From 1 August 2018.

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 632

22 JUNE 2018

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

AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE MAGISTRATES' COURTS OF SOUTH AFRICA

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

SCHEDULE

GENERAL EXPLANATORY NOTE:

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

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

Definition

1. In this Schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011, R. 685 of

31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, R. 183 of 18 March 2014, R. 215 of 28 March 2014 ,R. 507 of 27 June 2014, R. 5 of 9 January 2015, R. 32 of 23 January 2015, R. 33 of 23 January 2015, R. 318 of 17 April 2015, R. 545 of 30 June 2015, R. 2 of 19 February 2016, R. 1055 of 29 September 2017 and R. 1272 of 17 November 2017.

Substitution of rule 45 of the Rules

2. The following rule is hereby substituted for rule 45 of the Rules:

"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]** be on a form corresponding substantially with 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 sub-rule (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 sub-rule (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 thereof.

(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*]**, with appropriate changes, 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]** on affidavit **[or affirmation form]** setting out the following particulars pertaining to the judgment debtor—

(a) the full names of the judgment debtor, his or her identity number or passport number, residential and business address;

(b) the name and address of his or her employer and his or her employee number;

(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, substantiated where reasonably possible with the most recent proof thereof and attached as annexures;

(f) his or her gross weekly or monthly income (including that of his or her spouse and dependants) and expenses substantiated by the most recent proof in the possession of the debtor relating to his or her income and expenditure;

(g) the **[number]** details of agreements with other creditors for payment of a debt in instalments, and of emoluments attachment orders or other court orders against him or her and the total amount payable thereunder, substantiated by copies thereof and attached as annexures; 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]** correspond substantially with Form 40A of Annexure 1.

(9) A notice in terms of section 65A(8)*(b)* of the Act shall **[be similar to]** correspond substantially with Form 40B of Annexure 1."

Substitution of rule 46 of the Rules

3. The following rule is hereby substituted for rule 46 of the Rules:

"46. Attachment of emoluments by emoluments attachment order

(1) **[When an emoluments attachment order application 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.]**

When an emoluments attachment order has been authorised by the court, an application to issue that order must be made on a form corresponding substantially with Form 38A of Annexure 1.

(2) An emoluments attachment order shall be issued **[in the]** on a form **[prescribed in Annexure 1, being]** corresponding substantially with Form 38 of Annexure 1, and shall contain sufficient information to enable the garnishee to identify the judgment debtor, including the date of birth, identity number or passport number and **[work]** employee number **[or date of birth]** of the judgment debtor."

Substitution of rule 49 of the Rules

4. The following rule is hereby substituted for rule 49 of the Rules:

"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 sub-rule (5) or (5A).

(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]** consented 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 plaintiff's 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]** consented in writing to the rescission or variation of the judgment.

(5A)(*a*) Where a judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid in full, a court may, on application by the judgment debtor or any other person affected by the judgment, rescind that judgment.

(*b*) The application contemplated in paragraph *(a)*—

(i) must be made on a form corresponding substantially with Form 5C of Annexure 1;

(ii) must be accompanied by an affidavit with annexures providing reasonable proof that the judgment debt, the interest and the costs have been paid; and

(iii) must be served on the judgment creditor not less than 10 days prior to the hearing of the application.

(6) Where an application for rescission or variation of a default judgment is made by any person other than an applicant referred to in sub-rule (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*]** from the beginning, 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."

Amendment of rule 55 of the Rules

5. Rule 55 of the Rules is hereby amended by—

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

"*(a)* Every application **[shall]** must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.";

(b) the substitution for paragraph *(c)* of subrule (1) of the following paragraph:

"*(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.";

(c) the substitution for paragraph *(d)* of subrule (1) of the following paragraph:

"**[*(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.]**

(d)(i) The notice of motion in every application other than interlocutory and other applications incidental to pending proceedings or one brought *ex parte* must correspond substantially with Form 1A of Annexure 1.

(ii) Copies of the notice and all annexures thereto must be served upon every party to whom notice is to be given."; and

(d) the substitution for paragraph *(a)* of subrule (4) of the following paragraph:

"**[*(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.]**

(a)(i) Interlocutory and other applications incidental to pending proceedings must be brought on notice corresponding substantially with Form 1C of Annexure 1, indicating a date assigned by a registrar or clerk of the court or as directed by a magistrate before whom the matter is to be heard.

(ii) The notice must be supported by affidavits if facts need to be placed before the court.

(iii) Copies of the notice and all annexures thereto must be served upon every party to whom notice is to be given.".

Amendment of Annexure 1 to the Rules

6. Annexure 1 to the Rules is hereby amended—

(a) by the insertion after Form 1B of Form 1C contained in the Annexure hereto;

(b) by the substitution for Form 5A of Form 5A contained in the Annexure hereto;

(c) by the substitution for Form 5B of Form 5B contained in the Annexure hereto;

(d) by the insertion after Form 5B of Form 5C contained in the Annexure hereto;

(e) by the substitution for Form 38 of Form 38 contained in the Annexure hereto; and

(f) by the insertion after Form 38 of Form 38A contained in the Annexure hereto.

Commencement

7. These rules come into operation on **1 August 2018**.

ANNEXURE

"**No. 1C – Notice of Motion (Short Form, for Interlocutory or other applications incidental to pending proceedings)**

*** For use in the District Court**

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF .....

Held at ..... Case No: .....

In the matter between:

..... Applicant

and

.... Respondent

TAKE NOTICE that application will be made on behalf of the above-named applicant on the ..... day of ..... at 9:00 or as soon thereafter as the parties may be heard for an order in the following terms:

(a) .....

(b).....

(c).....

and that the affidavit of ..... annexed hereto will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

DATED at ..... this..... day of ..... 20 .....

.....
Applicant/Applicant's Attorney
(Physical address)
.....

To: 1. The Clerk of the above-named Court
.....

2. Respondent/Respondent's Attorney
(Physical address)
.....

No. 1C – Notice of Motion (Short Form, for Interlocutory or other applications incidental to pending proceedings)

*** For use in the Regional Court**

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF .....

Held at ..... Case No: .....

In the matter between:

..... Applicant

and

.... Respondent

TAKE NOTICE that application will be made on behalf of the above-named applicant on the ..... day of ..... at 9:00 or as soon thereafter as the parties may be heard for an order in the following terms:

(a) .....

(b).....

(c).....

and that the affidavit of ..... annexed hereto will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

DATED at ..... this..... day of ..... 20 .....

.....
Applicant/Applicant's Attorney
(Physical address)
.....

To: 1. The Registrar
.....

2. Respondent/Respondent's Attorney
(Physical address)
.....

No. 5A – Request for 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)

***For use in the District Court**

In the Magistrate's Court for the District of .....

held at .....Case No. ..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 57**[(2)]** of the Magistrates' Courts Act, 1944, be **[noted]** entered in his/her favour against the defendant as follows:

Judgment debt: R c

Costs: R c

Outstanding balance of the debt **[section 57(2)(c)(ii)]** .....

Interest at .....per cent per annum accounted from .....

Collection fees **[section 57(1)*(c)*]** .....

Summons, if any (attorney's charges, sheriff's fees and sheriff's fees on re-issue) **[section 57(1)]** .....

Cost of affidavit or affirmation by plaintiff/certificate by plaintiff's attorney **[section 57(2)(c)]** .....

Cost of registered letter **[section 57(1)]** .....

Cost of notice in terms of rule 54(1) .....

Letter of demand (section 56) .....

Request for judgment (section 57) .....

Admission of liability and undertaking to pay (section 57)

Totals R R

Total R

plus further interest at ..... per cent per annum as from the date of judgment to the date of payment, and that payment thereof take place in accordance with defendant's offer.

The following documents are attached:

[(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.

(b) The defendant's written acknowledgment of liability towards the plaintiff for the amount of the debt and costs claimed (or for any other amount) and his/her offer.

(c) A copy of the plaintiff's or plaintiff's attorney's written acceptance of the offer.

(d) An affidavit (or affirmation) by the plaintiff/a certificate by the plaintiff's attorney in terms of section 57(2)*(c)* of the Magistrates' Courts Act, 1944.]

(a) the summons, or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written acknowledgment of liability and offer indicating the amount of the instalment offered by the defendant;

(c) full particulars and documentary evidence of the defendant's –

(i) monthly or weekly income and expenditure, supported where reasonably possible by the most recent proof thereof in the possession of the defendant;

(ii) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments

in order for the court to be apprised of the defendant's financial position at the time the offer was made and accepted; and

(iii) if the written consent contains a consent to an emoluments attachment order, the notice to the employer and the judgment debtor of the intention to request the court to authorise an emoluments attachment order;

(d) a copy of the plaintiff's or his or her attorney's written acceptance of the offer and

proof of postage thereof to the defendant; and

(e) an affidavit by the plaintiff or a certificate by his or her attorney stating in which respects the defendant has failed to carry out the terms of his or her offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at.

Dated at ..... this ..... day of ....., 20.....,

Plaintiff/Plaintiff's attorney

.....

(Address)

.....

Judgment granted on the ..... day of ..... 20 ..... in favour of the plaintiff for the amount of R..... and the amount of R..... costs.

The defendant is further ordered to pay the said judgment and costs in monthly/weekly instalments of R..... /The defendant is further ordered to pay the said judgment and costs in accordance with the offer.* **

The first instalment must be paid on or before ..... and thereafter on or before the ..... day of every succeeding month/week* until the outstanding balance of the judgment debt and costs has been paid in full.

.....

[Clerk of the Court] Court

*delete whatever is not applicable

** Emoluments Attachment Order may only be issued if the court is satisfied that there is compliance with section 65J(2A)

No. 5A – Request for 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)

***For use in the Regional Court**

In the Regional Court for the Regional Division of .....

held at .....Case No. ..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 57**[(2)]** of the Magistrates' Courts Act, 1944, be **[noted]** entered in his/her favour against the defendant as follows:

Judgment debt: R c

Costs: R c

Outstanding balance of the debt **[section 57(2)(c)(ii)]** .....

Interest at .....per cent per annum accounted from .....

Collection fees **[section 57(1)*(c)*]** .....

Summons, if any (attorney's charges, sheriff's fees and sheriff's fees on re-issue) **[section 57(1)]** .....

Cost of affidavit or affirmation by plaintiff/certificate by plaintiff's attorney **[section 57(2)(c)]** .....

Cost of registered letter **[section 57(1)]** .....

Cost of notice in terms of rule 54(1) .....

Letter of demand (section 56) .....

Request for judgment (section 57) .....

Admission of liability and undertaking to pay (section 57)

Totals R R

Total R

plus further interest at ..... per cent per annum as from the date of judgment to the date of payment, and that payment thereof take place in accordance with defendant's offer.

The following documents are attached:

[(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.

(b) The defendant's written acknowledgment of liability towards the plaintiff for the amount of the debt and costs claimed (or for any other amount) and his/her offer.

(c) A copy of the plaintiff's or plaintiff's attorney's written acceptance of the offer.

(d) An affidavit (or affirmation) by the plaintiff/a certificate by the plaintiff's attorney in terms of section 57(2)*(c)* of the Magistrates' Courts Act, 1944.]

(a) the summons or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written acknowledgment of liability and offer indicating the amount of the instalment offered by the defendant;

(c) full particulars and documentary evidence of the defendant's –

(i) monthly or weekly income and expenditure, supported where reasonably possible by the most recent proof in the possession of the defendant;

(ii) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments,

in order for the court to be apprised of the defendant's financial position at the time the offer was made and accepted; and

(iii) if the written consent contains a consent to an emoluments attachment order, the notice to the employer and the judgment debtor of the intention to request the court to authorise an emoluments attachment order;

(d) a copy of the plaintiff's or his or her attorney's written acceptance of the offer and proof of postage thereof to the defendant; and

(e) an affidavit by the plaintiff or a certificate by his or her attorney stating in which respects the defendant has failed to carry out the terms of his or her offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at.

Dated at ..... this ..... day of ....., 20.....,

Plaintiff/Plaintiff's attorney

.....

(Address)

.....

Judgment granted on the ..... day of ..... 20 ..... in favour of the plaintiff for the amount of R..... and the amount of R..... costs.

The defendant is further ordered to pay the said judgment and costs in monthly/weekly instalments of R..... /The defendant is further ordered to pay the said judgment and costs in accordance with the offer.* **

The first instalment must be paid on or before ..... and thereafter on or before the ..... day of every succeeding month/week* until the outstanding balance of the judgment debt and costs has been paid in full.

.....

[Registrar] Court

*delete whatever is not applicable

** Emoluments Attachment Order may only be issued if the court is satisfied that there is compliance with section 65J(2A)

No. 5B – Request for Judgment where the defendant has consented to judgment - Section 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the District Court**

In the Magistrate's Court for the District of .....

held at ..... Case No. ..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 58**[(1)]** of the Magistrates' Courts Act, 1944, be **[noted]** entered in plaintiff's favour against the defendant as follows:

Judgment debt: R c

Costs: R c

Amount of debt **[section 58(1)(i)]** .....

Interest at.....per cent per annum accounted from .....

Letter of demand (section 56) .....

Summons, if any (attorney's charges, sheriff's fees and sheriff's fees on re-issue) **[section 58(1)]** .....

Cost of notice in terms of rule 54(1) .....

Request for judgment (section 58) .....

Consent to judgment (section 58) .....

Totals..... R R

Total..... R

and that payment thereof takes place in accordance with defendant's consent.

The following documents are attached:

[(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.

(b) The defendant's written consent to judgment and costs.]

(a) the summons or, if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written consent to judgment; and

(c) if the defendant consents to an order of court for payment in specified instalments-

(i) the written consent indicating the amount of the specified instalments; and

(ii) full particulars and documentary evidence of the defendant's–

(*aa*) monthly or weekly income and expenditure supported where reasonably possible by the most recent proof in the possession of the defendant;

(*bb*) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments

in order for the court to be apprised of the defendant's financial position at the time the defendant consented to judgment; and

(cc) if the written consent contains a consent to an emoluments attachment order, the notice to the employer and the judgment debtor of the intention to request the court to authorise an emoluments attachment order.

Dated at ..... this ..... day of ....., 20.....,

Plaintiff/Plaintiff's attorney:

.....

(Address)

.....

.....

Judgment granted on the ..... day of ..... 20 .... in favour of the plaintiff for the amount of R ..... and the amount of R ..... costs for which the defendant has consented to judgment.

The defendant is further ordered to pay the said judgment and costs in monthly/weekly instalments of R..... /The defendant is further ordered to pay the said judgment and costs in accordance with the offer.* **

The first instalment must be paid on or before ..... and thereafter on or before the ..... day of every succeeding month/week* until the outstanding balance of the judgment debt and costs has been paid in full.

.....

[Clerk of the Court] Court

* Delete what is not applicable

** Emoluments Attachment Order may only be issued if the court is satisfied that there is compliance with section 65J(2A)

No. 5B – Request for Judgment where the defendant has consented to judgment - Section 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the Regional Court**

In the Regional Court for the Regional Division of .....

held at ..... Case No. ..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 58**[(1)]** of the Magistrates' Courts Act, 1944, be **[noted]** entered in plaintiff's favour against the defendant as follows:

Judgment debt: R c

Costs: R c

Amount of debt **[section 58(1)(i)]** .....

Interest at.....per cent per annum accounted from .....

Letter of demand (section 56) .....

Summons, if any (attorney's charges, sheriff's fees and sheriff's fees on re-issue) **[section 58(1)]** .....

Cost of notice in terms of rule 54(1) .....

Request for judgment (section 58) .....

Consent to judgment (section 58) .....

Totals..... R R

Total..... R

and that payment thereof takes place in accordance with defendant's consent.

The following documents are attached:

[(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.

(b) The defendant's written consent to judgment and costs.]

(a) the summons, or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written consent to judgment; and

(c) if the defendant consents to an order of court for payment in specified instalments-

(i) the written consent indicating the amount of the specified instalments; and

(ii) full particulars and documentary evidence of the defendant's –

(*aa*) monthly or weekly income and expenditure supported where reasonably possible by the most recent proof in the possession of the defendant;

(*bb*) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments

in order for the court to be apprised of the defendant's financial position at the time the defendant consented to judgment; and

(*cc*) if the written consent contains a consent to an emoluments attachment order, the notice to the employer and the judgment debtor of the intention to request the court to authorise an emoluments attachment order.

Dated at ..... this ..... day of ....., 20.....,

Plaintiff/Plaintiff's attorney:

.....

(Address)

.....

.....

Judgment granted on the ..... day of ..... 20 .... in favour of the plaintiff for the amount of R ..... and the amount of R ..... costs for which the defendant has consented to judgment.

The defendant is further ordered to pay the said judgment and costs in monthly/weekly instalments of R..... /The defendant is further ordered to pay the said judgment and costs in accordance with the offer.* **

The first instalment must be paid on or before ..... and thereafter on or before the ..... day of every succeeding month/week* until the outstanding balance of the judgment debt and costs has been paid in full.

.....

[Registrar] Court

* Delete what is not applicable
** Emoluments Attachment Order may only be issued if the court is satisfied that there is compliance with section 65J(2A)

No. 5C – Application for rescission of judgment in terms of Section 36(3) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the District Court**

In the Magistrate's Court for the District of.....

held at .....Case No. ..... of 20.....

In the matter between

..... Applicant

and

..... Respondent

KINDLY TAKE NOTICE that application will be made, to the above honourable court, on _____ at 9:00, or so soon thereafter as the matter may be heard for an order in the following terms:

1. Rescinding the judgment that was granted in this matter against the applicant on …….. (specify date of judgment).
2. No costs order / Costs to be paid by respondent if opposed.*

TAKE NOTICE FURTHER that the attached affidavit of the applicant containing reasonable proof that the judgment debt, the interest and the costs have been paid and that the application has been served on the judgment creditor, at least 10 court days prior to the hearing, will be used in support of this application.

Signed at _____ on this day of _____ 20 ____.

……
Signature of Applicant/Applicant's Attorney

Address of Applicant/Applicant's Attorney
……
……
……

To: The Clerk of the Court
……
……

To: Respondent/Respondent's Attorney
……

Address of Respondent/Respondent's Attorney

.....

.....

.....

*Delete whichever is not applicable.

No. 5C – Application for rescission of judgment in terms of Section 36(3) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the Regional Court**

In the Regional Court for the Regional Division of.....

held at ..... Case No. ..... of 20.....

In the matter between

..... Applicant

and

..... Respondent

KINDLY TAKE NOTICE that application will be made to the above honourable court on _____ at 9:00, or so soon thereafter as the matter may be heard for an order in the following terms:

1. Rescinding the judgment that was granted in this matter against the applicant on ..... (specify date of judgment).
2. No costs order / Costs to be paid by respondent if opposed.*

TAKE NOTICE FURTHER that the attached affidavit of the applicant containing reasonable proof that the judgment debt, the interest and the costs have been paid and that the application has been served on the judgment creditor, at least 10 court days prior to the hearing, will be used in support of this application.

Signed at on this day of 20 .

.....
Signature of Applicant/Applicant's Attorney

Address of Applicant/Applicant's Attorney
.....
.....
.....

To: The Registrar of the Court
.....
.....

To: Respondent/Respondent's Attorney
.....
Address of Respondent/Respondent's Attorney
.....
.....
.....

*Delete whichever is not applicable.

No. 38 - Emoluments Attachment Order - Section 65J of the Magistrates' Courts Act 1944 (Act 32 of 1944)

***Only for use in the District Court**

[IMPORTANT NOTICE:

YOUR ATTENTION IS DIRECTED to section 65J(3) of the Magistrates' Courts Act, 1944 (read with section 3(1) of the Sheriffs Act, 1986), which provides that only a sheriff may serve this order on a garnishee in the manner prescribed by rule 9 of the Magistrates' Courts Rules. Service of this order by a person who is not a sheriff appointed in terms of section 2 of the Sheriffs Act, 1986, constitutes a criminal offence in terms of section 60(1)(*gA*) of the Sheriffs Act, 1986, and renders such service invalid and of no effect. A person who is convicted of an offence in terms of section 60(1)(*gA*) of the Sheriffs Act, 1986, shall be liable to a fine or to imprisonment for a period not exceeding three years or both such fine and such imprisonment.

YOUR ATTENTION IS FURTHER DIRECTED to section 65J(6) of the Magistrates' Courts Act, 1944, which provides as follows:

"If, after the service of such an emoluments attachment order on the garnishee, it is shown that the judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his or her own and his or her dependants' maintenance, the court shall rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above such sufficient means.".]

In the Magistrate's Court for the District of .....

held at ..... Case No. .....of 20.....

In the matter between

.....Judgment Creditor

and

.....Judgment Debtor

Particulars **[for the identification]** of the judgment debtor (where available): **[inclusive of his or her identity or work number or date of birth and address.]**

Identity number/date of birth /Passport number:.....

Employee number:.....

Address: .....

Particulars of the Garnishee:

.....Garnishee

Address: **[of garnishee]** .....

Whereas it has been made to appear to the above-mentioned Court that emoluments are at present or in future owing or accruing to the judgment debtor by or from the garnishee and that after satisfaction of the following order sufficient means will be left to the judgment debtor to maintain himself or herself and those dependent upon him or her;

It is ordered:

(1) That the said emoluments are attached;

(2) That the garnishee pay to the judgment creditor or his or her attorney on the ..... day of each and every month/week after this order has been granted the sum of R..... of the emoluments of the said judgment debtor until a sufficient amount has been paid to satisfy a judgment or order obtained against the judgment debtor by the judgment creditor in the ..... Court at ..... on the

..... day of ..... for the amount of R ..... (on which judgment or order the amount of R ..... remains unpaid) with costs amounting to R ..... and the costs of attachment amounting to R ..... as well as R ..... sheriff's fees.

Dated at ..... this ..... day of ....., 20.....

By Order of the Court,

.....

Clerk of the Court.

.....

Judgment Creditor/Attorney for Judgment Creditor.

Address of Judgment Creditor/Attorney for Judgment Creditor.

.....

YOUR ATTENTION IS DIRECTED to section 65J(6) of the Magistrates' Courts Act, 1944, which provides as follows:

"(a) If, after the service of such an emoluments attachment order on the garnishee, the garnishee believes or becomes aware or it is otherwise shown that the—

(i) judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his or her own maintenance or that of his or her dependants; or

(ii) amounts claimed are erroneous or not in accordance with the law, the garnishee, judgment debtor or any other interested party must without delay and in writing notify the judgment creditor or his or her attorney accordingly.

(b) The written notification referred to in paragraph (a) must set out the reasons for believing or knowing that the judgment debtor will not have sufficient means for his or her own maintenance or that of his or her dependants or that the amounts claimed are erroneous or not in accordance with the law.

(c) The judgment creditor or his or her attorney must, after receiving the notice contemplated in paragraph (a), without delay indicate whether he or she accepts the reasons given in that notification and if not, set the matter down for hearing in court with notice to the garnishee, judgment debtor or any other interested party referred to in paragraph (a).

(d) The court may, after hearing all parties and after satisfying itself that the order is just and equitable—

(i) rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above the sufficient means necessary for his or her maintenance and that of his or her dependants; or

(ii) make any order including an order regarding the division of the amount available to be committed to all the emoluments attachment orders, after satisfying itself that the amount is appropriate and does not exceed 25 per cent of the judgment debtor's basic salary and an order as to costs."

[Attention is directed] YOUR ATTENTION IS FURTHER DIRECTED to the provisions of **[section]** subsection 65J(10)*(a)* and *(b)* of the Magistrates' Courts Act, 1944, which read as follows:

[" Any garnishee may, in respect of the services rendered by him or her in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him or her from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor."]

"(a) Any garnishee may, in respect of the services rendered by him or her in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him or her from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor.

(b) A garnishee who—

(i) unreasonably fails to timeously deduct the amount of the emoluments attachment order provided for in subsection (4)*(a)*; or

(ii) unreasonably fails to timeously stop the deductions when the judgment debt and costs have been paid in full,
is liable to repay to the judgment debtor any additional costs and interest which have accrued or any amount deducted from the salary of the judgment debtor after the judgment debt and costs have been paid in full as a result of such failure."

IMPORTANT NOTICE:
YOUR ATTENTION IS DIRECTED to section 65J(3) of the Magistrates' Courts Act, 1944 (read with section 3(1) of the Sheriffs Act, 1986), which provides that only a sheriff may serve this order on a garnishee and, where applicable, on the judgment debtor in the manner prescribed by rule 9 of the Magistrates' Courts Rules. Service of this order by a

person who is not a sheriff appointed in terms of section 2 of the Sheriffs Act, 1986, constitutes a criminal offence in terms of section 60(1)(*g*A) of the Sheriffs Act, 1986, and renders such service invalid and of no effect. A person who is convicted of an offence in terms of section 60(1)(*g*A) of the Sheriffs Act, 1986, shall be liable to a fine or to imprisonment for a period not exceeding three years or both such fine and such imprisonment.

No. 38A – Notice of intention to issue an Emoluments Attachment Order - Section 65J(2A) of the Magistrates' Courts Act 1944 (Act 32 of 1944)

***Only for use in the District Court**

In the Magistrate's Court for the District of ..... held at..... Case No. .....of 20.....

In the matter between

..... Judgment Creditor

and

..... Judgment Debtor

Particulars of the judgment debtor (where available):

Identity number/date of birth /Passport number:.....

Employee number:.....

Address:.....

Particulars of the Garnishee:

.....Garnishee

Address:.....

TO: THE ABOVE-MENTIONED JUDGMENT DEBTOR AND HIS OR HER EMPLOYER (HEREIN REFERRED TO AS THE "GARNISHEE"):

WHEREAS on the..... (date) the Court authorised the attachment of the judgment debtor's emoluments and that the garnishee must pay the judgment creditor or his or her attorney R.... of the emoluments of the said judgment debtor on the ..... day of each and every month/week with effect from .....(date) until a sufficient amount has been paid to satisfy a judgment or order obtained against the judgment debtor by the judgment creditor in the ..... Court at ..... on the ..... day of ..... for the amount of R..... (on which judgment or order the amount of R..... remains unpaid) with costs

amounting to R ..... and the costs of attachment amounting to R ..... as well as R ..... sheriff's fees.

KINDLY TAKE NOTICE that the judgment creditor intends to apply for the issuing of the aforesaid emoluments attachment order.

TAKE FURTHER NOTICE that the full amount of the capital debt, interest and costs outstanding is the sum of R....., substantiated by the statement of account attached hereto.

TAKE FURTHER NOTICE that unless the judgment debtor or his or her employer (cited herein as the Garnishee) files a notice of intention to oppose the issuing of the emoluments attachment order within 10 court days after service of this Form 38A notice, the judgment creditor will apply to court to issue an emoluments attachment order. The notice of intention to oppose, if any, must be delivered by—

(a) serving a copy thereof on the judgment creditor or his or her attorney; and
(b) filing the original thereof with the clerk of this Court.

TAKE FURTHER NOTICE that–

(i) in your notice of intention to oppose you are required to give your full physical, residential or business address, postal address and where available, facsimile and electronic mail address; and indicate the preferred address for service upon you of all documents in this matter, and service thereof at the address so given shall be valid and effectual, except where personal service is required by an order of the court; and
(ii) if a physical address is given by you in your notice of intention to oppose and is referred to as your preferred address for the purpose of service, that 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 courthouse.

TAKE FURTHER NOTICE that–

(1) The contemplated notice of intention to oppose must state the grounds upon which the judgment debtor or employer wishes to oppose the issuing of the emoluments attachment order;

(2) The grounds which may be used to oppose the issuing of the emoluments attachment order include, but are not limited to, the following–

(a) that the amounts claimed are erroneous or not in accordance with the law; or

(b) that 25 per cent of the judgment debtor's basic salary* is already committed to other emoluments attachment orders and that the debtor will not have sufficient means left for his or her own maintenance or that of his or her dependants;

(3) The notice of intention to oppose must be accompanied by—

(a) a certificate by the employer of the judgment debtor setting out particulars of–

(i) all existing court orders against the judgment debtor or agreements with other creditors for payment of a debt and costs in instalments; and

(ii) when reasonably attainable, the amounts needed by the debtor for necessary expenses and those of the persons dependent on him or her and for the making of periodical payments which he or she is obliged to make in terms of an agreement or otherwise in respect of his or her other commitments;

(b) the contact details of all the relevant judgment creditors or their attorneys; and

(c) the latest salary advice of the judgment debtor.

TAKE FURTHER NOTICE that if this matter is opposed, it may be set down for hearing on 10 court days' notice.

TAKE FURTHER NOTICE that should you not oppose this matter, application will be made to court on the..... day of ..... at 09h00 or as soon thereafter as this matter may be heard for the issuing of an emoluments attachment order.

TAKE FURTHER NOTICE that you have a right to be assisted by a legal representative (a lawyer) of your own choice. **IF YOU CANNOT AFFORD THE SERVICES OF A LEGAL REPRESENTATIVE, YOU ARE ENTITLED TO APPLY FOR LEGAL AID IN ORDER TO BE ALLOCATED A LAWYER IF YOU QUALIFY.**

Dated at .....this.....day of.....20.....

.....

Judgment Creditor/Judgment Creditor's attorney

Physical address (within 15 kilometres of the courthouse):

.....

.....

.....

Postal address: .....

Electronic mail address: .....

Facsimile: .....

Indicate the preferred address for service: .....

......

See section 65J(1A)(a)* and *(b)* of the Magistrates' Courts Act, 1944, which reads as follows:

"*(a)* The amount of the instalment payable or the total amount of instalments payable where there is more than one emoluments attachment order payable by the judgment debtor, may not exceed 25 per cent of the judgment debtor's basic salary.

(b) For purposes of this section, "basic salary" means the annual gross salary a judgment debtor is employed on divided by 12 and excludes additional remuneration for overtime or other allowances."