson of a lay forum must confer with the parties and endeavour to obtain an agreement or settlement in respect of the matter.

(6) Before entering into discussions at a lay forum, the parties to that lay forum must, subject to any directions given by the presiding officer of the court, decide whether the chairperson is to file—

(a) a full report of the meeting, including anything that the chairperson considers relevant to the matter; or

(b) a report that either sets out any agreement or settlement reached by the parties or states only that the parties did not reach agreement on the matter.

(7) The report referred to in subrule (6), together with any agreement or settlement reached by the lay forum, must be submitted to the clerk within 15 days after conclusion of the proceedings of the lay forum, who must submit it to the court for the court to make any agreement or settlement reached an order of the court.

(8) If a lay forum refers the matter back to the court for a hearing, that referral must be in writing on a form which corresponds substantially with Part B of Form 10 of Annexure 1, stating the reasons why the matter was referred back.

(9) The court must, within five days from the date on which the matter was received back, order that the matter be heard in court and assign a date for the hearing.

(10) The clerk must immediately notify the parties involved in the matter on a form corresponding substantially with Form 4 of Annexure 1 of the date, place and time of the hearing.

Hearing

19. (1) The clerk must serve a notice corresponding substantially with Form 4 of Annexure 1 on the parties to the proceedings: Provided that where the parties have been warned by the court to attend such notice is not required.

(2) Unless the court directs otherwise the hearing must—

- (a) take place in a room as provided for in section 42(8) of the Act; and
- (b) be conducted in camera.

(3) A witness who is not a party to the hearing must be ordered by the court—

(a) to leave the court until his or her evidence is required or after his evidence has been given; or

(b) to remain present at court after his or her evidence has been given until the hearing is terminated or adjourned.

(4) The court may, before proceeding to hear evidence, require the parties to state shortly the issues of fact or questions of law which are in dispute and may record the issues so stated.

(5) If, in any pending matter, it appears to the court of its own accord, that there is 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 disposal of such question in such manner as it may deem fit, and the court shall at the request of any party make such order unless it appears that the questions cannot conveniently be decided separately.

(6) If the question in dispute is a question of law and the parties are agreed upon the facts, the facts may be admitted in court, either orally or by written statement, by the parties and recorded by the court and judgment may be given thereon without further evidence.

(7) When questions of law and issues of fact arise in the same case and the court is of opinion that the case may be disposed of upon the questions of law only, the court may require the parties to argue upon those questions only and may give its decision thereon before taking evidence as to the issues of fact and may give final judgment without dealing with the issues of fact.

(8)(a) The applicant shall first adduce his or her evidence, unless the court directs otherwise.

(b) If absolution from the instance is not decreed after the applicant has adduced evidence, the respondent shall then adduce his or her evidence.

(c) If the applicant has not called any evidence (other than that necessitated by his or her evidence on the issues proof whereof is on him or her) on any issues proof whereof is on the respondent, he or she shall have the right to do so after respondent has closed his or her case, but if he or she has called any such evidence, he or she shall have no such right.

(9) In a case of dispute as to the party upon whom the burden of proof rests, the court shall direct which party shall first adduce evidence.

(10) Any party may, with the leave of the court, adduce further evidence at any time before judgment; but such leave shall not be granted if it appears to the court that such evidence was intentionally withheld out of its proper order.

(11) The court may at any time before judgment, on the application of any party or of its own motion, recall any witness for further examination.

(12) Any witness may be examined by the court as well as by the parties.

(13) After the evidence on behalf of both parties has been adduced the party who first adduced evidence may first address the court and thereafter the other party and the party who first adduced evidence may reply.

CHAPTER 5

PARENTAL RESPONSIBILITIES AND RIGHTS

Part 1

General

Application regarding parental responsibilities and rights

20. Any person bringing an application for—

(1) a review of the outcome of mediation contemplated in section 21(3)(b) of the Act regarding a dispute about the fulfillment by the biological father of a child of the conditions referred to in section 21(1)(a) or (b);

(2) a parental responsibilities and rights agreement to be made an order of court in terms of 22(4)(b) of the Act;

(3) assignment of contact with or care of the child contemplated in section 23 of the Act;

(4) amendment of the registration of birth of the child or an order confirming paternity of the child contemplated in section 26 of the Act; or

(5) termination, extension, suspension or restriction of parental responsibilities and rights contemplated in section 28 of the Act, must bring such application as provided for in rule 6.

Part 2

Parental Responsibilities and Rights Agreement

General requirements regarding parental responsibilities and rights agreements

21. (1) A parental responsibilities and rights agreement must—

(a) be in writing on a form corresponding substantially with Form 11 of Annexure 1; and

(b) contain—

(i) particulars of those aspects pertaining to the care of, contact with, and financial responsibility for the child; and

(ii) incidental matters related to the upbringing of the child that are being conferred by the mother or other person having parental responsibilities and rights upon the biological father or any other person having an interest in the care, well-being and development of the child.

(2) Form 11 must be attached to the application for registration of the parental responsibilities and rights agreement as contemplated in subrule (1).

(3) Where parental responsibilities and rights are to be exercised in substantially the same manner by the biological father or any other person having an interest in the care, well-being and development of the child with respect to

more than one child in the same family, such parental responsibilities and rights agreement must be completed for each child.

(4) The applicant for the registration of a parental responsibilities and rights agreement must file copies of such agreement with the family advocate or the court, to enable each co-holder of parental responsibilities and rights to retain a copy of the registered agreement.

(5) Where a family advocate is required to satisfy himself or herself as contemplated in section 22(5) of the Act that a parental responsibilities and rights agreement is in the best interests of the child, this must be stated on a form corresponding substantially with Form 12 of Annexure 1.

Mediation and participation of child regarding parental responsibilities and rights agreement

22. (1) A family advocate, social worker, social service professional or other suitably qualified person who conducts mediation or assistance in the case of a dispute between the biological mother and father of the child with regard to the fulfillment by that father of the conditions set out in section 21(1) of the Act, may certify the outcome of that mediation or assistance on a form corresponding substantially with Form 13 of Annexure 1.

(2) A certificate of non-attendance of the mediation or assistance required by section 21(3) of the Act may be completed on a form corresponding substantially with Form 14 of Annexure 1 by a family advocate, social worker, social services professional or other suitably qualified person who has notified a respondent to attend such mediation or assistance and where such respondent has failed to attend.

(3)(a) Due consideration must be given to the views and wishes of the child in the development of any parental responsibilities and rights agreement, bearing in mind the child's age, maturity and stage of development.

(b) Bearing in mind the child's age, maturity and stage of development, such child must be informed of the contents of the parental responsibilities and

rights agreement by the family advocate, the court, a social worker, social service professional, psychologist or the child's legal representative when made an order of court.

(4) Where a child referred to in subrule (3) in respect of whom a parental responsibilities and rights agreement is concluded is not in agreement with the contents of the agreement, this should be recorded on the agreement, and the matter referred for mediation or assistance by a family advocate, social worker, social service professional or other suitably qualified person.

General provisions regarding parental responsibilities and rights agreement

23. (1) An application for the parental responsibilities and rights agreement to be made an order of court may be considered by the court upon filing of the Form 2 together with a certified copy of the written agreement.

(2) An application for variation, termination, extension, suspension or restriction of parental responsibilities and rights, must be brought on a form corresponding substantially with Form 2 of Annexure 1, supported by affidavit setting out the facts and grounds upon which the relief is sought: Provided that where a Form 2 of Annexure 1 was previously completed it shall not be necessary to submit a further Form 2 of Annexure 1.

Part 3

Parenting Plans

Preparation of parenting plan

24. (1) The co-holders of parental responsibilities and rights as contemplated in section 30 and who have agreed on a parenting plan, may approach the family advocate to register the parenting plan or the court to have it made an order of court.

(2) The co-holders of parental responsibilities and rights as contemplated in section 30 and who are experiencing difficulty in exercising their responsibilities and rights as envisaged in section 33(2) of the Act must first seek to agree on a parenting plan on matters referred to in section 33(3) of the Act.

(3) The parenting plan contemplated in subrule (1) must be prepared—

(a) with the assistance of a family advocate, social worker or psychologist as contemplated in section 33(5)(a) of the Act, and must be accompanied by a form corresponding substantially with Form 15 of Annexure 1; or

(b) after mediation by a social worker or other suitably qualified person as contemplated in section 33(5)(b) of the Act, and must be accompanied by a form corresponding substantially with Form 16 of Annexure 1.

(4) Bearing in mind the child's age, maturity and stage of development, such child must be consulted during the development of a parenting plan, and granted an opportunity to express his or her views after the implications and consequences of the parenting plan have been explained to the child, which views must be accorded due consideration.

(5) When a parenting plan has been agreed upon, the child must, bearing in mind the child's age, maturity and stage of development, be informed of the contents and consequences of the parenting plan by the family advocate, a social worker, social service professional, psychologist, suitably qualified person or the child's legal representative.

Part 4

Registration of parenting plan

Application for parenting plan to be made order of court

25. (1) An application for a parenting plan to be made an order of court must be on a form corresponding substantially with Form 2 and must be accompanied by form corresponding substantially with Form 17 of Annexure 1 and must—

(a) be signed by the parties to the parenting plan or, if a person whose signature is required is incapable of furnishing a signature, a thumbprint of that person must be effected and duly attested by a commissioner of oaths;

(b) contain the titles, full names, dates of birth, identity numbers or passport numbers, as the case may be, residential, work addresses, and contact details of all co-holders of parental responsibilities and rights named in the parenting plan; and

(c) contain the full names, dates of birth, identity numbers or passport numbers (as the case may be), residential addresses and contact details of any child named in the parenting plan.

(2) Where parental responsibilities and rights are to be exercised in the same manner by the holders of those responsibilities and rights with respect to more than one child in the same family, the application for registration of the parenting plan must be completed for each child.

(3) The applicant must file copies of the parenting plan with the court to enable each co-holder to retain a copy of the parenting plan.

(4) An application for variation of the parenting plan, must be brought on a form corresponding substantially with Form 2 of Annexure 1, supported by affidavit setting out the facts and grounds upon which the relief is sought: Provided that where a Form 2 of Annexure 1 was previously completed it shall not be necessary to submit a further Form 2 of Annexure 1.

CHAPTER 6

Part 1

Child in need of care and protection

Application for the removal of child to temporary safe care

26. (1) Whenever is it alleged by any person that a child may be in need of care and protection and an application is made for an order to place the child in

temporary safe care, such application must be made on a form corresponding substantially with Form 2 of Annexure 1, supported by an affidavit as to the facts on which the applicant relies for such removal: Provided that where the application is made by a designated social worker, it shall not be necessary to complete and file Form 2 of Annexure 1.

(2) The clerk must immediately submit the Form 2 of Annexure 1, affidavit and documents to the court for consideration.

(3) The court must as soon as is reasonably possible consider the application and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.

(4)(a) Where an application for the removal of the child is made *ex parte* the presiding officer may consider the application—

- (i) without notifying the parent, guardian, care-giver and child concerned, or
- (ii) order that notice of the application be given to the parent, guardian, care-giver and child concerned.

(5) Where notice had been ordered, the court must direct, having regard to the best interests of the child, whether the Form 2 of Annexure 1 or a portion thereof, affidavit and documents or portions thereof, in addition to the Form 3 of Annexure 1, should be served on the respondent.

(6) The presiding officer, if satisfied that the child is in need of care and protection—

(a) must make an order that the matter be investigated by a designated social worker; and

(b) may in addition make an order as provided in section 50 of the Act.

(7) The presiding officer making an order in terms of subrule (6)(a) may also issue an interim order for the temporary safe care of the child if it appears that it is necessary for the safety and well-being of the child.

(8) The presiding officer may—

(a) direct and authorise a designated social worker, police official or any person to remove the child;

(b) designate the place where or the person with whom the child must be kept in temporary safe care; and

(c) determine who may have contact with the child until the interim order is reviewed.

(9) The court ordering the removal of the child must simultaneously refer the matter to a designated social worker and direct the social worker to ensure that—

(a) the order in terms of subrule (7) is placed before the children's court, for review before the expiry of the next court day following the removal; and

(b) the child concerned, and where reasonably possible the parent, guardian or care-giver, as the case may be, are present in the children's court for the purposes of assisting the court in making a decision which is in the best interests of the child.

(10) The order for removal of the child must be made on a form corresponding substantially with Form 18 of Annexure 1.

Removal of child to temporary safe care

27. (1) A person authorised by a court order, a designated social worker or a police official who removes and places a child in temporary safe care—

(a) in terms of a children's court order contemplated in section 151(2) of the Act; or

(b) without a court order in terms of section 152(1) of the Act, must complete a form corresponding substantially with Form 19 of Annexure 1 and submit the original to the court and a copy thereof to the temporary safe care upon admission.

(2) The person authorized by the court, the designated social worker or police official referred to in subrule (1) must without delay but within 24 hours after the removal hand a copy of the Form 19 of Annexure 1 to the parent, guardian or care giver, if that person can readily be traced and notify the parent, guardian or care-giver by notice corresponding substantially with Form 21 of Annexure 1 stating—

- (a) the address of the court,
 - (b) the date and time of the hearing, which date must be no later than the next court day after the removal, and
 - (c) their right to challenge the appropriateness of the removal of the child.
- (3) The clerk must immediately hand the Forms 2, 19 and 21 of Annexure 1 and any other supporting document to the court.

Review of removal where child was removed by order of court

28. (1) The court must review whether it was necessary to remove and place a child in interim temporary safe care before the expiry of the next court day after the removal of the child.

(2) Where the Form 19 of Annexure 1 has been filed with the court after the expiry of the period provided for in section 151(2A)(a) of the Act, the court may condone the late filing thereof, having regard to the best interests of the child, and must record the reasons for the late filing of the Form 19 of Annexure 1.

(3) The court must ensure that the child, parent, guardian or care-giver is appropriately informed of the nature of the proceedings having regard to the provisions of rule 3.

(4) Where the child was removed by a court order, the court must consider any evidence previously received in terms of rule 27.

(5) The court may in addition—

(a) consider such further affidavits or oral evidence which must form part of the record of the proceedings;

(b) rely on a written report as provided for in section 63(1) of the Act; and

(c) where it appears to be in the best interests of the child, postpone the matter for the shortest period of time to call for further evidence or for the purpose of giving notice to any other person whose attendance at the proceedings is necessary, to attend the hearing.

(6) The parent, guardian, care-giver or child may file opposing affidavits, adduce evidence, call witnesses, question witnesses with the permission of the presiding officer and address the court.

(7) After considering the evidence, the court may—

(a) if it appears that the child may be in need of care and protection, confirm the removal of the child; and

(i) confirm the placement of the child at the place of temporary safe care;

(ii) place the child in any other approved temporary safe care;

(iii) make any other order regarding the placement or care of the child that would be in the best interests of the child;

(b) if it is found that the circumstances on which the removal has been based no longer require the child to be placed in temporary safe care and if it is in the best interests of the child to do so, the court may—

(i) set the removal aside and order the return of the child to the care of the person from whose care the child has been removed; and

(ii) may make any other order the court deems fit that would be in the best interests of the child;

(c) where appropriate, make any additional orders as provided for in section 50 of the Act.

(8) The court may, on application and where appropriate and necessary, amend or vary any order.

(9) The order for the placement of the child in the recommended place of temporary safe care, or any other approved temporary safe care must be on a form corresponding substantially with Part B of Form 18 of Annexure 1.

Removal of child to temporary safe care without court order

29. (1) If a designated social worker or police official has removed and placed the child in temporary safe care without a court order, such designated social worker or police official must without delay but within 24 hours after the removal hand a copy of the Form 19 of Annexure 1 to the parent, guardian or care giver, if

that person can readily be traced and notify the parent guardian or care-giver with a notice complying substantially with Form 21 stating—

(a) the address of the court ,

(b) the date and time of the review of the removal, which date must be no later than the next court day after the removal.

(c) their right to challenge the appropriateness to remove the child.

(2) The social worker must ensure that—

(a) the matter is placed before the court for review before the expiry of the next court day after the placement of the child in temporary safe care; and

(b) the child concerned, and where reasonably possible the parent, guardian or care-giver are present at court.

(3) Any person who removes a child must comply with the prescribed procedure as set out in section 152 of the Act.

Review of removal of child without court order

30. (1) A designated social worker or a police official may remove a child and place such child in temporary safe care without a court order if there are reasonable grounds for believing—

(a) that the child—

(i) is in need of care and protection; and

(ii) needs immediate emergency protection;

(b) that the delay in obtaining a court order for the removal of the child and placing the child in temporary safe care may jeopardise the child's safety and well-being; and

(c) that the removal of the child from such child's home environment is the best way to secure that child's safety and well-being.

(2) The court must, before the expiry of the next court day after the removal of the child, review whether it was necessary to remove the child and to place such child in temporary safe care.

(3) Where Form 19 of Annexure 1 have been filed with the court after the expiry of the period provided for in section 152(2)(d) of the Act the court may condone the late filing, having regard to the best interests of the child, and must record the reasons for the late filing of the Form 19.

(4) The court must ensure that the child, parent, guardian or care-giver is appropriately informed of the nature of the proceedings having regard to the provisions of rule 3.

(5) The court may in deciding the matter—

(a) consider such affidavits or oral evidence which must form part of the record of the proceedings;

(b) rely on a written report as provided for in section 63(1) of the Act; and

(c) where it appears to be in the best interests of the child, postpone the matter for the shortest period of time to call for further evidence or for the purpose of giving notice to any other person whose attendance at the proceedings is necessary, to attend the hearing.

(6) The parent, guardian, care-giver or child may file opposing affidavits, adduce evidence, call witnesses, question witnesses with the permission of the presiding officer and address the court.

(7) After considering all relevant information, the court may—

(a) if satisfied, that the designated social worker or police official, in removing the child, has satisfied the provisions of section 152(1) of the Act, make an order confirming the removal of the child; or

(b) if not satisfied that the designated social worker or police official, in removing the child, has satisfied the provisions of section 152(1) of the Act, make an order setting aside the removal and placement of the child.

(8) Where the court has made an order contemplated in—

(a) subrule (7)(a) the presiding officer may, in addition, make an order contemplated in section 151(2); or

(b) subrule (7)(b) the presiding officer may, in addition, make an order that the child be returned to its parent, guardian or care-giver, as the case may be, or

that the question of whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155(2).

(9) The court may, on application and where appropriate and necessary, amend or vary any order.

(10) The order for the placement of the child in the recommended place of temporary safe care, or any other approved temporary safe care must be on a form corresponding substantially with Part B of Form 18 of Annexure 1.

Investigation to decide whether child is in need of care and protection

31. (1) Where a child's placement in temporary safe care has been confirmed by a court in terms of section 151 or 152 of the Act, the matter must be—

(a) be brought before court within 90 calendar days after the removal of the child to temporary safe care as provided for in section 155(2) of the Act by a designated social worker;

(b) be adjourned for periods not exceeding 30 days at a time prior to the expiry of the 90 days period to—

(i) consider whether the continuous detention of the child in a place of safety is still necessary and in the best interests of the child;

(ii) monitor the investigation and give such additional orders as considered to be in the best interests of the child;

(iii) amend or vary the detention order; and

(c) be adjourned for periods of not exceeding 30 days at a time after the expiry of the 90 days period where the designated social worker has not submitted the report referred to in section 155(2), provided that the court may request the social worker to submit oral or written reasons to explain why the investigation has not been completed.

(d) be adjourned for periods of not exceeding 14 days at a time after the submission of the report of the designated social worker and the allocation of a date for the hearing by the presiding officer.

(2) A child who is not in temporary safe care but is the subject of an investigation as to whether that child is in need of care and protection must—

(a) be brought before court by no later than 90 calendar days after the commencement of the investigation;

(b) be adjourned for period not exceeding 30 days prior to the expiry of the 90 days period to—

(i) consider whether the continuous detention of the child in a place of safety is still necessary and in the best interests of the child;

(ii) monitor the investigation and give such additional orders considered to be in the best interests of the child;

(iii) amend or vary the detention order;

(c) be adjourned for periods of not exceeding 30 days at a time after the expiry of the 90 days period where the designated social worker has not submitted the report referred to in section 155(2) of the Act: Provided that the court may request the social worker to submit oral or written reasons why the investigation has not been completed; or

(d) be adjourned for periods of not exceeding 14 days at a time after the submission of the report of the designated social worker and the allocation of a date for the hearing by the presiding officer.

(3) The parent, guardian or care-giver of the child contemplated in subrule (1) or (2) must be notified by the clerk to attend proceedings of the court where a decision will be made as to whether the child is in need of care and protection on a form corresponding substantially with Form 21 of Annexure 1.

(4) The court must direct whether the report of the designated social worker or other professional reports or any portions thereof, must be served on the parent, guardian or care-giver of the child together with the notice referred to in subrule (3).

(5) The hearing must be conducted in accordance with the provisions of sections 54 to 64 of the Act.

Hearing to determine whether child is child in need of care and protection

32. (1) At the hearing to determine whether the child is a child in need of care and protection the court must—

(a) indicate whether the parties are present, and if not indicate why the party is not present;

(b) indicate whether the child is present and if not present the reason for the child's absence must be recorded;

(c) indicate whether there are other persons present who wish to be allowed as a party to the proceedings;

(d) explain the right to legal representation and record the response of the party and where applicable that of the person who wish to bring an application to be allowed as a party to the proceedings;

(e) indicate whether the court appointed a legal representative for the child;

(2) A person who wish to be allowed as a party to the hearing may bring an application in writing or orally and such application does not have to be accompanied by an affidavit.

(3) The court must consider the application and make a ruling before proceeding with the hearing: Provided that a person may at any stage of the hearing apply to be allowed as a party to the hearing.

(4) The party allowed to be present at the hearing has to be provided with a copy of the professional report or of such portions thereof as determined by the court.

(5) The court is in charge of the proceedings and may call such witnesses as the court deems necessary.

(6) The proceedings must be explained to the child in an age appropriate manner and the participation of the child or the absence thereof must be reflected in the record of proceedings.

(7) The court must explain to the parties and the child involved in the proceedings that the purpose of the enquiry is to determine whether the child is in

need of care and protection as set out in section 150 of the Act and record their responses thereto.

(8) The court must explain to the parties and the child involved in the proceedings the provisions of section 63(1) and (3) of the Act with regard to—

- (a) the admissibility of the report;
- (b) the evidential value of the report;
- (c) the right to cross-examine the author of the report;
- (d) the right to refute any statement contained in the report; and
- (e) the consequences of the failure to refute any statement contained in the report and record their responses thereto.

(9) The court must explain the right of the parties and the child involved in the proceedings to adduce evidence and record their responses thereto

(10) The court may allow the parties and the child involved in the proceedings to address the court in argument after receiving evidence.

(11) The court must make a finding whether the child is a child in need of care and protection as provided in section 150 of the Act.

(12) If the court finds that the child is a child—

(a) in need of care and protection the court must make an order as envisaged in section 156 of the Act; and

(b) who is not in need of care and protection the court must make an order as envisaged in section 156(4) of the Act.

(13) Where the court has made a finding as envisaged in subrule (12)(a) or (b) and the recommendation contained in the report of the designated social worker is disputed, the court may receive such evidence as required to make an appropriate order in the best interests of the child.

(14) The court must explain the right of the parties and the child involved in the proceedings to note an appeal and must record their response.

(15) The court must explain the provisions of sections 16, 159, 169 read with sections 129, 176, 186, 188, of the Act and general regulation 65 and 66 to the foster parent and the child involved in the proceedings and record their responses.

Abandoned or orphaned child

33. (1) In determining whether a child has been abandoned or orphaned for purposes of section 150(1)(a) of the Act, a court must—

(a) be furnished with a copy of the advertisement:

(i) published by a designated social worker in at least one local newspaper circulating in the area where the child has been found, calling upon any person to claim responsibility for the child; and

(ii) be satisfied that, for the purposes of—

(aa) section 150(1)(a) of the Act, a period of at least one month has lapsed since the publication of the advertisement; or

(bb) section 157(3) of the Act, a period of at least three months has lapsed since the publication of the advertisement,

and that no person has claimed responsibility for the child;

(b) have regard, in the case of an orphaned child:

(i) to the death certificate or certificates of the child's parent or parents, guardian or care-giver, obtained by the social worker concerned, or

(ii) if such certificates cannot be obtained, to an affidavit by a person or persons who can testify to the death of the child's parents, guardian or care-giver; or

(c) have regard, in the case of an abandoned child:

(i) to an affidavit, setting out the steps taken to trace the child's parents, guardian or care-giver, by the social worker concerned to the effect that the child's parents, guardian or care-giver cannot be traced, and

(ii) an affidavit by any other person who can testify to the fact that the child has had no contact with his or her parents, guardian or care-giver for a period of at least three months.

Part 2

Foster care

Extension of foster care order

34. (1) The designated social worker must submit the application for the extension of the foster care order at least 60 days before the order lapses to the court where the child resides.

(2) Where the foster care order was made by a court other than the court deciding the application for the extension of the foster care order, the clerk of the court where the order was made must upon request submit a certified copy of the report and court order to the designated social worker of the other court.

(3) The court where the child resides must consider the application for the extension of the foster care order as if the order was made by that court.

(4) Where the court previously made a finding that the child has been abandoned by his or her parent or guardian it is not required that an advertisement be published in a newspaper as provided for in rule 33.

(5) The court may postpone the application for the extension of the foster care order and request the designated social worker to submit such additional evidence as is required by the court.

(6) The clerk must notify the foster parent, parent, guardian or care-giver to attend the hearing and ensure the presence of the child at the hearing at least 10 days before the date of the hearing on a form corresponding substantially with Form 4 of Annexure 1.

CHAPTER 7

APPLICATION FOR ADOPTION

Application for adoption of child

35. (1) An application for the adoption of a child may be lodged by any person contemplated in section 231(1) of the Act as provided for in this rule.

(2) An application contemplated in subrule (1) must be lodged with the clerk of the court in the district where the child is resident.

(3) The clerk must—

(a) hand the forms corresponding substantially with Forms 23 and 24 of Annexure 1 to the person who wishes to adopt a child; and

(b) draw the attention of the prospective adoptive parent to the requirements set out in Forms 23 and 24 of Annexure 1.

(4) The prospective adoptive parent must complete Form 23 of Annexure 1 and submit it together with the following documents to the clerk—

(a) original birth certificate or identity document of child and where not available a sworn statement by the adoption social worker;

(b) certified copy of identity document or passport of prospective adoptive parent;

(c) certified copy of marriage certificate or a certified copy of the divorce order of the prospective adoptive parents, where applicable;

(d) report compiled by the adoption social worker that the prospective adoptive parent was properly assessed;

(e) where the child has been placed in the care of the prospective adoptive parent by a court before the application for adoption was brought, a certified copy of the court order placing the child in care of the prospective adoptive parent; and

(f) any other court order relating to the child, if available.

(5) Where the original or certified court order referred to in subrule (4)(c), (e) and (f) cannot be provided, the prospective adoptive parent must file an affidavit setting out the reasons why it cannot be provided.

(6) The clerk must—

(a) make certified copies of the original documents submitted,

(b) retain the original birth certificate or identity document of the child and report of the adoption social worker; and

(c) return the other original documents to the prospective adoptive parent.

(7) The clerk must upon receipt of the completed Form 23 of Annexure 1 complete an application form for the adoption of the child corresponding substantially with Form 25 of Annexure 1.

(8) The clerk must refer the application together with Form 23, Form 24 and the supporting documents to the court as soon as possible but not later than the next court day.

(9) The presiding officer must allocate a date for the preliminary hearing of the application, which date must be within 30 days from the day the matter was referred to the court.

(10) The court may instruct the clerk and the adoption social worker to conduct such investigation or submit any document as the court deems necessary.

(11) Any party must notify the clerk within 10 days of any change of address.

Placement of child

36. (1) A child may not be placed in the care of the prospective adoptive parent without a court order authorising such placement: Provided that where the child is in the care of the biological parent or guardian and the application for adoption is made by a married person whose spouse is the parent of the child or by a person whose permanent domestic life partner is the parent of the child no court order is necessary.

(2) Where the child has been placed in the alternative care of the prospective adoptive parent by a preceding court order no further order is required.

(3)(a) The prospective adoptive parent must apply on a form corresponding substantially with Form 23 to the court for an order of placement of the child in the care of the prospective adoptive parent.

(b) The application for such placement must be accompanied by a report compiled by the adoption social worker informing the presiding officer whether

the prospective adoptive parent is a fit and proper person to be entrusted with the care of the child.

(4) The application must immediately be placed before the court but not later than the next court day.

(5) The court may impose such conditions as required with regarding the placement of the child.

(6) The continued placement of the child may be reviewed on such conditions as determined by the court.

Freeing order

37. (1) The Department of Social Development, an accredited child protection organisation or adoption social worker may at any time apply on a form corresponding substantially with Form 2 to the court for a freeing order.

(2) The application must be accompanied by—

(a) a report compiled by the adoption social worker;

(b) a supporting affidavit by the parent or person whose consent to the adoption of the child is required; and

(c) a certified copy of the identity document or passport of the parent or person whose consent to the adoption of the child is required.

(3) The clerk must refer the application to the court as soon as possible but not later than the next court day.

Preliminary hearing of application to adopt

38. (1) The court must conduct a preliminary hearing to—

(a) gather information and investigate the application for adoption;

(b) determine who has to be notified of the application for adoption;

(c) determine who has to consent to the proposed adoption;

(d) determine who has to be present at the hearing;

(e) deal with interim applications and orders; and

(f) give such orders, instructions or direction to the clerk, adoption social worker or other professional as the court deems necessary.

(2) The court must consider the following issues and give further direction in respect of—

(a) legal representation of the prospective adoptive parent, parent and or child;

(b) the need for an interpreter to be appointed;

(c) the need for an intermediary to be appointed;

(d) consent to the adoption by parent, guardian and child;

(e) investigation and report by adoption social worker and other professionals;

(f) submission of supporting documents;

(g) attendance of any other person at the hearing;

(h) exchange of reports and documents; and

(g) any other matter relating to the adoption of the child.

(3) The court may postpone the matter for periods not exceeding 30 calendar days at a time.

(4)(a) The clerk must, immediately after the court has assigned a date for the preliminary hearing and at least 10 days before the date of the hearing, notify the prospective adoptive parent, adoption social worker, and any other party as directed by the court to attend the preliminary hearing on a form corresponding substantially with Form 4 of Annexure 1.

(b) The clerk must as directed by the court, indicate on the Form 4 of Annexure 1 whether the attendance of the child is required at the preliminary hearing.

(5) The clerk must upon the direction of the court subpoena a witness on a form corresponding substantially with Form 22 of Annexure 1 at least 10 days before the date of the hearing to attend the preliminary hearing.

(6) The court must direct the clerk to cause the sheriff to serve a notice of the proposed adoption on a form corresponding substantially with Form 26 of

Annexure 1, on each person whose consent to the proposed adoption is required and who has not consented to the adoption of the child.

(7) The court must give direction in writing to the clerk of the court and the adoption social worker as far as it concerns—

- (a) the investigation of the application;
- (b) consent to the adoption;
- (c) notice of the proposed adoption; or
- (d) any other matter related to the adoption of the child.

(8) The written directions must be recorded on the record of proceedings as prescribed in rule 56.

(9) Once the investigation of the application to adopt is finalised and the matter is ready for hearing the court must allocate a date for the hearing; provided that where the investigation has been finalised prior to the application being lodged at court and the matter is ready for trial the court may dispense with a preliminary hearing and allocate a date for hearing.

Steps to establish details of person who consents to adoption

39. (1) In order to establish the name and address of each person whose consent for an adoption is required in terms of section 233 of the Act, the clerk must request the relevant accredited child protection organisation or the relevant adoption social worker to provide him or her with the name and address of such persons.

(2) If the name or address of the person whose consent for adoption is required is not known, the relevant accredited child protection organisation or the relevant adoption social worker may employ a tracing agency or may place an advertisement in a newspaper in order to obtain the required details.

Notice of proposed adoption

40. (1) The notice informing each person whose consent to the adoption is required must be given on a form corresponding substantially with Form 26 of Annexure 1.

(2) The form must be served personally by the sheriff on the person mentioned in the form.

(3) Where the person to be served is outside the Republic the notice must be served as provided for in rule 9(9).

(4) The response to the notice must be in writing.

Consent to adoption

41. (1) The consent to adoption must—

(a) in the case of the adoption of a foster child, be accompanied by a written statement of the child's foster parent, on a form corresponding substantially with Form 27 of Annexure 1;

(b)(i) subject to section 236(1) to (3) of the Act, be accompanied by a written consent of each parent regardless of whether they are married or not, on a form corresponding substantially with Form 28 of Annexure 1, and

(ii) of the child, where such child is a child referred to in section 233(1)(c) of the Act, on a form corresponding substantially to Form 29 of Annexure 1, as required by section 233(1)(a) or section 233(1)(c) of the Act: Provided that if the parent is a child that parent is assisted by his or her guardian;

(c) subject to section 236(1) to (3) of the Act, in the case of any other person who holds guardianship in respect of the child, be accompanied by a written consent of that guardian, as required by section 233(1)(b) of the Act on a form corresponding substantially with Form 30 of Annexure 1; and

(2) The consent forms referred to in subrule (1)(b) and (c) must be signed in the presence of a presiding officer of the court as contemplated in section 233(6)(a) of the Act or in the case of consent given outside the Republic before a person referred to in rule 42(1) as contemplated in section 233(6)(b) of the Act.

(3) The consent to adoption may be given before a presiding officer at any children's court notwithstanding that the application for adoption is pending before another court.

(4) When a parent, guardian or child approach the court to consent to the proposed adoption of the child the clerk must arrange that the parent, guardian or child be brought immediately, or as soon as possible before the presiding officer.

(5) The child, parent or guardian must appear before the presiding officer in chambers and the proceedings may not be attended to by any other person, party, adoption social worker or professional, unless authorised by the presiding officer.

(6) The presiding officer must—

- (a) explain the parent's or guardian's right to legal representation; and
- (b) consider the appointment of a legal representative for the child.

(7) Before verifying the consent referred to in section 233(6)(a)(iii) of the Act, the presiding officer must first determine whether the person giving consent was counseled as provided for in section 233(4) and if the person was counseled, inform the person giving the consent of—

- (a) the effect of an adoption order as set out in sections 242;
- (b) the prohibited considerations as provided for in section 249;
- (c) the right to withdraw the consent in terms of rule 43;
- (d) the alternative placement options; and
- (e) the right to apply for a post adoptive agreement.

(8) The court, in the case of consent given in the Republic, must verify the identity of the person giving such consent against a valid identity document or a valid passport of such person.

Suggestion and motivation are requested as to other preferable or alternative documents to be used to verify the identity of the person giving consent.

(9)(a) The presiding officer must keep a record of the consent proceedings and must record all information disclosed by the person giving consent in respect of—

(i) the parent, guardian or child's responses to the explanations given in subrule (6) and if disclosed;

(ii) the reason for the adoption;

(iii) medical history; and

(iv) family origin of the child concerned.

(8)(a) The presiding officer must record the reason for the parent's or guardian's refusal to consent to the proposed adoption.

(b) The response of the child to the refusal to consent to the proposed adoption need not be recorded, unless it is in the child's best interest.

Consent outside Republic

42. (1) If consent to adoption of the child is given outside the Republic, it must be signed in the presence of an officer in the service of a South African diplomatic or consular mission, or by a judge, magistrate, justice of the peace or public officer of the country concerned.

(2) The person referred to in subrule (1) in the case of consent given outside the Republic, must verify the identity of the person giving such consent against a valid form of identification.

(3) The Form 28 or 30 as well as authenticated copy of a valid form of identification must be transmitted to the court.

Is it necessary to transmit to court the "authenticated copy of a valid form of identification"? Specific comment and brief motivation are requested in this regard.

Withdrawal of consent

43. (1) A parent, guardian or child may withdraw the consent before a presiding officer at any court notwithstanding that the application for adoption is pending before another court.

(2) When a parent, guardian or child approach the presiding officer to withdraw consent to the proposed adoption of the child the clerk must arrange

that the parent, guardian or child be brought immediately before the presiding officer or as soon as possible thereafter on the same day.

(3) A parent or guardian who wishes to withdraw the consent must do so on a form corresponding substantially with Form 31 of Annexure 1, in the presence of any presiding officer within 60 calendar days of the signing of such consent.

(4) A child who wishes to withdraw the consent must do so on a form corresponding substantially with Form 32 of Annexure 1, in the presence of any presiding officer within 60 calendar days of the signing of such consent.

(5) The presiding officer must verify the identity of the person who wishes to withdraw consent and keep a record of the proceedings as required in rule 56.

Post adoption agreements

44. (1) A post adoption agreement contemplated in section 234 of the Act must be on a form corresponding substantially with Form 33 of Annexure 1.

(2) A party to a post adoption agreement must inform all other parties to such an agreement of any change to any of the particulars referred to in subrule (1) within seven days of such change.

(3) The court, when granting the adoption application in terms of section 239 of the Act, may confirm a post adoption agreement if it is in the best interest of the child.

(4) An application may be made to the court for the amendment or termination of the post adoption agreement as provided for in section 234(6)(b) of the Act.

Consideration of adoption application

45. (1) The clerk must upon the direction of the presiding officer notify the prospective adoptive parent, the parent who has not consented to the proposed adoption, the social worker or any other person whose attendance is necessary

to attend the hearing as required in rule 8: Provided that where the person was warned by the court, no further notice will be required.

(2) The child must attend the hearing unless the court otherwise direct.

(3) Where the application for adoption is made for the adoption of siblings by the same prospective adoptive parent one record of proceedings must be kept.

(4) The presiding officer must explain the proceedings in appropriate terms to the child taking into consideration the child's age maturity and stage of development.

(5) If the parent or guardian refuses to consent to the proposed adoption, whether it is alleged that the consent is withheld unreasonably or not, the prospective adoptive parent must be considered to be the applicant and the parent or guardian as the respondent.

(6) Where it is alleged that the consent of the parent or guardian is not required the parent or guardian has to be notified to attend the hearing: Provided that where a court has previously made a finding that—

(a) the parent or guardian has abandoned the child, or if the whereabouts of that parent or guardian cannot be established, or if the identity of that parent or guardian is unknown; or

(b) the parent or guardian has abused or deliberately neglected the child, or has allowed the child to be abused or deliberately neglected, it will not be necessary to notify the parent or guardian of such hearing.

(8) The court must conduct an enquiry and keep a record of the proceedings as provided for in rule 56.

(9) The following documents must be submitted and considered by the court:

(a) Form 23 application;

(b) application for the adoption Form 25;

(c) birth certificate of child or notification by the Department of Home Affairs recoding the birth of a child;

(d) certified copy of identity document or passport of prospective adoptive parent;

(e) certified copy of marriage certificate of prospective adoptive parent where applicable;

(f) certified copy of divorce order or death certificate of spouse where applicable;

(g) in the case where a child has been abandoned, an advertisement published in a newspaper in the area where the child has been found calling upon any person to claim responsibility for the child, where applicable;

(h) affidavit by adoption social worker setting out the steps taken to trace parent or guardian, where applicable;

(i) certified copy of death certificate of the parent of orphaned child, where applicable;

(j) court order placing child in the care of the prospective adoptive parent, where applicable;

(k) affidavit in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);

(l) certificate in terms of the National Child Protection Register in terms of the Act;

(m) the report of the adoption social worker;

(n) letter by provincial head of social development recommending the adoption of the child;

(o) where applicable—

(i) reports from other professionals such as psychologists;

(ii) consent of the child;

(iii) consent of the parent;

(iv) consent of the guardian; and

(v) written statement of the foster parent;

(vi) information established by the clerk with regard to the request of a person who has consented to the adoption and who wants the court to dispense with the consent of another person;

- (vii) written response of a person who has been requested to indicate why the court should not dispense with such person's consent; and
- (p) a report by the clerk on any failure to respond to the requests.

(10)(a) The court must in considering the adoption application have regard to all the relevant factors and record a finding in respect of whether—

- (i) the child is adoptable in terms of section 230(3) of the Act;
- (ii) the adoptive parent is fit and proper to be entrusted with the full parental responsibilities and rights in respect of the child as provided for in section 231(2)(a) of the Act;
- (iii) the adoptive parent is willing and able to undertake, exercise and maintain those responsibilities and rights as provided for in section 231(2)(b) of the Act;
- (iv) the parent is over the age of 18 years as provided for in section 231(2)(c) of the Act;
- (v) the adoptive parent was properly assessed by an adoption social worker for compliance with section 231(2)(a) and (b) of the Act;
- (vi) the religious and cultural background and preferences of the child, the child's parent and the adoptive parent have been taken into account as provided for in section 240(2)(a) of the Act;
- (vii) all reasonable preferences expressed by a parent and stated in the consent as provided for in section 240(2)(a) of the Act; and
- (viii) the written statement of the foster parent if the child is adopted by a person who is not the foster parent;
- (ix) the proposed adoption is in the best interests of the child as provided for in section 240(2)(a).

(b) The court must be satisfied and record the finding that—

- (i) consent to the adoption has been given as provided for in section 233 of the Act, and that such consent has not been withdrawn;
- (ii) consent is not required as provided for in section 236 of the Act;

(iii) consent has unreasonably been withheld and the adoption is in the best interests of the child as provided for in section 241 (1)(a) and (b) of the Act.

(11) The adoption order must be made on a form corresponding substantially with Form 34 of Annexure 1.

(12) Where the adoption order does not terminate the parental responsibilities and rights of the parent of a child when an adoption order is granted in favour of the spouse or permanent domestic life partner of that parent, the adoption order must be made on a form corresponding substantially with Form 35 of Annexure 1.

(13) The court must record the time and date that the adoption order was made.

Manner of recording information in adoptions register

46. (1) The clerk must submit the originals of the following documents to the Adoption Registrar designated as such in terms of section 247 of the Act—

- (a) the application for adoption;
- (b) every consent to the adoption as may be required;
- (c) the order of adoption and two copies thereof;
- (d) the certified copy of record of adoption proceedings including exhibits;

and

(e) the child's identity document or birth certificate or where these are not available, a sworn statement to that effect by an adoption social worker.

(2) Upon receipt of the documents contemplated in subrule (1) the Adoption Registrar must register such information in the adoption register.

(3) After completion of the registration contemplated in subrule (2) the Adoption Registrar must enter the date of registration and the registration number on each order of adoption and must forward—

(a) a copy of the order of adoption referred to in subrule (1)(c) and the original identity document or birth certificate to the adoptive parents; and

(b) the remaining copy of the adoption order to the relevant clerk of the court.

Rescission of adoption order

47. (1) A court may rescind an adoption order as provided for in section 243 of the Act on application by—

(a) the adopted child;

(b) a parent of the adopted child or any other person who had guardianship in respect of the child immediately before the adoption; or

(c) the adoptive parent of the child.

(2) An application in terms of subrule (1) must be lodged within a reasonable time but not exceeding two years from the date of the adoption, on a form corresponding substantially with Form 2 of Annexure 1.

(3) Notice of an application for rescission of an adoption order must be given to—

(a) the adoptive parent of that child, if any other person brings the application;

(b) all persons who have consented to the adoption in terms of section 233 of the Act, or who have withheld consent to the adoption in terms of section 241 of the Act, if the child or the adoptive parent brings the application; and

(c) any other person whom the court finds has a sufficient interest in the matter.

(4) If the High Court concerned rescinds an adoption order in terms of section 243 of the Act, the registrar of that court must submit a copy of the court order to the clerk of the relevant children's court.

(5) The clerk of the relevant court must, upon receipt of any court order rescinding an adoption order, notify the Director-General of Home Affairs in terms of the Births, Marriages and Deaths Registration Act, 1992 (Act No. 51 of 1992), of that order.

(6) The clerk referred to in subrule (5) must submit one copy of the court order to the Adoption Registrar who must deregister the adoption.

CHAPTER 8

INTER-COUNTRY ADOPTION

Accreditation to provide inter-country adoption services

48. The court must be satisfied that any organisation designated as a child protection organisation in terms of section 107 of the Act was accredited by the Central Authority to provide inter-country adoption services.

Report on person in convention or non- convention country applying to adopt child from Republic

49. (1) In addition to the requirements set out in article 15 of the Hague Convention on Inter-country Adoption, the report on an applicant required by section 261(2) or 262(2) of the Act must include—

- (a) identifying information with certified copies of supporting documents;
- (b) a medical report of the applicant's health status;
- (c) a police clearance certificate;
- (d) proof of citizenship and permanent residence;
- (e) the applicant's ethnic, religious and cultural background;
- (f) a detailed assessment by an adoption social worker;
- (g) information regarding the applicant's own childhood;
- (h) information regarding other significant family members of the applicant;
- (i) information about the character of the applicant;
- (j) details of the attitude of other family members towards the adoption;
- (k) plans for integration with siblings, where applicable;
- (l) plans for relocation of the child from the Republic to the place where the applicant resides;

(*m*) a description of the adoption counseling that has been received by the applicant;

(*n*) the applicant's ability to undertake inter-country adoption; and

(*o*) the reasons why the applicant wishes to adopt a child.

(2) In the event of more than one applicant applying jointly for the adoption of a child, the information set out in subrule (1) must be provided in respect of each applicant.

Report on child in Republic to be adopted by person from convention or non-convention country

50. (1) In addition to the requirements set out in article 16 of the Hague Convention on Inter-country Adoption, the report on a child required by section 261(3) or 262(3) of the Act must be a comprehensive child study report compiled by an adoption social worker employed by a designated child protection organisation.

(2) The report contemplated in subrule (1) must include—

(*a*) identifying information of the child with an original birth certificate or identity document, or where these are not available, a sworn statement from the social worker to supplement the lack of documentary information;

(*b*) detail regarding the child's language, culture, race and religion;

(*c*) a medical report confirming the health status of the child, and where applicable, a description of any special needs of the child;

(*d*) information about the child's natural parents, where such information is known, including—

(i) a description of the counseling they have received;

(ii) whether they have consented to the adoption; and

(iii) if their consent is not required, the reasons for such non-requirement;

(*e*) information regarding the sibling or siblings of the child, where applicable;

(f) comprehensive information regarding the efforts that have been made to provide suitable alternative care within the Republic;

(g) the views of the child concerning the adoption, where the child is capable of forming his or her own view; and

(h) the child's consent, if he or she is 10 years of age or older, which must be annexed to the report.

Order for adoption of child from Republic by person from convention country or non-convention country

51. The order for adoption granted in terms of section 261(5) or 262(5) of the Act must be issued by the court on a form substantially corresponding with Form 36 of Annexure 1.

Return of child following withdrawal of consent by Central Authority to adoption by person in convention or non-convention country

52. (1) Where the Central Authority of the Republic withdraws its consent to an inter-country adoption given to a convention country pursuant to section 261(6) or 262(6) of the Act, the Central Authority of the Republic must forward a letter setting out the withdrawal of consent to the Central Authority in the convention country with whom the agreement was made, requesting co-operation for the return of the child to the Republic.

(2) The letter contemplated in subrule (1) must be forwarded electronically or through a postal service.

(3) The request for co-operation contemplated in subrule (1) must be stipulated in specific terms, including the time when and the place where the child has to be handed over to an identified representative of the Central Authority of the Republic.

(4) The Central Authority of the Republic must appoint an escort to accompany a child on his or her return to the Republic, who must be a suitably

qualified or experienced person employed by the Department or by a designated child protection organisation.

(5) The child must be brought before the children's court who finalized the adoption application before the expiry of the next court day after the return of the child to the Republic.

Specific comment and motivation are requested as to the necessity of subrule (5), or an alternative provision be suggested.

(6) The court must—

(a) determine whether it would be in the best interests of the child to be placed in temporary safe care; or

(b) order an investigation by a designated social worker to determine whether the child is in need of care and protection as provided in section 150 of the Act.

(7) The costs related to the return of the child, including the costs of the person appointed to escort the child, must be paid for out of funds made available for this purpose by the Central Authority of the Republic.

(8) The Central Authority of the Republic must, within seven days of the child's arrival in the Republic, effect an appropriate amendment to the adoption register established in terms of section 247 of the Act and notify the Director-General of the Department of Home Affairs of the child's return.

Adoption of child from Republic by person in convention country

53. (1) The provisions of all the rules dealing with adoptions as provided for in chapter 8 apply equally to applications in terms of section 261 of the Act.

(2) The application must be considered as provided for in section 261(5) of the Act.

CHAPTER 9

GENERAL MATTERS

Settlement agreements

54. (1) An application to make a settlement agreement an order of court must be made in terms of rule 6 and be served upon the respondent unless it originates from existing court proceedings.

(2) The application must, when submitted to the court, contain the following:

- (a) The settlement agreement;
- (b) An affidavit by the parties confirming the agreement and the signatures to the agreement; and
- (c) Statement that there has been compliance with the provisions of section 6(5) of the Act.

(3) Where the parties agree that a settlement agreement may be made an order of court, a statement to that effect must be made in the agreement.

(4) The settlement agreement must be submitted to the court for confirmation or rejection.

(5) The court may confirm the settlement agreement and make it an order of court if—

- (a) after considering the settlement agreement and
- (b) it is in the best interests of the child.

(6) Before deciding the matter, the court may—

- (a) refer the settlement back to the parties for reconsideration on any specific issues; or
- (b) on good cause reject the settlement.

Questioning through intermediary

55. (1) A child who is a party or a witness in a matter before the court must be questioned through an intermediary if it is in the best interests of that child to do so.

(2)(a) Subject to paragraph (b), all questions to a child or a witness who is a child must be directed through the court.

(b) No questioning of any child or a witness who is a child in respect of whom a court has appointed an intermediary under subrule (1), must take place other than through that intermediary.

(c) The said intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.

(3) If a court appoints an intermediary under subrule (2), the court may direct that the relevant child or witness gives his or her evidence, at any place—

(a) which is informally arranged to set that child or witness at ease;

(b) which is so situated that any person whose presence may upset that child or witness, is outside the sight and hearing of that child or witness ; and

(c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary as well as that child or witness during his or her questioning .

(4)(a) No oath, affirmation or admonition which has been administered through an intermediary is invalid and no evidence which has been presented through an intermediary is inadmissible solely on account of the fact that such intermediary was not competent to be appointed as an intermediary, at the time when such oath, affirmation or admonition was administered or such evidence was presented.

(b) If in any proceedings it appears to a court that an oath, affirmation or admonition was administered or that evidence has been presented through an intermediary who was appointed in good faith but, at the time of such appointment, was not qualified to be appointed as an intermediary, the court must make a finding as to the validity of that oath, affirmation or admonition or the admissibility of that evidence, as the case may be, with due regard to—

(i) the reason why the intermediary concerned was not qualified to be appointed as an intermediary, and the likelihood that the reason concerned will affect the reliability of the evidence so presented adversely;

(ii) the mental stress or suffering which the child or witness, in respect of whom that intermediary was appointed, will be exposed to if that evidence is to

be presented anew through another intermediary, or by such witness in person; and

(iii) the likelihood that real and substantial justice will be impaired if that evidence is admitted.

(5) The court must provide reasons for refusing any application or request by any party to the matter for the appointment of an intermediary in respect of a child, immediately upon refusal and such reasons must be entered into the record of the proceedings.

(6) An intermediary referred to in subrule (1) must be summoned to appear in court on a specified date and at a specified place and time to act as an intermediary.

(7) If, at the commencement of or at any stage before the completion of the proceedings concerned, an intermediary appointed by the court—

(a) is for any reason absent;

(b) becomes unable to act as an intermediary in the opinion of the court; or

(c) dies,

the court may, in the interests of justice and after due consideration of the arguments put forward by the parties to the proceedings—

(i) postpone the proceedings in order to obtain the intermediary's presence;

(ii) summons the intermediary to appear before the court to advance reasons for being absent;

(iii) direct that the appointment of the intermediary be revoked and appoint another intermediary; or

(iv) direct that the appointment of the intermediary be revoked and that the proceedings continue in the absence of an intermediary.

(8) The court must immediately give reasons for any direction or order referred to in subrule (7)(c)(iv), which reasons must be entered into the record of the proceedings.

CHAPTER 10

MISCELLANEOUS

Keeping of and access to records

56. (1)(a) A court is a court of record and proceedings before it must be recorded verbatim, in narrative form or by mechanical or digital means.

(b) In addition to paragraph (a), a court must, in respect of each matter before it, record the information as required on a form corresponding substantially with Form 37 of Annexure 1 in so far as it is applicable.

(c) All proceedings must be in camera.

(2)(a) The record of proceedings includes any judgment handed down or ruling or order made by the court, any oral evidence given in court, any exception taken or objection made to any evidence received or tendered and the proceedings of the court generally, including the addresses of any of the parties or the record of any inspection *in loco*.

(b) The court must mark each document submitted as evidence and note that mark on the record.

(3) Provisions of rule 30(5) to (12) of the rules made under the Magistrates' Courts Act, 1944 apply with appropriate changes required by the context and in so far as they are applicable in respect of the transcription of any court records and copies thereof.

(4)(a) A record of proceedings may only be disposed of after the expiry of—

(i) 10 years after the youngest child involved in the proceedings had turned 18 years;

(ii) a period of three years after a contribution order was made, in the case of records relating to contribution orders; or

(iii) adoption records may not be destroyed and must only be archived after the expiry of 30 years after the adoption.

(b) The date of disposal must be recorded by the presiding officer on the front cover of the file.

(5) Subject to subrule (7), any party to the proceedings may have access to that record of proceedings—

(a) during office hours at the court where the matter was dealt with; and

(b) under the supervision of the clerk.

(6) Any person, other than a party to the proceedings, may in writing apply to the presiding officer of the court where the matter was dealt with, to have access to the record of proceedings, stating reasons why access should be granted.

(7) The presiding officer of the court may—

(a) refuse access to the record of proceedings; or

(b) grant access to record of proceedings, or any part thereof—

(i) during office hours at the court where the matter was dealt with;

(ii) under the supervision of the clerk;

and

(iii) on any other conditions he or she may determine.

(8) Notwithstanding the provisions of subrule (7), a presiding officer may give approval in a specific case for the record of proceedings to be accessible—

(a) for official or research purposes; and

(b) for the purpose of publishing a report on the proceedings in a publication which is intended to be read mainly by social workers, probation officers, medical practitioners, dentists, child and youth care workers, nurses, psychologists, educationists, lawyers, criminologists, jurists or members of any other relevant profession: Provided that no identifying details of the child or parent may be disclosed.

Contribution orders

57. (1)(a) The court may, when a child is placed in alternative care, temporary safe care, temporarily removed from the family for treatment, rehabilitation,

counselling or another reason, or as a short term emergency, enquire into the ability of the respondent to pay a sum of money or a recurrent sum of money as contribution towards the maintenance or treatment of, or the costs resulting from other special needs of the child in urgent need as provided for in section 161(1) of the Act.

(b) A clerk must, at the request of the presiding officer, issue a summons on a form corresponding substantially with Form 38 of Annexure 1, calling on a respondent to appear before the court at a time and place stated in the summons in order to show cause why a contribution or attachment of wages order should not be made against him or her, as provided for in section 161 of the Act.

(c) The respondent must bring proof of income and expenditure to the hearing when called upon to appear before court.

(2)(a) A notice of an application by a presiding officer for the variation, suspension, rescission or revival of a contribution or attachment of wages, salary or remuneration order must be on a form corresponding substantially with Form 39 of Annexure 1 and must be duly served on the respondent.

(b) An application by a respondent for the variation, suspension, rescission or revival of a contribution or attachment of wages, salary or remuneration order must be made on a form corresponding substantially with Form 40 of Annexure 1, and must be lodged with the clerk or the presiding officer, as the case may be.

(3) A summons referred to in subrule (1) and a notice referred to in subrule (2)(a) must be—

(a) served personally on a person by a sheriff, clerk, or a person authorised by the presiding officer of the court;

or

(c) served in any other manner as directed by a presiding officer of the court.

(4)(a) The court must in a summary manner conduct an inquiry into the income and expenses of the respondent and the ability to make a contribution to the maintenance, treatment of or the costs resulting from other special needs of a child.

(b) Before an order for attachment of wages, salary or remuneration in order to satisfy a contribution order can be made, the employer must be called upon to appear before the court to show cause why the court should not grant an emolument attachment order.

(c) The employer must be notified to appear before court on a form corresponding substantially with Form 4 of Annexure 1: Provided that it is not necessary for the employer to appear before court where the employer confirms in writing that if the order for the attachment of wages, salary or other remuneration is granted the respondent will still have sufficient means to maintain his or her dependants.

(d) The contribution order must specify to whom, by when and how the contribution order must be paid.

(5) A contribution order or a provisional contribution order must be made on a form corresponding substantially with Form 41 of Annexure 1, and a certified copy thereof must be handed to the respondent.

(6) The clerk must notify the beneficiary of the court order by providing the beneficiary with a certified copy of the court order and keep a record of the manner in which such notice was given in the court file.

(7)(a) An order to an employer in terms of section 165 of the Act for the deduction of an amount from the wages of respondent in compliance with a contribution order must be made on a form corresponding substantially with Form 42 of Annexure 1, and a certified copy thereof must be handed to the respondent.

(b) The attachment of wages, salary or remuneration order must be served on the employer within seven days after such order is made.

(8) The order has the effect of a maintenance order and sections 1 and 40 of the Maintenance Act, 1998 (Act No. 99 of 1998) read with such changes as the context may require, apply to a person who refuses or fails to comply with the contribution order.

CHAPTER 11

COSTS

Costs of proceedings

Comment and motivation are requested regarding the necessity of provisions for costs, and suggestions as to what procedure or process to be followed in relation to the award and recovery of costs.

58. (1) The court in giving judgment or in making any order, including any postponement, may award such costs as it deems fit.

(2) The costs of any application, order or issue raised may—

(a) be awarded by the court irrespective of the judgment in the application;

or

(b) may be made costs in the application; or

(c) may be reserved to be dealt with on the conclusion of the application, but if no order is made, such costs shall be costs in the application.

(3) Unless the court shall for good cause otherwise order, costs of interim orders must not be taxed until the conclusion of the action, and a party may present only one bill for taxation up to and including the judgment or other conclusion of the application.

(4) Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.

(5) In children's court matters, the scale of fees to be taken by a legal practitioner as between party and party is that set out in Annexure 2 in addition to the necessary expenses.

(6) The fees in subrule (5) must be allowable whether the work has been done by a legal practitioner or by the clerk of such legal practitioner, but must be allowable only in so far as the work to which such fees have been allocated has in fact and necessarily been done.

(7) The presiding officer in any court proceedings which last for the period of a quarter of an hour or longer, must note on the record of the proceedings in respect of each day thereof—

(a) the time of the day when the proceedings actually commenced and actually ended; and

(b) the time of the day of the commencement and conclusion of each adjournment on that day.

(8) The court may on request made at or immediately after the giving of judgment in any contested application in which—

(a) is involved any difficult question of law or of fact; or

(b) the application or opposition is frivolous or vexatious; or

(c) costs have been reasonably incurred and in respect of which costs there is no specific provision in the rules,

award costs on any scale higher than that on which the costs of the application would otherwise be taxable: Provided that the court may give direction as to the manner of taxation of such costs as may be necessary.

(9) When it is reasonable in any proceedings for a party to employ the services of a legal practitioner other than a local legal practitioner, the court may on proof thereof, and if costs are awarded to such party, order that such costs must include the reasonable travelling time, travelling expenses and subsistence expenses of such legal practitioner as determined by the court: Provided that the court may order that the determination of such costs be done on taxation by the clerk of the civil court.

(10) Where the court is of the opinion that at the hearing the party to whom costs are awarded has occupied time unnecessarily or in relation to matters not relevant to the issue, the court may disallow a proportionate part of the hearing fee payable to such party's legal practitioner.

(11) The court may in its discretion order that the whole of the costs of an application or counter-application be paid by the parties in such proportions as it may direct.

(12) Where the court is of the opinion that expense has been unnecessarily incurred because of the successful party's failure to take a course which would have shortened the proceedings and decreased the costs, it must award only

such costs as would have been incurred if the successful party had taken such course.

(13) Where costs in application and counter-application are awarded to different parties, the clerk of the civil court must on taxation subject to any order which has been made by the court, allow each party to submit a bill of costs in respect of all costs and charges incurred in instituting an application or counter-application and opposing the application or counter-application, respectively, and then to award the successful parties a proportionate amount of their costs in accordance with the award given by the court.

(14) Where costs or expenses are awarded to any party by the court, the party to whom such costs or expenses have been awarded must deliver a bill of such costs or expenses and give at least 5 days' notice of taxation for an hour to be fixed (generally or specially) by the clerk of the civil court and may include in such bill all such payments as have been necessarily and properly made by such party.

(15) After subrule (14) has been complied with the clerk of the civil court must tax and allow the relevant costs and expenses: Provided that witness fees must not be allowed in taxation unless properly vouched for.

(16)(a) Where more than one-fourth of the bill (excluding expenses) is taxed off, the party presenting the bill must not be allowed any costs of taxation.

(b) Where a party to whom a bill of costs is presented makes a written offer of payment in respect of such costs, and such offer is refused, the party presenting the bill must not be allowed any costs of taxation if the bill is taxed in an amount which is smaller than the amount of the offer.

(17) Where a bill of costs as between legal practitioner and client is required to be taxed, taxation must take place on at least 5 days' notice thereof to the legal practitioner or client, whether or not an application therefor is pending: Provided that, notwithstanding the provisions of subrule (3), a bill of costs as between legal practitioner and client may be taxed at any time after termination of the mandate.

(18) Where liability for costs is determined without judgment of the court by virtue of the provisions of these rules or by a settlement recorded in terms of rule 54, such costs are taxable by the clerk of the civil court as if they had been awarded by the court.

(19) On failure of a party giving notice of taxation to appear at the appointed time for taxation, such bill of costs may be taxed in his or her absence but such party must not be allowed any costs of taxation.

(20) If a party consents to pay the costs of another party, the clerk of the civil court must, in the absence of an order of the court, tax such costs, as if they had been awarded by the court.

(21) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.

CHAPTER 12

Contempt of court proceedings

59. (1) Any person who, during the sitting of the court—

(a) willfully insults an officer of the court present at the sitting, or who willfully hinders or obstructs an officer thereof in the exercise of his or her powers or the performance of his or her duties;

(b) willfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in the place where the sitting of the court is held; or

(c) does anything calculated improperly to influence the court in respect of any matter being or to be considered by the court,
may, by order of the court, be removed.

(2) The proceedings can continue in the absence of the person removed.

(3) Removal in terms of subrule (1) does not preclude the prosecution in a court of law of the person concerned on a charge of contempt of court.

Monitoring of court orders and non-compliance

60. (1) The court may monitor whether an order made by it has been complied with as contemplated in section 65 of the Act.

(2) When making a monitoring order, the court may—

(a)(i) order any person involved in the matter to appear before it on any future date; or

(ii) that reports by a designated social worker be submitted to the court within a specified period or from time to time as specified by the court.

(b) upon the receipt of a report of non-compliance, at any time call or recall any person involved in the matter to appear before it;

(c) inquire whether the order has been complied with and if not, why the order is not been complied with; and

(d)(i) confirm, vary, withdraw the order; or

(ii) enforce compliance with the order, if necessary through criminal prosecution in the magistrates court or in terms of section 45(2) of the Act.

Proceedings for committal for contempt of court

61. (1) Any person who deliberately, wilfully and *mala fide* disobeys an order of the court may be held to be in contempt of the order made by the court.

(2) An application for committal for contempt of court must be brought on a form corresponding substantially with Form 3 of Annexure 1, accompanied by an affidavit and a certified copy of the court order.

(3) The applicant must prove beyond reasonable doubt that—

(a) the court has granted an order;

(b) the order has been served upon the respondent or that the respondent is aware of the contents of the order;

(c) the respondent failed to comply with the said order of the court.

Comment and motivation are requested as to the following alternative draft to subrule (3):

- (3) *The applicant must satisfy the court that—*
- (a) *there exists an order which the respondent was required to comply with;*
 - (b) *the respondent was served with or received notice of the order; and*
 - (c) *the respondent failed to comply with the said order fully or timeously.*

(4) There is an evidentiary burden on the respondent to advance evidence that the non-compliance of the order was not willful and *mala fide*.

(5) If the respondent fails to advance evidence that establishes a reasonable doubt as to whether non-compliance was willful and *mala fide*, contempt will have been established beyond reasonable doubt.

(6) The application must be lodged with the clerk who must immediately submit the application and affidavit to the presiding officer.

(7) The application may be made by way of an *ex parte* application in which instance the provisions of rule 7 apply.

(8) The presiding officer must as soon as is reasonably possible allocate a date for the consideration of the application, which date must be within 40 days from the day the matter was referred to the presiding officer.

(9) The clerk must, immediately after the presiding officer has assigned a date for the hearing and at least 30 days before the date of the hearing—

(a) notify the parties, to attend the hearing, on a form corresponding substantially with Form 4 of Annexure 1;

(b) the application and affidavits must be annexed to the Form 4 which has to be served on the respondent;

(c) the respondent's attention must be drawn to the right to file an opposing affidavit on the clerk at least 20 court days before the date of the hearing;

(d) the clerk must serve a copy of the opposing affidavit on the applicant at least 15 court days before the date of the hearing.

(10) The applicant may file a replying affidavit on the clerk at least 10 days before the date of the hearing;

(11) The clerk must serve a copy of the replying affidavit on the respondent at least 5 days before the date of the hearing;

(12) Where both parties are legally represented the parties may serve the notice and affidavits referred to in subrules (9)(a), (10), and (11) on their legal representatives.

(13) The court must direct the further conduct of the hearing.

(14) If the court finds that the respondent is in contempt of the court order the court may—

(a) impose imprisonment not exceeding a period of three months;

(b) impose a fine not exceeding R5 000;

(c) both fine and imprisonment.

(15) The court may suspend the fine imposed or period of imprisonment or a portion thereof for a period of no more than five years on condition that the person is not convicted of contempt of court committed during the period of suspension.

Withdrawal, suspension, amendment or replacement of order of court

62. (1) The court may on application by any party to the proceedings withdraw, suspend or amend an order made by it or replace such an order with a new order as provided for in section 46(2) of the Act.

(2) The application contemplated in subrule (1) must be on a form corresponding substantially with Form 3 of Annexure 1, and be supported by an affidavit setting out the reasons for the relief sought in the application.

(3) A presiding officer may, on application by any person affected by a patent error in the judgment of that court, correct patent errors in any judgment in respect of which no appeal is pending, upon notice to all parties.

(4) A presiding officer who of his or her own accord corrects errors in a judgment must advise the parties of the correction in writing.

Appeals

63. (1) Upon a request in writing by any party within 10 days after any order as provided for in section 51 of the Act and before noting an appeal the presiding

officer must within 15 days hand to the clerk written reasons which shall become part of the record showing—

- (a) the facts found to be proven; and
- (b) the reasons for the order.

(2) The clerk must on receipt from the presiding officer of the written reasons supply to the party applying therefor a copy of such reasons and must endorse on the original minutes of record the date on which the copy of such reasons was so supplied.

(3) An appeal may be noted within 20 days after the date of an order appealed against or within 20 days after the clerk has supplied a copy of the written reasons to the party applying therefor, whichever period is the longer.

(4) An appeal must be noted by the delivery of notice, and, unless the court of appeal otherwise orders, by giving security for the respondent's costs of appeal to the amount of R1 000: Provided that no security must be required from the State or, unless the court of appeal otherwise orders, from a person to whom Legal Aid South Africa is rendered by a statutorily established legal aid board.

(5) Money paid into court under subrule (4) and outstanding for more than three years, may be paid into the National Revenue Fund, after three months' notice of such intention in writing has been given to the parties concerned, whereafter the parties concerned may apply for a refund of the amount paid into the said Fund.

(6) A cross-appeal must be noted by the delivery of notice within 10 days after the delivery of the notice of appeal.

(7) A notice of appeal or cross-appeal must state—

(a) whether the whole or part only of the order is appealed against, and if part only, then what part; and

(b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

(8)(a) Upon the delivery of a notice of appeal the relevant presiding officer must within 15 days thereafter hand to the clerk a statement in writing showing

(so far as may be necessary having regard to any written reasons already handed in by him or her)–

(i) the facts he or she found to be proved;

(ii) the grounds upon which he or she arrived at any finding of fact specified in the notice of appeal as appealed against; and

(iii) his or her reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.

(b) A statement referred to in paragraph (a) becomes part of the record.

(c) This rule also, so far as may be necessary, applies to a cross-appeal.

(9) A party noting an appeal or a cross-appeal must prosecute the same within such time as may be prescribed by rule of the court of appeal, which rules apply with necessary changes and, in default of such prosecution, the appeal or cross-appeal is deemed to have lapsed, unless the court of appeal sees fit to make an order to the contrary.

(10) Subject to rule 50 of the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa, the clerk must, within 15 days after he or she receives notice that an appeal has been set down for hearing, transmit to the registrar of the court of appeal the record of the proceedings duly certified.

(11)(a) A respondent desiring to abandon the whole or any part of a judgment appealed against may do so by the delivery of a notice in writing stating whether he or she abandons the whole, or if part only, what part of such judgment.

(b) Every notice of abandonment in terms of paragraph (a) becomes part of the record.

Referral to children’s court by any other court

64. (1) A court making an order in terms of section 47(1) of the Act must immediately cause that order to be brought to the attention of the clerk of the children’s court having jurisdiction over the child .

(2) The clerk of the court must, upon receipt of the certified copy of the proceedings, relevant documents and court order immediately forward them to the relevant designated social worker and submit a copy of such documents to the presiding officer.

(3) The presiding officer may, in addition make any order as provided for in section 50 of the Act.

(4) The designated social worker must submit a provisional report to the court within 10 days.

(5) The presiding officer may upon the receipt of the provisional report make or amend an order as to the further or continued care of the child, the investigation or make an order the court deems appropriate and in the best interests of the child.

(6)(a) If a court referred to in section 47(2) of the Act, forms an opinion that a child of any of the parties to the proceedings has been abused or neglected, the court may—

(i) suspend the proceedings pending an investigation as contemplated in section 155(2) of the Act into the question as to whether the child is in need of care and protection; and

(ii) must request the Director of Public Prosecutions to attend to the allegations of abuse or neglect.

(b) The registrar or clerk of the court concerned must immediately—

(i) provide the clerk of the children's court having jurisdiction, with a certified copy of the proceedings, documents and the order;

(ii) inform the Director of Public Prosecutions by submitting a certified copy of the proceedings, documents and order to the Senior Public Prosecutor of the district; and

(iii) where that court made an order that the child be placed in temporary safe care provide the designated social worker with an order to remove the child.

(c) The clerk of the children's court must, upon receipt of the certified copy of the proceedings, documents and the court order immediately forward it to the

relevant designated social worker and submit a copy of such documents to the presiding officer.

(7) The presiding officer may, in addition make any order as provided for in section 50 of the Act.

(8) The designated social worker must submit a provisional report to the court within 10 days.

(9) The presiding officer may upon the receipt of the provisional report make or amend an order as to the further or continued care of the child, the investigation or make an order the court deems appropriate and in the best interest of the child.

(10) The court making the order in terms of section 47(1) or (2) of the Act, may also order that the child be placed in temporary safe care if it is necessary for the safety and well-being of the child.

(11) The order must immediately be submitted to the clerk of the children's court having jurisdiction who must immediately submit such order to the presiding officer of that children's court.

(12) The presiding officer of that children's court must proceed further with the matter as provided in terms of section 152 of the Act.

(13) The clerk of that children's court must forthwith inform the court that made the order in terms of section 47(1) or (2) how the order of the court was dealt with.

(14) The designated social worker must inform the court that made the order for the removal of the child whether that order has been effected as ordered.

Declaratory order

65. (1) Any person listed in section 15(2) of the Act may approach the court on a form corresponding substantially with Form 2 of Annexure 1 accompanied by an affidavit setting out—

(a) the alleged rights which have been infringed or threatened;

(b) the particulars of the person who's rights have been infringed;
 (c) the facts upon which the person rely;
 (d) the alleged rights which have been infringed or threatened;
 (e) the relief sought, including a declaration of rights; and
 (f) particulars of interested persons against whom, or in whose favour the declaration will operate.

(2) All interested persons must be joined in an application for a declaration of rights.

(3) The application must be lodged with the clerk who must immediately submit the application and affidavits to the presiding officer.

(4) The presiding officer must as soon as is reasonably possible allocate a date for the consideration of the application, which date must be within 30 days from the day the matter was referred to the presiding officer.

(5) The presiding officer must determine whether there are interested persons who must be joined to the proceedings and issue directions regarding service of the application upon the interested person.

(6) The presiding officer must indicate whether—

(a) the child has to attend the hearing taking into consideration the child's age, health and personal circumstances; and

(b) an attorney must be appointed to represent the interests of the child.

(7) The clerk must, immediately after the presiding officer has assigned a date for the hearing and at least 10 days before the date of the hearing notify the respondent, and interested parties to attend the hearing, on a form corresponding substantially with Form 4 of Annexure 1.

(8) The application must be annexed to the Form 4.

Short title and commencement

66. These rules are called the Rules Regulating the Conduct of the Proceedings of the Children's Courts of South Africa, and commence on 2018.