

GUIDELINES ON PROCEDURE: EVICTIONS IN TERMS OF PIE-ACT

1. The application on Long Form, Form 1A of Annexure 1. - Rule 55(1) (d).
2. The date that has to be “set forth”, in terms of Rule 55(1)(e)(iii), to fall on a Friday, the for Unopposed Motions, in the Vanderbijlpark Civil Court.
3. The date to oppose will be not less than 5 days after service of the notice on the Long Form. – -Rule 55(1)(e)(iii).
- 4.1 The notice on the Long Form *is not* a notice to enrol.
- 4.2 Enrolment is done in compliance with Rule 55(1)(f).
- 4.3 The word “may” in Rule 55(1) (f), gives discretion to proceed in terms of the notice; it does not give applicant discretion to choose whether he wants to give the clerk of the court 5 days’ notice.
- 4.4 The Clerk of the Court has no discretion to condone short notice.

UNOPPOSED APPLICATIONS:

5. Follow the steps in paragraphs 1 to 4.
6. If the respondent does not on or before 5 days after service of the notice on the Long Form notify the applicant in writing of his intention to oppose, the applicant may proceed to enrol the *ex-parte* application for directions for serving and hearing date, as envisaged in section 4 (2) of the PIE-Act. This application is in terms of Section 4(2) and 4(5) of the PIE-act.
7. *Cape Killarney Property SCA 2001 (4) SA 1222* explains the ratio.
8. The *ex-parte* application to be enrolled for a Friday.
9. The short form to be used for the *ex parte*-application. - Rule 55(1) (d). The short form contains the notice of enrolment to the Clerk of the court.
10. The applicant, provided that there was no opposition filed, (no notice to oppose, and/or no answering affidavit) may request the court to grant the same “Friday date” which was mentioned in the initial application in terms of Rule 55(1)(e)(iii).

OPPOSED APPLCATIONS

11. If the respondent proceeds in terms of rule 55(1)(g)(i), and gives notice in writing of his/her intention to oppose, the procedure as set out in Rule 55(1)(g), and (h) have to be followed and the time limits have to be exhausted.
12. Once a notice to oppose was delivered, the matter should be canalised to the opposed roll. Even if no answering affidavit follows, the matter should still be referred to the opposed roll. - Rule 55(1) (j)(i) and Rule 55 (1) (j)(iv).

13. Only once the replying affidavit was delivered, or once the applicant has elected not to reply, the applicant may approach the court with the *ex-parte* application for directions regarding serving and hearing date, as envisaged in section 4 (2) of the PIE-Act.

14. The applicant should request the court to set a Thursday, the hearing day for opposed motions in Vanderbijlpark.

15. The applicant should ensure that the forth coming Thursday-date should be at least 14 days in future (in order to comply with the 14-days provision in terms of PIE). Time for service should also be allowed.

16. A pre-trial is advisable in most matters, in order to dispose of the application in the most expeditious and least costly manner.

THE EX-PARTE APPLICATION

SCENARIO'S: OPPOSED PIE- APPLICATIONS

19. If the respondent fails to respond to the Rule 55 notice, but appears in the court for unopposed motions as a result of the PIE-notice, the court will make the necessary directions, bearing in mind the provisions of Rule 1(1), Rule 1(2), Rule 1(3) and Section 4 (1) of the PIE-Act.

20. Where there is a real dispute of facts which cannot be determined on the documents, the court may proceed in terms of Rule 55(1)(k)(i), or 55 (1)(k)(ii). If the court proceeds in terms of rule 55 (1)(k)lii, the matter will be referred to the trial roll.

