

10.1 ANTON PILLER TYPE ORDERS

1. These practises apply when an order which is sought ex parte involves a search for a movable object or the attachment thereof in order to preserve evidence as is meant in *Shoba v Officer Commanding 1995 (4) SA 1 (A)* or if the item is not identified in the papers, i.e. if identification is dependent upon a pointing out which is still to be made.
2. Such an application must stand on its own and not form part of an application in which other relief is claimed. Duplication of costs is to be minimised by incorporating evidence in one application by reference in any other application.
3. When the applicant wishes the matter to be heard in camera:
 - 3.1 the applicant may, without being obliged to do so, prove the reason why such a hearing is necessary in a separate affidavit. If a separate affidavit is employed and a hearing in camera is refused without a party or the judge having placed reliance on the contents of the application itself, the applicant may withdraw and remove the Anton Piller application;
 - 3.2 a certificate from counsel in support of a hearing in camera is not necessary;
 - 3.3 all steps must be taken as if the application is being set down on the motion court roll by use of the ordinary forms and in the ordinary manner except that the notice of set down and application are handed to the clerk of the senior judge on motion court duty for purposes of safekeeping and maintaining secrecy all in accordance with the directions of the senior judge.
4. A notice which accords with annexure A hereto must be handed to the person on whom the order is to be served prior to any execution of the order.
- 5.1 Annexure B represents a model order which applies to relief along Anton Piller lines. It may be adapted according to circumstances but the judge's attention must be drawn to deviations.
- 5.2 Deviations from annexure B must be limited to what is necessary and must heed the following guidelines:
 - 5.2.1 Unless the procedure is limited in case law, undertakings to the court must be employed to counteract injustice and avoidable inconvenience to the respondent.
 - 5.2.2 The order must be justifiable in terms of South African law.
 - 5.2.3 It must be borne in mind that it is of the essence of an Anton Piller type order that it results in some immediate interference with the respondent without any prior notice (even if a rule nisi pattern of order were to be used). Immediate operation must be limited to what can be fully justified by urgency or other need for breach of the audi alteram partem principle.
 - 5.2.4 Relief which can not be so justified must be dealt with in a separate part of the notice of motion (and where necessary of the court order) so that the respondent has a proper opportunity to oppose such relief. Immediate preserving of evidence does not imply a need

to allow the making of copies or other early discovery without the other party having a chance to be heard.

ANNEXURE A

1. The order being served on you requires you to allow the persons named therein to enter the premises described in this order and to search for, examine and remove or copy the articles specified in this order. You are also required to point out and hand over any such item to the sheriff. Particulars are stated in the order.

- 2.1 When this notice is handed to you, you are entitled, if you are an employee of the respondent or in charge of the premises, to contact the respondent or a more senior officer of the respondent. You are entitled to the attendance and advice of such senior person, the respondent or an attorney provided such person arrives without delay and not later than one hour after the handing over of this notice.

- 2.2 Until the attorney, the respondent or such other officer arrives or until the time has passed for him or her to arrive, you need not comply with any part of this order, except that you must allow the applicant's attorney, the sheriff and the other persons named in the order to enter the premises and to take such steps as, in the opinion of that attorney, are reasonably necessary to prevent prejudice to the further execution of the order.

3. You are further entitled to have the sheriff and the applicant's attorney explain to you what this notice and the court order mean.

4. You may be punished for contempt of court if you, inter alia,
 - 4.1 obstruct the sheriff unlawfully in the execution of this order; or
 - 4.2 wilfully disobey this order; or
 - 4.3 remove or intentionally cause harm to any item about to be attached or removed in terms of this order, until the attachment is set aside by the Court or is lifted on instruction from the applicant.

ANNEXURE B

Having heard counsel for the applicant and having read the papers filed of record, and on the basis that the applicant undertakes to this court that -

1. this order will not be executed outside the hours between 08h00 and 18h00 on a weekday;
2. applicant will prevent the disclosure of any information gained during the execution of this order to any party except in the course of obtaining legal advice or pursuing litigation against the respondent;
3. applicant will compensate the respondent for any damage caused to the respondent by anyone exceeding the terms of this order;
4. applicant will compensate the respondent for any damage caused to the respondent by reason of the execution of this order should this order subsequently be set aside,

IT IS ORDERED:

1. That the respondent and any other adult person in charge of the premises of the respondent at New Road, Delmas grant the sheriff of the above Honourable Court, applicant's manager (Mr XY Zuma), attorney AB Collins ("applicant's attorney") and a computer operator nominated by applicant access to the said premises for the purpose of
 - 1.1 searching the premises for the purpose of enabling any of those persons to identify and point out to the sheriff originals or copies of or extracts from applicant's recipes and formulae for the manufacture of AZ toys;
 - 1.2 examining any item for the purpose of identifying it and deciding whether it is of the nature mentioned in the preceding subparagraph;
 - 1.3 searching the premises for the purposes of finding any computer disc containing any of the items referred to above.
2. That the respondent forthwith discloses passwords and procedures required for effective access to the computer for the purpose of searching on the computer and making a disc copy, or, if that is not possible, a print out of computer documents containing information of the nature which would be expected in a document mentioned in paragraph 1.1 above.
3.
 - 3.1 That the respondent permit the sheriff to attach and to remove any document pointed out by a person mentioned in paragraph 1 as being a document covered by paragraph 1.
 - 3.2 That, subject to paragraph 5.2 hereof, the sheriff is authorised to attach any document which is pointed out by any of the aforesaid persons and is directed to remove any attached document in respect of which the applicant or the applicant's attorney does not give a different instruction. The sheriff is directed to keep each removed item in his custody until the applicant authorises its release to the respondent or this Court directs otherwise.

4. That until completion of the search authorised in the preceding paragraphs the respondent may not access any computer or any area where documents of the class mentioned in paragraph 1.1 may be present except with the leave of the applicant's attorney or to make telephone calls or send an electronic message to obtain the attendance and advice mentioned in the notice which is handed over immediately prior to execution of this order.
5. The sheriff is directed, before this order and this application is served or executed, to -
 - (a) hand to the respondent or the other person found in charge of the said premises a copy of a notice which accords with annexure A of the Practice Manual; and
 - (b) to explain paragraphs 2, 3 and 4 thereof; and
 - (c) to inform those persons the following:
 - 5.1 That any interested party may apply to this Court on not less than twenty four (24) hours' notice to the offices of the applicant's attorney for a variation or setting aside of this order, the court's practices and rules applying unless the court directs otherwise.
 - 5.2 That the respondent is entitled to make a copy of any document which the sheriff intends to remove unless the sheriff declares that the time involved makes the procedure impractical and the sheriff either does not remove the relevant item or removes it in a container sealed by him and which the sheriff may not open except to give to effect this order or to any further direction from the Court.
 - 5.3 That the respondent or his representative is entitled to inspect items in the sheriff's possession for the purpose of satisfying themselves that the inventory is correct.
6. The sheriff is ordered to immediately make a detailed inventory of all items attached and to provide the Registrar of this court, the applicant's attorney, and the respondent with a clear copy thereof.
7. That unless a different direction is obtained from the Court, applicant and applicant's attorney will, two days after this order is executed, become entitled to inspect any of the removed items in order to assess whether it provides evidence relevant to the present application or to the further legal proceedings envisaged in the application.
8. That the sheriff is ordered to inform the respondent that the execution of this order does not dispose of all the relief sought by the applicant and to simultaneously serve the notice of motion and explain the nature and exigency thereof.
9. The costs of this application are reserved for determination in the further proceedings foreshadowed in this application save that -

- (a) if the applicant does not institute those legal proceedings within three weeks of the date of this order, either party may, on not less than 96 hours' notice to the other, apply to this Honourable Court for an order determining liability for those costs and determining what must be done about removed items and any copies thereof;
- (b) any other party affected by the grant or execution of this order may on no less than 96 hours' notice apply to this Honourable Court for an order determining liability for the costs of such party and determining what must be done about any item removed from any such party or any copy thereof.

Note: in some situations the following may also be appropriate:

- 10. The respondent and any other adult person in charge of the premises at which this order is executed are further directed to disclose to the sheriff of the above Honourable Court the whereabouts of any document or item falling within the categories of documents and items referred to in 1.1 above, whether at the premises at which this order is executed or elsewhere to the extent that the whereabouts are known to such person(s).
- 11. In the event of any document or item is disclosed to be at the premises other than the premises mentioned in paragraph 1.1 of this order, the applicant may approach this court ex parte for leave to permit execution of this order at such other premises.