

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 842

31 MAY 2019

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

AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS
OF THE SUPREME COURT OF APPEAL 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), and with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE

GENERAL EXPLANATORY NOTE:

- [] Expressions in bold type in square brackets indicate omissions from existing rules.
- _____ Expressions underlined with a solid line indicate insertions into existing rules.

Definition

1. In this Schedule the "Rules" means the Rules of the Supreme Court of Appeal published under Government Notice No. R. 1523 of 27 November 1998, as amended by Government Notice Nos. R. 979 of 19 November 2010, R. 191 of 11 March 2011, R. 113 of 15 February 2013, R. 1055 of 29 September 2017 and R. 1318 of 30 November 2018.

Amendment of rule 1 of the Rules

2. Rule 1 of the Rules is hereby amended—
- (a) by the insertion in subrule (1) before the definition of "apply " of the following definition:
" 'Act' means the Superior Courts Act, 2013 (Act No. 10 of 2013).";
- (b) by the substitution in subrule (1) for the definition of "Court" of the following definition:
"**'Court'** means the Supreme Court of Appeal [**of South Africa**] as referred to in section 5 of the Act";
- (c) by the substitution in subrule (1) for the definition of "court day" of the following definition:
"**'court day'** means [**any day other than a Saturday, Sunday or public holiday**] a business day as defined in the Act"; and
- (d) by the substitution in subrule (1) for the definition of "President" of the following definition:

"'President' means the President of the Court and, in **[his or her]** the absence of the President, includes the Deputy President of the Court;"

Amendment of rule 6 of the Rules

3. Rule 6 of the Rules is hereby amended by the addition of the following subrule:

"Application and referral for reconsideration

(9) Notwithstanding the provisions of this rule, an application to the President and a referral by the President, for reconsideration of a decision in terms of section 17(2)(f) of the Act, shall be conducted in accordance with directives issued by the President."

Amendment of rule 7 of the Rules

4. Rule 7 of the Rules is hereby amended—

(a) by the substitution in subrule (1) for paragraph (c) of the following paragraph:

"(c) the setting aside of a direction of a **[high] court of a Division** in terms of section **[20(2)(b) of the Supreme Court Act, 1959 (Act No 59 of 1959)] 17(6) of the Act** or section 315(2)(b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)."; and

(b) by the addition of the following subrule:

"(5) Notwithstanding the provisions of this rule, an appeal in terms of section 18(4)(ii) of the Act shall be conducted in accordance with directives issued by the President."

Commencement

5. These Rules shall come into operation on **1 JULY 2019**.

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)**AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS
OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT 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), and with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

[] Expressions in bold type in square brackets indicate omissions from existing rules.

 Expressions underlined with a solid line indicate insertions into existing rules.

Definition

1. In this Schedule the "Rules" means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notice Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R. 1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R. 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R.

516 of 8 May 2009, R. 518 of 8 May 2009, R. 86 of 12 February 2010, R. 87 of 12 February 2010, R. 88 of 12 February 2010, R. 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012, R. 992 of 7 December 2012, R. 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R. 317 of 17 April 2015, R. 781 of 31 August 2015, R. 3 of 19 February 2016, R. 678 of 3 June 2016, R. 1055 of 29 September 2017, R. 1272 of 17 November 2017, R. 1318 of 30 November 2018 and R. 61 of 25 January 2019.

Substitution of rule 30A of the Rules

2. The following rule is hereby substituted for rule 30A of the Rules:

"30A Non-compliance with Rules

(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order—

(a) that such rule, notice, **[or]** request, order or direction be complied with; or

(b) that the claim or defence be struck out.

(2) Where a party fails to comply [Failing compliance] within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as **[to it seems meet] it deems fit.**"

Substitution of rule 32 of the Rules

3. Rule 32 of the Rules, is hereby amended—

(a) by the substitution for subrule (1) of the following subrule:

"(1) **[Where]** The plaintiff may, after the defendant has delivered **[notice of intention to defend] a plea, [the plaintiff may]** apply to court for summary judgment on each of such claims in the summons as is only—

(a) on a liquid document;

(b) for a liquidated amount in money;

(c) for delivery of specified movable property; or

(d) for ejectment;

together with any claim for interest and costs.";

(b) by the substitution for subrule (2) of the following subrule:

"(2)(a) **[The plaintiff shall within]** Within 15 days after the date of delivery of **[notice of intention to defend] the plea, the plaintiff shall deliver a** notice of application for summary judgment, together with an affidavit made by **[himself] the plaintiff** or by any other person

who can swear positively to the facts.

(b) [verifying] The plaintiff shall, in the affidavit referred to in subrule (2)(a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial [stating that in his opinion there is no *bona fide* defence to the action and that notice of intention to defend has been delivered solely for the purpose of delay].

(c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than [10] 15 days from the date of the delivery thereof.”;

(c) by the substitution for subrule (3) of the following subrule:

“(3) [Upon the hearing of an application for summary judgment the] The defendant may—

(a) give security to the plaintiff to the satisfaction of the [registrar] court for any judgment including costs which may be given [,]; or

(b) satisfy the court by affidavit (which shall be delivered five days before [noon on the court day but one preceding] the day on which the application is to be heard), or with the leave of the court by oral evidence of [himself] such defendant or of any other person who can swear positively to the fact that [he] the defendant has a *bona fide* defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.”;

(d) by the substitution for subrule (4) of the following subrule:

“(4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence [*viva voce*] orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.”;

(e) by the substitution in subrule (6) for subparagraph (b)(ii) of the following subparagraph:

“(ii) give leave to defend to the defendant as to part of the claim and enter judgment against [him] such defendant as to the balance of the claim, unless such balance has been paid to the plaintiff; or”;

(f) by the deletion of subrule (8A); and

(g) by the substitution in subrule (9) for paragraph (a) of the following paragraph:

“(a) the plaintiff makes an application under this rule, where the case is not within the terms of subrule (1) or where the plaintiff, in the opinion of the court, knew that the defendant relied on a contention which would entitle [him] such defendant to leave to defend, the court may order that the action be stayed until the plaintiff has paid the defendant's costs; and may further order that such costs be taxed as between attorney and client; and”

Substitution of rule 36 of the Rules

4. The following rule is hereby substituted for rule 36 of the Rules:

“36 Inspections, Examinations and Expert Testimony

(1) **[Subject to the provisions of this rule any]** A party to proceedings₁ in which damages or compensation in respect of alleged bodily injury is claimed₁ shall have the right to require any party claiming such damage or compensation, whose state of health is relevant for the determination thereof₁ to submit to a medical examination.

(2)(a) A **[Any]** party requiring another party to submit to a medical [such] examination shall deliver a notice to such other party that—

- (i) specifies [specifying] the nature of the examination required₁;
- (ii) specifies the person or persons **[by whom,]** who shall conduct the examination;
- (iii) specifies the place where and the date (being not less than **[fifteen]** 15 days from the date of such notice) and time when it is desired that **[such]** the examination shall take place₁; and
- (iv) requires [requiring such] the other party to submit himself or herself for the medical examination [then and there]at the specified place, date and time.
[Such]

(b) The notice contemplated in paragraph (a) shall—

- (i) state that **[such other]** the party being examined may have his or her own medical adviser present at [such] the examination; [,] and[shall]
- (ii) be accompanied by a remittance in respect of the reasonable expenses₂ to be incurred by **[such]** the other party in attending [such] the examination.

(c) The[Such] expenses referred to in paragraph (b)(ii) shall be tendered on the scale as if such person were a witness in a civil suit before the court: Provided[, however,] that—

[(a)](i) if **[such other]** the party being examined is immobile, the amount to be paid **[to him]** shall include the cost of **[his]** such person's travelling by motor vehicle and, where required, the reasonable cost of a person attending upon [him] the person to be examined;

[(b)](ii) where **[such other]** the party being examined will actually lose **[his]** salary, wage or other remuneration during the period of **[his]** absence from work, **[he]** such party shall₁, in addition to the aforementioned expenses₂, be entitled to receive an amount not exceeding **[R75,00]** the amount determined by the Minister, in terms of the relevant legislation, for witnesses in civil proceedings, per day in respect of the salary, wage or other remuneration which **[he]** such person will actually lose;

[(c)](iii) any amounts paid by a party as aforesaid shall be costs in the cause unless the court otherwise directs.

(3) The person receiving **[such]** the notice referred to in subrule (2) shall₁, within five days after the service **[thereof]** of the notice, notify the person delivering it₁ in writing₁ of the nature and grounds of any objection which **[he]** such person may have in relation to—

- (a) the nature of the proposed examination;
- (b) the person or persons who shall conduct [by whom] the examination **[is to be conducted];**
- (c) the place, date or time of the examination;
- (d) the amount of the expenses tendered **[to him];**

and shall further—

- (i) in the case of **[his]** the objection being to the place, date or time of the examination, furnish an alternative date, time or place₁ as the case may be; and

- (ii) in the case of the objection being to the amount of the expenses tendered, furnish particulars of such increased amount as may be required.

Should the person receiving the notice not deliver **[such]** an objection within the said period of five days, **[he]** such person shall be deemed to have agreed to the examination upon the terms set forth by the person giving the notice. Should the person giving the notice regard the objection raised by the person receiving it as unfounded in whole or in part **[he]** the person giving the notice may on notice make application to a judge to determine the conditions upon which the examination, if any, is to be conducted.

(4) Any party to such an action may at any time by notice in writing require any person claiming such damages to make available in so far as **[he]** such person is able to do so to **[such]** the other party within **[ten]** 10 days, any medical reports, hospital records, X-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages, and to provide copies thereof upon request.

(5) If it appears from any medical examination carried out either by agreement between the parties or pursuant to any notice given in terms of this rule, or by order of a judge, that any further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of such damages, any party may require a second and final medical examination in accordance with the provisions of this rule.

(5A) If any party claims damages resulting from the death of another person, **[he]** such party shall undergo a medical examination as prescribed in this rule if this is requested and it is alleged that **[his]** such party's own state of health is relevant in determining the damages.

(6) If it appears that the state or condition of any property of any nature whatsoever whether movable or immovable, may be relevant with regard to the decision of any matter at issue in any action, any party may at any stage give notice requiring the party relying upon the existence of such state or condition of such property or having such property in **[his]** that party's possession or under **[his]** that party's control to make it available for inspection or examination in terms of this subrule, and may in such notice require that such property or a fair sample thereof remain available for inspection or examination for a period of not more than **[ten]** 10 days from the date of receipt of the notice.

(7) The party called upon to submit such property for examination may require the party requesting it to specify the nature of the examination to which it is to be submitted, and shall not be bound to submit such property thereto if this will materially prejudice such party by reason of the effect thereof upon such property. In the event of any dispute whether the property should be submitted for examination, such dispute shall be referred to a judge on notice delivered by either party stating that the examination is required and that objection is taken in terms of this subrule. In considering any such dispute the judge may make such order as **[to him seems meet]** deemed fit.

- (8) Any party causing an examination to be made in terms of subrules (1) and (6) shall—
- (a) cause the person making the examination to give a full report in writing, within two months of the date of the examination or within such other period as may be directed by a judge in terms of rule 37(8) or in terms of rule 37A, of the results of [his] the examination and the opinions that [he] such person formed as a result thereof on any relevant matter;
 - (b) within five days after receipt of such report, inform all other parties in writing of the existence of the report, and upon request immediately furnish any other party with a complete copy thereof; and

- (c) bear the expense of the carrying out of any such examination: Provided that such expense shall form part of such party's costs.
- (9) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless **[he shall]** —
- (a) where the plaintiff intends to call an expert, the plaintiff shall not [less than fifteen days before the hearing,] more than 30 days after the close of pleadings, or where the defendant intends to call the expert, the defendant shall not more than 60 days after the close of pleadings, have delivered notice of intention to call such expert [have delivered notice of his intention so to do]; and
- (b) in the case of the plaintiff not [less] more than [ten] 90 days [before the trial,] after the close of pleadings and in the case of the defendant not more than 120 days after the close of pleadings, such plaintiff or defendant shall have delivered a summary of [such] the expert's opinion and [his] the reasons therefor[.] :

Provided that the notice and summary shall in any event be delivered before a first case management conference held in terms of rules 37A(6) and (7) or as directed by a case management judge.

(9A) The parties shall—

- (a) endeavour, as far as possible, to appoint a single joint expert on any one or more or all issues in the case; and
- (b) file a joint minute of experts relating to the same area of expertise within 20 days of the date of the last filing of such expert reports.
- (10) (a) No person shall, save with the leave of the court or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless **[he] such person** shall not **[less] more** than **[fifteen days before the hearing]** 60 days after the close of pleadings have delivered a notice stating **[his] an** intention to do so, offering inspection **[thereof] of such plan, diagram, model or photograph** and requiring the party receiving notice to admit the same within **[ten] 10** days after receipt of the notice.
- (b) If the party receiving the notice fails within the said period so to admit, the said plan, diagram, model or photograph shall be received in evidence upon its mere production and without further proof thereof. If such party **[states that he]** does not admit them, the said plan, diagram, model or photograph may be proved at the hearing and the party receiving the notice may be ordered to pay the cost of their proof."

Substitution of rule 37 of the Rules

5. The following rule is hereby substituted for rule 37 of the Rules:

"37 Pre-trial Conference

- (1) A party who receives notice of the trial date of an action shall, if **[he] such party** has not yet made discovery in terms of rule 35, within 15 days deliver a sworn statement which complies with rule 35(2).

(2)(a) In cases not subject to judicial case management as contemplated in rule 37A, a [A] plaintiff who receives the notice contemplated in subrule (1) shall within [five] 10 days deliver a notice in which [he] such plaintiff appoints a date, time and place for a pre-trial conference.

(b) If the plaintiff has failed to comply with paragraph (a), the defendant may, within 30 days after the expiration of the period mentioned in that paragraph, deliver such notice.

(3)(a) The date, time and place for the pre-trial conference may be amended by agreement: Provided that the conference shall be held not later than ~~[six weeks]~~ 30 days prior to the date of hearing.

(b) If the parties do not agree on the date, time or place for the pre-trial conference, the matter shall be submitted to the registrar for [his] decision.

(4) Each party shall, not later than 10 days prior to the pre-trial conference, furnish every other party with a list of—

- (a) the admissions which [he] such party requires;
- (b) the enquiries which [he] such party will direct and which are not included in a request for particulars for trial; and
- (c) other matters regarding preparation for trial which [he] such party will raise for discussion.

(5) At the pre-trial conference the matters mentioned in subrules (4) and (6) shall be dealt with.

(6) The minutes of the pre-trial conference shall be prepared and signed by or on behalf of every party and the following shall appear therefrom:

- (a) The ~~[place,] date, place~~ and duration of the conference and the names of the persons present;
- (b) if a party feels that [he] such party is prejudiced because another party has not complied with the rules of court, the nature of such non-compliance and prejudice;
- (c) that every party claiming relief has requested [his] such party's opponent to make a settlement proposal and that such opponent has reacted thereto;
- (d) whether any issue has been referred by the parties for mediation, arbitration or decision by a third party and [on what] the basis on which it has been so referred;
- (e) whether the case should be transferred to another court;
- (f) which issues should be decided separately in terms of rule 33(4);
- (g) the admissions made by each party;
- (h) any dispute regarding the duty to begin or the onus of proof;
- (i) any agreement regarding the production of proof by way of an affidavit in terms of rule 38(2);
- (j) which party will be responsible for the copying and other preparation of documents;
- (k) which documents or copies of documents will, without further proof, serve as evidence of what they purport to be, which extracts may be proved without proving the whole document or any other agreement regarding the proof of documents.

(7) The minutes shall be filed with the registrar not later than ~~[five weeks]~~ 25 days prior to the trial date.

(8)(a) A judge, who need not be the judge presiding at the trial, may, if [he] such judge deems it advisable, at any time at the request of a party or [meru motu] of own accord, call

upon the attorneys or advocates for the parties to hold or to continue with a conference before a judge in chambers and may direct a party to be available personally at such conference.

(b) No provision of this rule shall be interpreted as requiring a judge before whom a conference is held to be involved in settlement negotiations, and the contents of a reaction to a request for a settlement proposal shall not be made known to a judge except with the consent of the judge and all parties.

(c) The judge may, with the consent of the parties and without any formal application, at such conference or thereafter give any direction which might promote the effective conclusion of the matter, including the granting of condonation in respect of this or any other rule.

(d) Unless the judge determines otherwise, the plaintiff shall prepare the minutes of the conference held before the judge and file them, duly signed, with the registrar within five days or within such longer period as the judge may determine.

(9)(a) At the hearing of the matter, the court shall consider whether or not it is appropriate to make a special order as to costs against a party or [his] such party's attorney, because [he or his] such party or the party's attorney—

(i) did not attend a pre-trial conference; or

(ii) failed to a material degree to promote the effective disposal of the litigation.

(b) Except in respect of an attendance in terms of subrule (8)(a) no advocate's fees shall be allowed on a party-and-party basis in respect of a pre-trial conference held more than 10 days prior to the hearing.

(10) A judge in chambers may, without hearing the parties, order deviation from the time limits in this rule.

(11) A direction made in terms of this rule before the commencement of the trial may be amended."

Insertion of rule 37A in the Rules

6. The following rule is hereby inserted in the Rules after rule 37:

"37A Judicial Case Management

(1) A judicial case management system shall apply, at any stage after a notice of intention to defend is filed—

(a) to such categories of defended actions as the Judge President of any Division may determine in a Practice Note or Directive; and

(b) to any other proceedings in which judicial case management is determined by the Judge President, of own accord, or upon the request of a party, to be appropriate.

(2) Case management through judicial intervention—

(a) shall be used in the interests of justice to alleviate congested trial rolls and to address the problems which cause delays in the finalisation of cases;

(b) the nature and extent of which shall be complemented by the relevant directives or practices of the Division in which the proceedings are pending; and

- (c) shall be construed and applied in accordance with the principle that, notwithstanding the provisions herein providing for judicial case management, the primary responsibility remains with the parties and their legal representatives to prepare properly, comply with all rules of court, and act professionally in expediting the matter towards trial and adjudication.
- (3) The provisions of rule 37 shall not apply, save to the extent expressly provided in this rule, in matters which are referred for judicial case management.
- (4) In all matters designated to be subject to judicial case management in terms of subrule (1)(a) at any stage before the close of pleadings, the registrar may—
- (a) direct compliance letters to any party which fails to comply with the time limits for the filing of pleadings or any other proceeding in terms of the rules; and
- (b) in the event of non-adherence to the directions stipulated in a letter of compliance, refer a matter to a case management judge designated by the Judge President who shall have the power to deal with the matter in terms of the practice directives of the particular Division concerned.
- (5)(a) Notwithstanding the allocation of a trial date, a case that is subject to judicial case management shall not proceed to trial unless the case has been certified trial-ready by a case management judge after a case management conference has been held, as provided for in subrule (7).
- (b) A case management judge shall not certify a case as trial-ready unless the judge is satisfied—
- (i) that the case is ready for trial, and in particular, that all issues that are amenable to being resolved without a trial have been dealt with;
- (ii) that the remaining issues that are to go to trial have been adequately defined;
- (iii) that the requirements of rules 35 and 36(9) have been complied with if they are applicable; and
- (iv) that any potential causes of delay in the commencement or conduct of the trial have been pre-empted to the extent practically possible.
- (c) A case management judge may order directions on the making of discovery where the judge considers that such directions may expedite the case becoming trial-ready.
- (6) In every defended action in a category of case which has been identified in terms of subrule (1)(a) as being subject to judicial case management in which any party makes application for a trial date following the close of pleadings, the registrar shall issue a notice electronically to the parties, at the addresses furnished in terms of rules 17(3)(b) or 19(3)(a), in respect of the holding of a case management conference.
- (7) The notice by the registrar in terms of subrule (6) shall inform the parties—
- (a) of the date, time and place of a case management conference in the matter to be presided over by a case management judge;
- (b) of the name of the case management judge, if available;
- (c) that they are required to have held a pre-trial meeting before the case management conference at which the issues identified in subrule (10) in relation to the conduct and trial of the action must have been considered; and
- (d) that the plaintiff is required, not less than two days before the time appointed for the case management conference, to—

- (i) ensure that the court file has been suitably ordered, secured, paginated and indexed; and
- (ii) deliver an agreed minute of the proceedings at the meeting held in terms of paragraph (c), alternatively, in the event that the parties have not reached agreement on the content of the minute, a minute signed by the party filing the document together with an explanation why agreement on its content has not been obtained.

(8) The minute referred to in subrule (7)(d)(ii) shall particularise the parties' agreement or respective positions on each of the issues identified in subrule (10) and, to the extent that further steps remain to be taken to render the matter ready for trial, explicitly identify them and set out a timetable according to which the parties propose, upon a mutually binding basis, that such further steps will be taken.

(9)(a) In addition to the minute referred to in subrule (7)(d)(ii), the parties shall deliver a detailed statement of issues, which shall indicate—

- (i) the issues in the case that are not in dispute; and
- (ii) the issues in the case that are in dispute, describing the nature of the dispute and setting forth the parties' respective contentions in respect of each such issue.

(b) A case management judge may, upon considering the statement by the parties referred to in paragraph (a), direct that appearance by one or all of the parties is dispensed with.

(10) The matters that the parties must address at the pre-trial meeting to be held in terms of subrule (7) are as follows:

- (a) The matters set forth in rules 35, 36 and 37(6);
- (b) the soliciting of admissions and the making of enquiries from and by the parties with a view to narrowing the issues or curtailing the need for oral evidence;
- (c) the time periods within which the parties propose that any matters outstanding in order to bring the case to trial readiness will be undertaken;
- (d) subject to rule 36(9), the instruction of witnesses to give expert evidence and the feasibility and reasonableness in the circumstances of the case that a single joint expert be appointed by the parties in respect of any issue;
- (e) the identity of the witnesses they intend to call and, in broad terms, the nature of the evidence to be given by each such witness;
- (f) the possibility of referring the matter to a referee in terms of section 38 of the Act;
- (g) the discovery of electronic documents in the possession of a server or other storage device;
- (h) the taking of evidence by video conference;
- (i) suitable trial dates and the estimated duration of the trial; and
- (j) any other matter germane to expediting the trial-readiness of the case.

(11) Without limiting the scope of judicial engagement at a case management conference, the case management judge shall—

- (a) explore settlement, on all or some of the issues, including, if appropriate, enquiring whether the parties have considered voluntary mediation;

- (b) endeavour to promote agreement on limiting the number of witnesses that will be called at the trial, eliminating pointless repetition or evidence covering facts already admitted; and
- (c) identify and record the issues to be tried in the action.
- (12) The case management judge may at a case management conference—
- (a) certify the case as trial-ready;
- (b) refuse certification;
- (c) put the parties on such terms as are appropriate to achieve trial-readiness, and direct them to report to the case management judge at a further case management conference on a fixed date;
- (d) strike the matter from the case management roll and direct that it be re-enrolled only after any non-compliance with the rules or case management directions have been purged;
- (e) give directions for the hearing of opposed interlocutory applications by a motion court on an expedited basis;
- (f) order a separation of issues in appropriate cases notwithstanding the absence of agreement by the parties thereto;
- (g) at the conclusion of a case management conference, record the decisions made and, if deemed convenient, direct the plaintiff to file a minute thereof;
- (h) make any order as to costs, including an order *de bonis propriis* against the parties' legal representatives or any other person whose conduct has conducted unreasonably to frustrate the objectives of the judicial case management process.
- (13) The record of the case management conference, including the minutes submitted by the parties to the case management judge, any directions issued by the judge and the judge's record of the issues to be tried in the action, but excluding any settlement discussions and offers, shall be included in the court file to be placed before the trial judge.
- (14) The trial judge shall be entitled to have regard to the documents referred to in subrule (13) in regard to the conduct of the trial, including the determination of any applications for postponement and issues of costs.
- (15) Unless the parties agree thereto in writing, the case management judge and the trial judge shall not be the same person.
- (16) Any failure by a party to adhere to the principles and requirements of this rule may be penalised by way of an adverse costs order."

Amendment of rule 68 of the Rules

7. Rule 68 of the Rules is hereby amended by—

- (a) the substitution for item 5(c) of the Tariff of the following item:

“(c) against immovable property—	
(i) for execution, including service of notice of attachment upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is in occupation of some person other than the owner, also upon such occupier	186,00
(ii) for notice of attachment to a single lessee or occupier (identical notices where there are several lessees, occupiers or owners, for each after the first)	17,50 5,50
(iii) for making valuation report for purposes of sale, per <u>half hour</u> or part thereof.	[93,50] <u>47,00</u>
(iv) when— (aa) a sheriff has been authorised to sell property and the property is not sold by reason of the fact that the attachment is withdrawn or stayed [irrespective of the amount of the writ], all the necessary notice for the withdrawal <u>or stay</u> of the attachment (bb) <u>upliftment of judicial attachment on immovable property occurs</u>	186,00 <u>186,00</u>
(v) for ascertaining and recording what bonds or other encumbrances are registered against the property, together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered, including any correspondence in connection therewith (in addition to reasonable expenses necessarily incurred)	93,50
(vi) for notifying the execution creditor of such bonds or other encumbrances and of the names and addresses of the persons in whose favour such bonds or other encumbrances are registered	17,50
(vii) for consideration of proof that a preferent creditor has complied with the requirements of rule 46(5)(a)	10,00
(viii) for the notice referred to in rule 46(6)	17,50
(ix) for consideration of notice of sale prepared by the execution creditor in consultation with the sheriff; and	
(x) for verifying that notice of sale has been published in the newspapers indicated and in the <i>Gazette</i> <u>inclusive fee for (ix) and (x) [; and]</u>	<u>93,50</u>
(xi) for forwarding a copy of the notice of sale to every judgment creditor who had	[93,50]

caused the immovable property to be attached and to every mortgagee thereof whose address is known, for each copy [<u>inclusive fee for (ix), (x), and (xi)</u>]	<u>17,50</u>
(xii) for affixing a copy of the notice of sale to the notice board of the magistrate's court referred to in rule 46(7)(e) and at or as near as may be to the place where the sale is actually to take place, an inclusive fee of <u>R40,00 and travelling costs referred to in item 3</u>	<u>[33,50]</u>
(xiii) for—	<u>[78,50]</u>
(aa) considering the conditions of sale <u>prepared by the execution creditor</u>	<u>93,50</u>
(bb) considering further or amended conditions of sale <u>submitted by an interested party</u>	<u>93,50</u>
(cc) <u>settling of conditions of sale</u>	<u>93,50</u>
(dd) <u>all necessary attendances prescribed by any law related to auctions, in particular the Consumer Protection Act, 2008 (Act No. 68 of 2008)</u>	<u>280,50</u>
(ee) <u>the conducting of an auction, save that this fee may not be charged if commission is claimed in terms of item (xiv)</u>	<u>186,00</u>
(xiv) On the sale of immovable property by the sheriff as auctioneer, 6 per cent on the first R100 000,00, 3,5 per cent on R100 001,00 to R400 000,00 and 1,5 per cent on the balance of the proceeds of the sale, subject to a maximum commission of R40 000,00 in total and a minimum of R3 000,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser;	
(xv) for—	
(aa) <u>written notice to the purchaser who has failed to comply with the conditions of sale</u>	<u>47,00</u>
(bb) <u>any report referred to in rule 46(11)</u>	<u>47,00</u>
(cc) <u>informing judgment debtor of the cancellation referred to in rule 46(11)(a)(iii)</u>	<u>17,50</u>
(dd) <u>giving notice referred to in rule 46(11)(c)</u>	<u>17,50</u>
(xvi) for giving transfer to the purchaser	<u>23,00</u>
(xvii) for—	
(aa) <u>receipt of certificate referred to in rule 46(14)(a)</u>	<u>17,50</u>
(bb) <u>preparing a plan of distribution of the proceeds (including the necessary copies) and for forwarding a copy to the registrar</u>	<u>93,50</u>
(xviii) for giving notice to all parties who have lodged writs and to the execution	

debtor that the plan of distribution will lie for inspection, for every notice	17,50
(xix) [for request to magistrate to pay out in accordance with the plan of distribution.] <u>for the report referred to in rule 46A(9)(d)</u>	[10,00] <u>47,00</u>

(b) the insertion after item 16 of the Tariff of the following item:

<p><u>"17 (a) Where the mandator instructs the sheriff, in writing, to serve or execute a document referred to in item 2 or 5 on an urgent basis or after hours, the sheriff shall charge an additional fee, irrespective of whether the service or execution was successful, and such additional fee shall be paid by the mandator, save where the court orders otherwise.</u></p> <p><u>(b) For the purpose of paragraph (a)—</u></p> <p><u>(i) "urgent" means on the same day or within twenty four hours of the written instruction; and</u></p> <p><u>(ii) "after hours" means any time—</u></p> <p><u>(aa) before 7h00 or after 19h00 on Mondays to Fridays;</u></p> <p><u>or</u></p> <p><u>(bb) on a Saturday, Sunday or public holiday."</u></p>	165,00
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Repeal of Forms 4, 5 and 6 of the First Schedule

8. "Forms 4, 5 and 6 of the First Schedule to the Rules are hereby repealed."

Commencement

9. These Rules shall come into operation on **1 JULY 2019**.

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)**AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF
THE MAGISTRATES' 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), with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

[] Words or expressions in bold type in square brackets indicate omissions from the existing rules.

_____ Words or expressions underlined with a solid line indicate insertions into the existing rules.

Definition

1. In this Schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011, R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, R. 183 of 18 March 2014, R. 215 of 28 March 2014 and R. 507 of 27 June 2014, R. 5 of 9 January 2015, R. 32 of 23 January 2015, R. 33 of 23 January 2015, R. 318 of 17 April 2015, R. 545 of 30 June 2015, R. 2 of 19 February 2016, R. 1055 of 29 September 2017, R. 1272 of 17 November 2017, R. 632 of 22 June 2018 and R. 1318 of 30 November 2018.

Substitution of rule 9(3) of the Rules

2. The following rule is hereby substituted for rule 9(3) of the Rules:

"(3) All process shall, subject to the provisions of this rule, be served upon the person affected thereby by **[delivery of]** delivering a copy thereof in one or other of the following manners:

- (a) To the said person personally or to **[his or her]** such person's duly authorised agent: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;
- (b) at the residence or place of business of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of

this paragraph, when a building, other than an hotel, boarding house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;

- (c) at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over [him or her] such person or, in the absence of [such] a person in authority, to a person apparently not less than 16 years of age and apparently in charge at [his or her] such person's place of employment;
- (d) if the person so to be served has chosen a *domicilium citandi*, by delivering [or leaving] a copy thereof at the *domicilium* so chosen: Provided that the sheriff shall set out in the return of service the details of the manner and circumstances under which such service was effected;
- (e) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there is no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;
- (f) if the plaintiff or his or her authorised agent has given instructions in writing to the sheriff to serve by registered post, the process shall be so served: Provided that a debt counsellor who makes a referral to court in terms of section 86(7)(c) or 86(8)(b) of the National Credit Act, 2005 may cause the referral to be served by registered post or by hand;
- (g) in proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person's official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council;
- (h) to any agent or attorney who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected in any applicable manner prescribed in this rule;
- (i) where a local authority or statutory body is to be served, on the town clerk or assistant town clerk or mayor of such local authority or the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or
- (j) 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 by the party initiating the proceedings:

Provided that where **[such]** service has been effected in the manner prescribed by paragraphs *(b)*, *(c)*, *(e)* or *(g)*, the sheriff shall **[indicate]** set out in the return of service of the process the name of the person to whom it has been delivered and the capacity in which such person stands in relation to the person, corporation, company, body corporate or institution affected by the process: **[and where such service has been effected in the manner prescribed by paragraphs *(b)*, *(c)*, *(d)* or *(f)*, 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, treat such service as invalid]** Provided further that whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit. Provided **[further]** furthermore that service of any process through which a divorce action or action for nullity of marriage is instituted shall only be effected by the sheriff on the defendant personally.”

Amendment of rule 19 of Rules

3. The following rule is hereby substituted for rule 19 of the Rules:

“19. Exceptions and applications to strike out

(1)(a) Where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, [as the case may be,] the opposing party [may] who intends to take an exception shall, within the period allowed for filing any subsequent pleading, deliver an exception thereto [and may set it down for hearing in terms of rule 55(1)(j): Provided that where a party intends to take an exception that a pleading is vague and embarrassing such party shall within the period allowed as aforesaid by notice afford such party's opponent an opportunity of removing the cause of complaint within 15 days: Provided further that the party excepting shall within 10 days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver the exception], as provided in paragraphs *(b)* and *(c)*.

(b) A party who intends to take an exception shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity of removing the cause of complaint within 15 days of such notice.

(c) A party who intends to take an exception shall, within 10 days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver the exception.

(d) The exception may be set down for hearing in terms of rule 55 within 10 days after delivery thereof, failing which the exception shall lapse.

(2) Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the matter aforesaid, and may set such application down for hearing in terms of rule 55 [(1)(j), but] within 10 days of expiry of the time limit for the delivery of an answering affidavit or, if an answering affidavit is delivered, within five days after the delivery of a replying affidavit or expiry of the time limit for delivery of a replying affidavit: Provided that—

(a) the party intending to make an application to strike out shall, by notice, delivered within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity to remove the cause of complaint within 15 days of delivery of the notice of intention to strike out; and

(b) the court shall not grant the [same] application, unless it is satisfied that the applicant will be prejudiced in the conduct of [his or her] any claim or defence if [it be] the application is not granted.

(3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.

(4) Wherever any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary.”

Amendment of rule 55 of the Rules

4. Rule 55 of the Rules is hereby amended:

(a) by the substitution for paragraph (e) of subrule (1) of the following paragraph:

“(e) In a notice of motion the applicant **[shall] must-**

(i) appoint a physical address, which address **[shall] must**, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the office of the registrar or clerk of court, at which notice and service of all documents in such proceedings will be accepted;

(ii) state the applicant's postal, facsimile or electronic mail addresses where available; and

(iii) set forth a day, not less than **[5] five** days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether he or she intends to oppose such application, and state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the respondent of the notice.”

(b) by the substitution for paragraph (f) of subrule (1) of the following paragraph:

“(f) If the respondent does not, on or before the day mentioned for that purpose in a notice of motion, notify the applicant of his or her intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar or clerk of the court notice of set down **[5] five** days before the day upon which the application is to be heard.”

(c) by the substitution for the words preceding subparagraph (i) of paragraph (g)

of subrule (1) of the following words:

“(g) Any party opposing the grant of an order sought in a notice of motion **[shall] must**”

(d) by the substitution for subparagraph (i) of paragraph (g) of subrule (1) of the following subparagraph:

“(i) within the time stated in the notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint an address, which address **[shall] must**, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the office of the registrar or clerk of the court, at which he or she will accept notice and service of all documents, as well as such party’s postal, facsimile or electronic mail addresses where available;”

(e) by the substitution for subparagraph (i) of paragraph (h) of subrule (1) of the following subparagraph:

“(h)(i) After receipt of a notice of intention to oppose, the applicant **[shall] must** lodge forthwith with the registrar or clerk of the court the original notice of motion plus annexures thereto and, where applicable, the return of service.”

(f) by the substitution for subparagraphs (i) and (ii) of paragraph (j) of subrule (1) of the following subparagraphs:

“(j)(i) Where no answering affidavit, or notice in terms of paragraph (g)(iii), is delivered within the period referred to in paragraph (g)(ii) the applicant may within **[5] five** days of the expiry thereof apply to the registrar or clerk of the court to allocate a date for the hearing of the application.” and

“(ii) Where an answering affidavit is delivered the applicant may apply for an allocation of the date for the hearing of the application within **[5] five** days of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within **[5] five** days of the expiry of the period referred to in paragraph (h) and where such notice is delivered the applicant may apply for such allocation within **[5] five** days after delivery of such notice.”

(g) by the substitution for subparagraph (iv) of paragraph (j) of subrule (1) of the following subparagraph:

“(iv) Notice in writing of the date allocated by the registrar or clerk of the court **[shall] must** be delivered by applicant or respondent, as the case may be, to the opposite party not less than 10 days before the date allocated for the hearing.”

(h) by the substitution for paragraph (b) of subrule (2) of the following paragraph:

“(b) The periods prescribed with regard to applications **[shall] apply [mutatis mutandis] with appropriate changes** to counter-applications: Provided that the court may on good cause shown postpone the hearing of the application.”

(i) by the substitution for the words preceding subparagraph (i) of paragraph (a)

of subrule (3) of the following words:

“(3)(a) No application in which relief is claimed against another party **[shall] must** be considered *ex parte* unless the court is satisfied that—”

(j) by the substitution for paragraphs (b); (c); (e); and (f) of subrule (3) of the

following paragraphs:

“(b) The notice of motion in every application brought *ex parte* **[shall be similar to] must correspond substantially with** Form 1 of Annexure 1.

(c) Any order made against a party on an *ex parte* basis **[shall] must** be of an interim nature and **[shall] 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 order should not be confirmed.

(e) A copy of any order made *ex parte* and of the affidavit, if any, on which it was made **[shall] must** be served on the respondent thereto.

(f) Where cause is shown against any order made *ex parte* against a party 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.”

(k) by the substitution for paragraph (a) of subrule (5) of the following paragraph:

“(5)(a) A court, if satisfied that a matter is urgent, may make an order dispensing with the forms and service provided for in these **[Rules] rules** and may dispose of the matter at such time and place and in accordance with such procedure (which **[shall] must** as far as practicable be in terms of these **[Rules] rules**) as the court deems appropriate.”

(l) by the substitution for subrule (6) of the following subrule:

“(6) In any application against **[any Minister, Deputy Minister, Provincial Premier, officer or servant of the State, in his or her capacity as such, the State or the administration of any province] the State or an organ of State, a Minister, Deputy Minister, Premier, Member of the Executive Council, or official appointed in the public service, in such person’s official capacity,** the respective periods referred to in subrule (1)(e), or for the return of a *rule nisi*, **[shall] must** not be less than 15 days after the service of the notice of motion, or the *rule nisi*, as the case may be, unless the court has specially authorised a shorter period.”

(m) by the substitution for subrule (8) of the following subrule:

“(8)(a) The minutes of any order required for service or execution **[shall] must** be drawn up by the party entitled thereto and **[shall]** be approved and signed by the registrar or clerk of the court.

(b) The copies of the minutes referred to in paragraph (a) for record and service **[shall] must** be made by the party indicated in that paragraph and the copy for record **[shall] must** be signed by the registrar or clerk of the court.

(c) Rules 41 and 42 **[shall]**, in so far as it may be necessary in the execution of an order under this rule, **[mutatis mutandis]** apply with appropriate changes to such execution."

(n) by the substitution for paragraph (b) of subrule (9) of the following paragraph:

"(b) The court **[shall] may** not grant an application referred to in paragraph (a) unless it is satisfied that the applicant will be prejudiced **[in his or her case if it be] if the application is not granted.**"

(o) by the substitution for subrule (10) of the following subrule:

"(10) The provisions of rules [Rules] 28 and 28A [shall] apply equally to all applications."

(p) by the insertion of the following sub-rule (11):

"(11) The days from 21 December to 7 January, both inclusive, must not be counted in the time allowed for delivery of any notice or affidavit contemplated in this rule: Provided that the provisions of this subrule do not apply to applications brought under subrule (5) or rule 58."

Amendment of Part I of Table A of Annexure 2 to the Rules

5. Part I of Table A of Annexure 2 to the Rules is hereby amended by –

(a) the substitution for subparagraph (b) of paragraph 2 of Part I of the following subparagraph:

(b) Where the amount in dispute is not apparent on the face of the proceedings and –

- (i) the matter is instituted in the Magistrates' Court for a District, costs shall be computed on Scale C; or
- (ii) the matter is instituted in the Regional Court for a Regional Division, costs shall be computed on Scale D,

unless the court orders otherwise.

(b) the substitution for paragraph 6 of the following paragraph:

"6. Fees to counsel shall be allowed on taxation only in cases falling within scale B, C or D or where the court has made an order in terms of rule 33(8) [and shall not be so allowed unless payment thereof is vouched by the signature of counsel]"..

(c) the substitution for paragraph 7 of the following paragraph:

" 7. Where the amount allowed for an item is specified, the amount shall be inclusive of all necessary copies, attendances and services (other than services by the sheriff for the Magistrate's Court) in connection therewith [.] save that for the necessary filing of documents at court a charge shall be allowed at R27,00 per document."

(d) the substitution for paragraph 8 of the following paragraph:

"8 Where the amount allowed for an item is left blank-

(a) the drawing of documents (not pleadings) shall be allowed at R27,00 for each folio;

(b) copies for filing, service and an attorney's copy to retain shall also be allowed;

(c) R27,00 [17,00] shall be allowed for each necessary service;

(d) R27,00 shall be allowed per document for the necessary filing of documents at court."

(e) the substitution for paragraph 16 of the following paragraph:

"16. Any amount necessarily and actually disbursed in tracing the debtor [.] shall be allowed in addition to the fees laid down in this tariff." and

(f) the insertion after paragraph 16 of the following paragraph:

"17. Item 10A and 14A of Part III in the tariff to Table A are also applicable to Part IV of the tariff to Table A."

Amendment of Part III of Table A of Annexure 2 to the Rules

6. Part III of Table A of Annexure 2 to the Rules is hereby amended by –

(a) the insertion after item 10 of the appended tariff, of the following item:

<u>"10A Pagination and indexing of pleadings per quarter of an hour or part thereof :</u>	<u>R108,00</u>	<u>R108,00</u>	<u>R131,50</u>	<u>R171,00"</u>
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(b) the insertion after item 14 of the appended tariff, of the following item:

<u>"14A Drawing up heads of argument per quarter of an hour or part thereof:</u>	<u>R160,50</u>	<u>R160,50</u>	<u>R202,50</u>	<u>R261,00"</u>
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Amendment of Part IV of Table A of Annexure 2 to the Rules

7. Item 21 of Part IV of Table A of Annexure 2 to the Rules is hereby amended by the deletion of the words "Note: A fee to counsel on application shall be allowed only where the court certifies that the briefing of counsel was warranted".

Amendment of Part III of Table B of Annexure 2 to the Rules

8. Part III of Table B of Annexure 2 to the Rules is amended by the substitution in paragraph 1 for subparagraph (b) of the following subparagraph:

“(b) In addition to the fees stated below, the administrator shall be entitled to a fee of 10% on each instalment collected for the redemption of capital and costs[.], which amount is included in the 12,5% in terms of section 74L(2) of the Act.”

Amendment of Part II of Table C of Annexure 2 to the Rules

9. Part II of Table C of Annexure 2 to the Rules is hereby amended by the substitution for Part II of the following Part:

“PART II

SHERIFFS WHO ARE NOT OFFICERS OF THE PUBLIC SERVICE

- 1A. For registration of any document for service or execution upon receipt thereof: R10,00.
- 1B. (a) For the service of a summons, subpoena, notice, order or other document not being a document mentioned in item 2, the journey to and from the place of service of any of the above-mentioned documents—
- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R40,00;
 - (ii) within a distance of 12 kilometres, but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R47,00;
 - (iii) within a distance of 20 kilometres, but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R63,00;
 - [(iv) where a mandator instructs the sheriff in writing to serve a document referred to in item 1B(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 1B(a)(i), (ii) and (iii), respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.]**
- (b) For the attempted service of the documents mentioned in paragraph (a), the journey to and from the place of attempted service of any of the above-mentioned documents—
- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R33,50;
 - (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R40,00;

(iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R56,00;

[(iv) where a mandator instructs the sheriff in writing to serve a document referred to in item 1B(a) urgently on the day of receipt of such document or after normal office hours and the sheriff is unsuccessful in his or her attempt to effect service, the costs shall be calculated at double the tariff in item 1B(b)(i), (ii) and (iii) respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.]

(c) (i) Where a document must be served together with a process of the court and is mentioned in such process or is an annexure thereto, no additional fees shall be charged for service of the document, otherwise R10,00 may be charged for every separate document served.

(ii) No fees shall be charged for a separate document when process in criminal matters is served.

(iii) The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.

(iv) Where a mandator instructs the sheriff, in writing, to serve or execute a document referred to in item 1B(a) or (2)(a) on an urgent basis or after hours, the sheriff shall charge an additional fee of R165,00 for such service irrespective of whether the service or execution was successful, which additional fee shall be paid by the mandator, save where the court orders otherwise.

(v) For the purpose of sub-paragraph (iv)—

(aa) “urgent” means on the same day or within twenty four hours of the written instruction; and

(bb) “after hours” means any time –

(aaa) before 7h00 or after 19h00 on Mondays to Fridays; or

(bbb) on a Saturday, Sunday or public holiday.

2. (a) For the execution of a warrant (other than against immovable property), interdict, garnishee order or emoluments attachment order, the journey to and from the place of execution of the above-mentioned documents—

(i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R56,00;

(ii) within a distance of 12 kilometres, but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R63,00;

(iii) within a distance of 20 kilometres, but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R78,50;

[(iv) where a mandator instructs the sheriff in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 2(a)(i), (ii) and (iii), respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.]

(b) For the attempted execution of the documents mentioned in paragraph (a), the journey to and from the place of attempted execution of the above-mentioned documents —

(i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R47,00;

(ii) within a distance of 12 kilometres, but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R56,00;

(iii) within a distance of 20 kilometres, but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R70,50;

[(iv) where a mandator instructs the sheriff in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours and the sheriff is unsuccessful in his or her attempt to effect execution, the costs shall be calculated at double the tariff in item 2(b)(i), (ii) and (iii) respectively, which costs shall be paid by the mandator, save where the court orders otherwise.]

(c) (i) For the ejectment of a defendant from the premises referred to in the warrant of ejectment: R33,50 per half hour or part thereof (except extraordinary expenses necessarily incurred).

(ii) A further fee of R22,50 shall be paid after execution for every person over and above the person named or referred to in the process of ejectment, in fact ejected from separate premises: Provided that where service on any person other than the judgment debtor, respondent or garnishee is necessary in order to

complete the execution, the fee laid down in item 1B(a) may be charged in respect of each such service.

(d) for the execution of any writ against immovable property—

(i) for execution, including service of notice of attachment upon the owner of the immovable property and upon the registrar of deeds or other office charged with the registration of such property, and if the property is in occupation of some other person other than the owner, also upon such occupier: R186,00;

(ii) for notice of attachment to a single lessee or occupier: R17,50;

(iii) identical notices where there are several lessees, occupiers or owners, for each after the first: R5,50;

(iv) for making valuation report for purposes of sale, per half hour or part thereof: R47,00;

(v) when a sheriff has been authorised to sell property and the property is not sold by reason of the fact that the attachment is withdrawn or stayed, all the necessary notice for the withdrawal or stay of the attachment: R186,00; Upliftment of judicial attachment on immovable property: R186,00;

(vi) for ascertaining and recording what bonds or other encumbrances are registered against the property, together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered including any correspondence in connection therewith (in addition to reasonable expenses necessarily incurred): R93,50;

(vii) for notifying the execution creditor of such bonds or other encumbrances and of the names and addresses of the persons in whose favour such bonds or other encumbrances are registered: R17,50;

(viii) for consideration of proof that a preferent creditor has complied with the requirements of rule 43(5)(a): R10,00;

(ix) for notice referred to in rule 43(6): R17,50;

(x) for considering of notice of sale prepared by the execution creditor in consultation with the sheriff; and

for verifying that notice of sale has been published in the newspapers indicated and in the Gazette, inclusive fee for such consideration and verification: R93,50;

(xi) for forwarding a copy of the notice of sale to every judgment creditor who had caused the immovable property to be attached

and to every mortgagee thereof whose address is known, for each copy: R17,50;

(xii) for affixing a copy of the notice of sale to the notice board of the magistrates' court referred to in rule 43(7)(e) and at or as near as may be to the place where the sale is actually to take place, an inclusive fee of R40,00 and travelling costs referred to in item 4(a);

(xiii) for considering the conditions of sale prepared by execution creditor; for considering further or amended conditions of sale submitted by interested party; settling of conditions of sale: R93,50 for each attendance;

(xiv) for all necessary attendances prescribed by any law related to auctions, in particular the Consumer Protection Act, 2008 (Act No. 68 of 2008): R280,50;

(xv) for the conducting of an auction, save that this fee may not be charged if commission is claimed in terms of items 2(d)(xvi) and (xvii): R186,00;

(xvi) On the sale of immovable property by the sheriff as auctioneer, 6 per cent on the first R100 000,00, 3.5 per cent on R100 001,00 to R400 000,00 and 1.5 per cent on the balance of the proceeds of the sale, subject to a maximum commission of R40 000,00, in total, and a minimum of R3 000,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser;

(xvii) If an auctioneer is employed as provided in rule 43(10), 3 per cent on the first R100 000,00, 2 per cent on R100 001,00 to R400 000,00 and 1 per cent on the balance thereof, subject to a maximum commission of R22 850,00, in total, and a minimum of R3 000,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser;

(xviii) for written notice to the purchaser who has failed to comply with the conditions of sale: R47,00;

(xix) for any report referred to in rule 43(11): R47,00;

(xx) for informing judgment debtor of the cancellation referred to in rule 43(11)(a)(iii): R17,50;

(xxi) for giving notice referred to in rule 43(11)(c): R17,50;

(xxii) for giving transfer to the purchaser: R23,00;

(xxiii) for receipt of certificate referred to in rule 43(14)(a): R17,50;

(xxiv) for preparing a plan of distribution of the proceeds (including necessary copies) and for forwarding a copy to the registrar: R93,50;

(xxv) for giving notice to all parties who have lodged writs and to the execution debtor that the plan of distribution will lie for inspection, for every notice: R17,50;

(xxvi) for the report referred to in rule 43A(9)(d): R47,00.

3. **Compilation of any return in terms of rule 8, in duplicate: R16,00.**
4. **(a) The Sheriff shall, in addition to the fees mentioned in items 1B(a), 1B(b), 2(a) and 2(b), but subject to item 4(b) and (c), be allowed a travelling allowance of R5,00 per kilometre, or part thereof, for the shortest possible forward and return journey from the office of the Sheriff to the place of service or execution and back.**

(b) The travelling allowance mentioned in items 4(a), 5(a) and 5(c)(i) shall be calculated on the distance reckoned from the office of the sheriff if—

 - (i) the sheriff's office is situated within the area of jurisdiction allocated to the sheriff by the Minister; and**
 - (ii) the distance from the sheriff's office is less than the distance reckoned from the court-house closest to the address for service.**

(c) If the requirement in item 4(b) is not met, then the travelling allowance mentioned in items 4(a), 5(a) and 5(c)(i) shall be calculated on the distance reckoned from the court-house closest to the address for service.
5. **(a) In respect of the discharge of any official duty other than those mentioned in items 1 and 2, but subject to item 4(b) and (c), a travelling allowance of R5,00 per kilometre for every kilometre, or part thereof, shall be payable to the sheriff for going and returning.**

(b) A travelling allowance shall include all the expenses incurred in travelling, including train fares.

(c) A travelling allowance shall be calculated in respect of each separate service, except that—

 - (i) where more services than one can be done on the same journey, the distance from the sheriff's office to the first place of service may be taken into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services; and**
 - (ii) where service of the same process has to be effected by a sheriff on more than one person at the same service address, only one charge for travelling shall be allowed.**

- (d) When it is necessary for the sheriff to convey any person under arrest, an allowance of R5,00 per kilometre in respect of that portion of his or her journey on which he or she was necessarily accompanied by such person shall be allowed.
6. (a) Making an inventory, including the making of all necessary copies and time spent on stock-taking: R33,50 per half hour or part thereof.
- (b) For assistance, if necessary, with the making of an inventory, R33,50 per half hour or part thereof.
7. The perusing, drawing up and completing of a bail bond, deed of suretyship or indemnity bond: R10,00.
8. Charge or custody of property (money excluded):
- (a) (i) For each officer necessarily left in possession, a reasonable inclusive amount not exceeding R117,00 per day.
- (ii) Travelling allowances, to include board in every case.
- (b) If livestock is attached, only the necessary expenses of herding and preserving the stock shall be allowed.
- (c) If the goods are removed and stored, only the cost of removal and storage shall be allowed.
9. (a) **'possession'** shall mean actual physical possession by a person employed and paid by the sheriff, whose sole work for the time being is to remain on the premises where the goods have been attached, and who, in fact, remains in possession for the period for which possession is charged.
- (b) **'cost of removal'** shall mean the amount actually and necessarily disbursed for removal or attempted removal if the goods were removed by a third party or an attempt was made to remove them, if they were removed by the sheriff him- or herself, such amount as would fairly be allowable in the ordinary course of business if the goods were removed by a third party, or an attempt was made to so remove them.
- (c) **'cost of storage'** shall mean the amount actually and necessarily paid for storage if the goods were stored with a third person or, if the sheriff provided the storage, such amount as would fairly be allowable in the ordinary course of business if the goods were stored with a third person.
10. (a) Where a warrant of execution or garnishee order is paid in full, or in part, to the sheriff or moneys attached in execution against movables, 9 per cent of the amounts so paid or attached, with a minimum of R63,00 and a maximum of R614,00.
- (b) Notice of attachment to defendant and to each person to be notified: R10,00.

11. Where property is released from attachment in terms of rule 41(7)(f)(i), or the warrant of execution is withdrawn or stayed, or the judgment debtor's estate is sequestrated after the attachment, but before the sale, 2.3 per cent of the value of the goods attached, subject to a maximum of R186,00: Provided that if a sale subsequently takes place in consequence of the said attachment, the amount so paid shall be deducted from the commission payable under item 12.
12. Where the warrant of execution against movables is completed by sale, 9 per cent for the first R15 000,00 or part thereof, and thereafter 6 per cent, with a maximum of R8 178,50.
13. For the insurance of attached property, if deemed necessary, and on written instructions of the judgment creditor to the sheriff, in addition to the premium to be paid, an all-inclusive amount of R33,50.
- [14. **(a) When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or stayed, or of the sequestration of the estate of the execution debtor, the expenses in connection with the attempted sale and the sum of R186,00 shall be payable to the sheriff or the person in fact authorised to act as auctioneer, as the case may be.**
- (b) The drawing up of a report of the improvements on the property for the purpose of sale: R33,50 per half hour or part thereof.**
- (c) Written notice to the purchaser who has failed to comply with the conditions of sale: R47,00.**
- (d) Consideration of conditions of sale: R93,50.]**
15. When immovable property has been attached in execution and the attachment lapses, as referred to in section 66(4) of the Act: R56,00.
- [16. **When an execution against immovable property is completed by sale, the following fees shall be allowed to the sheriff on the proceeds of the sale:**
- (a) On the sale of immovable property by the sheriff as auctioneer, 6 per cent on the first R100 000,00, 3.5 per cent on R100 001,00 to R400 000,00 and 1.5 per cent on the balance of the proceeds of the sale, subject to a maximum commission of R40 000,00, in total, and a minimum of R3 000,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.**
- (b) If an auctioneer is employed as provided in rule 43(9), 3 per cent on the first R100 000,00, 2 per cent on R100 001,00 to R400 000,00 and 1 per cent on the balance thereof, subject to a maximum commission of R22 850,00, in total, and a minimum of R3 000,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in**

paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.]

17. In addition to the fees allowed by items 10 to ~~[15]~~ 13, both inclusive, there shall be allowed—
- (a) the sum actually and reasonably paid by the sheriff or the auctioneer for printing, advertising and giving publicity to any sale or intended sale in execution; and
- [(b) the sum of R23,50 to the sheriff for giving transfer to the purchaser.]**
18. Where the sheriff is in possession under more than one warrant of execution, he or she may charge fees for only one possession, and such possession shall, as far as possible, be apportioned equally to the several warrants issued during the same period: Provided that each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding what would have been due under his or her execution if it had stood alone.
19. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds so far as they are in excess of the amount of the warrant.
20. The fees and expenses of the sheriff in execution of a garnishee order shall be added to the amount to be recovered under the order, and shall be chargeable against the judgment debtor.
21. If it is necessary for the sheriff to return a document received by him or her for service or execution to the mandator because—
- (a) the address of service which appears on the process does not fall within his or her jurisdiction; or
- (b) the mandator requested, before an attempted service or execution of the process, that it be returned to him or her,
- an amount of R10,00 shall be payable.
22. For the conveyance of any person arrested by the sheriff or committed to his or her custody from the place of custody to the court on a day subsequent to the day of arrest: R33,50 per journey and R63,00 per hour, or part thereof, for attending at court.
23. For the examination of indicated newspapers and the *Gazette* in which the notice of sale has been published, as referred to in rule ~~[43(6)(c) and rule]~~ 41(8)(c): R10,00.
- [24. For forwarding a copy of the notice to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property concerned whose address is reasonably ascertainable, for each copy: R10,00.]**

25. **[(a)]** For affixing a copy of the notice of sale on the notice board or door of the court-house or other public building[.], and at or as near as may be to the place where the said sale is actually to take place referred to in rule **[43(6)(e) and rule] 41(8)(b): R23,50[.]**
- [(b)]** For affixing a copy of the notice of sale on the property due to be sold, the amount in paragraph (a)] and travelling costs, referred to in item 5(a).
26. For the drawing up and issuing of an interpleader summons: R93,50.
27. In addition to the fees prescribed in this Table, the sheriff shall be entitled to the amount actually disbursed for postage and telephone calls.
28. For the writing of each necessary letter, facsimile or electronic mail, excluding formal letters accompanying process or returns: R17,50.
29. Each necessary attendance by telephone: R16,00.
30. Sending and receiving of each necessary facsimile or electronic mail per page (in addition to telephone charges): R5,50.
- [31. For the perusal of the records of the Registrar of Deeds, in terms of rule 43(3), to determine the order of precedence of creditors:**
- (a) If investigated by the sheriff him or herself: R56,00 per case.**
- (b) If the sheriff utilises the services of a third party for the investigation, the actual cost, as required by the third party, provided that it is reasonable.]**
32. For the making of all necessary copies of documents: R4,00, per A4 size page.
33. (a) A request to tax an account of a sheriff shall be done within 90 days after the date on which the account of which the fees are disputed, has been rendered.
- (b) For the drawing up of the bill for taxation and attendance of the taxation by the sheriff: R63,00.
34. Bank charges: Actual costs incurred relating to bank charges and cheque forms.
35. (a) Drafting of notice to the judgment debtor in terms of section 65A(8)(b) of the Act: R17,50.
- (b) Service of the notice referred to in paragraph (a): Tariff as prescribed in item 1B(a).

(c) Attempted service of the notice referred to in paragraph (a): Tariff as prescribed in item 1B(b).

(d) The tariff, as prescribed in item 4, shall apply to paragraphs (b) and (c).

36. (a) For the arrest or attempted arrest of a judgment debtor in terms of section 65A(6) of the Act:

(i) The tariff as prescribed in item 2(a) or item 2(b), as the case may be.

(ii) The tariff, as prescribed in item 4, shall apply to this item.

(b) For the handing over of the judgment debtor to the South African Police Service, prisoners' friend or clerk of the court or other lawful place of detention:

(i) The tariff, as prescribed in item 2(a).

(ii) Travelling costs from place of arrest to place of handing over to the relevant authority, referred to in paragraph (b), per kilometre or part thereof: R5,00.

(iii) Waiting time in regard to handing over the judgment debtor to the relevant authority, referred to in paragraph (b): R33,50, per half hour or part thereof, with a maximum of R124,00.”

Commencement

10. These rules come into operation on **1 JULY 2019**.