South Africa

Magistrates' Courts Act, 1944

Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa

Government Notice R740 of 2010

Legislation as at 22 March 2016

Note: There are **outstanding amendments** that have not yet been applied:
Government Notice R1055 of 2017, Government Notice R1272 of 2017, Government Notice R632 of 2018, Government Notice R1318 of 2018, Government Notice R842 of 2019, Government Notice R1343 of 2019, Government Notice R107 of 2020, Government Notice R858 of 2020, Government Notice R1156 of 2020, Government Notice R1604 of 2021, Government Notice R2134 of 2022, Government Notice R2434 of 2022, Government Notice R2298 of 2022, Government Notice R2414 of 2022, Government Notice R3371 of 2023, Government Notice R3399 of 2023, Government Notice R4476 of 2024, Government Notice R5127 of 2024.

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Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa
(Government Notice R740 of 2010)
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Government Notice R740 of 2010

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Commenced on 15 October 2010 by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Commencement

[This is the version of this document as it was from 22 March 2016 to 31 October 2017.]

[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R1222 of 2010) on 28 January 2011]
[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R611 of 2011) on 2 September 2011]
[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R1085 of 2011) on 3 February 2012]
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[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R215 of 2014) on 2 May 2014]
[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R507 of 2014) on 28 July 2014]
[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R183 of 2014) on 1 December 2014]
[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R5 of 2015) on 13 February 2015]
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[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R318 of 2015) on 22 May 2015]
[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R545 of 2015) on 31 July 2015]
[Amended by Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa: Amendment (Government Notice R2 of 2016) on 22 March 2016]

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), read with section 9(6)(a) of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act No. 31 of 2008), with the approval of the Minister for Justice and Constitutional Development, made the rules in the Schedule.

1. Purpose and application of rules

(1) The purpose of these rules is to promote access to the courts and to ensure that the right to have disputes that can be resolved by the application of law by a fair public hearing before a court is given effect to.

(2) These rules are to be applied so as to facilitate the expeditious handling of disputes and the minimization of costs involved.

(3) In order to promote access to the courts or when it is in the interest of justice to do so, a court may, at a conference convened in terms of section 54(1) of the Act, dispense with any provision of these rules and give directions as to the procedure to be followed by the parties so as to dispose of the action in the most expeditious and least costly manner.

(4) (a) The forms contained in Annexure 1 may be used with such variation as circumstances require.

(b) Subject to the provisions of paragraph (a), the clerk or registrar of the court may refuse to issue:

(i) any summons purporting to be in the form of Form 2, 2A, 2B or 3 but which does not substantially comply with the prescribed requirements; or

(ii) any written request as referred to in section 59 of the Act which does not substantially comply with a request contained in Form 5A or 5B.

(c) All process of the court for service or execution and all documents or copies to be filed of record other than documents or copies filed of record as documentary proof shall be on paper known as A4 standard paper of a size of approximately 210mm by 297 mm.

[subrule (4) substituted by section 2 of Government Notice R545 of 2015]

2. Definitions

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

"**apply**" means apply on motion and 'application' has a corresponding meaning;

"**clerk of the court**" means a clerk of the court appointed under section 13 of the Act and includes an assistant clerk of the court so appointed;

"**Criminal Procedure Act, 1977**" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"**default judgment**" means a judgment entered or given in the absence of the party against whom it is made;

"**deliver**" (except when a summons is served on the opposite party only, and in rule 9) means to file with the registrar or clerk of the court and serve a copy on the opposite party either by hand-delivery, registered post, or, where agreed between the parties or so ordered by court, by facsimile or electronic mail (in which instance Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 will apply), and "delivery", "delivered" and "delivering" have corresponding meanings;

"**Divorce Act, 1979**" means the Divorce Act, 1979 (Act No. 70 of 1979);

"**Electronic Communications and Transactions Act, 2002**" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"**give security**" includes the giving of a security bond either by the party with someone as his surety or by two or more other persons;

"**National Credit Act, 2005**" means the National Credit Act, 2005 (Act No. 34 of 2005);

"**notice**" means notice in writing;

"**pending case**" means a case in which summons or notice_of motion has been issued and which has not been withdrawn, discontinued or dismissed and in which judgment has not been entered or given;

"**plaintiff**", **"defendant"**, **"applicant"**, **"respondent"** and **"party"** include the attorney or counsel appearing for any such party and the officer of any local authority nominated by it for the purpose;

"**registrar of the court**" means a registrar of the court appointed under section 13A of the Act and includes an assistant registrar of the court so appointed;

"**sheriff**", means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and also a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;

"**signature**", includes an advanced electronic signature as defined and described in Chapters I, II and III of the Electronic Communications and Transactions Act, 2002 and this also applies to "sign", "signing" and "signed";

"**the Act**" means the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

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

(3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

Chapter 1

[heading Chapter 1, inserted by section 2(a) of Government Notice R183 of 2014]

3. Duties and office hours of registrars and clerks of the court in civil matters

(1) The registrar or clerk of the court shall sign (manually or by machining a facsimile of his or her signature) and issue all such process of the court as may be sued out by any person entitled thereto or, at the request of any party by whom process was sued out, to reissue such process after its return by the sheriff.

(2) The first document filed in a case or any application not relating to a then pending case shall be numbered by the registrar or clerk of the court with a consecutive number for the year during which it is filed.

(3) Every document that has been served or delivered in an action or application referred to in subrule (2) or in any subsequent matter in continuation of any such application or action shall be marked with the relevant number by the party delivering it and shall not be received by the registrar or clerk of the court until so marked.

(4) All documents delivered to the registrar or clerk of the court to be filed and any minutes made by the court shall be filed under the number of the respective action or application.

(5) Copies of the documents referred to in rule 3(4) may be made by any person in the presence of the registrar or clerk of the court.

(6) The registrar or clerk of the court shall notify the plaintiff forthwith in writing of—

(a) the defendant's consent to judgment before the filing of any notice of intention to defend;

(b) a defective memorandum of notice of intention to defend by a defendant who is not represented by an attorney and in what respect such notice is defective as envisaged by rule 12(2)(a); and

(c) a request for a judgment by default having been refused.

(7) (a) The registrar or clerk of the court shall note on a certified copy of a judgment at the request of the party to whom such copy is issued—

(i) particulars of any other judgment by the court or any other court, stating the relevant court in that case; and

(ii) any costs incurred after judgment and payable by the judgment debtor.

(b) A second or further certified copy of a judgment may be issued upon the filing of an affidavit confirming the loss of the certified copy of a judgment which it is intended to replace.

(8) The registrar or clerk of the court shall assist litigants by explaining these rules of procedure and providing such further assistance as is reasonably possible in accordance with section 9(6)(b)(ii) of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act No. 31 of 2008).

(9) *[subrule (9) deleted by section 2 of Government Notice R507 of 2014]*

(10) Any act to be performed or notice to be signed by the registrar or clerk of the court in terms of these rules may be performed or signed by a judicial officer, provided that no judicial officer shall write out any affidavit, pleading or process for any party or tax any bill of costs.

(11) When a court imposes upon a person any fine such person shall forthwith pay such fine to the registrar or clerk of the court.

(12) Except on Saturdays, Sundays and public holidays, the offices of the registrar or clerk of the court shall be open from 8:00 to 13:00 and from 14:00 to 16:00, save that, for the purpose of issuing any process or filing any document, other than a notice of intention to defend, the offices shall be open from 8:00 to 13:00, and from 14:00 to 15:00: Provided that the registrar or clerk of the court may in exceptional circumstances issue process and accept documents at any time, and shall do so when directed by a magistrate.

4. Applications in terms of sections 57 and 58 of the Act

(1) (a) The letter of demand referred to in sections 57 and 58 of the Act shall contain particulars about the nature and amount of the claim.

(b) Where the original cause of action is a credit agreement under the National Credit Act, 2005, the letter of demand referred to in section 58 of the Act must deal with each one of the relevant provisions of sections 129 and 130 of the National Credit Act, 2005, and allege that each one has been complied with.

(2) A request in writing referred to in section 59 of the Act shall be directed to the registrar or clerk of the court by means of Form 5A or 5B, as the case may be, supported by an affidavit containing such evidence as is necessary to establish that all requirements in law have been complied with.

(3) A consent to judgment in terms of section 58 of the Act shall be signed by the debtor and by two witnesses whose names shall be stated in full and whose addresses and telephone numbers shall also be recorded.

(4) Rules 12(5), (6), (6A) and (7) apply to a request for judgment in terms of sections 57 and 58 of the Act.

[subrule (4) substituted by section 3 of Government Notice R507 of 2014]

5. Summons

(1) Every person making a claim against any other person may, through the office of the registrar or clerk of the court, sue out a simple summons or a combined summons addressed to the sheriff

directing the sheriff to inform the defendant among other things that, if the defendant disputes the claim and wishes to defend, the defendant shall—

(a) within the time stated in the summons, give notice of intention to defend; and

(b) after complying with paragraph (a), if the summons is a combined summons, within 20 days after giving such notice, deliver a plea (with or without a claim in reconvention), or an exception, or an application to strike out.

(2) (a) In every case where the claim is not for a debt or liquidated demand the summons shall be a combined summons similar to Form 2B of Annexure 1, to which summons shall be annexed a statement of the material facts relied upon by the plaintiff in support of plaintiff's claim, and which statement shall, amongst others, comply with rule 6, but in divorce matters a combined summons substantially compliant with Form 2C shall be used.

[subrule (2) substituted by section 4 of Government Notice R507 of 2014]

(3) (a) (i) Every summons shall be signed by an attorney acting for the plaintiff and shall bear the attorney's physical address at which plaintiff will accept service of all subsequent documents and notices in the suit. In places where there are three or more attorneys or firms of attorneys practising independently of one another, the physical address shall be within 15 kilometres of the courthouse. The summons shall also bear the attorney's postal address, and, where available, the attorney's facsimile and electronic mail address. The State Attorney may appoint the office of the registrar or clerk of the civil court as its address for service.

(ii) If no attorney is acting for the plaintiff, the summons shall be signed by the plaintiff. The summons shall bear the plaintiffs physical address at which the plaintiff will accept service of all subsequent documents and notices in the suit. In places where there are three or more attorneys or firms of attorneys practicing independently of one another, the physical address shall be within 15 kilometres of the courthouse. The summons shall also bear the plaintiff's postal address, and, where available, the plaintiff's facsimile and electronic mail address.

[subrule (3) amended by section 2 of Government Notice R611 of 2011 and substituted by section 4 of Government Notice R507 of 2014]

(4) Every summons shall set forth—

(a) the surname and first names or initials of the defendant by which the defendant is known to the plaintiff, the defendant’s residence or place of business and, where known, the defendant’s occupation and employment address and, if the defendant is sued in any representative capacity, such capacity; and

(b) the full names, gender (if the plaintiff is a natural person) and occupation and the residence or place of business of the plaintiff, and if the plaintiff sues in a representative capacity, such capacity.

(5) (a) Every summons shall include a form for notice of intention to defend.

(b) Every summons, except a divorce summons, shall include:

(i) a form for consent to iudgment;

(ii) a notice drawing the defendant's attention to the provision of section 109 of the Act; and

(iii) a notice in which the defendant's attention is directed to the provisions of sections 57, 58, 65A and 65D of the Act in cases where the action is based on a debt referred to in section 55 of the Act.

[subrule (5) substituted by section 4 of Government Notice R507 of 2014]

(6) A summons shall also—

(a) where the defendant is cited under the jurisdiction conferred upon the court by section 28(1)(d) of the Act, contain an averment that the whole cause of action arose within the district or region, and set out the particulars in support of such averment;

(b) where the defendant is cited under the jurisdiction conferred upon the court by section 28(1)(g) of the Act, contain an averment that the property concerned is situated within the district or region; and

(c) show any abandonment of part of the claim under section 38 of the Act and any set-off under section 39 of the Act.

(7) Where the plaintiff issues a simple summons in respect of a claim regulated by legislation the summons may contain a bare allegation of compliance with the legislation, but the declaration, if any, must allege full particulars of such compliance:

Provided that where the original cause of action is a credit agreement under the National Credit Act, 2005, the plaintiff seeking to obtain judgment in terms of section 58 of the Act shall in the summons deal with each one of the relevant provisions of sections 129 and 130 of the National Credit Act, 2005, and allege that each one has been complied with.

(8) A summons for rent under section 31 of the Act shall be in the form prescribed in Annexure 1, Form 3.

(9) Where the plaintiff sues as cessionary the plaintiff shall indicate the name, address and description of the cedent at the date of cession as well as the date of the cession.

(10) A summons in which an order is sought to declare executable immovable property which is the home of the defendant shall contain a notice in the following form:

> "The defendant's attention is drawn to section 26(1) of the Constitution of the Republic of South Africa which accords to everyone the right to have access to adequate housing. Should the defendant claim that the order for eviction will infringe that right it is incumbent on the defendant to place information supporting that claim before the Court".

(11) If a party fails to comply with any of the provisions of this rule, such summons shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 60A.

6. Rules relating to pleadings generally

(1) Every pleading shall be signed by an attorney or, if a party is unrepresented, by that party.

(2) The title of the action describing the parties thereto and the number assigned thereto by the registrar or clerk of the court, shall appear at the head of each pleading: Provided that where the parties are numerous or the title lengthy and abbreviation is reasonably possible, it shall be so abbreviated.

(3) Every pleading shall be divided into paragraphs (including sub-paragraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct averment.

(4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

(5) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he or she shall not do so evasively, but shall answer the point of substance.

(6) A party who in such party's pleading relies upon a contract shall state whether the contract is in writing or oral, when, where and by whom it was concluded, and if the contract is in writing a copy thereof or of the part relied on in the pleading shall be annexed to the pleading.

(7) It shall not be necessary in any pleading to state the circumstances from which an alleged implied term can be inferred.

(8) A party claiming division, transfer or forfeiture of assets in divorce proceedings in respect of a marriage out of community of property, shall give details of the grounds on which such party claims entitlement to such division, transfer or forfeiture.

(9) A plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof: Provided that a plaintiff suing for damages for personal injury shall specify plaintiff's date of birth, the nature and extent of the injuries, and the nature, effects and duration of the disability alleged to give rise to such damages, and shall as far as practicable separately state what amount, if any, is claimed for—

(a) medical costs and hospital and other similar expenses and how these costs and expenses are made up;

(b) pain and suffering, stating whether temporary or permanent and which injuries caused it;

(c) disability in respect of—

(i) the earning of income (stating the earnings lost to date and how the amount is made up and the estimated future loss and the nature of the work the plaintiff will in future be able to do); and

(ii) the enjoyment of amenities of life (giving particulars and stating whether the disability concerned is temporary or permanent); and

(d) disfigurement, with a full description thereof and stating whether it is temporary or permanent.

(10) A plaintiff suing for damages resulting from the death of another shall state the date of birth of the deceased as well as that of any person claiming damages as a result of the death.

(11) If a claim is founded on any cause of action arising out of or regulated by legislation, the plaintiff shall state the nature and extent of plaintiff's compliance with the relevant provisions of the legislation.

[subrule (11) substituted by section 5 of Government Notice R507 of 2014]

(12) Where the plaintiff sues as cessionary the plaintiff shall indicate the name, address and description of the cedent at the date of cession as well as the date of the cession.

(13) If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 60A.

7. Amendment of summons

(1) Subject to the provisions of this rule, a summons may be amended by the plaintiff before service as he or she may deem fit.

(2) Any alteration or amendment of a summons before service and whether before or after issue, shall, before the summons is served, be initialled by the registrar or clerk of the court in the original summons, and, until so initialled, such alteration or amendment shall have no effect.

(3) (a) When no first name or initial or an incorrect or incorrectly spelt first name is or not all the first names of the defendant are reflected in the summons and the first name or initial or the correct or correctly spelt first name of the defendant is or all the first names of the defendant are furnished by the person on whom service of the summons was effected, and such first name or initial or correct or correctly spelt first name is disclosed in the return of the sheriff, or all the first names of the defendant are so disclosed, the registrar or clerk of the court may, at the request of the plaintiff and without notice to the defendant, insert such name or initial

in the summons as being the name or initial of the defendant and such amendment shall for all purposes be considered as if it had been made before service of the summons.

(b) Rule 55A shall apply to the amendment of a summons after service.

8. Sheriff of the court

(1) Except as otherwise provided in these rules, the process of the court shall be served or executed, as the case may be, through the sheriff.

(2) Service or execution of process of the court shall be effected without any unreasonable delay, and the sheriff shall, in any case where resistance to the due service or execution of the process of the court has been met with or is reasonably anticipated, have power to call upon any member of the South African Police Force, as established by the South African Police Service Act, 1995 (Act No. 68 of 1995), to render him or her aid.

(3) The sheriff to whom process other than summonses is entrusted for service or execution shall in writing notify—

(a) the registrar or clerk of the court and the party who sued out the process that service or execution has been duly effected, stating the date and manner of service or the result of execution and return the said process to the registrar or clerk of the court, or

(b) the party who sued out the process that he or she has been unable to effect service or execution and of the reason for such inability, and return the said process to such party,

and keep a record of any process so returned.

(4) When a summons is entrusted to the sheriff for service, subrule (3) shall *mutatis mutandis* be applicable: Provided that the registrar or clerk of the court shall not be notified of the service and that the summons shall be returned to the party who sued out the summons.

(5) In any court for which an officer of the Public Service has been appointed sheriff, the return of any process shall be deemed to have been properly effected if the said process is placed in a receptacle specially set apart for the attorney of that party in the office of the said sheriff.

(6) After service or attempted service of any process, notice or document, the sheriff, other than a sheriff who is an officer of the Public Service, shall specify the total amount of his or her charges on the original and all copies thereof and the amount of each of his or her charges separately on the return of service.

(7) The Director-General of Justice shall by notice in the *Gazette* publish the name of every court for which a sheriff who is an officer of the Public Service has been appointed.

9. Service of process, notices and other documents

(1) A party requiring service of any process, notice or other document to be made by the sheriff shall provide the sheriff with the original or a certified copy of such process, notice or document, together with as many copies thereof as there are persons to be served: Provided that the registrar or clerk of the court may, at the written request of the party requiring service, hand such process, notice or document and copies thereof to the sheriff.

(2) (a) Except as provided in paragraph (b) or in the case of service by post or upon order of the court, process, notices or other documents shall not be served on a Sunday or public holiday.

(b) An interdict, a warrant of arrest, and a warrant of attachment of property under section 30bis of the Act may be executed on any day at any hour and at any place.

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

(a) To the said person personally or to his or her 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 or, in the absence of such person in authority, to a person apparently not less than 16 years of age and apparently in charge at his or her 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;

(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 may cause the referral to be served by registered post or by hand.

(g) in the case of a Minister, Deputy Minister or Provincial Premier, in his or her official capacity, the State or provincial administration, at the Office of the State Attorney in Pretoria, or a branch of that Office which serves the area of jurisdiction of the court from which the process has been issued;

(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 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 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.

[subrule (3) amended by section 6 of Government Notice R507 of 2014]

(4) (a) The sheriff shall, on demand by the person upon or against whom process is served, exhibit to that person the original or certified copy of the process.

(b) The sheriff or other person serving the process or documents shall explain the nature and contents thereof to the person upon whom service is being affected and shall state in his or her return or affidavit or on the signed receipt whether he or she has done so.

(5) Where the person to be served keeps his or her residence or place of business closed and thus prevents the sheriff from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door or security gate of such residence or place of business or to place such copy in the post box at such residence or place of business.

(6) Service of an interpleader summons where claim is made to any property attached under process of the court may be made upon the attorney, if any, of the party to be served.

(7) Where two or more persons are to be served with the same process, service shall be effected upon each, except—

(a) in the case of a partnership, when service may be affected by delivery at the office or place of business of such partnership, or if there be none such, then by service on any member of such partnership in any manner prescribed in this rule;

(b) in the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected by delivery to any one of them in any manner prescribed in this rule;

(c) in the case of a syndicate, unincorporated company, club, society, church, public institution or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairperson or secretary or similar officer thereof in any manner prescribed in this rule.

(8) Service of a subpoena on a witness may be effected at a reasonable time before attendance is required in any manner prescribed in this rule.

(9) (a) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or appearance to defend, as the case may be, or by sending it by registered post to the postal address so given: Provided that, subject to rules 5 and 13, service of such notice, request, statement or other document may be effected by sending it by facsimile or electronic mail to the facsimile address or electronic mail address given in the summons or notice of intention to defend, as the case may be.

(b) An address for service, postal address, facsimile address or electronic address so given as contemplated in paragraph (a) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that paragraph at such new address.

(c) (i) Service by registered post under this subrule shall, until the contrary appears, be deemed to have been effected at 10 o'clock in the forenoon on the fourth day after the postmarked date upon the receipt for registration.

(ii) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 is applicable to service by facsimile or electronic mail.

(d) Service under this subrule need not be effected through the sheriff.

(10) Subject to rule 10, where the court is satisfied that service cannot be effected in any manner prescribed in this rule and that the action is within its jurisdiction, it may make an order allowing service to be effected by the person and in the manner specified in such order.

(11) Where service of an *ex parte* order calling upon the respondent to show cause at a time stated or limited in the order or of an interpleader summons is to be effected upon any party, service of such *ex parte* order or interpleader summons shall be effected—

(a) in the case where the party to be so served is the State, at least 20 days; or

(b) in the case where any other party is to be served, at least 10 days, before the time specified in such *ex parte* order or interpleader summons for the appearance of such party.

(12) Except where otherwise provided, notice of any application to the court shall be served—

(a) in the case where the party to be served is the State or a servant of the State in his or her official capacity, at least 20 days; or

(b) in the case of any other party, at least 10 days,

before the day appointed for the hearing of the application, but the court may on cause shown reduce such period.

(13) (a) Unless otherwise provided, where service of process may be effected by registered post such service shall be effected by the sheriff placing a copy thereof in an envelope, addressing and posting it by pre-paid registered letter to the address of the party to be served and making application at the time of registration for an acknowledgment by the addressee of the receipt thereof as provided in regulation 44(5) of the regulations published under Government Notice R. 550 of 14 April 1960.

(b) A receipt form completed as provided in regulation 44(8) of the said regulations shall be a sufficient acknowledgment of receipt for the purposes hereof.

(c) If no such acknowledgment be received the sheriff shall state the fact in his or her return of service of the process.

(d) Every such letter shall have on the envelope a printed or typewritten notice in the following terms:

"This letter must not be readdressed. If delivery is not effected before _____ 20 _____, this letter must be delivered to the Sheriff of the Magistrate's Court at _____".

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

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

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

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

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

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

(b) by any person referred to in sub-paragraph (i) or (ii) of paragraph (a), if the law of such country permits him or her to serve such process or document or if there is no law in such country prohibiting such service and the authorities of that country have not interposed any objection thereto.

(15) Service of any process of the court or of any document in Australia, Botswana, Finland, France, Hong Kong, Lesotho, Malawi, New Zealand, Spain, Swaziland, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe may, notwithstanding subrule (14), also be effected by an attorney, solicitor, notary public or other legal practitioner in the country concerned who is under the law of that country authorised to serve process of court or documents and in the state concerned who is under the law of that state authorised to serve process of court or documents.

(16) (a) Any process of court or document to be served in a foreign country shall be accompanied by a sworn translation thereof into an official language of that country or part of that country in which the process or document is to be served, together with a certified copy of the process or document and such translation.

(b) Any process of court or document to be served as provided in subrule (14), shall be delivered to the registrar or the clerk of the court, as the case may be.

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

(17) Service shall be proved—

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

(b) where service has not been effected by the sheriff, nor in terms of subrule (14) or (15), by an affidavit of the person who effected service, or in the case of service on an attorney or a member of his or her staff, the Government of the Republic, the Administration of any Province or on any Minister, Premier, or any other officer of such Government or Administration, in his or her capacity as such, by the production of a signed receipt therefor.

(17A) (a) The document which serves as proof of service shall, together with the served process of court or document, without delay be furnished to the person at whose request service was effected.

(b) The person at whose request service was effected shall file the document which serves as proof of service on behalf of the person who effected service with the registrar or clerk of the court when—

(i) he or she sets the matter in question down for any purpose;

(ii) it comes to his or her knowledge in any manner that the matter is being defended;

(iii) the registrar requests filing; or

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

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

(a) by a certificate of the person effecting service in terms of subrule (14)(a) or subrule (15) in which he or she identifies himself or herself, states that he or she is authorised under the law of that country to serve process of court or documents therein and that the process of court or document in question has been served as required by the law of that country and sets forth the manner and the date of such service: Provided that the certificate of a person referred to in subrule (15) shall be duly authenticated; or

(b) by a certificate of the person effecting service in terms of sub-rule (14)(b) in which he or she states that the process of court or document in question has been served by him or her, setting forth the manner and date of such service and affirming that the law of the country

concerned permits him or her to serve process of court or documents or that there is no law in such country prohibiting such service and that the authorities of that country have not interposed any objection thereto.

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

(20) 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.

(21) Whenever a request for the service on a person in the Republic of any civil process or citation is received from a State, territory or court outside the Republic and is transmitted to the registrar or clerk of the court, as the case may be, in terms of any applicable law, the registrar or clerk shall transmit to the sheriff or any person appointed by a magistrate of the court concerned for service of such process or citation—

(a) two copies of the process or citation to be served; and

(b) two copies of a translation in English of such process or citation if the original is in any other language.

(22) Service under subrule (21) shall be effected by delivering to the person to be served one copy of the process or citation to be served and one copy of the translation, if any, thereof in accordance with this rule.

(23) After service has been effected as provided in subrule (22) the sheriff or the person appointed for the service of such process or citation shall return to the registrar or the clerk of court concerned one copy of the process or citation together with—

(a) proof of service, which shall be by affidavit made before a magistrate, justice of the peace or commissioner of oaths by the person by whom service has been effected and verified, in the case of service by the sheriff, by the certificate and seal of office of such sheriff or, in the case of service by a person appointed by the magistrate of the court concerned, by the certificate and seal of office of the registrar or clerk of the court concerned; and

(b) particulars of charges for the cost of effecting such service.

(24) The particulars of charges for the cost of effecting service under subrule (21) shall be submitted to the taxing officer of the court concerned, who shall certify the correctness of such charges or other amount payable for the cost of effecting service.

(25) The registrar or clerk of the court concerned shall, after effect has been given to any request for service of civil process or citation, return to the Director-General of Justice—

(a) the request for service referred to in subrule (21);

(b) the proof of service together with a certificate in accordance with Form 46 of Annexure 1 duly sealed with the seal of the court concerned for use out of the jurisdiction; and

(c) the particulars of charges for the cost of effecting service, and the certificate, or copy thereof, certifying the correctness of such charges.

10. Edictal citation and substituted service

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

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

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

(b) Upon such application the court may make such order as to the manner of service as it deems fit and shall further order the time within which notice of intention to defend is to be given or any other step that is to be taken by the person to be served.

(c) Where service by publication is ordered, it may be in a form similar to Form 4 of Annexure 1, approved and signed by the registrar or clerk of the court.

(3) Any person desiring to obtain leave to effect service inside or outside the Republic of any document other than one whereby proceedings are instituted, may either make application for such leave in terms of subrule (2) or request such leave at any hearing at which the court is dealing with the matter, in which latter event no papers need be filed in support of such request, and the court may act upon such information as may be given from the bar or given in such other manner as it may require, and may make such order as it deems fit.

11. Judgment by consent

(1) Save for actions for relief in terms of the Divorce Act, 1979, or nullity of marriage, a defendant may before delivering notice of intention to defend consent to judgment by—

(a) signing the form of consent endorsed on the original summons;

(b) lodging with the registrar or the clerk of the court the copy of the summons served upon him or her with the form of consent endorsed thereon duly signed by him or her; or

(c) lodging with the registrar or clerk of the court a consent in a similar form duly signed by him or her and by two witnesses whose names are stated in full and whose addresses and telephone numbers are also recorded.

(2) Where a defendant consents to judgment as contemplated in subrule (1) before instructions for service have been given to the sheriff, it shall not be necessary to serve the summons, and the defendant shall not be chargeable with fees for service.

(3) Subject to the provisions of section 58 of the Act a defendant consenting in terms of subrule (1) before the expiration of the time within which to deliver notice of intention to defend shall not be chargeable with judgment charges.

(4) A defendant may, after delivering notice of intention to defend, save for actions for relief in terms of the Divorce Act, 1979, or nullity of marriage, consent to judgment by delivering a consent similar in form to that endorsed on the summons and such consent shall be signed by the defendant or by his or her attorney.

(5) (a) If a defendant's consent is for less than the amount claimed in the summons, he or she may deliver notice of intention to defend or may continue his or her defence as to the balance of the claim.

(b) Notwithstanding a judgment upon a consent contemplated in paragraph (a), the action may proceed as to the balance of the claim, and it shall be in all subsequent respects an action for such balance.

(6) When a defendant has consented to judgment, the registrar or clerk of the court shall, subject to section 58 of the Act and rule 12(5), (6) and (7), enter judgment in terms of the defendant's consent: Provided that where such consent to judgment is contained in defendant's plea, the registrar or

clerk of the court shall refer the matter to the court and the court may thereupon exercise its powers under rule 12(7).

12. Judgment by default

(1) (a) If a defendant has failed to deliver the notice of intention to defend within the time stated in the summons or before the lodgement of the request provided for in this paragraph, and has not consented to judgment, the plaintiff may lodge with the registrar or clerk of the court a request in writing similar to Form 5 of Annexure 1, in duplicate, together with the original summons and the return of service, for judgment against such defendant for—

(i) any sum not exceeding the sum claimed in the summons or for other relief so claimed;

(ii) the costs of the action; and

(iii) interest at the rate specified in the summons to the date of payment or, if no rate is specified, at the rate prescribed under section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

(b) When the defendant has been barred in terms of rule 21B(3) from delivering a plea, the plaintiff may lodge with the registrar or clerk of the court a request in writing for judgment in the same manner as when the defendant has failed to deliver the notice of intention to defend.

(c) When the defendant has failed to deliver the notice of intention to defend or, having delivered such notice, has been barred in terms of rule 21B(3) from delivering a plea and the plaintiff has in either case lodged a request for judgment, the registrar or clerk of the court shall process the request in terms of the provisions of subrules (2), (3), (4), (5), (6), (6A) and (7), and notify the plaintiff of the outcome of the request by returning the duplicate copy duly endorsed as to the result and the date thereof.

(d) When a defendant has delivered the notice of intention to defend but has been barred in terms of rule 21B(3) from delivering a plea and the registrar or clerk of the court has entered judgment in terms of a request lodged by the plaintiff, costs shall be taxed as if it had been a defended action.

(e) If the original summons cannot be filed together with the request for judgment as required by paragraph (a), the plaintiff may—

(i) file with the registrar or clerk of the court a copy or duplicate original of the summons and a copy of the signed return of service received from the sheriff; and

(ii) file an affidavit together with the documents mentioned in subparagraph (i) stating the reasons why the original summons and return of service cannot be filed: Provided that in divorce actions or actions for nullity of marriage rule 22(5) shall apply.

[subrule (1) amended by section 7 of Government Notice R507 of 2014 and substituted by section 2(a) of Government Notice R2 of 2016]

(2) (a) If it appears to the registrar or clerk of the court that the defendant intends to defend the action but that his or her notice of intention to defend is defective, in that the notice—

(i) has not been properly delivered; or

(ii) has not been properly signed; or

(iii) does not set out the postal address of the person signing it or an address for service as provided in rule 13; or

(iv) exhibits any two or more of such defects or any other defect of form,

he or she must not enter judgment against the defendant unless the plaintiff has delivered notice in writing to the defendant calling upon him or her to deliver the notice of intention to defend in due form within 5 days of the receipt of such notice.

(b) The notice provided for in sub-rule (2)(a) must set out in what respect the defendant's notice of intention to defend is defective.

(c) On failure of the defendant to deliver the notice of intention to defend as provided in paragraph (a), the plaintiff may lodge with the registrar or clerk of the court a written request for judgment in default of due notice of intention to defend: Provided that in divorce actions or actions for nullity of marriage rule 22(5) shall apply.

[subsrule (2) substituted by section 2(b) of Government Notice R2 of 2016]

(3) Judgment in default of the notice of intention to defend must not be entered in an action in which the summons has been served by registered post unless the acknowledgement of receipt referred to in rule 9(13)(a) has been filed by the sheriff with his or her return of service.

[subrule (3) substituted by section 2(c) of Government Notice R2 of 2016]

(3A) When a claim is for a debt or liquidated amount in money and the defendant has failed to deliver the notice of intention to defend or, having delivered the notice of intention to defend, has failed to deliver a plea within the period specified in the notice delivered in terms of rule 21B(2) and the plaintiff has in either case lodged a request for judgment, the registrar or clerk of the court may, subject to the provisions of sub-rules (2), (4), (5), (6) and (6A) grant judgment or refer the matter to the court in terms of subrule (7).

[subrule (3A) substituted by section 2(d) of Government Notice R2 of 2016]

(4) The registrar or clerk of the court shall refer to the court any request for judgment for an unliquidated amount and the plaintiff shall furnish to the court evidence either oral or by affidavit of the nature and extent of the claim, whereupon the court shall assess the amount recoverable by the plaintiff and shall give an appropriate judgment.

(5) The registrar or clerk of the court must refer to the court any request for judgment on a claim founded on any cause of action arising out of or based on an agreement governed by the National Credit Act, 2005 or the Credit Agreements Act, 1980 (Act No. 75 of 1980), and the court shall thereupon make such order or give such judgment as it may deem fit.

[subrule (5) substituted by section 2(e) of Government Notice R2 of 2016]

(6) If the action be on a liquid document or any agreement in writing the plaintiff shall together with the request for default judgment file the original of such document or the original agreement in writing or an affidavit setting out reasons to the satisfaction of the court or the registrar or clerk of the court, as the case may be, why such original cannot or should not be filed.

(6A) If a claim is founded on any cause of action arising out of or regulated by legislation, then the plaintiff shall together with the request for default judgment file evidence confirming compliance with the provisions of such legislation to the satisfaction of the court.

(7) The registrar or clerk of the court may refer to the court any request for judgment and the court may thereupon—

(a) if a default judgment be sought, call upon the plaintiff to produce such evidence either in writing or oral in support of his or her claim as it may deem necessary;

(b) if a judgment by consent be sought, call upon the plaintiff to produce evidence to satisfy the court that the consent has been signed by the defendant and is a consent to the judgment sought;

(c) give judgment in terms of plaintiffs request or for so much of the claim as has been established to its satisfaction;

(d) give judgment in terms of defendant's consent;

(e) refuse judgment; or

(f) make such other order as it may deem fit.

(8) When one or more of several defendants in an action consent to judgment or fail to deliver notice of intention to defend or to deliver a plea, judgment may be entered against the defendant or defendants who have consented to judgment or are in default, and the plaintiff may proceed on such judgment without prejudice to his or her right to continue the action against another defendant or other defendants.

(9) Judgment shall be entered by making a minute of record thereof.

13. Notice of intention to defend

(1) The defendant in every civil action shall be allowed 10 days after service of summons on defendant within which to deliver a notice of intention to defend, either personally or through defendant's attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.

(2) In an action against any Minister, Deputy Minister, Provincial Premier, officer or servant of the State, in such official capacity, the State or the administration of a province, the time allowed for delivery of notice of intention to defend shall not be less than 20 days after service of summons, unless the court has specially authorised a shorter period.

(3) (a) When a defendant delivers notice of intention to defend—

(i) the defendant shall therein give his or her full physical, residential or business address, postal address and where available, facsimile address and electronic mail address;

(ii) the defendant shall also indicate and select therein the preferred address for service on the defendant thereat of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by an order or practice of the court personal service is required; and

(iii) if a physical address is given by the defendant in the notice of intention to defend as the preferred address for the purpose of such service, in places where there are three of more attorneys or firms of attorneys practicing independently of one another, that address shall be situated within 15 kilometres of the courthouse.

[subrule (3) substituted by section 3 of Government Notice R611 of 2011 and by section 8 of Government Notice R507 of 2014]

(4) A party shall not by reason of delivery of notice of intention to defend be deemed to have waived any right to object to the jurisdiction of the court or to any irregularity or impropriety in the proceedings.

(5) Notwithstanding subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted. Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the request for judgment by default.

(6) After receipt of a notice of intention to defend, the plaintiff shall lodge forthwith with the registrar or clerk of the court the original summons and the return of service.

[subrule (6) added by section 8 of Government Notice R507 of 2014]

14. Summary judgment

(1) Where the defendant has served notice of intention to defend, 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.

[subrule (1) substituted by section 2 of Government Notice R318 of 2015]

(2) (a) The plaintiff shall within 15 days after the date of service of notice of intention to defend, deliver notice of application for summary judgment, together with an affidavit made by plaintiff or by any other person who can swear positively to the facts verifying the cause of action and the amount, if any, claimed and stating that in his or her opinion there is no *bona fide* defence to the action and that notice of intention to defend has been served solely for the purposes of delay.

(b) A copy of the served notice of intention to defend must be annexed to such affidavit.

(c) If the claim is founded on a liquid document a copy of the document must be annexed to such affidavit.

(d) The notice of application for summary judgment must state that the application will be set down for hearing on a stated day not being less than 10 days from the date of the delivery thereof.

[subrule (2) substituted by section 9 of Government Notice R507 of 2014 and by section 2 of Government Notice R318 of 2015]

(3) Upon the hearing of an application for summary judgment the defendant may—

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

(b) satisfy the court by affidavit (which shall be delivered 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 or herself or of any other person who can swear positively to the fact that defendant has a *bona fide* defence to the action, and such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

(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 orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it deems fit.

(5) If the defendant does not find security or satisfy the court as provided in subrule (3), the court may enter summary judgment in favour of the plaintiff.

(6) If on the hearing of an application made under this rule it appears–

(a) that any defendant is entitled to defend and any other defendant is not so entitled; or

(b) that the defendant is entitled to defend as to part of the claim,

the court shall—

(i) give leave to defend to a defendant so entitled thereto and give judgment against the defendant not so entitled; or

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

(iii) make both orders provided for in subparagraphs (i) and (ii).

(7) If the defendant finds security or satisfies the court as provided in subrule (3), the court shall give leave to defend, and the action shall proceed as if no application for summary judgment had been made.

(8) Leave to defend may be given unconditionally or subject to such terms as to security, time for delivery of pleadings, or otherwise, as the court deems fit.

(9) Where delivery of a declaration is required by these rules and the court, when giving leave to defend in terms of this rule, has not made an order for the delivery of such declaration within a specified time, such declaration shall be delivered within 15 days of the date leave to defend has been given.

(10) The court may at the hearing of an application for summary judgment make such order as to costs as it deems fit: Provided that if—

(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 or her 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

(b) in any case in which summary judgment was refused and in which the court after trial gives judgment for the plaintiff substantially as prayed, and the court finds that summary judgment should have been granted had the defendant not raised a defence which in its opinion was unreasonable, the court may order the plaintiff's costs of the action to be taxed as between attorney and client.

14A. Provisional sentence

(1) Where by law any person may be summoned to answer a claim made for provisional sentence, proceedings shall be instituted by way of a summons in accordance with Form 2A of Annexure 1, calling upon such person to pay the amount claimed or failing such payment to appear personally or by practitioner upon a day named in such summons not being less than 10 days after the service upon him or her of such summons, to admit or deny his or her liability.

(2) A summons provided for in subrule (1) shall be issued by the registrar or clerk of the court and rule 5 shall apply *mutatis mutandis*.

(3) Copies of all documents upon which the claim is founded shall be annexed to the summons and served with it.

(4) The plaintiff shall set down a case for hearing for provisional sentence not later than three days before the day upon which it is to be heard.

(5) (a) Upon the day named in a summons for provisional sentence the defendant may appear personally or by a practitioner to admit or deny his or her liability or may, not later than three days before the day upon which he or she is called upon to appear in court, deliver an affidavit setting forth the grounds upon which he or she disputes liability.

(b) In the event of delivery of an affidavit provided for in paragraph (a) the plaintiff shall be afforded a reasonable opportunity of replying thereto.

(6) if at a hearing for provisional sentence the defendant admits his or her liability or if he or she has previously filed with the clerk of the court an admission of liability signed by himself or herself and

witnessed by an attorney acting for him or her and not acting for the opposite party, or, if not so witnessed, verified by affidavit, the court may give final judgement against him or her.

(7) The court may hear oral evidence as to the authenticity of the defendant's signature, or that of his or her agent, to the document upon which claim for provisional sentence is founded or as to the authority of the defendant's agent.

(8) (a) Should the court refuse provisional sentence it may order the defendant to file a plea within a stated time and may make such order as to the costs of the proceedings as it deems fit.

(b) When an order provided for in paragraph (a) has been made the provisions of these rules as to pleading and the further conduct of trial actions shall *mutatis mutandis* apply.

(9) The plaintiff shall on demand furnish the defendant with security *de restituendo* to the satisfaction of the registrar or clerk of the court, against payment of the amount due under a judgment for provisional sentence.

(10) Any person against whom provisional sentence has been granted may enter into the principal case only if he or she shall have satisfied the amount of the judgment of provisional sentence and costs, or if the plaintiff on demand fails to furnish due security in terms of subrule (9).

(11) (a) A defendant entitled and wishing to enter into the principal case shall, within two months of the grant of provisional sentence, deliver notice of his or her intention to do so, and he or she shall deliver a plea within 10 days thereafter.

(b) Failing a notice or plea contemplated in paragraph (a) a provisional sentence shall *ipso facto* become a final judgment and the security given by the plaintiff shall lapse.

15. Declaration

(1) In all actions in which the plaintiff has issued a simple summons and the defendant has delivered a notice of intention to defend, the plaintiff shall, within 15 days after receipt of the notice of intention to defend, deliver a declaration.

(2) A declaration under subrule (1) shall set forth the nature of the claim, the conclusions of law which the plaintiff shall be entitled to deduce from the facts stated therein, and a prayer for the relief claimed.

(3) Where the plaintiff seeks relief in respect of several distinct claims founded upon separate and distinct facts, such claims and facts shall be separately and distinctly stated.

(4) *[subrule (4) deleted by section 3(a) of Government Notice R2 of 2016]*

(5) Where a plaintiff has been barred in terms of rule 21B(3) from delivering a declaration, the defendant may set the action down for hearing upon not less than 10 days' notice to the defaulting plaintiff, and apply for absolution from the instance or, after adducing evidence, for judgment, and the court may make such order thereon as it deems fit.

[subrule (5) substituted by section 3(b) of Government Notice R2 of 2016]

16. Further particulars

(1) Subject to subrules (2), (3) and (4) further particulars shall not be requested.

(2) (a) After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him or her to prepare for trial.

(b) A request contemplated in paragraph (a) shall be complied with within 10 days after receipt thereof.

(3) A request for further particulars for trial and the reply thereto shall be signed by an attorney or, if a party is unrepresented, by that party.

(4) If a party who has been requested in terms of this rule to furnish any particulars fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as it deems fit.

(5) A court shall at the conclusion of a trial *mero motu* consider whether the further particulars were strictly necessary, and shall disallow all costs of and flowing from any unnecessary request or reply, or both, and may order either party to pay the costs thereby wasted, on an attorney and client basis or otherwise.

17. Plea

(1) Where a defendant has delivered notice of intention to defend, the defendant shall within 20 days after the service upon him or her of a declaration or within 20 days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.

(2) The defendant shall in defendant's plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which defendant relies.

(3) (a) Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted.

(b) If any explanation or qualification of any denial is necessary, it shall be stated in the plea.

(4) (a) If by reason of any claim in reconvention, the defendant claims that on the giving of judgment on such claim, the plaintiffs claim will be extinguished either in whole or in part, the defendant may in the plea refer to the fact of such claim in reconvention and request that judgment in respect of the claim or any portion thereof which would be extinguished by such claim in reconvention, be postponed until judgment on the claim in reconvention.

(b) In the event of a request for postponement as provided for in paragraph (a) judgment on the claim shall, either in whole or in part, be so postponed unless the court, upon the application of any person interested, otherwise orders, but the court, if no other defence has been raised, may give judgment for such part of the claim as would not be extinguished, as if the defendant were in default of filing a plea in respect thereof, or may, on the application of either party, make such order as it deems fit.

(5) (a) Where a tender is pleaded as to part of the amount claimed, the plea shall specify the items of the plaintiff's claim to which the tender relates.

(b) A plea of tender shall not be admissible unless the amount of the alleged tender is secured to the satisfaction of the plaintiff on the delivery of the plea, if not already paid or secured to the plaintiff and the amount so secured shall be paid out to the plaintiff only on the order of the court or upon an agreement in writing of the parties.

(c) A tender after action brought shall imply an undertaking to pay the plaintiff's costs up to the date of the tender, unless such an undertaking is expressly disavowed at the time of such tender, and shall be valid without a securement of the amount at which such costs may be taxed.

(6) If the defendant fails to comply with any of the provisions of subrules (2), (3) and (5), the plea shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 60A.

18. Offer to settle

(1) (a) In any action in which a sum of money is claimed, either alone or with any other relief, the defendant may at any time unconditionally or without prejudice make an offer in writing to settle the plaintiffs claim.

(b) An offer to settle the plaintiff's claim shall be signed either by the defendant himself or herself or by his or her attorney if the latter has been authorised thereto in writing.

(2) (a) Where the plaintiff claims the performance of some act by the defendant, the defendant may at any time tender, either unconditionally or without prejudice, to perform such act.

(b) In the event of a tender contemplated in paragraph (a) the defendant shall, unless the act must be performed by him or her personally, execute an irrevocable power of attorney authorising the performance of such act which he or she shall deliver to the registrar or clerk of the court together with the tender.

[paragraph (b) substituted by section 10 of Government Notice R507 of 2014]

(3) Any party to an action who may be ordered to contribute towards an amount for which any party to the action may be held liable, or any third party from whom relief is being claimed in terms of rule 28A, may, either unconditionally or without prejudice, by way of an offer of settlement—

(a) make an offer in writing to that other party to contribute either a specific sum or in a specific proportion towards the amount to which the plaintiff may be held entitled in the action; or

(b) give an indemnity in writing to such other party, the conditions of which shall be set out fully in the offer of settlement.

(4) One of several defendants, as well as any third party from whom relief is claimed, may, either unconditionally or without prejudice, by way of an offer of settlement make an offer in writing to settle the plaintiffs or defendant's claim or tender to perform any act claimed by the plaintiff or defendant.

(5) Notice of any offer or tender in terms of this rule shall be given to all parties to the action and shall state—

(a) whether the same is unconditional or without prejudice as an offer of settlement;

(b) whether it is accompanied by an offer to pay all or only part of the costs of the party to whom the offer or tender is made, and further that it shall be subject to such conditions as may be stated therein;

(c) whether the offer or tender is made by way of settlement of both claim and costs or of the claim only; and

(d) whether the defendant disclaims liability for the payment of costs or for part thereof, in which case the reasons for such disclaimer shall be given, and the action may then be set down on the question of costs alone.

(6) A plaintiff or party referred to in subrule (3) may within 15 days after the receipt of the notice referred to in subrule (5), or thereafter with the consent in writing of the defendant or third party or order of court, on such conditions as may be considered to be fair, accept any offer or tender, whereupon the registrar or clerk of the court, having satisfied himself or herself that the requirements of this subrule have been complied with, shall hand over the power of attorney referred to in subrule (2) to the plaintiff or his or her attorney.

(7) In the event of a failure to pay or to perform within 10 days after delivery of the notice of acceptance of the offer or tender, the party entitled to payment or performance may, on 5 days' notice in writing to the party who has failed to pay or perform apply through the registrar or clerk of the court to a magistrate for judgment in accordance with the offer or tender as well as for the costs of the application.

(8) If notice of the acceptance of the offer or tender in terms of subrule (6) or notice in terms of subrule (7) is required to be given at an address other than that provided in rule 13(3), then it shall be given at an address, which is not a post office box or posts restante, within 15 kilometres of the office of the registrar or clerk of the court at which such notice must be delivered.

(9) If an offer or tender accepted in terms of this rule is not stated to be in satisfaction of a plaintiffs claim and costs, the party to whom the offer or tender is made may apply to the court, after notice of not less than 5 days, for an order for costs.

(10) No offer or tender in terms of this rule made without prejudice shall be disclosed to the court at any time before judgment has been given, and no reference to such offer or tender shall appear on any file in the office of the registrar or clerk of the court containing the papers in the said case.

(11) The fact that an offer or tender referred to in this rule has been made may be brought to the notice of the court after judgment has been given as being relevant to the question of costs.

(12) If the court has given judgment on the question of costs in ignorance of an offer or tender in terms of this rule and it is brought to the notice of the registrar or clerk of the court, in writing, within 5 days after the date of judgment, the question of costs shall be considered afresh in the light of the offer or tender: Provided that nothing in this subrule contained shall affect the court's discretion as to an award of costs.

(13) Any party who, contrary to this rule, personally or through any person representing him or her, discloses an offer or tender in terms of this rule to the magistrate or the court shall be liable to have costs given against him or her even if he or she is successful in the action.

(14) This rule shall apply *mutatis mutandis* where relief is claimed on motion or claim in reconvention or in terms of rule 28A.

18A. Interim payments

(1) In an action for damages for personal injuries or the death of a person, the plaintiff may, at any time after the expiry of the period for the delivery of the notice of intention to defend, apply to the court for an order requiring the defendant to make an interim payment in respect of his or her claim for medical costs and loss of income arising from his or her physical disability or the death of a person.

(2) Subject to rule 55 the affidavit in support of the application provided for in subrule (1) shall contain the amount of damages claimed and the grounds for the application, and all documentary proof or certified copies thereof on which the applicant relies shall accompany the affidavit.

(3) Notwithstanding the grant or refusal of an application for an interim payment, further such applications may be brought on good cause shown.

(4) If at the hearing of an application for interim payment, the court is satisfied that–

(a) the defendant against whom the order is sought has in writing admitted liability for the plaintiffs damages; or

(b) the plaintiff has obtained judgment against the respondent for damages to be determined,

the court may, if it deems fit but subject to subrule (5), order the respondent to make an interim payment of such amount as it deems fit, which amount shall not exceed a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff taking into account any contributory negligence, set off or counterclaim.

(5) No order shall be made under subrule (4) unless it appears to the court that the defendant is insured in respect of the plaintiffs claim or that he or she has the means at his or her disposal to enable him or her to make such a payment.

(6) The amount of any interim payment ordered shall be paid in full to the plaintiff unless the court otherwise orders.

(7) Where an application has been made under subrule (1), the court may prescribe the procedure for the further conduct of the action and in particular may order the early trial thereof.

(8) The fact that an order has been made under subrule (4) shall not be pleaded and no disclosure of that fact shall be made to the court at the trial or at the hearing of questions or issues as to the amount of damages until such questions or issues have been determined.

(9) In an action where an interim payment or an order for an interim payment has been made, the action shall not be discontinued or the claim withdrawn without the consent of the court.

(10) If an order for an interim payment has been made or such payment has been made, the court may, in making a final order, or when granting the plaintiff leave to discontinue his or her action or withdraw the claim under subrule (9) or at any stage of the proceedings on the application of any party, make an order with respect to the interim payment which the court may consider just and the court may in particular order that—

(a) the plaintiff repays all or part of the interim payment;

(b) the payment be varied or discharged; or

(c) a payment be made by any other defendant in respect of any part of the interim payment which the defendant, who made it, is entitled to recover by way of contribution or indemnity or in respect of any remedy or relief relating to the plaintiffs claim.

(11) The provisions of this rule shall apply *mutatis mutandis* to any claim in reconvention.

19. Exceptions and applications to strike out

(1) 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, 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.

(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 the court shall not grant the same unless it is satisfied that the applicant will be prejudiced in the conduct of his or her claim or defence if it be 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.

20. Claims in reconvention

(1) (a) The provisions of these rules shall apply equally to claims in reconvention except that it shall not be necessary to deliver a notice of intention to defend and that all times which, in the case of a claim in convention, run from the date of delivery of a notice of intention to defend, shall, in the case of a claim in reconvention, run from the date of delivery of such claim in reconvention.

(b) A defendant who counterclaims shall, together with such defendant's plea, deliver a claim in reconvention setting out the material facts thereof in accordance with rules 6 and 15 unless the plaintiff agrees, or if plaintiff refuses, the court allows it to be delivered at a later stage.

(c) A claim in reconvention shall be set out either in a separate document or in a portion of the document containing the plea, but headed "Claim in Reconvention", and it shall not be necessary to repeat therein the names or descriptions of the parties to the proceedings in convention.

(2) If the defendant is entitled to take action against any other person and the plaintiff, whether jointly, jointly and severally, separately or in the alternative, the defendant may with the leave of the court proceed in such action by way of a claim in reconvention against the plaintiff and such other persons, in such manner and on such terms as the court may direct.

(3) A defendant who has been given leave to counterclaim as provided for in subrule (2), shall add to the title of such defendant's plea a further title corresponding with what would be the title of any action instituted against the parties against whom such defendant makes claim in reconvention, and all further pleadings in the action shall bear such title, subject to the proviso to rule 6(2).

(4) A defendant may counterclaim conditionally upon the claim or defence in convention failing.

(5) A defendant delivering a claim in reconvention may by notice delivered therewith or within 5 days thereafter apply to the court to pronounce that the claim in reconvention exceeds its jurisdiction and to stay the action under section 47 of the Act.

(6) Where a court finds that the claim in reconvention exceeds its jurisdiction, the defendant may forthwith or by notice delivered within 5 days after such finding apply for stay of the action.

(7) If no application for stay is made or, having been made, has been dismissed, the court shall on the application of the plaintiff or otherwise of its own motion dismiss a claim in reconvention pronounced to exceed its jurisdiction, unless the defendant shall forthwith abandon under section 38 of the Act sufficient of such claim to bring it within the jurisdiction of the court.

(8) Where both the claim in convention and the claim in reconvention proceed to trial under rule 29 each action may be tried separately but judgment shall be given on both concurrently.

(9) A claim in reconvention may not be made by a defendant in reconvention.

(10) Where an action is withdrawn, stayed, discontinued or dismissed it shall nevertheless be competent to proceed separately with the claim in reconvention.

(11) If the defendant fails to comply with any of the provisions of this rule, the claim in reconvention shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 60A.

[rule 20 substituted by rule 2 of Government Notice R215 of 2014]

21. Replication and plea in reconvention

(1) Within 15 days after the service upon plaintiff of a plea and subject to subrule (2), the plaintiff shall where necessary deliver a replication to the plea and a plea to any claim in reconvention, which plea shall comply with rule 17.

(2) No replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading shall be necessary, and issue shall be deemed to be joined and pleadings closed in terms of rule 21A(b).

(3) (a) Where a replication or subsequent pleading is necessary, a party may therein join issue on the allegations in the previous pleading.

(b) To such extent as a party has not dealt specifically with the allegations in the plea or such other pleading, such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined.

(4) A plaintiff in reconvention may, subject to the provisions *mutatis mutandis* of subrule (2), within 10 days after the delivery of the plea in reconvention deliver a replication in reconvention.

(5) Further pleadings–

(a) may, subject to the provisions *mutatis mutandis* of sub-rule (2), be delivered by the respective parties within 10 days after the previous pleading delivered by the opposite party; and

(b) shall be designated by the names by which they are customarily known.

21A. Close of pleadings

Pleadings shall be considered closed if—

(a) either party has joined issue without alleging any new matter, and without adding any further pleading;

(b) the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed;

(c) the parties agree in writing that the pleadings are closed and such agreement is filed with the registrar or clerk of the court; or

(d) the parties are unable to agree as to the close of pleadings, and the court upon the application of a party declares them closed.

21B. Failure to deliver pleadings — barring

(1) Any party who fails to deliver a replication or subseguent pleading within the time stated in rule 21 shall be automatically barred.

(2) If any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may deliver a notice in writing calling upon that party to deliver such pleading within five days of receipt of such notice.

(3) Any party failing to deliver the pleading referred to in the notice mentioned in sub-rule (2) within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading and automatically barred: Provided that for the purposes of this rule the days from 16 December to 15 January, both inclusive, shall not be counted in the time allowed for the delivery of any pleading.

[rule 21B inserted by section 11 of Government Notice R507 of 2014 and substituted by section 4 of Government Notice R2 of 2016]

22. Set-down of trial

(1) The trial of an action shall be subject to the delivery by the plaintiff, after the pleadings have been closed, of notice of trial for a day or days approved by the registrar or clerk of the court: Provided that, if the plaintiff does not within 15 days after the pleadings have been closed deliver notice of trial, the defendant may do so.

(2) The delivery of notice of trial shall automatically operate to set down for trial at the same time any claim in reconvention made by the defendant.

[subrule (2) substituted by section 5(a) of Government Notice R2 of 2016]

(3) Delivery of notice of trial shall be effected at least 20 days before the day so approved.

(4) On receipt of an application for a trial date the registrar or clerk of the court shall draw the court file and take it to the magistrate to enable the magistrate to consider whether a pre-trial conference in terms of section 54 of the Act is necessary: Provided that the trial date shall be allocated within 10 days of receipt of the application for trial date.

(5) In divorce actions or actions for nullity of marriage, notwithstanding anything in this rule contained, the registrar of the court shall at the written request of the plaintiff set the action

down for hearing at the time and place and on a date to be fixed by the registrar of the court, if the defendant has—

(a) failed to deliver the notice of intention to defend; or

(b) failed to deliver a plea after receiving a notice in terms of rule 21B(2); or

(c) given written notice to the plaintiff and the registrar or clerk of the court that he or she does not intend defending the action, but no notice of such request or set down need be served on the defendant.

[subrule (5) substituted by section 12 of Government Notice R507 of 2014 and by section 5(b) of Government Notice R2 of 2016]

(6) When an undefended divorce action is postponed the action may be continued before another court notwithstanding that evidence has been given.

23. Discovery of documents

(1) (a) Any party to any action may require any other party thereto, by notice in writing, to make discovery on oath within 20 days of all documents and tape, electronic, digital or other forms of recordings relating to any matter in question in such action, whether such matter is one arising between the party requiring discovery and the party required to make discovery or not, which are or have at any time been in the possession or control of such other party.

(b) A notice in terms of paragraph (a) shall not, save with the leave of a magistrate, be given before the close of pleadings.

(2) (a) A party required to make discovery shall within 20 days or within the time stated in any order of a magistrate make discovery of such documents on affidavit similar to Form 13 of Annexure 1, specifying separately–

(i) such documents and tape, electronic, digital or other forms of recordings in his or her possession or that of his or her agent other than the documents and tape recordings mentioned in paragraph (b);

(ii) such documents and tape, electronic, digital or other forms of recordings in respect of which he or she has a valid objection to produce; and

(iii) such documents and tape, electronic, digital or other forms of recordings which he or she or his or her agent had but no longer has in his or her possession at the date of the affidavit.

(b) A document shall be deemed to be sufficiently specified if it is described as being one of a bundle of documents of a specified nature, which have been initialled and consecutively numbered by the deponent.

(c) Statements of witnesses taken for purposes of the proceedings, communications between attorney and client and between attorney and advocate, pleadings, affidavits and notices in the action shall be omitted from the schedules.

(3) If any party believes that there are, in addition to documents or tape, electronic, digital or other forms of recordings disclosed in terms of this rule, other documents, including copies thereof, or tape, electronic, digital or other forms of recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him or her to make the same available for inspection in accordance with subrule (6), or to state on oath within 10 days that such documents are not in his or her possession, in which event he or she shall state their whereabouts, if known to him or her.

[subrule (3) substituted by section 13 of Government Notice R507 of 2014]

(4) A document or tape, electronic, digital or other forms of recording not disclosed as requested in terms of this rule may not, save with the leave of the court granted on such terms as to it may seem

meet, be used for any purpose at the trial by the party who was obliged but failed to disclose it, provided that any other party may use such document or tape, electronic, digital or other forms of recording.

(5) (a) Where the Road Accident Fund as defined in the Road Accident Fund Act, 1996 (Act No. 56 of 1996), is a party to any action by virtue of the provisions of that Act, any party thereto may obtain discovery in the manner provided in paragraph (d) against the driver or owner, as defined in that Act, of that vehicle.

(b) Paragraph (a) shall apply *mutatis mutandis* to the driver of a vehicle owned by a person, state, government or body of persons referred to in the Road Accident Fund Act, 1996.

(c) Where the plaintiff sues as a cessionary, the defendant shall *mutatis mutandis* have the same rights under this rule against the cedent.

(d) A party requiring discovery in terms of paragraph (a), (b), or (c) shall do so by notice similar to Form 14 of Annexure 1.

(6) (a) Any party may at any time by notice similar to Form 15 of Annexure 1 require any party who has made discovery to make available for inspection any document or tape, electronic, digital or other form of recording disclosed in terms of subrules (2) and (3).

(b) A notice provided for in paragraph (a) shall require the party to whom notice is given to deliver to him or her within 5 days a notice similar to Form 15A of Annexure 1, stating a time within 5 days from the delivery of such latter notice when the document or tape, electronic, digital or other form of recording may be inspected at the office of his or her attorney or, if he or she is not represented by an attorney, at some convenient place mentioned in the notice, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade, business or undertaking, at their usual place of custody.

(7) (a) A party receiving a notice similar to Form 15A of Annexure 1 mentioned in subrule (6)(b) shall be entitled at the time therein stated, and for a period of 5 days thereafter during normal business hours and on any one or more of such days, to inspect such document or tape, electronic, digital or other form of recording and to take copies or transcriptions thereof.

(b) A party's failure to produce any such document or tape, electronic, digital or other form of recording required for inspection shall preclude him or her from using it at the trial, save where the court on good cause shown allows otherwise.

(8) If any party fails to give discovery as aforesaid or, having been served with a notice under subrule (6)(a), omits to give notice of a time for inspection as provided for in subrule 6(b) or fails to give inspection as required by that subrule, the party desiring discovery or inspection may apply to a court, which may order compliance with this rule and, failing such compliance, may dismiss the claim or strike out the defence.

(9) Any party to an action may after the close of pleadings give notice to any other party to specify in writing particulars of dates and parties of or to any document or tape, electronic, digital or other form of recording intended to be used at the trial of the action on behalf of the party to whom notice is given, and the party receiving such notice shall not less than 15 days before the date of trial deliver a notice–

(a) specifying the dates of and parties to and the general nature of any such document or tape, electronic, digital or other form of recording which is in his or her possession; or

(b) specifying such particulars as he or she may have to identify any such document or tape, electronic, digital or other form of recording not in his or her possession, at the same time furnishing the name and address of the person in whose possession such document or tape, electronic, digital or other form of recording is.

(10) (a) Any party proposing to prove any document or tape, electronic, digital or other form of recording at a trial may give notice to any other party requiring him or her within 10 days

after the receipt of such notice to admit that such document or tape, electronic, digital or other form of recording was properly executed and is what it purports to be.

(b) If a party receiving a notice under paragraph (a) does not within the said period admit as required, then as against such party the party giving the notice shall be entitled to produce the document or tape, electronic, digital or other form of recording specified at the trial without proof other than proof, if it is disputed, that the document or tape, electronic, digital or other form of recording is the document or tape, electronic, digital or other form of recording referred to in the notice and that the notice was duly given.

(c) If a party receiving a notice under paragraph (a) states that the document or tape, electronic, digital or other form of recording is not admitted as required, it shall be proved by the party giving the notice before he or she is entitled to use it at the trial, but the party not admitting it may be ordered to pay the costs of its proof.

(11) (a) Any party may give to any other party who has made discovery of a document or tape, electronic, digital or other form of recording notice to produce at the hearing the original of such document or tape, electronic, digital or other form of recording, not being a privileged document or tape, electronic, digital or other form of recording, in such party's possession.

(b) A notice under paragraph (a) shall be given not less than 5 days before the hearing but may, if the court so allows, be given during the course of the hearing.

(c) If any notice under paragraph (a) is so given, the party giving the same may require the party to whom notice is given to produce the said document or tape, electronic, digital or other form of recording in court and shall be entitled, without calling any witness, to hand in the said document or object, which shall be receivable in evidence to the same extent as if it had been produced in evidence by the party to whom notice is given.

(12) The court may, during the course of any proceeding, order the production by any party thereto under oath of such document or recording in his or her power or control relating to any matter in question in such proceeding as the court may deem fit, and the court may deal with such document or tape, electronic, digital or other form of recording, when produced, as it deems fit.

(13) (a) Any party to any proceeding may at any time before the hearing thereof deliver a notice similar to Form 15B of Annexure 1 to any other party in whose pleadings or affidavits reference is made to any document or tape, electronic, digital or other form of recording to produce such document or tape, electronic, digital or other form of recording for his or her inspection and to permit him or her to make a copy or transcription thereof.

(b) Any party failing to comply with a notice under paragraph (a) shall not, save with the leave of the court, use the relevant document or tape, electronic, digital or other form of recording in such proceeding provided that any other party may use such document or tape, electronic, digital or other form of recording.

(14) The provisions of this rule relating to discovery shall *mutatis mutandis* apply, in so far as the court may direct, to applications.

(15) After appearance to defend has been delivered, any party to any action may, for purposes of pleading, require any other party to make available for inspection within 5 days a clearly specified document or tape, electronic, digital or other form of recording in his or her possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof.

(16) For purposes of this rule a tape recording includes a sound track, film, magnetic tape, record or any other material on which visual images, sound or other information can be recorded.

24. Medical examinations, inspection of things, expert testimony and tendering in evidence any plan, diagram, model or photograph

(1) Subject to this rule, any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed may require any party claiming such damages or compensation whose state of health is relevant to the determination of such damages or compensation to submit to an examination by one or more duly registered medical practitioners.

(2) (a) Any party requiring another party to submit to an examination provided for in subrule (1) shall deliver a notice specifying the nature of the examination required, the person or persons by whom it will be conducted, the place where and the date (being not less than 15 days from the date of such notice) and time it is desired that such examination shall take place and requiring such other party to submit himself or herself for examination at such place, date and time.

(b) A notice referred to in paragraph (a) shall state that the other party may have his or her own medical adviser present at such examination, and shall be accompanied by a remittance in respect of the reasonable expense to be incurred by the other party in attending such examination.

(c) The amount of the expense referred to in paragraph (b) shall be tendered on the scale as if such person were a witness in a civil suit before the court: Provided that—

(i) if the other party is physically incapable of proceeding on his or her own to attend such examination, the amount to be paid to him or her shall include the cost of his or her travelling by motor vehicle and, where required, the reasonable cost of a person attending upon him or her,

(ii) where the other party will actually forfeit any salary, wage or other remuneration during the period of his or her absence from work he or she shall in addition to his or her expenses on the basis of a witness in a civil case be entitled to receive an amount not exceeding R75 per day in respect of the salary, wage or other remuneration which he or she will actually forfeit, and

(iii) any amount paid by a party in terms of this subrule shall be costs in the cause, unless the court otherwise directs.

(3) (a) Any party receiving a notice referred to in subrule (2)(a) shall, within 10 days of the service thereof, notify the party delivering it in writing of the nature and grounds of any objection which he or she may have in relation to–

(i) the nature of the proposed examination;

(ii) the person or persons by whom the examination is to be conducted;

(iii) the place, date or time of the examination; and

(iv) the amount of the expenses tendered to him or her,

and shall further—

(aa) in the case of his or her objection being to the place, date or time of the examination, suggest an alternative place, date or time for the examination or;

(bb) in the case of his or her objection being to the amount of the expenses tendered, furnish particulars of such increased amount as he or she may require.

(b) If a party receiving the notice referred to in subrule (2)(a) does not deliver any objection within the period referred to in paragraph (a), he or she shall be deemed to have agreed to the examination upon the terms set forth by the party giving the notice.

(c) If a party receiving an objection is of opinion that the objection or any part thereof is not well-founded he or she may apply to the court to determine the conditions upon which the examination, if any, is to be conducted.

(4) Any party to proceedings referred to in subrule (1), may at any time by notice require any party claiming any damages or compensation so referred to, to make available and to furnish copies thereof on request, in so far as he or she is able to do so, to such first-mentioned party within 15 days any medical report, hospital record, X-ray photograph, or other documentary information of a like nature relevant to the assessment of such damages or compensation.

(5) If it appears from any medical examination carried out either by agreement between the parties or in pursuance of any notice given in terms of this rule or any determination made by the court under subrule (3) that any further medical examination by any other medical practitioner is necessary or desirable for the purpose of obtaining full information on matters relevant to the assessment of such damages or compensation, any party may require a second and final examination in accordance with the provisions of this rule.

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

(6) If it appears that the state or condition of anything 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 thereto may at any stage thereof, not later than 15 days before the hearing, give notice requiring the party relying upon the existence of such state or condition of such thing or having such thing in his or her possession or under his or her control to make it available for inspection or examination and may in such notice require such party to have such thing or a fair sample thereof available for inspection or examination for a period not exceeding 10 days from the receipt of the notice.

(7) (a) A party requested under subrule (6) to submit a thing for inspection or examination may require the party so requesting to specify the nature of the inspection or examination for which such thing is to be submitted, and shall not be bound to submit such thing therefor if he or she will be materially prejudiced by reason of the effect thereof upon such thing.

(b) In the event of any dispute whether a thing should be submitted for inspection or examination, either party may on application to the court state that the inspection or examination has been required and objected to and the court may make such order as it may deem fit.

(8) Any party causing a medical examination or an inspection or examination to be made in terms of subrule (1) or (6) shall—

(a) cause the person making the medical examination or the inspection or examination to give a full report in writing of the results of such medical examination or inspection or examination, as the case may be, and the opinions that he or she formed as a result thereof on any relevant matter;

(b) after receipt of such report and upon request, furnish any other party with a complete copy thereof; and

(c) bear the expense of the carrying out of any such medical examination or inspection or examination and 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 or she shall—

(a) not less than 15 days before the hearing, have delivered notice of his or her intention to do so; and

(b) not less than 10 days before the hearing, have delivered a summary of such opinions of such expert and his or her reasons therefor.

(10) (a) No party to an action shall, except with the consent of all the other parties to the action or with the leave of the court, be entitled to tender in evidence any plan, diagram, model or photograph unless he or she shall not less than 10 days before the hearing of the action, have given every such other party notice of his or her intention to do so.

(b) A notice under paragraph (a) shall state that every party receiving it shall be entitled to inspect such plan, diagram, model or photograph and shall require such party, within 5 days of the receipt thereof, to state whether he or she has any objection to such plan, diagram, model or photograph being admitted in evidence without proof.

(c) If a party receiving a notice under paragraph (a) fails within the period specified in the notice to state whether he or she objects to the admission in evidence of the plan, diagram, model or photograph referred to in the notice, such plan, diagram, model or photograph, as the case may be, shall be received in evidence upon its mere production and without further proof thereof.

(d) If a party receiving a notice under paragraph (a) objects to the admission in evidence of such plan, diagram, model or photograph, such plan, diagram, model or photograph, as the case may be, may be proved at the hearing of the action and the party receiving the notice may be ordered to pay the costs of such proof.

25. Pre-trial procedure for formulating issues

(1) The request in writing referred to in section 54(1) of the Act shall be made in duplicate to the registrar or clerk of the court requesting the court to call a pre-trial conference and shall indicate generally the matters which it is desired should be considered at such conference.

(2) The registrar or clerk of the court shall place a request referred to in subrule (1) before a judicial officer who shall, if he or she decides to call a conference, direct the registrar or clerk of the court to issue the necessary process.

(3) The process for requiring the attendance of parties or their legal representatives at a pre-trial conference shall be by letter signed by the registrar or clerk of the court, together with a copy of the request, if any, referred to in subrule (1), which letter shall be delivered in accordance with the provisions of subrule 9(9)(a) at least 10 days prior to the date fixed for the said conference.

[subrule (3) substituted by section 14 of Government Notice R507 of 2014]

26. Subpoenae, interrogatories and commissions *de bene esse*

(1) Any party desiring the attendance of any person to give evidence at a trial, may as of right, without any prior proceeding whatsoever, sue out from the office of the registrar or clerk of the court one or more subpoenas for that purpose, each of which subpoena shall contain the names of not more than four persons, and the service thereof upon any person therein named shall be effected by the sheriff in the manner prescribed by rule 9, and the process of subpoenaing such witness shall correspond substantially to Form 24.

(2) (a) Where the evidence of any person is to be taken on commission before any Commissioner within the Republic, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.

(b) In the case of evidence taken on commission, such process shall be sued out by the party desiring the attendance of the witness and shall be issued by the Commissioner.

(3) If any witness has in his or her possession or control any deed, instrument, writing or thing which the party requiring his or her attendance desires to be produced in evidence, the subpoena shall specify such document or thing and require him or her to produce it to the court at the trial.

(4) There shall be handed to the sheriff together with a subpoena so may copies thereof as there are witnesses to be summoned and also the sum of money that the party for whom they are to be summoned considers that the sheriff shall pay or offer to the said witnesses for their conduct money.

(5) The court may set aside service of any subpoena if it appears that the witness was not given reasonable time to enable him or her to appear in pursuance of the subpoena.

27. Withdrawal, dismissal and settlement

(1) Where a summons has not been served or the period limited for delivery of notice of intention to defend has expired and no such notice has been delivered, the plaintiff may withdraw the summons by notice to the registrar or clerk of the court.

(2) Save as provided by subrule (1), a plaintiff or applicant desiring to withdraw an action or application against all or any of the parties thereto shall deliver a notice of withdrawal similar to Form 6 of Annexure 1.

(3) Any party served with notice of withdrawal may within 20 days thereafter apply to the court for an order that the party so withdrawing shall pay the applicant's costs of the action or application withdrawn, together with the costs incurred in so applying: Provided that where the plaintiff or applicant in the notice of withdrawal embodies a consent to pay the costs, such consent shall have the force of an order of court and the registrar or clerk of the court shall tax the costs on the request of the defendant.

(4) Any party may by delivery of notice abandon any specified claim, exception or defence pleaded by him or her and such notice shall be taken into consideration in taxing costs.

(5) If in any proceedings a settlement or an agreement to postpone or withdraw is reached, the attorney for the plaintiff or applicant shall inform the registrar or clerk of the court and other parties thereto by delivering a notice accordingly.

[subrule (5) substituted by section 2 of Government Notice R5 of 2015]

(6) (a) Application may be made to the court by any party at any time before judgment to record the terms of any settlement agreed to by the parties to a proceeding without entry of judgment: Provided that if the terms of settlement so provide, the court may make such settlement an order of court.

(b) Where any party to a settlement agreement is not present at the time when the terms of a settlement agreement are recorded or made an order of court, the presiding Magistrate may call for the verification of the authenticity of any signature of a party to a settlement agreement before recording the terms thereof or recording same as an order of court or granting judgment in terms thereof.

[subrule (6) substituted by section 2 of Government Notice R5 of 2015]

(7) An application referred to in sub-rule (6) shall be on notice, except when the application is made in court during the hearing of any proceeding at which the other party is represented or when a written waiver (which may be included in the statement of the terms of settlement) by such other party of notice of the application is produced to the court.

[subrule (7) substituted by section 2 of Government Notice R5 of 2015]

(8) At the hearing of an application referred to in sub-rule (6) the applicant shall lodge with the court a statement of the terms of settlement signed by all parties to the proceeding and, if no objection thereto be made by any other party, the court shall note that the proceeding has been settled on the terms set out in the statement and thereupon all further proceedings shall, save as provided in sub-rules (9) and (10), be stayed.

[subrule (8) substituted by section 2 of Government Notice R5 of 2015]

(9) (a) When the terms of a settlement agreement which was recorded in terms of subrule (6) provide for the future fulfilment by any party of stated conditions and such conditions have not been complied with by the party concerned, the other party may at any time on notice to all interested parties apply for the entry of judgment in terms of the settlement.

(b) An application referred to in this subrule shall be on notice to the party alleged to be in default, setting forth particulars of the breach by the respondent of the terms of settlement.

(10) After hearing the parties to an application referred to in subrule (9) the court may—

(a) dismiss the application;

(b) give judgment for the applicant as specified in the terms of settlement;

(c) set aside the settlement and give such directions for the further prosecution of the action as it may deem fit; or

(d) make such order as it may deem fit as to the costs of the application.

28. Intervention, joinder and consolidation of actions

(1) The court may, on application by a person desiring to intervene in any proceedings and having an interest therein, grant leave to such person to intervene on such terms as it may deem fit.

(2) The court may, on application by any party to any proceedings, order that another person shall be added either as a plaintiff or applicant or as a defendant or respondent on such terms as it may deem fit.

(3) A plaintiff may join several causes of action in the same action and the court may at the conclusion of the proceedings make such order as to costs as it deems fit.

(4) Where there has been a joinder of causes of action or of parties, the court may on the application of a defendant at any time order that separate trials be held either in respect of some or all of the causes of action or some or all of the parties; and the court may on such application make such order as it deems just and expedient.

[subrule (4) substituted by section 15 of Government Notice R507 of 2014]

(5) Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon—

(a) the said actions shall proceed as one action;

(b) the provision of this rule shall *mutatis mutandis* apply with regard to the action so consolidated; and

(c) the court may make any order which it deems fit with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.

28A. Third party procedure

(1) Where a party in any action claims—

(a) as against any other person not a party to the action (in this rule called a 'third party') that such party is entitled, in respect of any relief claimed against him or her, to a contribution or indemnification from such third party; or

(b) any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between such party and the third party, and should properly be

determined not only as between any parties to the action but also as between such parties and the third party or between any of them,

such party may issue a third party notice, similar to Form 43 of Annexure 1, which notice shall be served by the sheriff.

(2) (a) A third party notice shall state the nature and grounds of the claim of the party issuing the same, the question or issue to be determined, and any relief or remedy claimed.

(b) In so far as the statement of the claim in a third party notice and the question or issue are concerned, the rules with regard to pleadings and to summonses shall *mutatis mutandis* apply.

(3) (a) A third party notice, accompanied by a copy of all pleadings filed in the action up to the date of service of the notice, shall be served on the third party and a copy of the third party notice, without a copy of the pleadings filed in the action up to the date of service of the notice, shall be filed with the registrar or clerk of the court and served on all other parties before the close of pleadings in the action in connection with which it was issued.

(b) After the close of pleadings, a third party notice may be served only with the leave of the court.

(4) If a third party intends to contest the claim set out in the third party notice he or she shall deliver notice of intention to defend, as if to a summons, and immediately upon receipt of such notice, the party who issued the third party notice shall inform all other parties accordingly.

(5) A third party shall, after service upon him or her of a third party notice, be a party to the action and, if he or she delivers notice of intention to defend, shall be served with all documents and given notice of all matters as a party.

(6) A third party may—

(a) plead or except to the third party notice as if he or she were a defendant to the action; and

(b) by filing a plea or other proper pleading contest the liability of the party issuing the notice on any ground notwithstanding that such ground has not been raised in the action by such latter party:

Provided however that the third party shall not be entitled to claim in reconvention against any person other than the party issuing the notice save to the extent that he or she would be entitled to do so in terms of rule 20.

(7) The rules with regard to the filing of further pleadings shall apply to third parties as follows:

(a) In so far as the third party's plea relates to the claim of the party issuing the notice, the said party shall be regarded as the plaintiff and the third party as the defendant; and

(b) in so far as the third party's plea relates to the plaintiffs claim, the third party shall be regarded as a defendant and the plaintiff shall file pleadings as provided by the said rules.

(8) (a) Where a party to an action has against any other party (whether either such party became a party by virtue of any counter-claim by any person or by virtue of a third party notice or by any other means) a claim referred to in subrule (1), he or she may issue and serve on such other party a third party notice in accordance with the provisions of this rule.

(b) Save that no further notice of intention to defend shall be necessary, the same procedure shall apply as between the parties to a notice referred to in paragraph (a) and they shall be subject to the same rights and duties as if such other party had been served with a third party notice in terms of subrule (1).

(9) Any party who has been joined as such by virtue of a third party notice may at any time make application to the court for the separation of the trial of all or any of the issues arising by virtue of such third party notice and the court may upon such application make such order as it deems fit,

including an order for the separate hearing and determination of any issue on condition that its decision on any other issue arising in the action either as between the plaintiff and the defendant or as between any other parties, shall be binding upon the applicant.

(10) *[subrule (10) deleted by section 16 of Government Notice R507 of 2014]*

29. Trial

(1) Unless the court shall otherwise order, the trial of an action shall take place at the court-house from which the summons was issued.

(2) A witness who is not a party to the action may be ordered by the court–

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

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

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

(4) If, in any pending action, it appears to the court *mero motu* that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall at the request of any party make such order unless it appears that the questions cannot conveniently be decided separately.

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

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

(7) (a) If on the pleadings the burden of proof is on the plaintiff he or she shall first adduce his or her evidence.

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

(8) Where on the pleadings the burden of proof is on the defendant, the defendant shall first adduce his or her evidence, and if necessary the plaintiff shall thereafter adduce his or her evidence.

(9) (a) Where the burden of proving one or more of the issues is on the plaintiff and that of proving others is on the defendant, the plaintiff shall first call his or her evidence on any issues proof whereof is upon him or her, and may then close his or her case, and the defendant shall then call his or her evidence on all the issues.

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

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

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

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

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

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

(15) Where the court has authorised the evidence of any witness to be taken on interrogatories, such interrogatories shall be filed within 4 days of the order and cross-interrogatories within 5 days thereafter.

30. Record of proceedings in civil matters

(1) Minutes of record shall forthwith be made of—

(a) any judgment given by the court;

(b) any oral evidence given in court;

(c) any objection made to any evidence received or tendered; and

(d) the proceedings of the court generally including the record of any inspection *in loco*.

(2) The court shall mark each document put in evidence and note such mark on the record.

(3) The minutes and marks may be made by the registrar or clerk of the court and, save as provided in subrule (4), by the presiding judicial officer.

(4) The addresses of the parties, oral evidence given, any exception or objection taken in the course of the proceedings, the rulings and judgment of the court and any other portion of the proceedings, may be noted in shorthand (also in this rule referred to as "shorthand notes") either verbatim or in narrative form or recorded by mechanical, electronic or digital means.

(5) (a) Every person employed for the taking of shorthand notes or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his or her duties in writing take an oath or make an affirmation before a judicial officer in the following form:

> "I, _____ swear/solemnly and sincerely affirm and declare that I will faithfully, accurately and to the best of my ability take down in shorthand or cause to be recorded by mechanical, electronic or digital means, as directed by the judicial officer, the proceedings in any case in which I may be employed thereto as an officer of the court and that I will similarly, when required to do so, transcribe the same or, as far as I am able to do so, any other notes taken by any officer of the court or recorded by mechanical, electronic or digital means.".

(b) Such oath or affirmation shall be administered in the manner prescribed for the taking of an oath or affirmation.

(6) (a) Shorthand notes taken in terms of this rule shall be certified as correct by the shorthand writer and filed with the record of the case by the registrar or clerk of the court.

(b) Subject to the provisions of subrule (7), no shorthand notes taken in terms of this rule shall be transcribed unless a judicial officer so directs.

(c) The transcript of any shorthand notes transcribed in terms of paragraph (b) shall be certified as correct by the person making it and shall be filed with the record.

(7) (a) In any case in which no transcription was directed in terms of subrule (6) any person may on notice to the registrar or clerk of the court request a transcription of any shorthand note

taken by virtue of a direction given under subrule (4) and shall pay, in respect of proceedings made by mechanical, electronic or digital means, the full cost thereof as predetermined by agreement between the contractor concerned and the State for such transcription.

(b) One copy of the transcript of the shorthand notes referred to in paragraph (a) shall be supplied, free of charge, to the person at whose request the transcription was made.

(c) The original copy of the transcript of any shorthand notes referred to in paragraph (a), shall be certified as correct by the person making it and shall be filed with the record of the case.

(d) A sum sufficient to cover the approximate fee payable under paragraph (a) shall be deposited with the registrar or clerk of the court in advance.

(8) Subject to the provisions of subrule (11), any shorthand notes, and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.

(9) Subject to subrule (7)(b), a copy of any transcript made simultaneously with the transcription of proceedings made by mechanical, electronic or digital means may, upon application to the registrar or clerk of the court, be supplied to any person upon payment of the full cost thereof as predetermined by agreement between the contractor concerned and the State, in the case of a copy of a transcript referred to in subrules (6) and (7).

(10) Any reference in this rule to shorthand notes or to a transcription or transcript of such notes, or to a copy of such transcript, or to a person employed for the taking of such notes, or to a person transcribing such notes, shall be construed also as a reference to a record of proceedings made by mechanical, electronic or digital means, to a transcription or transcript of such record, or to a copy of such transcript, to a person employed for the making of such mechanical, electronic or digital record, or to a person transcribing such record, as the case may be.

(11) Any party may, not later than 10 days after judgment, or where the proceedings have been noted in shorthand or by mechanical, electronic or digital means, within 10 days after having been notified by the registrar or clerk of the court that the transcript of the shorthand notes or mechanical, electronic or digital record has been completed, apply to the court to correct any errors in the minutes of such proceedings or in the transcript of such shorthand notes or mechanical, electronic or digital record and the court may then correct any such errors.

(12) If, before the hearing of the application, all parties affected file a consent to the corrections claimed, no costs of such application shall be allowed; otherwise, costs shall be in the discretion of the court.

31. Adjournment and postponement

(1) The trial of an action or the hearing of an application or matter may be adjourned or postponed by consent of the parties or by the court, either on application or request or of its own motion.

(2) Where an adjournment or postponement is made *sine die*, any party may by delivery of notice of reinstatement set down the action, application or matter for further trial or hearing on a day generally or specially fixed by the registrar or clerk of the court, not earlier than 10 days after delivery of such notice.

(3) Any adjournment or postponement shall be on such terms as to costs and otherwise as the parties may agree to or as the court may order.

32. Non-appearance of a party – withdrawal and dismissal

(1) If a plaintiff or applicant does not appear at the time appointed for the trial of an action or the hearing of an application, the action or application may be dismissed with costs.

(2) If a defendant or respondent does not so appear, a judgment (not exceeding the relief claimed) may be given against him or her with costs, after consideration of such evidence, either oral or by affidavit, as the court deems necessary.

(3) The withdrawal or dismissal of an action or a decree of absolution from the instance shall not be a defence to any subsequent action, but if a subsequent action is brought for the same or substantially the same cause of action before payment of the costs awarded on such withdrawal, dismissal or decree of absolution, the court may on application, if it deems fit and if the said costs have been taxed and payment thereof has been demanded, order a stay of such subsequent action until such costs shall be paid and that the plaintiff shall pay the costs of such application.

33. Costs

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

(2) The costs of any application or order or issue raised by the pleadings may—

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

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

(c) may be reserved to be dealt with on the conclusion of the action,

but if no order is made, such costs shall be costs in the action.

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

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

(5) (a) In district court civil matters, the scale of fees to be taken by attorneys as between party and party shall—

(i) be that set out in Table A of Annexure 2 in addition to the necessary expenses;

(ii) in relation to proceedings under sections 65, 65A to 65M, inclusive, and 72 of the Act and all matters ancillary thereto be that set out in Parts I and II respectively of Table B of the said Annexure; and

(iii) in relation to proceedings under sections 74 and 74A to 74W, inclusive, of the Act and all matters ancillary thereto be that set out in Part III of Table B of the said Annexure.

(b) The scale of fees referred to in paragraph (a) (iii) of this subrule shall also be the scale of fees to be taken between attorney and client in relation to proceedings under sections 74 and 74A to 74W, inclusive, of the Act.

(c) In regional court civil matters, including matters in respect of causes of action in terms of section 29(1B)(a) of the Act, the scale of fees to be taken by attorneys as between party and party shall be that set out in scale D of Table A of Annexure 2 in addition to the necessary expenses.

[subrule (5) substituted by section 2 of Government Notice R760 of 2013]

(6) Save as to appearance in open court without counsel, the fees in subrule (5) shall be allowable whether the work has been done by an attorney or by his or her clerk, but shall, except in the case of the fee referred to in paragraph 13 of the general provisions under Table A of Annexure 2, be allowable only in so far as the work to which such fees have been allocated has in fact and necessarily been done.

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

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

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

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

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

(b) the plaintiff makes two or more claims which are not alternative claims; or

(c) the claim or defence is frivolous or vexatious; or

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

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

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

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

(11) The court may in its discretion order that the whole of the costs of an action (including the costs of any claim in reconvention) be paid by the parties in such proportions as it may direct.

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

(13) Where costs in convention and reconvention are awarded to different parties, the registrar or clerk of the court shall on taxation subject to any order which has been made by the court, allow each party to submit a bill of costs in respect of all costs and charges incurred in instituting and defending the claim in convention and reconvention, and defending the claim in convention and reconvention, respectively, and then to award the successful parties a proportionate amount of their costs in accordance with the award given by the court.

(14) (a) The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the registrar or clerk of the court without notice and inserted in the warrant.

(b) The costs payable by the judgment debtor in respect of any proceedings under section 65 or 65A to 65M inclusive, or 72 of the Act shall be inserted by the judgment creditor or his or her attorney on the face or reverse side of any process issued under either of those sections and assessed by the registrar or clerk of the court before issue.

(c) The registrar or clerk of the court may refuse to issue any process under section 65 or 65A to 65M, inclusive, or 72 of the Act in which the costs are not inserted or inserted but not according to tariff.

(15) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's delivery of notice of intention to defend or on the defendant's consent

to judgment before the time for such notice has expired, the party to whom such costs or expenses have been awarded shall deliver a bill of such costs or expenses and give at least 5 days' notice of taxation for an hour to be fixed (generally or specially) by the registrar or clerk of the court and he or she may include in such bill all such payments as have been necessarily and properly made by him or her.

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

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

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

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

(19) Where liability for costs is determined without judgment of the court by virtue of the provisions of these rules or by a settlement recorded in terms of rule 27(8), such costs shall be taxable by the registrar or clerk of the court as if they had been awarded by the court.

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

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

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

34. Fees of the sheriff

(1) The fees and charges to be taken by a sheriff who is an officer of the Public Service shall be those prescribed in Part I of Table C of Annexure 2 and in the case of any other sheriff those prescribed in Part II of the said Table and Annexure.

(2) Every account of fees or charges furnished by a sheriff shall contain the following note:

"You may require this account to be taxed and vouched before payment".

(3) (a) Any party having an interest may by notice in writing require the fees and charges claimed by or paid to the sheriff to be taxed by the registrar or clerk of the court, and may attend on such taxation.

(b) Upon a taxation referred to in paragraph (a) the sheriff shall vouch to the satisfaction of the registrar or clerk of the court all charges claimed by him or her.

(c) A fee for the attending of the taxation shall be allowed–

(i) to the sheriff if the sheriffs fees or charges are taxed and passed in full, as allowed for in Table C; and

(ii) to the interested party concerned if the sheriffs fees or charges are taxed but not passed in full, on the same basis as the fee allowed to the sheriff under subparagraph (i).

35. Review of taxation

(1) Any interested party may, within 15 days after he or she has knowledge thereof, bring before a judicial officer for review—

(a) the costs and expenses claimed in any undefended action;

(b) the assessment by the registrar or clerk of the court of any costs and expenses;

(c) the taxation by the registrar or clerk of the court of any costs awarded in any action or matter; or

(d) the taxation by the registrar or clerk of the court of any fees or charges of the sheriff.

(2) A review in terms of subrule (1) shall be on 10 days' notice to the party entitled to receive or liable to pay such costs and expenses or to the sheriff, as the case may be.

(3) Any party dissatisfied with the decision of the judicial officer as to any item or part of an item which was objected to before the registrar or clerk of the court, may, after notice to the other party, within 10 days of the decision require the judicial officer to state a case for the decision of a judge, which case shall embody all relevant findings of fact by the judicial officer: Provided that, save with the consent of such officer, no case shall be stated where the total of the amounts which he or she has disallowed or allowed, as the case may be, and which the dissatisfied party seeks to have allowed or disallowed, respectively, is less than R1000.

(4) Any party may within 10 days after the judicial officer has stated a case in terms of subrule (3) submit contentions in writing to the judicial officer.

(5) The judicial officer shall lay the case together with the written contentions submitted and his or her own report not later than 15 days after receipt of such contentions, before a judge of the court of appeal who may then—

(a) decide the matter upon the case and contentions so submitted, together with any further information which he or she may require from the judicial officer; or

(b) decide if after hearing the parties or their counsel or attorneys in chambers; or

(c) refer the case for decision to the court of appeal.

(6) The judge or the court deciding a matter in terms of subrule (5) may make such order as he or she or it deems fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge or the court as costs.

36. Process in execution

(1) The process for the execution of any judgment for the payment of money, for the delivery of property whether movable or immovable, or for ejectment shall be by warrant issued and signed by the registrar or clerk of the court and addressed to the sheriff.

(2) A process issued under subrule (1) may be sued out by any person in whose favour any such judgment shall have been given, if such judgment is not then satisfied, stayed or suspended.

(3) A process issued under subrule (1) may at any time, on payment of the fees incurred, be withdrawn or suspended by notice to the sheriff by the party who has sued out such process: Provided that a request in writing made from time to time by such party to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.

(4) Any alteration in a process issued under subrule (1) shall be initialled by the registrar or clerk of the court before it is issued by him or her.

(5) The registrar or clerk of the court shall at the request of a party entitled thereto reissue process issued under subrule (1) without the court having sanctioned the reissue.

(6) Any process issued under subrule (1) shall be invalid if a wrong person is named therein as a party, but no such process shall be invalid merely by reason of the misspelling of any name therein, or of any error as to date.

(7) Except where judgment has been entered by consent or default, process in execution of a judgment shall not be issued without leave of the court applied for at the time of granting the judgment, before the day following that on which the judgment is given.

37. Second or further warrants or emoluments attachment orders or garnishee orders

(1) Where any warrant or emoluments attachment order or garnishee order has been lost or mislaid, the court may on the application of any interested party and after notice to any person affected thereby, authorise the issue of a second or further warrant or emoluments attachment order or garnishee order, as the case may be, on such conditions as the court may determine and may make such order as to costs as it may deem fit.

(2) Notice of an application in terms of subrule (1) shall be on not less than 5 days' notice and shall state the reasons for the application.

(3) Sub-rules (1) to (6), inclusive, of rule 36 shall *mutatis mutandis* apply to any warrant or emoluments attachment order or garnishee order authorised by the court in terms of subrule (1) and in addition such warrant or garnishee order shall clearly be endorsed as follows:

"This second or further warrant _____ (*describe nature of warrant*) of emoluments attachment order or garnishee order (as the case may be) was authorised by the court on _____ and replaces any warrant _____ (*describe nature of warrant*) or emoluments attachment order or garnishee order (as the case may be) instead of which it is issued or reissued".

(4) (a) When any warrant or emoluments attachment order or garnishee order which has been replaced by a warrant or emoluments attachment order or garnishee order issued in terms of subrule (1) becomes available it shall immediately be cancelled by the registrar or clerk of the court by endorsing across the face thereof between two parallel transverse lines the following words:

"Cancelled. Fresh warrant _____ (*describe nature of warrant*) or emoluments attachment order or garnishee order (as the case may be) issued in terms of an order of the court dated _____ ".

(b) An endorsement in terms of paragraph (a) shall be signed and dated by the registrar or clerk of the court.

(5) The fact that a second or further warrant or emoluments attachment order or garnishee order has been issued and the date and amount thereof shall be endorsed on the record of the case by the registrar or clerk of the court.

38. Security by judgment creditor

(1) Where the sheriff is in doubt as to the validity of any attachment or contemplated attachment, he or she may require that the party suing out the process in execution shall give security to indemnify him or her.

(2) Unless the summons commencing the action has been served upon the defendant personally or he or she has delivered notice of intention to defend or notice of attachment has been given to him or her personally–

(a) if any property corporeal or incorporeal is attached in execution, the execution creditor shall, at least 10 days before the day appointed for the sale of such property give security to the

satisfaction of the sheriff for the payment to the execution debtor if such attachment be set aside of any sum which the execution debtor may in law be entitled to recover from the execution creditor for damages suffered by reason of such attachment or of any proceedings consequent thereon; and if security be not given the attachment shall cease to have effect: Provided that the execution debtor may by endorsement to that effect on the warrant of execution dispense with the giving of security under this rule; or

(b) if moneys are received by the sheriff under any form of execution otherwise than as the proceeds of the sale in execution of property in respect of the attachment of which security has been given in terms of paragraph (a), such moneys shall not be paid to the execution creditor until he or she has given security for the restitution of the full amount received by the sheriff if the attachment be thereafter set aside: Provided that the execution debtor may in writing over his or her signature dispense with the giving of such security.

(3) The prescribed fee for security given under this rule shall without taxation be recoverable as part of the costs of execution.

(4) Any surety bond or other document of security given in terms of this rule may be sued upon by the execution debtor without formal transfer thereof to him.

(5) This rule shall not apply where the party suing out the process in execution or the execution creditor is a Minister, a Deputy Minister or a Provincial Premier, in his or her official capacity, the State or a provincial government.

39. General provisions regarding execution

(1) Unless otherwise ordered by the court, the costs and expenses of issuing a warrant and levying execution shall be a first charge on the proceeds of the property sold in execution and may so far as such proceeds are insufficient be recovered from the execution debtor as costs awarded by the court.

(2) (a) Subject to any hypothec existing prior to attachment, all warrants of execution lodged with any sheriff appointed for a particular area or any other sheriff on or before the day immediately preceding the date of the sale in execution shall rank *pro rata* in the distribution of the proceeds of the goods sold in execution.

(b) The sheriff conducting a sale in execution shall not less than 10 days prior to the date of sale forward a copy of the notice of sale to all other sheriffs appointed for the area in which he or she has been instructed to conduct a sale in respect of the attached goods.

(c) The sheriff conducting a sale in execution shall accept from all other sheriffs appointed for that area or any other sheriff a certificate listing any attachment that has been made and showing the ranking of creditors in terms of warrants in the possession of those sheriffs.

(3) (a) Withdrawal of attachment shall be effected by note made and signed by the sheriff on the warrant of execution that the attachment is withdrawn, stating the time and date of the making of such note.

(b) The sheriff shall give notice in writing of a withdrawal of attachment and of the time and date thereof to the execution creditor, the execution debtor, all other sheriffs appointed for that area or any other sheriff who has submitted a certificate referred to in subrule (2)(c) and to any other person by whom a claim to the property attached has been lodged with him or her: Provided that the property shall not be released from attachment for a period of four months if a certificate referred to in subrule (2)(c) or an unsatisfied warrant of execution lodged under subrule (2) remains in the hands of the sheriff.

(4) If any property attached in execution is claimed by any third party as his or her property or any third party makes any claim to the proceeds of property so attached and sold in execution, the sheriff shall, subject to subrule (5), deal with such matter as provided in rule 44.

(5) Notwithstanding a claim to property referred to in subrule (4) by a third party the sheriff shall attach such property if he or she has not yet done so and the property shall remain under

attachment pending the outcome of interpleader proceedings unless sooner released from attachment upon order of the court or otherwise, and rule 41 (7) shall *mutatis mutandis* apply to property so attached.

(6) (a) On completion of any sale in execution of property, whether movable or immovable, the sheriff shall attach to his or her return a vendue roll showing details of the property sold, the prices realised, and, where known, the names and addresses of the purchasers and an account of the distribution of the proceeds and shall send a copy of such vendue roll to all other sheriffs appointed for that area who have submitted certificates referred to in subrule (2)(c).

(b) Where a warrant of execution has been lodged with the sheriff conducting a sale in execution by any other sheriff referred to in sub-rule (2)(a), the sheriff conducting the sale shall make payment in terms of a distribution account to any sheriff who submitted a certificate referred to in subrule (2)(c) in respect of that sale.

(c) Payment in terms of a distribution account shall only be made after the distribution account has lain for inspection for a period of 15 days after the sheriff who has lodged a warrant of execution with the sheriff who conducted the sale, has received a copy of the distribution account.

(7) No sheriff or person on behalf of the sheriff shall at a sale in execution purchase any of the property offered for sale either for himself or herself or for any other person.

40. Execution against a partnership

(1) Where a judgment debtor is a partner in a firm and the judgment is against him or her for a separate debt, the court may, after notice to the judgment debtor and to his or her firm, appoint the sheriff as receiver to receive any moneys payable to the judgment debtor in respect of his or her interests in the partnership.

(2) An appointment in terms of subrule (1) shall, until the judgment debt is satisfied, operate as an attachment of the interest of the judgment debtor in the partnership assets and the sheriff so appointed shall notify all other sheriffs appointed for that area of such appointment.

(3) Where a judgment is against a firm, the partnership property shall first be exhausted, so far as it is known to the judgment creditor, before the judgment is executed against the separate property of the partners.

41. Execution against movable property

(1) (a) The sheriff shall, upon receiving a warrant directing him or her to levy execution on movable property, repair to the residence, place of employment or business of the execution debtor or to another place pointed out by the execution creditor where movable property is to be attached as soon as circumstances permit, and there demand payment of the judgment debt and costs or else require that so much movable property be pointed out as the said sheriff may deem sufficient to satisfy the warrant, and if such last-mentioned request be complied with the sheriff shall make an inventory and valuation of such property.

(b) If the property pointed out in terms of paragraph (a) is insufficient to satisfy the warrant, the sheriff shall nevertheless proceed to make an inventory and valuation of so much movable property as may be pointed out in part execution of the warrant.

(c) If the execution debtor does not point out any property as required in terms of subrule (1), the sheriff shall immediately make an inventory and valuation of so much of the movable property belonging to the execution debtor as he or she may deem sufficient to satisfy the warrant or of so much of the movable property as may be found in part execution of the warrant.

(d) If on demand the execution debtor pays the judgment debt and costs, or part thereof, the sheriff shall endorse the amount paid and the date of payment on the original and copy of the warrant, which endorsement shall be signed by him or her and counter-signed by the execution debtor or his or her representative.

(2) So far as may be necessary to the execution of any warrant referred to in subrule (1), the sheriff may open any door on any premises, or of any piece of furniture, and if opening is refused or if there is no person there who represents the person against whom such warrant is to be executed, the sheriff may, if necessary, use force to that end.

(3) The sheriff shall exhibit the original warrant of execution and shall hand to the execution debtor or leave on the premises a copy thereof.

(4) As soon as the requirements of this rule have been complied with by the sheriff, the goods inventoried by him or her shall be deemed to be judicially attached.

(5) The sheriff shall hand a copy of an inventory made under this rule, signed by himself or herself to the execution debtor or leave the same on the premises, which copy shall have subjoined thereto a notice of the attachment.

(6) Where specie and documents are found and attached, the number and kinds thereof shall be specified in the inventory and any such specie or documents shall thereupon be sealed and removed to the office of the sheriff where it shall be safely stored.

(7) (a) The execution creditor or his or her attorney shall, where movable property, other than specie or documents, has been attached, after notification of such attachment, instruct the sheriff in writing, whether the property shall be removed to a place of security or left upon the premises in the charge and custody of the execution debtor or in the charge and custody of some other person acting on behalf of the sheriff: Provided that the execution creditor or his or her attorney may, upon satisfying the registrar or clerk of the court, who shall endorse his or her approval on the document containing the instructions, of the desirability of immediate removal upon issue of the warrant of execution, instruct the sheriff in writing, to remove immediately from the possession of the execution debtor all or any of the articles reasonably believed by the execution creditor to be in the possession of the execution debtor.

(b) In the absence of any instruction under paragraph (a), the sheriff shall leave the movable property, other than specie or documents, on the premises and in the possession of the person in whose possession the said movable property is attached.

(c) Where a sheriff is instructed to remove the movable property, he or she shall do so without any avoidable delay, and he or she shall in the mean time leave the same in the charge or custody of some person who shall have the charge or custody in respect of the goods on his or her behalf.

(d) Any person in whose charge or custody movable property which has been attached, has been left, shall not use, let or lend such property, or permit it to be used, let or lent, nor shall he or she in any way do anything which will decrease its value and, if the property attached shall have produced any profit or increase, the custodian shall be responsible for any such profit or increase in like manner as he or she is responsible for the property originally attached.

(e) If a person in whose charge or custody movable property has been left, other than the execution debtor, makes a default in his or her duty he or she shall not be entitled to recover any remuneration for his or her charge and custody.

(f) (i) Unless an order of court is produced to the sheriff requiring him or her to detain any movable property under attachment for such further period as may be stipulated in such order, the sheriff shall, if a sale in respect of such property is not pending, release from attachment any such property which has been detained for a period exceeding four months.

(ii) If such order was made on application made *ex parte*, such order shall not be subject to confirmation.

(iii) In the event of a claimant lodging an interpleader claim with the sheriff in accordance with rule 44, the period of four months referred to in paragraph (i) shall be suspended from the date on which the claimant delivers his or her affidavit to the sheriff until the final adjudication of the interpleader claim, including any review or appeal in respect of such interpleader claim.

(8) (a) Any movable property sold in execution of process of the court shall be sold publicly and for cash by the sheriff who removed the goods in terms of subrule (7)(b) or, with the approval of the magistrate, by an auctioneer or other person appointed by the sheriff, to the highest bidder at or as near to the place where the same was attached or to which the same had been so removed as aforesaid as may be advantageous for the sale thereof.

(b) The execution creditor shall, after consultation with the sheriff, prepare a notice of sale and furnish two copies thereof to the sheriff in sufficient time to enable one copy to be affixed not later than 10 days before the day appointed for the sale on the notice board or door of the court-house or other public building in which the said court is held and the other at or as near as may be to the place where the said sale is actually to take place.

(c) If in the opinion of the sheriff the value of the goods attached exceeds R5 000 he or she shall indicate some local or other newspaper circulating in the district and require the execution creditor to publish the notice of sale in that newspaper not later than 10 days before the date appointed for the sale in addition to complying with paragraph (b) and to furnish him or her with a copy of the edition of the paper in which the publication appeared not later than the day preceding the date of sale.

(9) The day appointed for a sale in execution shall be not less than 15 days after attachment: Provided that where the goods attached are of a perishable nature, or with the consent of the execution debtor, the court may, upon application, reduce any period referred to in this subrule or subrule (8) to such extent and on such conditions as it may deem fit.

(10) A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the said warrant and any warrant referred to in rule 39(2) and the costs of the sale.

(11) (a) Should the sheriff have a balance in hand after satisfaction of the claim of the execution creditor and of all warrants of execution lodged with him or her on or before the day immediately preceding the date of the sale and of all costs he or she shall pay the same to the execution debtor if he or she can be found, otherwise he or she shall pay such balance into court.

(b) The balance paid into court in terms of paragraph (a), if not disposed of before the expiration of three years, shall be paid into the State Revenue Fund after three months' notice of such intention has been given to the persons concerned, whereafter any application for the refund of such balance shall be directed to the State Revenue Fund by a person concerned.

42. Execution against movable property (continued)

(1) Where the property attached in execution is a lease or a bill of exchange, promissory note, bond or other security for the payment of money–

(a) attachment shall not be complete until after notice to the lessor, lessee or person liable on the bill of exchange or other security, as the case may be; and

(b) the attachment shall not be valid unless and until the instrument in question is taken possession of by the sheriff and notice has, in the case of a registered lease or bond, been given to the registrar of deeds concerned.

(2) Where the movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person or is under the supervision or control of a third person–

(a) attachment shall be effected by service by the sheriff on the execution debtor and on such third person of notice of the attachment with a copy of the warrant of execution, which service may be effected as if such notice was a summons: Provided that where service cannot be effected in any manner prescribed the court may make an order allowing service to be effected in the manner stated in the order; and

(b) the sheriff may, upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser, seller or such other third person, enter upon the premises where such property is and make an inventory and valuation of the said property.

(3) The method of attachment of property under section 32 of the Act shall *mutatis mutandis* be the same as that of attachment in execution.

43. Execution against immovable property

(1) A warrant of execution against immovable property shall contain a full and complete description of the nature and situation (including the address) of the immovable property to enable it to be traced and identified by the sheriff, and shall be accompanied by sufficient information to enable the sheriff to give effect to the provisions of subrule (2).

(2) (a) The mode of attachment of immovable property shall be by notice by the sheriff served in like manner as a summons together with a copy of the warrant of execution upon the execution debtor as owner thereof, upon the registrar of deeds or other officer charged with the registration of such immovable property, upon all registered holders of bonds (other than the execution creditor) registered against the property attached and, if the property is in the occupation of some person other than the execution debtor, also upon such occupier, and upon the local authority in whose area the property is situated.

(b) If the period of attachment is extended as referred to in section 66(5) of the Act, notice of such extension shall be given to the persons referred to in paragraph (a) in the manner referred to in that paragraph.

(c) If the attachment of immovable property lapses in terms of section 66(4) or section 66(5) of the Act, the Sheriff shall notify the persons who are entitled to receive notice in terms of paragraph (a) that such attachment has lapsed.

(3) After the attachment of immovable property the sheriff shall ascertain and record whether the property is subject to any claim preferent to that of the execution creditor and, if that be the case, he or she shall thereupon notify the execution creditor of the existence of any such claim to enable the latter to give notice in terms of section 66(2) of the Act.

(4) The sheriff may by notice, served in like manner as a summons, require the execution debtor to deliver to him or her all documents in his or her possession or under his or her control relating in any way to his or her title to attached immovable property.

(5) Where attached immovable property is situate in a district other than that in which the judgment was given, the party requiring execution shall forward the warrant of execution to a sheriff of the court of the district in which the property is situate, who shall proceed to attach the property in the manner provided in this rule.

(6) (a) The sheriff shall appoint a day and place for the sale of attached immovable property which day shall, except by special leave of the court, be not less than one month after service of the notice of attachment.

(b) The execution creditor shall, after consultation with the sheriff, prepare a notice of sale containing a short description of the attached immovable property and its situation, the

date, time and place for the holding of the sale and the material conditions thereof and furnish the sheriff with as many copies of the said notice as he or she may require.

(c) The execution creditor shall publish a notice prepared in terms of paragraph (b) once in a newspaper registered with the Audit Bureau of Circulations of South Africa circulating in the district in which the immovable property is situated and in the *Government Gazette* not less than 5 days and not more than 15 days before the date of the sale and provide the sheriff, by hand or by facsimile, with one photocopy of each of the notices published in the newspaper and the *Government Gazette*, respectively, or, in the case of the *Government Gazette*, the number of the *Government Gazette* in which the notice was published.

(d) Not less than 10 days prior to the date of the sale in execution of immovable property the sheriff shall forward by registered post a copy of the notice of sale prepared in terms of paragraph (b) to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property whose address is reasonably ascertainable.

(e) Not later than 10 days before the day appointed for a sale in execution of immovable property the sheriff shall affix one copy of the notice of the sale on the notice board or door of the court-house or other public building in which the said court is held and one copy at or as near as may be to the place where the said sale is actually to take place.

(7) (a) The conditions of sale for a sale in execution of immovable property shall be prepared by the execution creditor and shall, *inter alia*, provide for payment by the purchaser of interest on the purchase price from the date of sale of the property to date of payment of the purchase price.

(b) The execution creditor shall not less than 20 days prior to the appointed date of a sale in execution of immovable property, deliver two copies of the conditions of sale to the sheriff and one copy thereof to each person who may be entitled to notice of the sale.

(c) Any interested party may not less than 15 days prior to the appointed date of a sale in execution of immovable property, upon 24 hours' notice to such other persons as may have received a copy of such conditions of sale and to the execution creditor, apply to a judicial officer for a modification of such conditions of sale and such judicial officer may make such order as he or she may deem fit.

(8) The execution creditor may appoint the conveyancer for the purposes of transfer of immovable property sold in execution.

(9) (a) The execution creditor or any person having an interest in the due and proper realisation of attached immovable property may, by notice given to the sheriff within 15 days after attachment, but subject to the provisions hereinafter contained, require that such property shall be sold by an auctioneer in the ordinary course of business and may in such notice nominate the auctioneer to be employed.

(b) (i) Where a notice in terms of paragraph (a) is given by any person other than the execution creditor, such notice shall be accompanied by the deposit of a sum sufficient to cover the additional expense of sale by an auctioneer in the ordinary course of business, and in default of such a deposit such notice shall be void.

(ii) A notice in terms of paragraph (a) shall lapse if in fact the services of an auctioneer are not obtainable.

(iii) If after satisfying the claim of the execution creditor and all warrants of execution lodged with the sheriff on or before the day immediately preceding the date of the sale and all costs there are surplus proceeds of such property, such deposit shall be returned to the depositor, but if there is not such a surplus such deposit shall, as far as may be necessary, be applied in payment of the auctioneer's fees and expenses.

(c) If two or more notices in terms of paragraph (a) are given, the first shall have the preference.

(10) A sale in execution of immovable property shall be by public auction without reserve and the property shall, subject to the provisions of section 66(2) of the Act and to the other conditions of sale, be sold to the highest bidder.

(11) A sale in execution of immovable property shall be held at a place deemed fit by the sheriff or, for good cause shown, at such other place as the magistrate may determine.

(12) Where immovable property is situate in a district other than that in which the judgment was given, the sale in execution of the property shall be effected by a sheriff of the court of the district in which it is situate in the manner provided in this rule.

(13) (a) The sheriff shall give transfer of immovable property sold in execution to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.

[paragraph (a), previously unnumbered, numbered by section 2 of Government Notice R685 of 2012]

(b) If the purchaser fails to carry out his or her obligations under the conditions of sale, the sale may be cancelled by a magistrate in chambers on the request and report of the sheriff conducting the sale, after due notice to the purchaser, and the property may again be put up for sale.

[paragraph (b) added by section 2 of Government Notice R685 of 2012]

(14) (a) Subject to paragraph (b), all moneys in respect of the purchase price of immovable property sold in execution shall be paid to the sheriff of the court and not to the execution creditor or any other person on his or her behalf, and the sheriff shall retain such moneys in trust until transfer has been given to the purchaser.

(b) The sheriff shall as soon as possible after the sale in execution of immovable property prepare in order of preference as provided in this rule, a plan of distribution of the purchase money received and such plan shall lie in his or her office for inspection of persons having an interest therein for a period of 15 days after the date of sale, unless all such persons inform the sheriff before the expiration of that period in writing that they have no objection to such plan, and a copy thereof shall be lodged with the registrar or clerk of the court and with any other sheriff who submitted a certificate referred to in rule 39(2)(c).

(c) After deduction from the purchase money of the costs of execution, the following shall be the order of preference:

(i) The claims of any creditors ranking in priority to the judgment debt in their legal order of preference;

(ii) the claim of the execution creditor to the extent of his judgment plus costs and the claims of other execution creditors who have lodged warrants of execution in terms of rule 39(2) plus costs; and

(iii) the claims of creditors secured in respect of that property in their legal order of preference.

(d) Any person having an interest in a plan prepared in terms of paragraph (b) and objecting thereto shall, within a period of 10 days after the expiration of the period referred to in paragraph (b), give notice in writing to the sheriff, the registrar or clerk of the court and all other persons having an interest therein of the particulars of his objection and may, if the grounds for his or her objection are not removed within 15 days after the expiration of the first-mentioned period, bring such plan before the court for review.

(e) A review under paragraph (d) shall be on 5 days' notice to the persons mentioned in that paragraph: Provided that if such notice is not given within 20 days after the expiration

of the period of 15 days mentioned in that paragraph, the objection will be deemed to be withdrawn.

(f) The court, on review, may hear and determine the matter in dispute in a summary manner and may thereafter amend or confirm the plan of distribution or may make such order as it may deem fit.

(g) if–

(i) no objection be lodged to a plan of distribution; or

(ii) the persons having an interest signify their concurrence therewith; or

(iii) an objection be lodged to such plan and notice in accordance with the proviso in paragraph (e) be not duly given; or

(iv) the plan be amended or confirmed on review,

the sheriff shall pay out the moneys retained by the sheriff in trust in terms of paragraph (a) in accordance with the plan of distribution, and any surplus shall, subject to section 71 of the Act, be paid to the execution debtor, if he or she can be found: Provided that if the sheriff is an officer of the Public Service and has certified that–

(aa) no objection has been lodged against such plan; or

(bb) all the persons having an interest therein have informed him or her that they have no objection; or

(cc) an objection has been lodged against such plan and notice in accordance with the proviso in paragraph (e) has not been given; or

(dd) the plan has been amended in accordance with an order of the court or has been confirmed on review,

such amount shall be paid out by the sheriff or any person authorised thereto by him or her in accordance with the plan of distribution so certified.

(h) Rule 41(11) shall, subject to section 71 of the Act, *mutatis mutandis* apply to any surplus amount not paid out to an execution debtor under paragraph (g).

(15) The sheriff shall, when notifying the result of the execution in terms of rule 8 (3) (a), also show the disposal of the amount recovered by him or her, and the notification to the registrar or clerk of the court shall be supported by a receipt for every amount paid out by him or her.

43A. Enforcement of foreign civil judgments

(1) Whenever a certified copy of a judgment referred to in section 3(1) of the Enforcement of Foreign Civil Judgments Act, 1988 (Act No. 32 of 1988), is filed with the registrar or clerk of the court in the Republic, such registrar or clerk of the court shall register that judgment by numbering it with a consecutive number for the year during which it is filed and by noting the particulars in respect of the judgment referred to in paragraphs (a), (b) and (c) of the said section on the case cover.

(2) A judgment creditor shall, together with the certified copy of a judgment referred to in subrule (1)—

(a) file an affidavit made by himself or herself or by somebody else who can confirm the following facts stating—

(i) the amount of interest due, the appropriate rate of interest and how the amount of interest has been calculated; and

(ii) whether any amount has been paid by the judgment debtor since judgment, and, if so, whether such amount has been deducted from the capital amount of the judgment debt or from the interest or costs, as the case may be; and

(b) if any amount payable under the judgment is expressed in a currency other than the currency of the Republic, file a certificate issued by a banking institution registered in terms of section 4 of the Banks Act, 1965 (Act No. 23 of 1965), stating the rate of exchange prevailing at the date of the judgment.

(3) A notice issued in terms of section 3(2) of the Enforcement of Foreign Civil Judgments Act, 1988 (Act No. 32 of 1988), shall contain—

(a) the consecutive number referred to in subrule (1);

(b) the date on which the judgment was registered;

(c) the balance of the amount payable under the judgment;

(d) the taxed costs awarded by the court of the designated country;

(e) the interest, if any, which by the law or by order of the court of the designated country concerned is due on the amount payable under the judgment up to the time of registration of the judgment;

(f) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining a certified copy of the judgment;

(g) the names of the parties concerned; and

(h) the name of the court where the judgment was given.

44. Interpleader claims

(1) (a) Where any third party (hereinafter in this subrule referred to as the "applicant") has in his or her custody or possession property to which two or more persons (hereinafter in this rule referred to as the "claimants") make adverse claims the applicant may sue out a summons in the form prescribed for that purpose in Annexure 1 calling upon the claimants to appear and state the nature and particulars of their claims and have such claims adjudicated upon.

(b) If the property in question consists of money, the applicant shall when suing out the summons pay the amount thereof into court.

(c) The applicant shall annex to a summons referred to in paragraph (a) an affidavit setting out that—

(i) he or she claims no interest in the subject matter in dispute other than for charges or costs;

(ii) he or she is not colluding with any of the claimants; and

(iii) in the case of property other than money paid into court in terms of paragraph (b), he or she is willing to deal with the property as the court may direct.

(2) (a) Where any person other than the execution debtor (hereinafter in this subrule referred to as the "claimant") makes any claim to or in respect of property attached by the sheriff in execution of any process of the court or where any such claimant makes any claim to the proceeds of property so attached and sold in execution the sheriff shall require from such claimant to lodge an affidavit in triplicate with the sheriff within 10 days from the date on which such claim is made, setting out–

(i) the claimant's full names, identity number and occupation;

(ii) the claimant's residential address and business address or address of employment; and

(iii) the nature and grounds of his or her claim substantiated by any relevant evidence.

(b) (i) Within 15 days after the date on which the claim is made the sheriff shall notify the execution creditor and all other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the claim.

(ii) Simultaneously with the notice referred to in subparagraph (i), the sheriff shall deliver one copy of the claimant's affidavit to the execution creditor and one to the execution debtor.

(c) (i) The execution creditor shall, within 10 days of receipt of notice of the claimant's claim and affidavit, advise the sheriff in writing whether he or she admits or rejects the claimant's claim.

(ii) If the execution creditor gives the sheriff notice within the period stated in paragraph (i) that he or she admits the claim, he or she shall not be liable for any costs, fees or expenses afterwards incurred and the sheriff may withdraw from possession of the property claimed.

(3) (a) If the execution creditor gives the sheriff notice that he or she rejects the claim, the sheriff shall within 10 days from date of such notice prepare and issue out a summons in the form prescribed for that purpose in Annexure 1 calling upon the claimant and the execution creditor to appear on the date specified in the summons to have the claim of the claimant adjudicated upon.

(b) The sheriff shall notify all other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the date specified in the summons sued out under paragraph (a) and of the judgment of the court.

(c) The registrar or clerk of the court shall sign and issue the summons.

(4) If any claimant does not appear in pursuance of any summons sued out under this rule or appears but fails or refuses to comply with any order made by the court after his or her appearance, the court may make an order declaring him or her and all persons thereafter claiming under him or her barred from making any claim in respect of the subject matter referred to in the summons against the applicant or the sheriff.

(5) If any claimant referred to in this rule appears in pursuance of any summons sued out under this rule, the court may–

(a) order him or her to state, orally or in writing on oath or otherwise, as the court may deem expedient, the nature and particulars of his or her claim;

(b) order that the matters in issue shall be tried on a day to be appointed for that purpose and, if any such claimant is a claimant referred to in subrule (1), order which of the claimants shall be plaintiff and which defendant for the purpose of trial; or

(c) try the matters in dispute in a summary manner.

(6) Where the matters in issue are tried, whether summarily or otherwise, the provisions of rule 29 as to the trial of an action shall *mutatis mutandis* apply.

(7) The court may, in and for the purposes of any interpleader proceedings, make such order as to any additional expenses of execution occasioned by the claim and as to payment of costs incurred by the applicant or sheriff as it may deem fit.

45. Enquiry into financial position of judgment debtor

(1) A notice referred to in section 65A(1) of the Act calling upon a judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as the representative of the juristic person and in his or her personal capacity to appear before the court in chambers shall be similar to Form 40 of Annexure 1 and shall indicate the date of the judgment or order, the amount thereof, the balance of the capital, interest, costs and collection fees which the defendant

undertook to pay under section 57(1)(c) of the Act owing as at the date of issue or reissue of such notice and shall be supported by an affidavit or affirmation by the judgment creditor or a certificate by his or her attorney stating—

(a) the date of the judgment or the date of the expiry of the period of suspension under section 48(e) of the Act, as the case may be;

(b) that the judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or became payable or from the expiry of the period of suspension in terms of section 48(e) of the Act;

(c) in what respect the judgment debtor has failed to comply with the judgment or order referred to in section 65A(1) of the Act, the amount in arrear and outstanding balance on the date on which the notice is issued;

(d) that the judgment debtor has been advised by registered letter of the terms of the judgment or of the expiry of the period of suspension under section 48(e) of the Act, as the case may be, and that a period of 10 days has elapsed since the date on which the said letter was posted;

(2) A notice referred to in subrule (1) shall state the consequences of failure to appear in court on the date determined for the enquiry.

(3) Any alteration in a notice referred to in subrule (1) or in a warrant of arrest in terms of section 65A(6) of the Act shall be initialled by the judgment creditor or his or her attorney and by the registrar or clerk of the court before issue or reissue.

(4) When a judgment or order referred to in section 65A(1) of the Act has been given in any court other than the court of the district in which the enquiry is held, the registrar or clerk of the court shall not issue the notice until there is lodged with him or her a copy of the judgment or order of such other court duly certified by the registrar or clerk of that court.

(5) (a) When a judgment debtor has been arrested and is brought before a court which is not the court which authorised the warrant of arrest, that registrar or clerk of the court shall open a file, allocate a case number to it and hand it, together with the warrant, to the court.

(b) When the court referred to in paragraph (a) transfers the matter in terms of section 65A(11) of the Act to the court which authorised the warrant, the registrar or clerk of the court shall without delay send the original warrant and certified copies of the minutes of the proceedings and the order to that effect to the court which authorised the warrant.

(c) If the court before which proceedings in terms of section 65A(10)(b) or (11) are pending is not the court which authorised the warrant in terms of section 65A(6), the registrar or clerk of the former court shall by telephone or in writing by facsimile notify the registrar or clerk of the latter court of the appearance of the judgment debtor, director or officer before the former court and shall inform the judgment creditor or his or her attorney by telephone or in writing by facsimile accordingly: Provided that full particulars of telephone calls and proof of transmission of facsimiles shall be filed in the case cover.

(6) The provisions of rule 55 shall apply *mutatis mutandis* to a request referred to in section 65A(3) of the Act.

(7) A written offer referred to in section 65 of the Act shall be in affidavit or affirmation form setting out–

(a) the full names of the judgment debtor, his or her residential and business address;

(b) the name and address of his or her employer;

(c) his or her marital status;

(d) the number of his or her dependants, their age and their relationship to him or her;

(e) his or her assets and liabilities;

(f) his or her gross weekly or monthly income (including that of his or her spouse and dependants) and expenses;

(g) the number of emoluments attachment orders or other court orders against him or her and the total amount payable thereunder; and

(h) his or her offer and the dates of the proposed instalments.

(8) A warrant in terms of section 65A(6) of the Act shall be similar to Form 40A of Annexure 1.

(9) A notice in terms of section 65A(8)(b) of the Act shall be similar to Form 40B of Annexure 1.

46. Attachment of emoluments by emoluments attachment order

(1) When an emoluments attachment order is issued by a judgment creditor out of any court other than the court in which the judgment or order was obtained, a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit or affirmation or certificate referred to in section 65J(2)(b) of the Act.

(2) An emoluments attachment order shall be issued in the form prescribed in Annexure 1, being Form 38, and shall contain sufficient information to enable the garnishee to identify the judgment debtor, including the identity number or work number or date of birth of the judgment debtor.

47. Attachment of a debt by garnishee order

(1) An application for an attachment of a debt shall be supported by an affidavit or affirmation by the creditor or a certificate by his or her attorney stating that–

(a) a court—

(i) has granted judgment to the judgment creditor; or

(ii) has ordered the payment of a debt referred to in section 55 of the Act and costs in specific instalments;

(b) the judgment or order referred to in subrule (1)(a) is still unsatisfied, stating the amounts still payable thereunder;

(c) the garnishee resides, carries on business or is employed within the district, with mention of the address of the garnishee; and

(d) a debt is at present or in future owing or accruing by or from the garnishee to the judgment debtor and the amount thereof.

(2) Unless an application for a garnishee order is directed to the court which granted the judgment or order referred to in subrule (1)(a), a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit or affirmation or certificate referred to in subrule (1).

(3) Sufficient information including the identity number or work number or date of birth of the judgment debtor shall be furnished in a garnishee order to enable the garnishee to identify the judgment debtor.

(4) Upon an application under this rule the court may require such further evidence as it may deem fit.

(5) Upon an application under this rule the court may order the garnishee to pay to the judgment creditor or his or her attorney so much of the debt at present or in future owing or accruing by or from him or her to the judgment debtor as may be sufficient to satisfy the said judgment, together with the costs of the garnishee proceedings (including the costs of service), or failing such payment to appear before the court on a day to be named in the said order and show cause why he should not pay such debt.

(6) The registrar or clerk of the court shall note upon the face of an order made under subrule (5) the day it was made.

(7) An order made under subrule (5) shall be served upon the garnishee and upon the judgment debtor and shall operate as an attachment of the said debt in the hands of the garnishee.

(8) The judgment debtor and the garnishee may appear on the day fixed for the hearing of the application, but may not question the correctness of the judgment on which the application is based.

(9) If the garnishee does not dispute his or her indebtedness to the judgment debtor, or allege that he or she has a set-off against the judgment debtor or that the debt sought to be attached belongs to or is subject to a claim by some other person, or if he or she shall not appear to show cause as provided in subrule (5), the court may order the garnishee to pay the debt (or such portion of it as the court may determine) to the judgment creditor or his or her attorney on the dates set out in the said order, and should the garnishee make default, execution for the amount so ordered and costs of the said execution may be issued against the garnishee. Rules 36 to 43, inclusive shall *mutatis mutandis* apply to execution in terms of this subrule.

(10) If the garnishee disputes his or her liabilities to pay the debt or alleges that he or she has any other defence, set-off or claim in reconvention which would be available to him or her if he or she were sued for the said debt by the judgment debtor, the court may order the garnishee to state, orally or in writing, on oath or otherwise, as to the court may seem expedient, the particulars of the said debt and of his or her defence thereto and may either hear and determine the matters in dispute in a summary manner or may order that—

(a) the matters in issue shall be tried under the ordinary procedure of the court; and

(b) for the purpose of such trial, the judgment creditor shall be plaintiff and the garnishee defendant, or *vice versa*.

(11) If the garnishee alleges that the debt belongs to or is subject to a claim by some other person the court may extend the return day and order such other person to appear and state the nature and particulars of his or her claim and either to maintain or relinquish it, and may deal with the matter as if the judgment creditor and such other person were claimants in interpleader in terms of rule 44.

(12) If the judgment debtor alleges that the judgment has been satisfied or is for some other reason not operative against him or her, or that the garnishee is not indebted to him or her, the court may try the issue summarily.

(13) After hearing the parties or such of them as appear the court may–

(a) order payment by the garnishee in terms of subrule (9);

(b) declare the claim of any person to the debt attached to be barred;

(c) dismiss the application; or

(d) make such other order as it may deem fit.

48. Administration orders

(1) A creditor who, in terms of section 74F(3) of the Act, wishes to object to any debt listed with an administration order or to the manner in which the order commands payments to be made, shall do so within 20 days after the granting of the order has come to his or her notice.

(2) A creditor who, in terms of section 74G(10)(b) of the Act, wishes to object to any debt included in the list of creditors shall, within 15 days after he or she has received a copy of the administration order, notify the administrator in writing of his or her objections and the grounds whereupon his or her objections are based.

(3) In a matter referred to in subrule (2) the administrator shall obtain from the clerk of the court a suitable day and time for the hearing of the objections by the court and thereupon, in writing, notify the creditor referred to in subrule (2), the debtor and any other involved creditors, of the said day and time.

[subrule (3) substituted by section 17 of Government Notice R507 of 2014]

(4) An administrator may, in terms of section 74L(1)(b) of the Act, before making a distribution referred to in that section detain an amount not exceeding 25 per cent of the amount collected to cover the costs that he or she may have to incur if the debtor is in default or disappears; Provided that the amount in the possession of the administrator for this purpose at any stage shall not exceed the amount of R600.

(5) Should an administrator be an officer employed by the State the remuneration referred to in section 74L of the Act shall accrue to the State.

49. Rescission and variation of judgments

(1) A party to proceedings in which a default judgment has been given, or any person affected by such judgment, may within 20 days after obtaining knowledge of the judgment serve and file an application to court, on notice to all parties to the proceedings, for a rescission or variation of the judgment and the court may, upon good cause shown, or if it is satisfied that there is good reason to do so, rescind or vary the default judgment on such terms as it deems fit: Provided that the 20 days' period shall not be applicable to a request for rescission or variation of judgment brought in terms of subrule (5).

(2) It will be presumed that the applicant had knowledge of the default judgment 10 days after the date on which it was granted, unless the applicant proves otherwise.

(3) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who wishes to defend the proceedings, the application must be supported by an affidavit setting out the reasons for the defendant's absence or default and the grounds of the defendant's defence to the claim.

(4) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who does not wish to defend the proceedings, the applicant must satisfy the court that he or she was not in wilful default and that the judgment was satisfied, or arrangements were made to satisfy the judgment, within a reasonable time after it came to his or her knowledge.

(5) (a) Where a plaintiff in whose favour a default judgment was granted has agreed in writing that the judgment be rescinded or varied, either the plaintiff or the defendant against whom the judgment was granted, or any other person affected by such judgment, may, by notice to all parties to the proceedings, apply to the court for the rescission or variation of the default judgment, which application shall be accompanied by written proof of the plaintiffs consent to the rescission or variation.

(b) An application referred to in paragraph (a) may be made at any time after the plaintiff has agreed in writing to the rescission or variation of the judgment.

(6) Where an application for rescission or variation of a default judgment is made by any person other than an applicant referred to in subrule (3), (4) or (5), the application must be supported by an affidavit setting out the reasons why the applicant seeks rescission or variation of the judgment.

(7) All applications for rescission or variation of judgment other than a default judgment must be brought on notice to all parties, supported by an affidavit setting out the grounds on which the applicant seeks the rescission or variation, and the court may rescind or vary such judgment if it is satisfied that there is good reason to do so.

(8) Where the rescission or variation of a judgment is sought on the ground that it is void *ab origine* or was obtained by fraud or mistake, the application must be served and filed within one year after the applicant first had knowledge of such voidness, fraud or mistake.

(9) A magistrate who of his or her own accord corrects errors in a judgment in terms of section 36(1)(c) of the Act shall, in writing, advise the parties of the correction.

50. Appeals and transfer of actions to magistrates' courts

(1) Where an appeal lies to a magistrate's court it may be noted by delivery of notice within 10 days after the date of the judgment appealed against.

(2) The notice of appeal shall set out concisely and distinctly the grounds of appeal.

(3) The party noting an appeal shall prosecute the same within 20 days after the noting of the appeal.

(4) The hearing of an appeal shall be subject to the delivery by the appellant of notice of set down for a day approved by the registrar or clerk of the court.

(5) A notice of set down referred to in subrule (4) shall be delivered at least 10 days before the day of hearing.

(6) At any time after delivery of notice of appeal but not later than delivery of notice of set-down the appellant shall cause to be filed with the clerk of the court the record, or a duly certified copy thereof, of the proceedings which resulted in the judgment or decision appealed against.

(7) Subject to the provisions of any other law regulating procedure of the court on appeals, the court may, in its discretion, grant leave to a party to adduce oral evidence at the hearing of an appeal or proceed by way of rehearing either in whole or in part.

(8) The court may in its discretion award to either party the costs incurred in an appeal, which costs shall be taxed on such scale of costs prescribed for actions in the court as the court may direct.

(9) The summons or other initial document issued in a case transferred to a court in terms of rule 39(22) of the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa shall stand as summons commencing an action in the court to which such case has been so transferred and shall, subject to any right the defendant may have to except thereto, be deemed to be a valid summons, issued in terms of the rules and any matter done or order given in the court from which such case has been transferred and the case shall thereupon proceed from the appropriate stage following the stage at which it was terminated before such transfer.

(10) Costs incurred in a case before transfer in terms of subrule (9) shall, unless the court otherwise directs, be costs in the cause.

51. Appeals in civil cases

(1) Upon a request in writing by any party within 10 days after judgment and before noting an appeal the judicial officer shall within 15 days hand to the registrar or clerk of the court a judgment in writing which shall become part of the record showing—

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

(b) his or her reasons for judgment.

(2) The registrar or clerk of the court shall on receipt from the judicial officer of a judgment in writing supply to the party applying therefor a copy of such judgment and shall endorse on the original minutes of record the date on which the copy of such judgment was so supplied.

(3) An appeal may be noted within 20 days after the date of a judgment appealed against or within 20 days after the registrar or clerk of the court has supplied a copy of the judgment in writing to the party applying therefor, whichever period shall be the longer.

(4) An appeal shall be noted by the delivery of notice, and, unless the court of appeal shall otherwise order, by giving security for the respondent's costs of appeal to the amount of R1000: Provided that

no security shall be required from the State or, unless the court of appeal otherwise orders, from a person to whom legal aid is rendered by a statutorily established legal aid board.

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

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

(7) A notice of appeal or cross-appeal shall state–

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

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

(8) (a) Upon the delivery of a notice of appeal the relevant judicial officer shall within 15 days thereafter hand to the registrar or clerk of the court a statement in writing showing (so far as may be necessary having regard to any judgment in writing already handed in by him or her) —

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

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

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

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

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

(9) A party noting an appeal or a cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and, in default of such prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary.

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

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

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

(12) Where the parties agree in terms of section 82 of the Act that the decision of the court shall be final, either party may lodge the memorandum of such agreement with the registrar or the clerk of the court, and such memorandum shall thereupon become part of the record in the action or matter.

52. Representation of parties

(1) (a) A party may institute or defend and may carry to completion any legal proceedings either in person or by a practitioner.

(b) A local authority, company or other incorporated body in doing so may act through an officer thereof nominated by it for that purpose.

(c) A partnership or group of persons associated for a common purpose in doing so may act through a member thereof nominated by it for that purpose.

(d) No person acting under paragraphs (a), (b) or (c) other than a practitioner shall be entitled to recover therefor any costs other than necessary disbursements.

(2) It shall not be necessary for any person to file a power of attorney to act, but the authority of any person acting for a party may be challenged by the other party within 10 days after he or she has noticed that such person is so acting or with the leave of the court for good cause shown at any time before judgement and thereupon such person may not, without the leave of the court, so act further until he or she has satisfied the court that he or she has authority so to act and the court may adjourn the hearing of the action or application to enable him or her to do so: Provided that no power of attorney shall be required to be filed by the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or to a deputy state attorney or any attorney instructed in writing by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting in his or her capacity as such.

(3) If a party dies or becomes incompetent to continue an action the action shall thereby be stayed until such time as an executor, trustee, guardian or other competent person has been appointed in his or her place or until such incompetence shall cease to exist.

(4) Where an executor, trustee, guardian or other competent person has been appointed for a party who has died or has become incompetent, the court may, on application, order that the person so appointed be substituted in the place of that party.

53. *Pro Deo* applicants

(1) (a) Any person desiring to sue or defend as a *pro Deo* litigant may apply to the court on notice to the party to be sued or to the plaintiff, as the case may be, for leave to do so.

(b) The applicant shall deliver with a notice referred to in paragraph (a) an affidavit made by himself or herself setting out fully the grounds of action or of defence on which he or she intends to rely and particulars of his or her means.

(2) The registrar or clerk of the court shall, at the request of an applicant desiring to sue or defend as a *pro Deo* litigant and on the direction of a judicial officer, write out the relevant notice and affidavit, notwithstanding that the claim or value of the matter in dispute exceeds R100 and no fee shall be payable by the applicant for such assistance.

(3) The court may upon an application to sue or defend as a *pro Deo* litigant—

(a) examine the applicant on oath as to his or her right of action or grounds of defence, and as to his or her means;

(b) require the applicant to call further evidence with reference to either question; or

(c) refer any such application to an attorney for investigation and report as to the applicant's means and whether he or she has a *prima facie* right of action or defence, as the case may be.

(4) If the court is satisfied that an applicant referred to in subrule (1) has a *prima facie* right of action or of defence and is not possessed of means sufficient to enable him or her to pay the costs of the action, court fees and sheriffs charges and will not be able within a reasonable time to provide such sums from his or her earnings, the court may order that—

(a) process of the court shall be issued and served free of charge to the applicant other than for the disbursements of the sheriff;

(b) an attorney be appointed to act for such applicant; or

(c) the registrar or clerk of the court, without charge, write out such process, affidavits, notices and other documents as may be required to comply with these rules.

(5) If a *pro Deo* litigant succeeds and is awarded costs against his or her opponent he or she shall, subject to taxation, be entitled to include and recover in such costs his or her attorney's costs and also the court fees and sheriffs charges so remitted and if he or she shall recover either the principal amount, the interest or the costs, he or she shall first pay and make good out of that *pro rata* all such costs, fees and charges.

(6) If the *pro Deo* litigant does not succeed or recover upon a judgment in his or her favour no fees shall be taken from him or her by the attorney so appointed to act for him or her.

(7) An order made under this rule—

(a) shall not exempt a *pro Deo* litigant from liability to be adjudged to pay adverse costs; and

(b) may, on application at any time before judgment by any person affected thereby, be reviewed and rescinded or varied by the court for good cause shown.

(8) Nothing contained in this rule shall prevent the court, at its discretion, from referring a *pro Deo* litigant or applicant to a convenient legal aid centre or justice centre for assistance at any given time.

54. Actions by and against partners, a person carrying on business in a name or style other than his or her own name, an unincorporated company, syndicate or association

(1) (a) Any two or more persons claiming or being sued as co-partners may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action.

(b) In any case referred to in paragraph (a) any party may by notice require from the party so suing or sued a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm.

(2) A party receiving a notice in terms of subrule (1)(a) shall, within 10 days after receipt thereof, deliver the statement required.

(3) When the names of the partners are declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named in the summons; but all the proceedings shall nevertheless continue in the name of the firm.

(4) Any person carrying on business in a name or style other than his or her own name may sue or be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all the provisions of this rule relating to proceedings against firms shall apply.

(5) The provisions of this rule shall also *mutatis mutandis* apply to an unincorporated company, syndicate or association.

(6) When action has been instituted by or against a firm or by or against a person carrying on business in a name or style other than his own name or by or against an unincorporated company, syndicate or association in the name of the firm or in such name or style or in the name of the company, syndicate or association, as the case may be, the court may on the application of the other party to the action made at any time either before or after judgment on notice to a person alleged to be a partner in such firm or the person so carrying on business, or a member of such company, syndicate or association, declare such person to be a partner, the person so carrying on business or a member, as the case may be, and on the making of such order the provisions of subrule (3) shall apply as if the name of such person had been declared in a statement delivered as provided in subrule (2).

55. Applications

(1) (a) Every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(b) The notice of motion must be addressed to the party or parties against whom relief is claimed and to the registrar or clerk of the court.

(c) Where it is necessary or proper to give any person notice of an application, the notice of motion must also be addressed to such person and served on such person.

(d) The notice of motion in every application other than one brought *ex parte* shall be similar to Form 1A of Annexure 1 and copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.

(e) In a notice of motion the applicant shall—

(i) appoint a physical address, which address shall, 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 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.

(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 days before the day upon which the application is to be heard.

(g) Any party opposing the grant of an order sought in a notice of motion shall–

(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, 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;

(ii) within 10 days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents; and

(iii) where it intends to raise questions of law only, deliver notice of intention to do so, within the time stated in subparagraph (ii), setting forth such question.

(h) (i) After receipt of a notice of intention to oppose, the applicant shall 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.

(ii) Within 10 days of the service upon him or her of the affidavit and documents referred to in paragraph (g)(ii), the applicant may deliver a replying affidavit.

[paragraph (h) substituted by section 18 of Government Notice R507 of 2014]

(i) The court may in its discretion permit the filing of further affidavits.

(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 days of

the expiry thereof apply to the registrar or clerk of the court to allocate a date for the hearing of the application.

(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 days of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within 5 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 days after delivery of such notice.

(iii) If the applicant fails so to apply within the appropriate period provided for in subparagraph (ii), the respondent may do so immediately upon the expiry thereof.

(iv) Notice in writing of the date allocated by the registrar or clerk of the court shall 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.

(k) (i) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision.

(ii) The court may in particular, but without affecting the generality of subparagraph (i) direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for that person or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

[subrule (1) substituted by section 4 of Government Notice R611 of 2011]

(2) (a) Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action.

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

(3) (a) No application in which relief is claimed against another party shall be considered *ex parte* unless the court is satisfied that–

(i) the giving of notice to the party against whom the order is claimed would defeat the purpose of the application; or

(ii) the degree of urgency is so great that it justifies dispensing with notice.

(b) The notice of motion in every application brought *ex parte* shall be similar to Form 1 of Annexure 1.

(c) Any order made against a party on an *ex parte* basis shall be of an interim nature and shall 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.

(d) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 24 hours notice.

(e) A copy of any order made *ex parte* and of the affidavit, if any, on which it was made shall 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 for examination or cross-examination.

(g) Any order made *ex parte* may be confirmed, discharged or varied by the court on cause shown by any person affected thereby and on such terms as to costs as the court may deem fit.

(h) *Ex parte* applications may be heard in chambers.

(4) (a) Interlocutory and other applications incidental to pending proceedings must be brought on notice, supported by affidavits if facts need to be placed before the court, and set down with appropriate notice.

(b) Applications to the court for authority to institute proceedings or directions as to procedure or service of documents may be made *ex parte* where the giving of notice of such application is not appropriate or not necessary.

(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 and may dispose of the matter at such time and place and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as the court deems appropriate.

(b) An application brought as a matter of urgency must be supported by an affidavit which sets out explicitly the circumstances which the applicant avers render the matter urgent and the reasons why the applicant claims that he or she could not be accorded substantial redress at a hearing in due course.

(c) A person against whom an order was granted in his or her absence in an urgent application may by notice set down the matter for reconsideration of the order.

(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 respective periods referred to in subrule (1)(e), or for the return of a *rule nisi*, shall 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.

(7) The court, after hearing an application, whether brought *ex parte* or otherwise, may make no order thereon (save as to costs if any) but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.

(8) (a) The minutes of any order required for service or execution shall 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 be made by the party indicated in that paragraph and the copy for record shall 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 to such execution.

(9) (a) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client.

(b) The court shall 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 not granted.

(10) Rules 28 and 28A shall apply equally to all applications.

[subrule 10 inserted by section 3 of Government Notice R5 of 2015]

55A. Amendment of pleadings

(1) (a) Any party desiring to amend a pleading or document other than an affidavit, filed in connection with any proceedings, shall notify all other parties of his or her intention to amend and shall furnish the particulars of the amendment.

(b) Unless the court otherwise directs, in actions for divorce or nullity of marriage, where summons had been served personally on the defendant, who remains unrepresented, the notice of amendment in terms of sub-paragraph (a) shall be effected by way of personal service on such defendant by the sheriff.

[subrule (1) substituted by section 19 of Government Notice R507 of 2014]

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice of amendment, the amendment will be effected.

(3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.

(4) If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.

(5) If no objection is delivered as contemplated in subrule (4), every party who received the notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days after the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7).

(6) Unless the court otherwise directs, an amendment authorised by an order of the court may not be effected later than 10 days after such authorisation.

(7) (a) Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.

(b) Unless the court otherwise directs, in actions for divorce or nullity of marriage, where summons had been served personally on the defendant, who remains unrepresented, the relevant page or pages in an amended form shall be served personally on such defendant by the sheriff.

[subrule (7) substituted by section 19 of Government Notice R507 of 2014]

(8) Any party affected by an amendment may, within 15 days after the amendment has been effected or within such period as the court may determine, make any consequential adjustment to the documents filed by him or her, and may also take the steps contemplated in rule 19.

(9) A party giving notice of amendment in terms of subrule (1) shall, unless the court otherwise directs, be liable for the costs thereby occasioned to any other party.

(10) The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment, grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.

56. Interdicts, attachments to secure claims and *mandamenten van spolie*

(1) Application to the court for an order of an interdict or attachment or for a *mandament van spolie* shall be made in terms of rule 55.

(2) Every application referred to in subrule (1) shall be accompanied by an affidavit stating the facts upon which the application is made and the nature of the order applied for.

(3) The court may, before granting an order upon an application referred to in subrule (1), require the applicant to give security for any damages which may be caused by such order and may require such additional evidence as it may think fit.

(4) Unless otherwise ordered by a court, an order for the attachment of goods shall *ipso facto* be discharged upon security being given by the respondent to the sheriff for the amount to which the order relates, together with costs.

(5) The security contemplated in subrule (4) may be given to abide the result of the action instituted or to be instituted; and may be assigned by the respondent to part only of the order and shall in that event operate to discharge the order as to that part only.

[subrule (5) substituted by section 20 of Government Notice R507 of 2014]

[rule 56 substituted by section 5 of Government Notice R611 of 2011]

57. Attachment of property to found or confirm jurisdiction

(1) Any application to the court for an order of attachment of property under section 30bis of the Act may be made *ex parte*.

(2) (a) Any application for an order of attachment of property under section 30bis of the Act shall be supported by an affidavit in which is stated–

(i) the name, address, occupation and place of residence of the applicant;

(ii) the name, and, if known, the address, occupation and place of residence of the respondent;

(iii) the amount of the claim or the value of the matter in dispute and facts from which it is apparent that the action to be instituted against the respondent is within the jurisdiction of the court and that the attachment is necessary;

(iv) whether the attachment is intended to found or confirm jurisdiction;

(v) details of the property, including its ownership, value and situation;

(vi) such other information as may be necessary to secure an order; and

(vii) the terms of the order applied for.

(b) An affidavit contemplated in paragraph (a) shall be made by the applicant or, if thereto authorised, by someone on his or her behalf and shall state whether the deponent knows of his or her own knowledge the facts to which he or she deposes: Provided that where the facts are not known to the deponent of his or her own knowledge but are alleged to be true to the best of his or her information and belief, it shall be stated how the information was obtained or on what grounds he or she bases his or her belief.

(c) Any application for an order in regard to service of any process in any action referred to in section 30bis of the Act may be combined with any application for attachment referred to in paragraph (a).

(3) The court may, before granting an order of attachment of property under subrule (2) require the applicant to give security for any damages which may be caused by such order and may, in regard to any application under subrule (2), require such additional evidence as it may deem fit.

(4) (a) Any order of attachment under subrule (2) shall call upon the respondent to show cause at a time and on a date stated in the order why such order should not be confirmed.

(b) The return date for an order of attachment under subrule (2) may be anticipated by the respondent upon 12 hours' notice to the applicant.

(c) Where the respondent appears to show cause against an order of attachment under subrule (2), the court may order the applicant or deponent to the affidavit or the respondent to attend for examination or cross-examination and may confirm, discharge or vary such order on such terms as to costs as it may deem fit.

(5) The minutes of any order referred to in this rule which are required for service or execution shall be prepared by the applicant and approved and signed by the registrar or clerk of the court and shall state that the return date may be anticipated by the respondent upon 12 hours' notice to the

applicant and that the applicant may obtain release of his or her property upon security being given as hereinafter provided.

(6) (a) Upon receipt of the minutes of the order and of a copy of the affidavit on which it was made the sheriff shall proceed to attach the property specified therein.

(b) Subject to paragraph (c), the rules relating to the powers and duties of the sheriff in regard to the method of attachment in execution against movable and immovable property shall, in so far as those rules are appropriate and can be applied, *mutatis mutandis* apply to an attachment of property under this rule.

(c) Subject to any order of the court, the sheriff shall where movable property is attached under this rule, remove such property to a place of security or, if such property be inconvenient to remove, shall leave such property upon the premises in the charge and custody of some person acting on his or her behalf.

(d) Any expense incurred in removing property attached under this rule to a place of security or for the storage of such property or in leaving such property in the charge or custody of some person acting on behalf of the sheriff, shall be borne by the applicant and shall, subject to any order of the court, be costs in the cause.

(7) Unless the court shall otherwise order, any property attached as provided in this rule shall, upon security being given to the satisfaction of the sheriff of the court for the amount of the applicant's claim and the costs of the application for attachment, be released from attachment.

(8) An order made for the attachment of property under subrule (1) shall *ipso facto* be discharged upon security being given by the respondent as provided in subrule (7).

58. Maintenance *pendente lite*, contribution towards costs, interim custody and access to children

(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) Maintenance *pendente lite*;

(b) a contribution towards the costs of a pending matrimonial action;

(c) interim care of any child; or

(d) interim contact with any child.

[subrule (1) substituted by section 21 of Government Notice R507 of 2014]

(2) (a) An applicant for any relief contemplated in subrule (1) shall deliver a sworn statement setting out the relief claimed and the grounds therefor, together with a notice to the respondent which shall substantially correspond with Form 42 of Annexure 1.

(b) A statement and notice contemplated in paragraph (a) shall be signed by the applicant or his or her legal practitioner, and contain an address for service and shall be served by the sheriff.

(3) The respondent shall within 10 court days after receiving a statement and notice contemplated in subrule (2) deliver a sworn reply in the nature of a plea, signed and giving an address for service, in default of which he or she shall be *ipso facto* barred.

(4) As soon as possible after subrule (3) has been complied with the registrar shall bring the matter before the court for summary hearing, on 10 court days' notice to the parties, unless the respondent is in default.

(5) The court may hear such evidence as is considered necessary and may dismiss the application or make such order as it deems fit to ensure a just and expeditious decision.

(6) The court may, on the same procedure, vary a decision referred to in subrule (5) in the event of a material change taking place in the circumstances of either party or a child, or the contribution towards costs proving inadequate.

(7) No attorney or advocate appearing in a case under this rule shall charge a fee of more than R404,00 if the claim is undefended or R929,00 if it is defended, unless the court in an exceptional case otherwise directs.

[subrule (7) substituted by section 2 of Government Notice R263 of 2013]

(8) No instructing attorney in cases under this rule shall charge a fee of more than R1 414,00 if the claim is undefended or R2 020,00 if it is defended, unless the court in an exceptional case otherwise directs.

[subrule (8) substituted by section 2 of Government Notice R263 of 2013]

59. Assessors

(1) The court may from time to time frame a list of persons who, having regard to the nature of the business of the court and to their ability and reputation, appear to be qualified and willing to act as assessors under section 34 of the Act upon reasonable notice and upon payment of the fees prescribed in Table D of Annexure 2.

(2) (a) Every person for the time being named in the list of qualified and willing assessors shall be an assessor for the purposes of this rule and shall continue to be an assessor until a new list has been framed or until he or she gives to the registrar or clerk of the court his or her resignation in writing.

(b) Upon receipt of such resignation as an assessor the registrar or clerk of the court shall remove the name of such assessor from the list of qualified and willing assessors.

(c) An assessor summoned to act as such in any action may not, without the leave of the court, resign during the trial of the action.

(3) Nothing in this rule shall prevent the court from summoning, with the consent of all parties to the action, persons not on the list of qualified and willing assessors to act as assessors in any particular action.

(4) The number and names of the assessors to sit in any case shall be decided by consent of the parties or, where they are unable to agree, by the court: Provided that not more than two assessors shall sit in any case.

(5) (a) A party who desires the trial to take place with assessors shall deliver notice of application for assessors, if he or she is the plaintiff, with the notice of trial, and if he or she is the defendant not more than 5 days after receiving notice of trial.

(b) A notice contemplated in paragraph (a) shall contain either a consent by the other party or a notice setting down the application for hearing.

(6) (a) The party who desires a trial to take place with assessors shall, at the time of delivering the notice of application, deposit with the registrar or clerk of the court the amount prescribed in Table D of Annexure 2 for each assessor applied for and shall be liable for any further sum becoming due to the assessors for fees.

(b) The fees and expenses of assessors shall, unless otherwise ordered by the court, be costs in the action.

(7) If an application for a trial to take place with assessors is consented to or granted, the registrar or clerk of the court shall summon the assessors named in the consent or selected by the court by having a summons served upon each of them in the manner provided for the service of a summons commencing an action.

(8) If at the time and place appointed for the trial either of the assessors summoned does not attend, the court may either proceed to try the action with the assistance of the assessor, if any, who is in attendance, or without assistance, if none attended, or may adjourn the trial.

(9) Where a trial is postponed or adjourned due to the absence of an assessor, the party who applied for assessors shall, after the order for postponement or adjournment, pay to the registrar or clerk of the court, in addition to the deposit mentioned in subrule (6), the fees due up to the hour of postponement or adjournment to such assessors as have attended.

(10) Where the payment required under subrule (9) is not made the court may stay the action until it be made or may continue the trial without the assistance of assessors or may make such order as it may deem fit.

(11) Every assessor acting in a case shall he entitled to the fees set out in Table D of Annexure 2.

60. Non-compliance with rules, including time limits and errors

(1) Except where otherwise provided in these rules, failure to comply with these rules or with any request made in pursuance thereof shall not be ground for the giving of judgment against the party in default.

(2) Where any provision of these rules or any request made in pursuance of any such provision has not been fully complied with the court may on application order compliance therewith within a stated time.

(3) Where any order made under subrule (2) is not fully complied with within the time so stated, the court may on application give judgment in the action against the party so in default or may adjourn the application and grant an extension of time for compliance with the order on such terms as to costs and otherwise as may be just.

(4) The court may on an application under subrule (2) or (3) order such stay of proceedings as may be necessary.

(5) (a) Any time limit prescribed by these rules, except the period prescribed in rule 51(3) and (6), may at any time, whether before or after the expiry of the period limited, be extended—

(i) by the written consent of the opposite party; and

(ii) if such consent is refused, then by the court on application and on such terms as to costs and otherwise as it may deem fit.

(b) A court granting an extension of the time limit contemplated in subparagraph (a)(ii) after expiry of the time prescribed or fixed may make such order as to it seems appropriate as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these rules.

[subrule (5) substituted by section 22 of Government Notice R507 of 2014]

(6) (a) Where there has been short service without leave, of any notice of set down or notice of any application or of process of the court the court may, instead of dismissing such notice or process, adjourn the proceedings for a period equivalent, at the least, to the period of proper notice upon such terms as it may deem fit.

(b) If the proceedings are adjourned in the absence of the party who received short service, due notice of the adjournment must be given to such party by the party responsible for the short service.

(7) Subject to subrule (8) no process or notice shall be invalid by reason of any obvious error in spelling or in figures or of date.

(8) If any party has in fact been misled by any error in any process or notice served upon him or her, the court may on application grant that party such relief as it may deem fit and may for that purpose set aside the process or notice and rescind any default judgment given thereon.

(9) The court may, on good cause shown, condone non-compliance with these rules.

[subrule (9) added by section 3 of Government Notice R318 of 2015]

60A. Irregular proceedings

(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if—

(a) the applicant has not himself or herself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within 10 days of becoming aware of the step, by written notice afforded his or her opponent an opportunity of removing the cause of complaint within 10 days; and

(c) the application is delivered within 15 days after the expiry of the second period mentioned in sub-rule (2)(b).

(3) If at the hearing of an application in terms of subrule (1) the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as it deems fit.

(4) Until a party has complied with any order of court made against him or her in terms of this rule, he or she shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

61. Records, entries or documents as evidence in civil matters

(1) Where it is necessary to give in evidence in the court any record, entry or document of the same court in another action, the registrar or clerk of the court shall, on reasonable notice, produce and show the original thereof, and the cost of copies shall not be allowed.

(2) Where it is necessary to give in evidence in another court any record, entry or document of a court, a copy thereof certified by the registrar or clerk of the court may be given in evidence in that other court without production of the original.

62. Security for costs

(1) A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.

(2) If only the amount of security demanded under subrule (1) is contested the registrar or clerk of the court shall determine the amount to be given and his or her decision shall be final.

(3) If a party from whom security is demanded under subrule (1) contests his or her liability to give security or fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar or clerk within 10 days of the demand or the registrar's or clerk’s decision, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

(4) The court may, if security demanded is not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as it deems fit.

(5) Any security for costs shall, unless the court otherwise directs, or the parties otherwise agree, be given in the form, amount and manner directed by the registrar or clerk of the court.

(6) The registrar or clerk of the court may, upon written request of the party in whose favour security is to be provided and on notice to interested parties, increase the amount thereof if he or she is satisfied that the amount originally furnished is no longer sufficient; and his or her decision shall be final.

63. Filing, preparation and inspection of documents

(1) (a) All documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blue-black ink on one side only of paper of good quality and of A4 standard size.

(b) A document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.

(2) Stated cases, affidavits, grounds of appeal and the like shall be divided into concise paragraphs which shall be consecutively numbered.

(3) In defended actions or opposed applications the plaintiff or applicant, as the case may be, shall not later than 10 days prior to the hearing of the matter collate, and number consecutively, and suitably secure, all pages of the documents delivered and shall prepare and deliver a complete index thereof.

(4) Every affidavit filed with the registrar or clerk of the court by or on behalf of a respondent shall, if he or she is represented, on the first page thereof bear the name and address of the attorney filing it.

(5) The registrar or clerk of the court may reject any document which does not comply with the requirements of this rule.

(6) Any person, with leave of the registrar or clerk of the court and on good cause shown, may examine and make copies of all documents in a court file at the office of the registrar or clerk of the court.

64. Procedure for securing the attendance of witnesses in criminal cases

(1) The process for securing the attendance of any person before the court to give evidence in any criminal case or to produce any books, papers or documents, shall be by subpoena prepared by the party desiring the attendance of that person and issued by the registrar or clerk of the court.

(2) The original subpoena and so many copies thereof as there are witnesses to be subpoenaed, shall be delivered to the sheriff or other person authorised to serve subpoenas in the area where the witness is residing or to the person referred to in section 15(2) or (3) of the Act, as the case may be.

(3) A copy of the subpoena shall be served upon the witness personally or at his or her residence or place of business or employment by delivering it to some person thereat who is apparently not less than 16 years of age and apparently residing or employed thereat.

(4) If the person to be served with a subpoena keeps his residence or place of business closed and thus prevents the service of the subpoena, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

(5) The person serving a witness subpoena shall, if required by the person upon whom it is served, exhibit to him or her the original.

(6) The person serving a witness subpoena shall make a return of service by endorsing on the original or on a document attached thereto the manner in which the subpoena was served, and the original shall be returned to the registrar or clerk of the court out of whose office it was issued.

65. Criminal record book

(1) The registrar or clerk of the court shall keep a book to be styled the "criminal record book" in which he or she shall daily enter particulars of every criminal case coming before the court on that day.

(2) Where the court has issued a warrant in terms of the provisions of section 55 or section 56 of the Criminal Procedure Act, 1977, and the prosecutor subsequently withdraws the charge, it shall not be necessary to again enter particulars of such case in the criminal record book: Provided that if such particulars are not entered in the criminal record book a separate register shall be kept by the registrar or clerk of the court of all warrants issued in terms of the aforesaid sections and at each successive stage he or she shall enter therein particulars of the date of issue of the warrant, the case number, the name of the accused, the date upon which the warrant was forwarded to the police for execution, the fact that the case has been withdrawn and any other particulars that circumstances may require.

(3) The charge sheet in a criminal case or, when the matter comes before the court by way of preparatory examination, the covering sheet, shall, when the matter first comes before the court, be numbered by him or her with a consecutive number for the year and the case shall then be entered in the criminal record book under that number.

(4) The particulars recorded in the criminal record book shall include—

(a) the date of hearing;

(b) the case number;

(c) the name of the accused;

(d) the crime charged;

(e) the verdict;

(f) the sentence or other mode of disposal; and

(g) any remarks (including the date and effect of any order of the High Court of South Africa varying the verdict or sentence on review or appeal).

(5) The judicial officer presiding at a criminal hearing shall himself or herself record in the criminal record book any sentence imposed or other order of disposal made by him or her including acquittal, or other discharge, postponement of sentence, adjournment, remand to another court or committal for trial.

66. Records of criminal cases

(1) The plea and explanation or statement, if any, of the accused, the evidence orally given, any exception or objection taken in the course of the proceedings, the rulings and judgment of the court and any other portion of criminal proceedings, may be noted in shorthand (also in this rule referred to as "shorthand notes") either verbatim or in narrative form or recorded by mechanical means.

(2) Every person employed for the taking of shorthand notes in terms of subrule (1) or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his or her duties in writing take an oath or make an affirmation before a judicial officer as provided in rule 30(5).

(3) (a) Shorthand notes taken in the course of criminal proceedings shall be certified as correct by the shorthand writer and filed with the record of the case by the registrar or clerk of the court.

(b) Subject to the provisions of subrule (4) and rule 67(3), (8) and (10), no such shorthand notes shall be transcribed unless a judicial officer so directs.

(c) The transcript of any shorthand notes transcribed under paragraph (b) shall be certified as correct by the person making such transcript and shall be filed with the record.

(4) (a) In any case in which no transcription was directed in terms of subrule (3), any person may, on notice to the registrar or clerk of the court, request a transcription of any shorthand note taken by virtue of a direction given under subrule (1) and shall, in respect of proceedings made by mechanical means, save in the case of the State, pay the full cost thereof as predetermined by agreement between the contractor concerned and the State for such transcript.

(b) One copy of the transcript of such shorthand notes shall be supplied, free of charge, to the person at whose request the transcription was made.

(c) The original copy of the transcript of any shorthand notes referred to in paragraph (a), shall be certified as correct by the person making such copy and shall be filed with the record of the case.

(d) A sum sufficient to cover the approximate fee payable under paragraph (a) shall be deposited with the registrar or clerk of the court in advance.

(5) Subject to the provisions of subrule (6), any shorthand notes and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.

(6) The prosecutor or the accused may, not later than 10 days after judgment or where the proceedings have been taken down in shorthand or by mechanical means, within 10 days after the transcription thereof has been completed, apply to the court to correct any error in the record or the certified transcript thereof and the court may correct any such error.

(7) Subject to subrule (4)(b), a copy of any transcript made simultaneously with the transcription of proceedings made by mechanical means may, upon application to the registrar or clerk of the court be supplied to any person upon payment, save in the case of the State, of the full cost thereof as predetermined by agreement between the contractor concerned and the State, in the case of a copy of a transcript referred to in subrules (3) and (4)(a).

(8) Any reference in this rule to shorthand notes or to a transcription or transcript of such notes or to a copy of such transcript, or to a person employed for the taking of such notes, or to a person transcribing such notes, shall be construed as a reference to a record of proceedings made by mechanical means, to a transcription or transcript of such record, or to a copy of such transcript, to a person employed for the making of such mechanical record, or to a person transcribing such record as the case may be.

(9) Where a magistrate or the court is satisfied that an accused is unable to pay the costs of obtaining a copy of any record or of any transcript thereof or is able to pay only part of such costs, such magistrate or court may, at the request of the accused, direct the registrar or clerk of the court to deliver a copy of such record or transcript to the accused free of charge or at such reduced charge as the magistrate or court may determine.

67. Criminal appeals

(1) (a) An appellant, other than a person who applies orally for leave to appeal immediately after the passing of the sentence or order as contemplated in section 309B(3)(b) of the Criminal Procedure Act, 1977 who wishes to apply for leave to appeal in terms of section 309B(1) of that Act, shall do so in writing to the registrar or clerk of the court and shall also send a copy of the application to the director of public prosecutions concerned, or, in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(b) An appellant who wishes to apply for condonation as contemplated in section 309B(1)(b)(ii) of the Criminal Procedure Act, 1977, or an appellant who wishes to apply for leave to adduce further evidence as contemplated in section 309B(5)(a) of that Act, shall do so in writing to

the registrar or clerk of the court and shall also send a copy of the application to the director of public prosecutions concerned, or, in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(2) (a) Where an application for leave to appeal is made in writing, notice in terms of section 309B(2)(d) of the Criminal Procedure Act, 1977, shall be given by the registrar or clerk of the court at least 10 days before the date fixed for the hearing of the application for leave to appeal, unless the appellant or his or her legal representative and the director of public prosecutions or a person designated by him or her or in a case in which the prosecution was not at the public instance, the other prosecutor concerned have agreed to a shorter period, and shall correspond substantially to Form 57 of Annexure 1.

(b) The notice referred to in paragraph (a) shall–

(i) be handed to the appellant or his or her legal representative and the director of public prosecutions or a person designated by him or her or other prosecutor concerned and proof of receipt of such notice shall be indicated on a copy of the notice, which shall be kept by the registrar or clerk of the court; or

(ii) be sent by registered post.

(3) (a) A legal representative appearing on behalf of an appellant, shall simultaneously with the lodging of the application for leave to appeal lodge a power of attorney authorising him or her to act on behalf of the appellant, or if a legal representative is employed after an application for leave to appeal has been lodged, after such appointment.

(b) An appellant shall state in the application for leave to appeal referred to in subrule (1) a postal address where any notice may be served on him or her by registered post if he or she is not represented by a legal representative or if he or she ceases to be represented by a legal representative.

(4) If the appellant is unable, owing to illiteracy or physical defect, to write out an application for leave to appeal or notice of appeal, the clerk of the court shall, upon his or her request, do so.

(5) Upon an application for leave to appeal being granted the registrar or clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and place such copy before the judicial officer who shall within 15 days thereafter furnish to the registrar or clerk of the court a statement in writing showing–

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

(b) his or her reasons for any finding of fact specified in the appellant's statement of grounds of appeal; and

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

(5A) (a) A person contemplated in the first proviso of section 309(1)(a) of the Criminal Procedure Act, 1977, who wishes to appeal against his or her conviction or sentence or order, shall do so in writing to the registrar or clerk of the court and shall also send a copy of such notice of appeal to the director of public prosecutions concerned or in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(b) The notice of appeal contemplated in paragraph (a) shall set forth clearly and specifically the grounds upon which such person wishes to appeal.

(c) The provisions of subrules (3) to (8) and (14) and (15) shall apply further with any changes required by the context.

(6) The registrar or clerk of the court shall upon receipt of the judicial officer's statement contemplated in subrule (5) forthwith inform the appellant that the statement has been furnished.

(7) Within 15 days after the appellant has been informed in terms of subrule (6), he or she may by notice to the registrar or clerk of the court amend his or her statement of grounds of appeal and the judicial officer may, in his or her discretion, within 10 days thereafter furnish to the registrar or clerk of the court a further or amended statement of his or her findings of fact and reasons for judgment.

(8) When an appeal is noted in a case in which the prosecution was not at the public instance any amended statement provided for in subrule (7) shall be served by the appellant also upon the prosecutor.

(9) A director of public prosecutions or other prosecutor desiring to appeal under section 310 of the Criminal Procedure Act, 1977, against the dismissal of a summons or charge shall, within 20 days after such dismissal, deliver a notice of appeal.

(10) Upon an appeal being noted as provided in subrule (9) the registrar or clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and then place the record before the judicial officer who shall within 15 days thereafter furnish to the registrar or clerk of the court a statement in writing of his or her reasons for dismissing the summons or charge.

(11) A director of public prosecutions or other prosecutor who contemplates an appeal under section 310 of the Criminal Procedure Act, 1977, shall, within 20 days after the conclusion of the criminal proceedings, in writing request the judicial officer to state a case.

(12) (a) Upon receipt of the request referred to in subrule (11), the registrar or clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and then place the record before the judicial officer who shall within 15 days thereafter furnish a stated case to the registrar or clerk of the court who shall transmit a copy thereof to the director of public prosecutions or other prosecutor, as the case may be.

(b) The stated case contemplated in paragraph (a) shall be divided into paragraphs numbered consecutively and shall be arranged in the following order:

(i) The judicial officer’s findings of fact in so far as they are material to the questions of law on which decision in favour of the appellant was given;

(ii) questions of law; and

(iii) the judicial officer’s decision on such questions and his or her reasons therefor.

(13) The director of public prosecutions or other prosecutor may, within 15 days after the receipt by him or her of the stated case, deliver notice of appeal against the decision on questions of law.

(14) Every notice of appeal, statement of grounds of appeal, judicial officer’s statement and stated case filed of record with or furnished to the registrar or clerk of the court under this rule shall become part of the record.

(15) (a) The registrar or clerk of the court shall within 10 days after receipt by him or her of the statement referred to in subrule (7) or (10) or of the notice of appeal delivered in terms of subrule (13), as the case may be, transmit to the registrar of the court of appeal the record of the criminal proceedings or the stated case, together with three copies thereof.

(b) When the prosecution is at the public instance he or she shall also transmit one such copy to the director of public prosecutions: Provided that if the appellant has not amended his or her statement of grounds of appeal as provided in subrule (7), the registrar or clerk of the court shall so transmit the record without delay after the period allowed for an amendment of the statement of grounds of appeal has lapsed.

68. Oath of office of interpreter

(1) Every interpreter shall upon entrance into office, in writing, take an oath or make an affirmation subscribed by him or her before a judicial officer in the form set out below, namely:

> "I, _____ (full name) do hereby swear/truly affirm that whenever I may be called upon to perform the functions of an interpreter in any proceedings in any magistrate's court I shall truly and correctly to the best of my knowledge and ability interpret from the language I may be called upon to interpret into an official language of the Republic of South Africa and "*vice versa*".

(2) Such oath or affirmation shall be taken or made or administered in the manner prescribed for the taking or making or administration of an oath or affirmation.

69. Repeal of rules and transitional provisions

(1) Subject to the provisions of sub-rules (3) and (4), the rules published under Government Notice No. R. 1108 of 21 June 1968, as amended by Government Notices Nos. R. 3002 of 25 July 1969, R. 490 of 26 March 1970, R. 947 of 2 June 1972, R. 1115 of 25 June 1974, R. 1285 of 19 July 1974, R. 689 of 23 April 1976, R. 261 of 25 February 1977, R. 2221 of 28 October 1977, R. 327 of 24 February 1978, R. 2222 of 10 November 1978, R. 1449 of 29 June 1979, R. 1314 of 27 June 1980, R. 1800 of 28 August 1981, R. 1139 of 11 June 1982, R. 1689 of 29 July 1983, R. 1946 of 9 September 1983, R. 1338 of 29 June 1984, R. 1994 of 7 September 1984, R. 2083 of 21 September 1984, R. 391 of 7 March 1986, R. 2165 of 2 October 1987, R. 1451 of 22 July 1988, R. 1765 of 26 August 1988, R. 211 of 10 February 1989, R. 607 of 31 March 1989, R. 2629 of 1 December 1989, R. 186 of 2 February 1990, R. 1887 of 8 August 1990, R. 1928 of 10 August 1990, R. 1990 of 17 August 1990, R. 1261 of 30 May 1991, R. 2407 of 27 September 1991, R. 2409 of 30 September 1991, R. 405 of 7 February 1992, R. 1510 of 29 May 1992, R. 1882 of 3 July 1992, R. 871 of 21 May 1993, R. 959 of 28 May 1993, R. 1134 of 25 June 1993, R. 1355 of 30 July 1993, R. 1844 of 1 October 1993, R. 2530 of 31 December 1993, R. 150 of 28 January 1994, R. 180 of 28 January 1994, R. 498 of 11 March 1994, R. 625 of 28 March 1994, R. 710 of 12 April 1994, R. 1062 of 28 June 1996, R. 1130 of 5 July 1996, R. 419 of 14 March 1997, R. 492 of 27 March 1997, R. 570 of 18 April 1997, R. 790 of 6 June 1997, R. 797 of 13 June 1997, R. 784 of 5 June 1998, R. 910 of 3 July 1998, R. 1025 of 7 August 1998, R. 1126 of 4 September 1998, R. 569 of 30 April 1999, R. 501 of 19 May 2000, R. 1087 of 26 October 2001, R. 37 of 18 January 2002, R. 38 of 18 January 2002, R. 1299 of 18 October 2002, R. 228 of 20 February 2004, R. 295 of 5 March 2004, R. 880 of 23 July 2004, R. 1294 of 5 December 2008, R. 1341 of 12 December 2008, R. 1342 of 12 December 2008, R. 1344 of 12 December 2008, R. 515 of 8 May 2009, R. 517 of 8 May 2009, R. 499 of 11 June 2010 and R. 592 of 9 July 2010 are hereby repealed.

(2) These rules shall apply to all proceedings instituted on or after the commencement date provided for in rule 70.

(3) (a) These rules shall apply to all proceedings instituted before the commencement date provided for in rule 70, unless:

(i) this would cause prejudice to a party, in which case the applicable rules in force as at the date of institution of the proceedings shall apply; or

(ii) the parties agree that the applicable rules in force as at the date of institution of the proceedings should apply.

(b) In instances where:

(i) there is a dispute between the parties as to which rules should apply: or

(ii) the parties fail to agree as contemplated in paragraph (a) subparagraph (ii);

then any party to the proceedings may apply to court in terms of rule 55(4)(a) for a ruling, as the court directs.

(4) In respect of proceedings instituted prior to the commencement of these rules, subject to sub-rule (3), the use of the forms contained in the First Annexure to the rules published under Government Notice No. R. 1108 dated 21 June 1968, as amended, and repealed by sub-rule (1), may, with the necessary variations as circumstances may require, be continued.

[rule 69 substituted by section 2 of Government Notice R1085 of 2011]

Chapter 2

[Chapter 2 inserted by section 2 of Government Notice R183 of 2014]

70. Objectives

The objectives of this Chapter are to give effect to—

(1) section 34 of the Constitution of the Republic of South Africa, 1996, which guarantees everyone the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum; and

(2) the resolution of the Access to Justice Conference held in July 2011, under the leadership of the Chief Justice, towards achieving delivery of accessible and quality justice for all, that steps be taken to introduce alternative dispute resolution mechanisms, preferably court-annexed mediation or the Commission for Conciliation, Mediation and Arbitration kind of alternative dispute resolution, into the court system.

71. Purposes of mediation

The main purposes of mediation are to—

(a) promote access to justice;

(b) promote restorative justice;

(c) preserve relationships between litigants or potential litigants which may become strained or destroyed by the adversarial nature of litigation;

(d) facilitate an expeditious and cost-effective resolution of a dispute between litigants or potential litigants;

(e) assist litigants or potential litigants to determine at an early stage of the litigation or prior to commencement of litigation whether proceeding with a trial or an opposed application is in their best interests or not; and

(f) provide litigants or potential litigants with solutions to the dispute, which are beyond the scope and powers of judicial officers.

72. Purpose of rules

The purpose of the rules in this Chapter is to provide the procedure for the voluntary submission of civil disputes to mediation in selected courts.

73. Definitions

"**action**" means litigation commenced by the issue of summons;

"**alternative dispute resolution**" means a process, in which an independent and impartial person assists parties to attempt to resolve the dispute between them, either before or after commencement of litigation; `application' means litigation commenced by notice of motion;

"**defendant**" includes any respondent and any party who would be defending a dispute if litigation were initiated;

"**dispute**" means the subject matter of actual or potential litigation between parties or an aspect thereof;

"**litigant**" means a party to litigation;

"litigation' means court proceedings commenced by action or application proceedings;

"**mediation**" means the process by which a mediator assists the parties in actual or potential litigation to resolve the dispute between them by facilitating discussions between the parties, assisting them in identifying issues, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute;

"**mediation session**" means the period that a mediator and the parties are engaged in mediation of the disputei

"mediator means a person selected by parties or by the clerk of the court or registrar of the court from the schedule referred to in rule 86(2), to mediate a dispute between the parties;

"**potential litigation**" means litigation which may arise out of a dispute;

"**statement of claim**" means a written statement signed by the party, in which a party intending to claim any relief against another party sets out in clear and concise terms the material facts on which the claim is based;

"statement of defence means a written statement, signed by the defendant, in which the defendant sets out in clear and concise terms the material facts on which the defendant's defence is based.

74. Application of rules

(1) The rules in this Chapter apply to the voluntary submission by parties to mediation of—

(a) disputes prior to commencement of litigation; and

(b) disputes in litigation which has already commenced and as contemplated in rules 78 and 79.

(2) These rules apply to courts to be designated by the Minister by publication in the *Gazette*.

(3) The application of these rules is subject to the provisions of any other law and the procedure provided for in any other law, for the mediation of disputes between parties to litigation.

75. Referral to mediation

(1) Parties may refer a dispute to mediation—

(a) prior to the commencement of litigation; or

(b) after commencement of litigation but prior to judgment;

Provided that where the trial has commenced the parties must obtain the authorisation of the court.

(2) A judicial officer may at any time after the commencement of litigation, but before judgment, enquire into the possibility of mediation of a dispute and accord the parties an opportunity to refer the dispute to mediation.

76. Functions and duties of clerks and registrars

(1) A clerk or registrar of the court must explain to all parties—

(a) the purpose of alternative dispute resolution, the meaning, objectives and benefits, including costs saving, of mediation; and

(b) their liability for the fees of the mediator.

(2) A clerk or registrar of the court must—

(a) inform the parties that they may be assisted by practitioners of their choice, at their own cost;

(b) in consultation with the parties, execute the duties in rules 77 and 78;

(c) if the parties agree to mediation, assist them to conclude a written agreement to mediate, which must be signed by the parties; and

(d) upon conclusion of an agreement to mediate, forward to the mediator—

(i) a copy of the agreement to mediate;

(ii) copies of the statement of claim and statement of defence, if mediation is to occur prior to commencement of litigation;

(iii) in action proceedings, copies of the summons and plea, or statement of defence if no plea has been filed; and

(iv) in application proceedings, copies of the founding, answering and replying affidavits, or statement of defence, if no answering affidavit has been filed.

77. Referral to mediation prior to commencement of litigation

(1) A party desiring to submit a dispute to mediation prior to commencement of litigation must make a request in writing to the clerk or registrar of the court, which would ordinarily have jurisdiction to hear the matter, if litigation were commenced.

(2) The request referred to in subrule (1) must indicate—

(a) whether relief is being claimed by or against the party seeking to mediate;

(b) the full names of the other party or parties or name or names by which the other party or parties to the dispute are known to the party seeking mediation;

(c) the physical and postal addresses of the other party or parties to the dispute;

(d) the facsimile number or electronic mail address of the party seeking mediation, if such party has a facsimile number or email address; and

(e) the nature of the dispute and the material facts on which the dispute is based.

(3) The clerk or registrar of the court must inform all other parties to the dispute that mediation of the dispute is being sought and must call upon the party seeking mediation and all other parties to the dispute to attend a conference within 10 days, for the purposes of determining whether all or some of the parties agree to submit the dispute to mediation.

(4) If at the conference referred to in subrule (3), some or all of the parties between whom mediation is possible, agree to submit the dispute to mediation, the clerk or registrar of the court must—

(a) in collaboration with the parties appoint a mediator or, if the parties cannot agree on a mediator, the clerk or registrar of the court must appoint a mediator;

(b) confer with the mediator and set the date, time and venue for mediation; and

(c) assist the parties to conclude a written mediation agreement between the parties, which must be signed by them and contain the following particulars:

(i) The particulars referred to in subrule 2(b), (c) and (d);

(ii) a statement that the parties have agreed to mediate the dispute between them;

(iii) the date, time and venue of the mediation;

(iv) the name of the mediator;

(v) the period of time that will be allocated for each mediation session;

(vi) the time within which mediation will be concluded and the method by which any periods or time limits may be extended;

(vii) the confidentiality and privilege attaching to disclosures at the mediation;

(viii) the consequences of any party not abiding by the agreement; and

(ix) where there are multiple parties to the dispute, the terms of any settlement agreement are not binding on any party who has not participated in mediation.

(5) A party claiming relief must lodge a statement of claim with the clerk or registrar of the court within 10 days of the signature of the agreement referred to in subrule 4(c), and forward a copy of the statement of claim to all other parties to the mediation proceedings.

(6) The party or parties against whom relief is being claimed must lodge a statement of defence with the clerk or registrar of the court within 10 days of receipt of the statement of claim, and forward a copy of the statement of defence to all other parties to the mediation proceedings.

78. Referral to mediation by litigants

(1) (a) Any party may at any stage after litigation has commenced, but before trial, request the clerk or registrar of the court, in writing, to refer the dispute to mediation.

(b) The clerk or registrar of the court must inform all other parties to the dispute that mediation of the dispute is being sought and must call upon the party seeking mediation and all other parties to the dispute to attend a conference within 10 days for the purposes of determining whether all or some of the parties agree to mediation.

(2) After the commencement of trial but prior to judgment any party may apply to court to refer the dispute to mediation.

(3) If the court refers the dispute to mediation, the provisions of subrule (4) and rules 76(2) and 77(4) apply.

(4) (a) In action matters, if pleadings have closed, the summons or declaration and plea, as referred to in the rules, will serve as the statement of claim and statement of defence, respectively.

(b) If a plea has not been delivered, the defendant must deliver a statement of defence within 10 days of the conclusion of the agreement to mediate.

(c) In application matters, the founding affidavit will serve as the statement of claim and the answering affidavit, if delivered, will serve as the statement of defence.

(d) If no answering affidavit has been delivered, the respondent must deliver a statement of defence within 10 days of the conclusion of the agreement to mediate.

79. Referral to mediation by court

(1) A court may, prior to or during a trial but before judgment, enquire into the possibility of mediation and accord the parties an opportunity to refer the dispute to the clerk or registrar of the court to facilitate mediation.

(2) If during the trial the parties consent to the dispute being mediated, the parties must request the court to refer the dispute to the clerk or registrar of the court to facilitate mediation.

(3) The provisions of rules 76(2), 77(4) and 78(4) apply if a dispute is referred to mediation under this rule.

80. Role and functions of mediator

(1) At the commencement of mediation the mediator must inform the parties of the following:

(a) The purposes of mediation and its objective to facilitate settlement between the parties;

(b) the facilitative role of the mediator as an impartial mediator who may not make any decisions of fact or law and who may not determine the credibility of any person participating in the mediation;

(c) the inquisitorial nature of mediation proceedings;

(d) the rules applicable to the mediation session;

(e) all discussions and disclosures, whether oral or written, made during mediation are confidential and inadmissible as evidence in any court, tribunal or other forum, unless the discussions and disclosures are recorded in a settlement agreement signed by the parties, or are otherwise discoverable in terms of the rules of court, or in terms of any other law;

(f) the mediator may during the mediation session encourage the parties to make full disclosure if in the opinion of the mediator such disclosure may facilitate a resolution of the dispute between the parties;

(g) no party may be compelled to make any disclosure, but a party may make voluntary disclosures with the same protection referred to in subrule (1)(e);

(h) the mediator will assist to draft a settlement agreement if the dispute is resolved; and

(i) if the dispute is not resolved, the mediator will refer the dispute back to the clerk or registrar of the court, informing him or her that the dispute could not be resolved.

(2) A mediator must, within 5 days of the conclusion of mediation, submit a report to the clerk or registrar of the court informing him or her of the outcome of the mediation.

(3) A mediator may postpone a mediation session if the parties agree.

81. Suspension of time limits

The time limits prescribed by the rules in Chapter I for the delivery of pleadings and notices, the filing of affidavits or the taking of any step by any litigant are suspended from the time of conclusion of an agreement to mediate to the conclusion of the mediation proceedings.

82. Settlement agreements

(1) In the event that the parties reach settlement, the mediator must assist the parties to draft the settlement agreement, which must be transmitted by the mediator to the clerk or registrar of the court.

(2) If a settlement is reached at mediation in a dispute which is not the subject of litigation, the clerk or registrar of the court must, upon receipt of the settlement agreement from the mediator, file the settlement agreement.

(3) If a settlement is not reached at mediation in a dispute which is not the subject of litigation, the clerk or registrar of the court must, upon receipt of the report from the mediator, file the report.

(4) If a settlement is reached at mediation in a dispute which is the subject of litigation, the clerk or registrar of the court must at the request of the parties and upon receipt of the settlement agreement from the mediator, place the settlement agreement before a judicial officer in chambers for noting that the dispute has been resolved or to make the agreement an order of court, upon the agreement of the parties.

(5) If a settlement is not reached at mediation in a dispute which is the subject of litigation, the clerk or registrar of the court must, upon receipt of the report from the mediator, file the report to enable the litigation to continue, from which time all suspended time periods will resume.

(6) Settlement agreements must be reduced to writing and signed by the parties.

83. Multiple parties and multiple disputes

(1) Where there are multiple parties to a dispute, parties who are agreeable to mediate may proceed to do so and parties who do not agree to mediate may proceed to litigation.

(2) Where there are multiple aspects to a dispute, the parties may agree that some aspects be mediated upon and other aspects be proceeded with to litigation.

(3) Where any aspect of a dispute remains unsettled after mediation, the parties may proceed to litigation on the unsettled aspect.

84. Fees of mediators

(1) Parties participating in mediation are liable for the fees of the mediator, except where the services of a mediator are provided free of charge.

(2) Liability for the fees of a mediator must be borne equally between opposing parties participating in mediation: Provided that any party may offer or undertake to pay in full the fees of a mediator.

(3) The tariffs of fees chargeable by mediators will be published by the Minister together with the schedule of accredited mediators referred to in rule 86(2).

85. Representation of parties at mediation proceedings

(1) Subject to subrules (2) and (3), parties to mediation must attend mediation sessions in person.

(2) Where a juristic person or a firm or a partnership is a party to mediation proceedings such entity must be represented by an official from that juristic person, firm or partnership, who must be duly authorised to represent the entity, to conclude a settlement and sign a settlement agreement on behalf of such entity.

(3) Where the state or an organ of state is a party to mediation proceedings the state or such organ must be represented by an official, duly authorised to represent the state or such organ to conclude a settlement and sign a settlement agreement on behalf of the state or organ of state, and be assisted by the State Attorney.

(4) Any party to mediation proceedings may be assisted by a practitioner or practitioners.

86. Accreditation of mediators

(1) The qualification, standards and levels of mediators who will conduct mediation under these rules, will be determined by the Minister.

(2) A schedule of accredited mediators, from which mediators for the purposes of this Chapter must be selected, will be published by the Minister. Forms and guidelines

87. Forms and guidelines

Forms and guidelines for assistance to parties, clerks of the court, registrars of the court, judicial officers and mediators in mediation proceedings will be published together with the promulgation of these rules.

88. Short title and commencement

These rules shall be called the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa and shall commence on a date to be fixed by the Minister.

[rule 88, previously rule 70, renumbered by section 3 of Government Notice R183 of 2014]

Annexure 1

Forms

[Annexure 1 substituted by section 23 of Government Notice R507 of 2014]

Numerical list	
Form No.	
1.	Notice of Motion (Short Form).
1A.	Notice of Motion (Long Form).
2.	Simple Summons.
2A.	Summons: Provisional Sentence.
2B.	Combined Summons.
2C.	Combined Summons: (Divorce Actions).
3.	Summons (in which is included an automatic rent interdict).
4.	Edictal citation/substituted service: short form of process.
5.	Request for default judgment.
5A.	Request for default judgment where the defendant has admitted liability and undertaken to pay the debt in instalments or otherwise - Section 57 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).
5B.	Request for judgment where the defendant has consented to judgment - Section 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).
6.	Notice of withdrawal of action/application.

Numerical list	
7.	Notice of application for summary judgment.
8.	Affidavit in support of application for summary judgment.
9.	Affidavit under section 32 of the Act.
10.	Security under section 32 of the Act.
11.	Order under section 32 of the Act.
12.	Consent to sale of goods attached under section 32 of the Act.
13.	Discovery -form of affidavit.
14.	Notice in terms of rule 23(5).
15.	Discovery - notice to produce.
15A.	Discovery - notice to inspect documents.
15B.	Discovery - notice to produce documents in pleadings, etc.
16.	Order for interdict obtained *ex parte*.
18.	Order for attachment of property to found or confirm jurisdiction.
19.	Direction to attend pre-trial conference.
20.	Order - Pre-trial conference.
21.	Application for trial with assessors.
22.	Summons to assessor.
23.	Commissions *de bene esse*.
24.	Subpoena.
25.	Warrant for payment of fine or arrest of witness in default.

Numerical list	
26.	Warrant for the arrest of a witness in default.
27.	Security on attachment or interdict *ex parte*.
28.	Security when execution is stayed pending appeal.
29.	Security when execution is allowed pending appeal.
30.	Warrant of ejectment
31.	Warrant for delivery of goods.
32.	Warrant of execution against property.
33.	Notice of attachment in execution.
34.	Notice to preferent creditor.
35.	Interpleader summons.
36.	Interpleader summons.
37.	Security under rule 38.
38.	Emoluments attachment order.
39.	Garnishee order.
40.	Notice to appear in court in terms of section 65A(1) of the Act.
40A.	Warrant of arrest in terms of section 65A(6) of the Act.
40B.	Notice to appear in court in terms of section 65A(8)(b) of the Act.
41.	Notice of set-down of postponed proceedings under section 65E(3) of the Act.
42.	Notice in terms of rule 58(2)(a).
43.	Notice to Third Party.

Numerical list	
44.	Application for an administration order under section 74(1) of the Act.
45.	Statement of affairs of debtor in an application for an administration order in terms of section 65l(2) or 74A of the Act.
46.	Certificate of service of foreign process.
47.	Notice to debtor that an additional creditor has lodged a claim against him or her for a debt owing before the making of the administration order.
48.	Notice to debtor that a creditor has lodged a claim for a debt owing after granting of the administration order.
49.	Notice to add an additional creditor to the list of creditors of a person under administration.
50.	Notice to creditor that his or her name has been added to the list of creditors of a person under administration.
51.	Administration order.
52.	Distribution account in terms of section 74J(5) of the Act.
52A.	Rescission of an administration order.
53.	Notice of abandonment of specified claim, exception or defence.
54.	Agreement not to appeal.
55.	Request to inspect record.
56.	Criminal record book.
57.	Notice in terms of section 309B(2)(d) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

[form 8 substituted by section 4 of Government Notice R318 of 2015]

[form 2A substituted by section 3(a) of Government Notice R545 of 2015]

[form 2B substituted by section 3(b) of Government Notice R545 of 2015]

[Please note: The forms have not been reproduced.]

Annexure 2

Scale of costs and fees

Table A – Costs

Part I – General provisions

1. When the amount in dispute is less than or equal to the amount of R7 000, costs shall be taxed on Scale A; when the amount in dispute exceeds the amount of R7 000, but is less than or equal to R50 000, costs shall be taxed on Scale B; when the amount in dispute exceeds R50 000, but is less than or equal to the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts, costs shall be taxed on Scale C; when the amount in dispute exceeds the maximumjurisdictional amount so determined by the Minister in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division or when the matter is in respect of a cause of action in terms of section 29(1B)(a) of the Act, costs shall be taxed on Scale D.

2. (a) For the purpose of computing costs, the expression 'amount in dispute' means, where costs are awarded to the plaintiff, the amount or value of the judgment and 'amount or value of the judgment' means, where more than one claim is involved in the action, the total of the amounts involved in the judgment. Where costs are awarded to the defendant, the expression 'amount in dispute' means, the amount or value of the claim, and 'amount or value of the claim' means, where more than one claim is involved in the action, the total of the amounts of all the claims. The amount or value of the judgment or claim shall be inclusive of interest but exclusive of costs. If a matter is settled at any time the costs shall be taxed on the scale laid down in the agreement of settlement.

   (b) Where the amount in dispute is not apparent on the face of the proceedings, costs shall, unless the court orders otherwise, be computed at the higher rate.

3. Costs taxable in terms of rule 33(19) shall be deemed to have been awarded under a judgment for the amount offered or a judgment in the terms of the settlement, as the case may be.

4. Claims for ejectment shall be computed at two months' rent of the premises.

5. The rate at which costs are computed shall not be increased by reason of any claim for confirmation of any interdict or interlocutory order.

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.

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.

8. Where the amount allowed for an item is left blank—

   (a) the drawing of documents (not pleadings) shall be allowed at R24, 00 for each folio;

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

   (c) R15, 00 shall be allowed for each necessary service;

9. (a) Where any document appears to the court to be unnecessary prolix, the court may disallow the whole or any part of the fee therefor.

(b) Where printed forms of documents to be copied are available, the fees for copying shall be limited to the necessary particulars inserted in such printed forms.

10. (a) A folio shall consist of 100 written or printed words or figures or part thereof.

(b) Four figures shall be reckoned as one word.

11. (a) Unless otherwise provided, a charge for perusal shall be allowed at R9,00 per folio in respect of any document or pleading necessarily perused.

(b) Where a charge is allowed for copying, it shall be allowed at R3,50 per page, regardless of the number of words, unless otherwise provided.

12. Where there are more defendants than one R13, 00 shall be added in respect of each additional defendant for each of items 2 and 3 of Part II and items 2 and 7 of Part III.

13. Where the judgment debt is payable in instalments in terms of the judgment or an agreement, a fee of 10% on each instalment collected in redemption of the capital, costs and interest shall be allowed, subject to a maximum of R330,00 on each instalment. No additional fee shall be charged for any attendance in connection with the receipt or payment of any instalment.

14. The clerk or registrar of the court shall on taxation disallow any charge unnecessarily incurred.

15. Where the fee under any item is calculated on a time basis, the total time spent on any one day shall be calculated and the fee for that day calculated on such total.

16. Any amount necessarily and actually disbursed in tracing the debtor.

Part II – Undefended actions

Item 1 - Registered letter of demand in terms of section 56 of the Act:		**R**
(a)	Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R36,00
(b)	Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division.	R47,00
Item 2 - Summons, inclusive of a letter of demand other than the letter of demand referred to in item 1:		
(a)	Claim or claims where the aggregate amount of the claim or claims does not exceed R7000	R121,00
(b)	Claim or claims where the aggregate amount of the claim or claims exceeds R7 000 but does not exceed R50 000	R404,00
(c)	Claim or claims where the aggregate of the claim or claims exceeds R50 000 but does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R598,00

(d)	Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division or when the matter is in respect of a cause of action in terms of section 29(1B)(a) of the Act	R779,00
Item 3 - Judgment:		
(a)	Claim or claims where the aggregate of the claim or claims does not exceed the amount in 2(a)	R121,00
(b)	Claim or claims where the aggregate of the claim or claims exceeds the amount in 2(b) but is not more than R50 000	R309,00
(c)	Claim or claims where the aggregate of the claim or claims exceeds R50 000, but does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates courts for districts	R504,00
(d)	Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division or when the matter is in respect of a cause of action in terms of section 29(1B)(a) of the Act	R654,50
Item 4 - Notice in terms of rule 12(2):		
(a)	Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R58,50
(b)	Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division or when the matter is in respect of a cause of action in terms of section 29(1B)(a) of the Act	R75,50
Item 5 - Notice in terms of rule 54 (1):		
(a)	Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R58,50
(b)	Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division	R75, 50

Item 6 - Affidavit or certificate:		
Item 7 - Attending court at the request of the magistrate when claim is referred to court for judgment or to obtain provisional sentence when claim is undefended:		as allowed under item 15 on the scale for defended actions.
Item 8 - For each registered letter forwarded to the debtor in terms of section 57(1) or (3) or section 58(2), of the Act by the creditor or his attorney, including copies		
(a)	Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R37,50
(b)	Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division	R48, 50
Item 9 - Admission of liability and undertaking to pay debt in instalments or otherwise (section 57 of the Act):		
(a)	Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R97,50
(b)	Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division	R126,50
Item 10 - Consent to judgment or to judgment and an order for the payment of judgment debt in instalments (section 58 of the Act)		
(a)	Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R97,50
(b)	Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division	R126, 50

Note: The amount of fees allowable under items 4, 5, 6, 7, 8, 9 and 10 shall be included without taxation in the amount of the costs for which judgment is entered.

Part III – Defended actions (and interpleader proceedings)

[Part III substituted by section 6 of Government Notice R2 of 2016]

Item		Scale A	Scale B	Scale C	Scale D
		R	R	R	R
1.	Instructions to sue or defend or to counterclaim or defend a counterclaim, perusal of all documentation and consideration of merits and all necessary consultations to issue summons	R487,00	R647,50	R778,00	R1011,50
2.	Summons	R244,50	R340,00	R406,50	R528,00
2A.	Particulars of Claim or Declaration	R244,50	R340,00	R406,50	R528,00
3.	Appearance	R41,00	R41,00	R49,50	R64,00
4.	Notice under rules 12(2) and 21B(2)	R41,00	R41,00	R49,50	R64,00
5.	Plea	R244,00	R340,00	R406,50	R528,00
6.	Claim in reconvention	R244,00	R340,00	R406,50	R528,00
7.	Reply, if necessary	R244,00	R340,00	R406,50	R528,00
8.	Drawing up of all documents not specifically mentioned, including request for further particulars, schedule of documents, all affidavits, subpoenas, any notice not otherwise provided for and drawing up of statements by witnesses	-	-	-	-

9.	Production of documents for inspection, or inspecting documents, per quarter of an hour or part thereof of the time spent		R144,50	R144,50	R182,50	R235,50
10.	Each copy of service, per page		R3,50	R3,50	R3,50	R3,50
11.	The recording of statements by witnesses, per quarter of an hour or part thereof		R144,50	R144,50	R182,50	R235,50
12.	Notice of trial or reinstatement		R41,00	R41,00	R49,50	R64,00
13.	Preparing for trial (if counsel not employed)		R810,00	R1 102,00	R1 322,00	R1 719,00
14.	Attendance at settlement negotiations, for each quarter of an hour or part thereof actually spent in such negotiations		R144,50	R144,50	R182,50	R235,00
15.	Attending court during trial, or at an on-the-spot inspection, or at postponement or examination on commission, for each quarter of an hour or part thereof spent in court while the case is actually being heard—					
	(a)	if counsel not employed	R144,50	R144,50	R182,50	R235,50
	(b)	if counsel employed	Nil	R58,50	R70,00	R91,00
16.	Attending pre-trial conference, for each quarter of an hour or part thereof actually spent in such conference		R144,50	R144,50	R182,50	R235,50
17.	Attending court to hear reserved judgment, per quarter of an hour or part thereof		R28,50	R28,50	R35,00	R45,50
18.	Correspondence—					

	(a)	for each necessary letter or telegram, per folio	R23,50	R23,50	R28,50	R37,00
	(b)	for each letter or telegram received, provided that a fee for perusal shall not be allowed in addition to the fee herein provided for	R15,00	R23,50	R28,50	R37,00
19.	Attendances: For each necessary attendance not otherwise provided for, per attendance		R15,00	R23,50	R28,50	R37,00
20.	Necessary formal telephone calls, per call		R15,00	R23,50	R28,50	R37,00
21.	Telephone consultations: For every 5 minutes or part thereof, subject to a maximum fee per consultation of R140,00 for Scales A to C and R 181,00 for Scale D		R41,00	R41,00	R49,50	R64,00
22.	Each necessary consultation, per quarter of an hour or part thereof		R144,50	R144,50	R182,50	R235.50
23.	The court may, on request made at the hearing, allow in addition to the fee prescribed in item 13 above a refresher fee in postponed or partly heard trials		R504,00	R713,50	R856,00	R1112,00

24.	Time spent waiting at court (owing to no court being available) per quarter of an hour or part thereof	R97.50	R97,50	R117,50	R153,00
25.	Travelling time per quarter of an hour or part thereof	R97,50	R97,50	R117,50	R153,00
26.	26 Subsistence and travelling expenses as laid down in rule 33(9)	The actual reasonable subsistence and travelling expenses as laid down in rule 33(9)			

Part IV – Other matters

Exceptions, applications to strike out, applications for summary judgment, appearance to obtain provisional sentence when claim is defended, interlocutory applications, arrest, interdict, applications under rule 27(9), applications to review judgment, order or taxation, applications for liquidation of close corporations and applications in terms of section 65J of the Act.

Item			Scale A	Scale B	Scale C	Scale D
			R	R	R	R
1.	(a)	Instructions to make application or to oppose or to show cause (the court may on request allow a higher amount)	R121,50	R244,50	R291,50	R379,00

Item			Scale A	Scale B	Scale C	Scale D
	(b)	Instructions to make application for liquidation of close corporation, perusal of all documentation and consideration of merits, and all necessary consultations	R598,50	R598,50	R717,50	R932,00
2.	Drawing up of all documents, affidavits, applications and notices, orders, etc		—	—	—	—
3.	Attending court on hearing:					
	(a)	If unopposed or opposed (if counsel not employed), for each quarter of an hour or part thereof actually spent in court	R144,50	R144,50	R182,50	R235,50
	(b)	If opposed (if counsel employed), for each quarter of an hour actually spent in court or part thereof	Nil	R58,50	R71,00	R91,00

Item			Scale A	Scale B	Scale C	Scale D
4.	(a)	Fee for preparation for argument, when opposed	R504,00	R595,00	R717,50	R932,00
	(b)	Fee for preparation for trial where proceedings are referred to trial or oral evidence	R504,00	R595,00	R717,50	R932,50
5.	Consultations and settlement negotiations - when opposed, per quarter of an hour or part thereof		R144,50	R144,50	R182,50	R235,50

Item		Scale
Taxation of costs		**R**
6.	Drawing up bill of costs:	5% of the fees allowed.
7.	Attending taxation:	5% of the total of the bill allowed.
8.	Attending on review of taxation, for each quarter of an hour or part thereof in court while review is actually being heard	R144,50
9.	Notice of application for review of taxation and service	—
10.	Affidavit, where necessary	—

Item			Scale
Execution			
11.	(a)	Issue of warrant of execution, ejectment, and delivery up of possession	R97,50
	(b)	For each reissue thereof	R41,00
12.	Inclusive fee for work done in connection with releasing of immovable property attached		R121,00
13.	Inclusive fee for work done in connection with sale in execution of immovable property only (excluding work in respect of which fees are already provided for elsewhere and the drawing up of the conditions of sale)		R309,00
14.	(a)	Drawing up of notice of sale in terms of rule 41(8) or rule 43(6), or conditions of sale in terms of rule 43(7)	—
	(b)	For all other work done and papers and documents supplied to the sheriff of the magistrate's court in connection with a sale in execution of movable property, an inclusive fee of	R210,50
15.	Security for restitution, where necessary		R80,50
Where counsel is employed			
16.	Instructions for exception or application, where allowed:		
	(a) Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts		R144,50

Item		Scale
	(b) Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division	R188,50
17.	Instructions on trial:	
	(a) Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R186,50
	(b) Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of magistrate's court for a regional division	R233,00
18.	Drawing brief on exception or application, where allowed	—
19.	Drawing brief on trial	—
20.	Attending each necessary consultation with counsel, per quarter of an hour or part thereof	
	(a) Claim or claims where the aggregate of the claim or claims does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	R60,50
	(b) Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division	R76,00

Item		Scale
Fees to counsel		
21.	With brief to argue exception or application	R713,50
[Note: A fee to counsel on application shall be allowed only where the court certifies that the briefing of counsel was warranted.]		
22.	With trial brief for the first day, not exceeding	R2024,50
23.	In any court held more than 30 km from the nearest town where a provincial or local division (other than a Circuit Court) of the High Court sits, a travelling allowance (in addition to the fee on brief) may be allowed by special order of the court at	R4,50 per km
24.	Each necessary consultation, per quarter of an hour	R144,50
25.	For every day exceeding one on which evidence is taken or arguments heard, a refresher not exceeding.	R1216, 00
26.	Drawing up pleadings	R325,00
	Notes: (a) In regard to items 22 and 25 a fee in lieu of the fee for the first day's hearing shall be allowed as follows when the case is settled or withdrawn or postponed at the instance of any party on or before the date of hearing: (i) not more than two days prior to the date of hearing: The fee otherwise allowable on taxation for the first day's hearing; (ii) not less than three days and not more than seven days prior to the date of hearing: Two thirds of the fee under (i); and (iii) not less than eight days and not more than 21 days prior to the date of hearing: Half of the fee under (i). (b) The court may on request allow a a higher fee for counsel in regard to items 22, 24, 25 and 26. (c) A fee for travelling time by counsel shall be allowed at the same rate as for attorneys under rule 33(9).	
Miscellaneous		
27.	Obtaining certified copy of judgment	R74,00

Item		Scale
28.	Obtaining payment in terms of rule 18(4)	R49,50
29.	Request for security in terms of rule 62(1)	—
30.	Furnishing security in terms of rule 62(1)	—

[Table A amended by section 2 and 3 of Government Notice R1222 of 2010, substituted by section 3 of Government Notice R760 of 2013 and by section 2 of Government Notice R33 of 2015]

Table B – Costs

Part I – General provisions in respect of proceedings in terms of sections 65 and 65A to 65M of the Act

1. Subject to the provisions of paragraph 3, no fees other than those in the Tariff to this Part shall be allowed.
2. Subject to the provisions of section 65K of the Act, the fees laid down in items (a), (b) or (c) of the Tariff to this Part, as the case may be, shall be payable for the drawing up of the notice referred to in section 65A(1), including appearance at the inquiry into the judgment debtor's financial position referred to in section 65D, or any appearance at subsequent suspension, amendment or rescission proceedings, and shall, with the exception of the fee allowed under item (m) of the tariff, be chargeable only once for the drawing up, issue and all reissues of the notice and all postponements of the inquiry, irrespective of the number of days on which the proceedings are heard in court: Provided that where the debtor leaves the area of jurisdiction of the court after issue of the notice referred to in section 65A(1) and the notice is reissued in any other district, the aforesaid fee may also be charged in such other district if the court so orders.
3. The following shall be allowed in addition to the fees laid down in the Tariff to this Part:
   (a) All necessary disbursements incurred in connection with the proceedings.
   (b) A fee of 10% on each instalment collected in redemption of the capital and costs of the action, subject to a maximum amount of R369,00 on every instalment. Where the amount is payable in instalments the collection fees shall be recoverable only on payment of every instalment. Such fees shall be in substitution for and not in addition to the collection fees prescribed in paragraph 13 of Part 1 of Table A.
   (c) All necessary disbursements incurred in connection with any prior abortive proceedings under section 72, if the court has so ordered.
   (d) Any amount necessarily and actually disbursed in tracing the judgment debtor, where the capital amount of the debt at the time the tracing agent was employed was not less than R403,50. The total amount to be allowed for each tracing shall not exceed R309,00.
4. For the purpose of the Tariff to this Part the amount of the claim shall, subject to the provisions of paragraph 3 (d), be the total of the capital amount and costs outstanding at the date of the first institution of proceedings under section 65A(1) of the Act.
5. Items 1 to 5 of Part IV of Table A of Annexure 2 are applicable in terms of section 65J of the Act.

Tariff

		R
(a)	Where the claim does not exceed the amount of R1 000,00	R203,50
(b)	Where the claim exceeds the amount of R1 000,00 but is not more than R2 000,00	R309,00
(c)	Where the claim exceeds the amount of R2 000,00	R365,00
(d)	Warrant of Arrest (Form 40A)	R80,50
(e)	(i) Emoluments Attachment Order (Form 38)	R161,50
	(ii) Reissue (Certificates included)	R130,00
(f)	Application for costs on notice (including appearance in court)	R80,50
(g)	Obtaining a certified copy of a judgment	R80,50
(h)	Affidavit or certificate by the judgment creditor or his or her attorney	R58,00
(i)	For each registered letter forwarded to the debtor in terms of sections 65A(2), 65E(6) or 65J(2) of the Act by the creditor or his or her attorney	R37,00
(j)	Affidavit or affirmation by debtor	R98,00
(k)	Request for an order under section 65 of the Act	R58,00
(l)	Attending postponed proceedings in terms of section 65E(3) of the Act or attending proceedings at court pursuant to the arrest of a judgment debtor, director or officer or pursuant to a notice referred to in 65A(8)(b)	R80,50
(m)	Subpoena:	

	(i)	Drawing up of subpoena, per folio	R23,50
	(ii)	Every necessary attendance, per attendance	R15,00
(n)	(i)	Correspondence: For every necessary letter or telegram written or received, including copy to retain, Provided that a fee for perusal shall not be allowed in addition to the fee herein provided for, per folio	R23,50
	(ii)	Attendances: For each necessary attendance not otherwise provided for, per attendance	R23,50
	(iii)	Necessary formal telephone calls, per call	R23,50

Part II – General provisions in respect of proceedings in terms of section 72 of the Act

1. Subject to the provisions of paragraphs 2 and 3 no fees other than those laid down in the Tariff to this Part shall be allowed.
2. Paragraph 3(a), (b) and (d) of the general provisions under Part 1 of this Table shall apply *mutatis mutandis* to this Part.
3. All necessary disbursements incurred in connection with any prior abortive proceedings under section 65 shall be allowed if the court has so ordered.
4. For the purpose of the Tariff to this Part the amount of the claim shall, subject to the provisions of paragraph 3(d) of the general provisions under Part 1 of this Table, be the total of the capital amount outstanding at the date of the first institution of proceedings in terms of section 72 of the Act.

Tariff

(a) Where the claim does not exceed R200,00	R121,00
(b) Where the claim exceeds R200,00	R260,00
(c) Obtaining certified copy of a judgment	R74,00

(d) Application for an order of execution against the garnishee	R74,00
(e) Garnishee Order (Form 39)	R98,00

Part III – General provisions in respect of proceedings in terms of section 74 of the Act

1. The following fees shall be allowed in addition to those laid down in the Tariff to this Part:
   (a) All necessary disbursements incurred in connection with the proceedings.
   (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.
2. For the purposes of items 4 and 5 of the Tariff to this Part, a folio shall consist of 100 written or printed words or figures and four figures shall be reckoned as one word.

Tariff

	Item	One to ten creditors	Eleven to twenty creditors	Twenty one or more creditors
		R	R	R
1.	Instructions to apply for administration order, including the necessary perusal of summonses, demands, etc., and ascertaining the amount of assets and liabilities, including all attendances and correspondence necessary in connection therewith	R144,50	R203,00	R324,50
2.	Instructions on application under section 74Q(1) or to oppose such application or the granting of administration order	R115,00	R115,00	R115,00
3.	Drawing up application for administration order or review thereof and affidavit, including all annexures thereto and all attendances, excluding attendance in court	R203,00	R203,00	R203,00
4.	Making copies of application, affidavit and annexures for creditors, per page	R3,50	R3,50	R3,50

5.		Perusal of application and other documents served, if any, per folio.	R8,50	R8,50	R8,50
Note: The fees under this item are only claimed by the attorney or an opposing party.					
6.		Attending court:			
	(a)	On postponement or setting aside, if not occasioned by the attorney or his client;	R54,50	R54,50	R54,50
	(b)	On any other hearing	R115,00	R218,50	R218,50
7.		For furnishing to a creditor by the administrator of the information referred to in section 74M(a) of the Act, per application	R15,00	R15,00	R15,00
8.		For furnishing of a copy of the debtor's statement of affairs referred to in sections 74 and 74A(1) of the Act by the administrator in terms of section 74m(b) or of a list or account referred to in section 74g(1) or 74J of the Act or of the debtor's statement of affairs referred to in section 65I(2) of the Act, per page	R3,50	R3,50	R3,50
9.		Correspondence and attendances	R23,50	R23,50	R23,50

[Table B substituted by section 3 of Government Notice R760 of 2013 and by section 2 of Government Notice R33 of 2015]

Table C – General provisions and tariff of fees (Sheriffs)

Part I – Sheriffs who are officers of the public service

1. For each service or execution or attempted service of any process or document: R7.
2. The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.

Part II – Sheriffs who are not officers of the public service

1A. For registration of any document for service or execution upon receipt thereof: R8,00

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: R35,00;

(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: R41,00;

(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: R55,00;

(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: R28,50;

(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: R35,00;

(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: R49,00;

(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 R8,00 may be charged for every separate document served.

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

2. (a) For the execution of a warrant, 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: R49,00;

(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: R55,00;

(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: R68,50;

(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: R41,00;

(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: R49,00;

(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: R62,00;

(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: R28,50 per half hour or part thereof (except extraordinary expenses necessarily incurred).

(ii) A further fee of R19,50 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.

3. Compilation of any return in terms of rule 8, in duplicate: R14,00.

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), 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: R28,50 per half hour or part thereof.

(b) For assistance, if necessary, with the making of an inventory; R28,50 per half hour or part thereof.

7. The perusing, drawing up and completing of a bail bond, deed of suretyship or indemnity bond: R8,00.

8. Charge or custody of property (money excluded):

(a) (i) For each officer necessarily left in possession, a reasonable inclusive amount not exceeding R103,00 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 R55,00 and a maximum of R542,00.

(b) Notice of attachment to defendant and to each person to be notified: R8,00.

11. Where property is released from attachment in terms of rule 41(7)(e), 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 R164,00: 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 R7 237,00.

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 R28,50.

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 R164,00 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: R28,50 per half hour or part thereof.

(c) Written notice to the purchaser who has failed to comply with the conditions of sale: R41,00.

(d) Consideration of conditions of sale: R81,50.

15. When immovable property has been attached in execution and the attachment lapses as referred to in section 66(4) of the act: R49,00.

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 R30 000, 00 of the proceeds of the sale and 3.5 per cent on the balance thereof, subject to a maximum commission of R10 777,00 in total and a minimum of R542,00 (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 R30 000,00 of the proceeds of the sale and 2 per cent on the balance thereof, subject to a maximum commission of R6 158,00 total and a minimum of R542,00 (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, 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;

    (b) the sum of R20,00 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 R8,00 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: R28,50 per journey and R55,00 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): R8,00.

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: R8,00.

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 referred to in rule 43(6)(e) and rule 41(8)(b): R20,00.

    (b) For affixing a copy of the notice of sale on the property due to be sold, the amount in paragraph (a) above and travelling costs referred to in item 5(a).

26. For the drawing up and issuing of an interpleader summons: R81,50.

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, excluding formal letters accompanying process or returns: R8,00.

29. Each necessary attendance by telephone (in addition to prescribed trunk charges and cellular charges): R8,00.

30. Sending and receiving of each necessary facsimile per A4 size page (in addition telephone charges): R4,50.

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: R49,00 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: R3,50 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: R55,00.

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: R14,50.

    (b) Service of notice referred to in paragraph (a): Tariff as prescribed in item 1B(a).

    (c) Attempted service of 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): R28,50 per half hour or part thereof with a maximum of R109,00.

[Part II substituted by section 2 of Government Notice R115 of 2013]

Table D – Fees payabable to assessors

1. For every attendance when the case is wholly or partly heard: R70 for each hour or part of an hour of such attendance, but not to be less than R140 or more than R350 for every such attendance.

2. For every attendance when the case is not heard but is postponed or settled, at the above rate, but the minimum to be R70.

3. Attendance to be reckoned from the hour for which the assessor is summoned to the hour at which judgment is given or reserved, or to the hour at which the assessor is expressly released by the court from further attendance, whichever shall be the earlier.

4. When the case is adjourned, postponed or settled, attendances to be reckoned from the hour for which the assessor is summoned to the hour at which the case is adjourned, postponed or settled, or to the hour at which the assessor is expressly released by the court from further attendance, whichever shall be the earlier.

5. An assessor shall be entitled to the following travelling allowance for each journey actually and necessarily taken between the courthouse and his or her residence or place of business:

   (a) R1, 10 per kilometer in the case of a motorcar with an engine swept volume of 2 150 cm^3 or less;

   (b) R1, 14 per kilometer in the case of a motorcar with an engine swept volume of 2 151 cm^3 upto and including 2 500 cm^3;

   (c) R1, 27 per kilometer in the case of a motorcar with an engine swept volume of 2 501 cm^3 up to and including 3 500 cm^3;

   (d) R1, 42 in the case of a motorcar with an engine swept volume of more than 3 500 cm^3.

6. The party who desires an assessor in terms of rule 59(6) shall pay to the clerk or registrar of the court an amount of R350 for each assessor applied for.

Appendix A

Tariff of allowances payable to witnesses in civil cases

The Minister for Justice and Constitutional Development has, in consultation with the Minister for Finance, under section 51 *bis* of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and section 42 of the Supreme Court Act, 1959 (Act 59 of 1959), prescribed the tariff of allowances in the Schedule.

Annexure 3 (Rule 87)

Mediation forms

[Annexure 3 inserted by section 4 of Government Notice R507 of 2014]

Form No:	
MED-1	Application for referral to mediation prior to litigation
MED-2	Invitation to respondent to engage in mediation prior to litigation
MED-3	Application for referral to mediation after litigation commenced
MED-4	Invitation to mediation after litigation commenced

Form No:	
MED-5	Explanation of process and rights
MED-6	Agreement to mediate
MED-7	Notice to Cash Hall to receive payment of mediator's fees
MED-8	Statement of Claim
MED-9	Statement of Defence
MED-10	Instructions to mediator
MED-11	Postponement of mediation
MED-12	Mediation time sheet
MED-13	Outcome of mediation
MED-14	Settlement Agreement
MED-15	Mediator's Report

[Editorial note: The forms have not been reproduced.]

Schedule

1. Definitions

In this Schedule any word or expression to which a meaning has been assigned in the Acts shall bear the meaning so assigned to it and unless the context otherwise indicates—

"**court manager**" means the person in control of the administration of a magistrate's office;

"**registrar**" includes assistant registrar;

"**the Acts**" means the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the Supreme Court Act, 1959 (Act 59 of 1959); and

"**witness**" means a person who attends a civil case as a witness.

2. Subsistence allowance

(1) A witness is entitled to the following allowances for each 24 hours or part thereof for which the witness is, for the purpose of the attendance of a civil case, absent from his or her residence or place of sojourn:

(a) the reasonable actual expenses if it is necessary to hire accommodation for the night; and

(b) (i) R50; or

(ii) the reasonable actual expenses incurred for meals on submission of proof of the expenses to the satisfaction of the court manager or the registrar.

(2) The allowances provided for in subregulation (1) are payable for the full period for which the witness is absent from his or her residence or place of sojourn for purposes of attending the court.

(3) In calculating the period of absence for purposes of subregulations (1) and (2), a witness is allowed 24 hours for each distance of 600 kilometres or part thereof travelled.

(4) The allowance provided for in subregulation (1) is not payable if the fare of a witness includes the cost of meals and accommodation.

3. Transport and travelling expenses

(1) A witness may, subject to subregulation (2), make use of public or private transport and is entitled to the following allowances:

(a) In the case of private transport—

(i) 92c per kilometre in the case of a motorcycle; or

(ii) R1.30 per kilometre in the case of a motor vehicle, calculated along the shortest route; or

(b) in the case of public transport, an amount equal to the fare for the least expensive transport along the shortest route.

(2) A witness may only use air transport if the court manager, registrar, or taxing master of the High Court of South Africa—

(a) is satisfied that the use thereof is warranted; and

(b) has approved that the witness may make use of air transport.

(3) On satisfactory proof having been produced, a witness is entitled to be reimbursed for his or her reasonable actual expenses incurred in respect of parking and toll fees.

4. Income forfeited

On satisfactory proof having been produced that a witness has forfeited income as a result of his or her attendance of a civil case, he or she is, in addition to the allowance that may be payable to the witness in terms of regulation 2, entitled to an allowance equal to the actual amount of income so forfeited, subject to a maximum of R1 500.00 per day.

5. Supplementary provisions

The court manager, registrar or taxing master of a High Court may approve—

(a) the payment of—

(i) an allowance not provided for in this Schedule; or

(ii) an allowance under circumstances not provided for in this Schedule,

to a witness if he or she is of the opinion that fairness so requires but with due regard to the principle that a witness should not be remunerated for the evidence given in a court of law; or

(b) the deviation from the prescribed tariff in the case of—

(i) a witness residing outside the Republic of South Africa; or

(ii) in any other case,

if he or she is satisfied that the application of the provisions of this Schedule may cause financial hardship.

6.

Where the expenses of a witness are provided for from any other source, no allowance in terms of this Schedule shall be paid to him or her.

7.

The allowances prescribed in this Schedule are also payable to a person who, of necessity, accompanies a witness on account of the youth or infirmity, owing to old age, or any other infirmity of the witness.

8.

The decision of a court manager, registrar, or taxing master of a High Court in respect of the amounts payable in terms of regulations 3, 4 and 5 shall be final.

9.

Government Notice R2597 of 1 November 1991 is repealed.