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DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 3 19 FEBRUARY 2016

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

AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA

The Rules Board for Courts of Law has under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), 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 [ ] represent omissions from existing text

Expressions with solid underline represent insertions into existing text

Definition

1. In this Schedule the "Rules" means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notices Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3

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November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R. 1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R. 516 of 8 May 2009, R. 518 of 8 May 2009, R 86 of 12 February 2010, R 87 of 12 February 2010, R 88 of 12 February 2010, R 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012, R. 992 of 7 December 2012, R. 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R. 317 of 17 April 2015 and R. 781 of 31 August 2015.

Substitution of rule 6 of the Rules

2. The following rule is hereby substituted for rule 6 of the Rules:

"6 Applications

(1) Save where proceedings by way of petition are prescribed by law, 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.

(2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion [shall] must be

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addressed to both the registrar and such person, otherwise it [shall] must be addressed to the registrar only.

(3) Every petition [shall] must conclude with the form of order prayed and be verified upon oath by or on behalf of the petitioner.

(4) *(a)* Every application brought *ex parte* (whether by way of petition or upon notice to the registrar supported by an affidavit as aforesaid) [shall] must be filed with the registrar and set down, before noon on the court day but one preceding the day upon which it is to be heard. If brought upon notice to the registrar, such notice [shall] must set forth the form of order sought, specify the affidavit filed in support thereof, request [him] the registrar to place the matter on the roll for hearing, and be as near as may be in accordance with Form 2 of the First Schedule.

(b) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application [by him] for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which [he] such person desires to be heard, whereupon the registrar [shall] must set such application down for hearing at the same time as the initial application [first mentioned].

(c) At the hearing the court may grant or dismiss either of or both such applications as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicant or otherwise as [to it seems meet] it deems fit.

(5) *(a)* Every application other than one brought *ex parte* [shall] must be brought on notice of motion as near as may be in accordance with Form 2 *(a)* of the First Schedule and true copies of the notice, and all annexures thereto, [shall] must be served upon every party to whom notice thereof is to be given.

(b) In a notice of motion the applicant [shall] must—

(i) appoint an address within 15 kilometres of the office of the registrar, at which applicant will accept notice and service of all documents in such proceedings;

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

(iii) [subject to the provisions of section 27 of the Act,] set forth a day, not less than five days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether

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respondent intends to oppose such application, and [shall] must further 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 said respondent of the said notice.

(c) If the respondent does not, on or before the day mentioned for that purpose in such notice, notify the applicant of [his] an intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar notice of set down before noon on the court day but one preceding the day upon which the same is to be heard.

(d) Any person opposing the grant of an order sought in the notice of motion [shall] must-

(i) within the time stated in the said notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint an address within 15 kilometres of the office of the registrar, at which such person will accept notice and service of all documents, as well as such person's postal, facsimile or electronic mail addresses where available;

(ii) within fifteen 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) if he or she intends to raise any question of law only, he or she [shall] must deliver notice of his or her intention to do so, within the time stated in the preceding sub-paragraph, setting forth such question.

(e) Within 10 days of the service upon [him] the respondent of the affidavit and documents referred to in sub-paragraph (ii) of paragraph *(d)* of subrule (5) the applicant may deliver a replying affidavit. The court may in its discretion permit the filing of further affidavits.

(f) (i) Where no answering affidavit, or notice in terms of sub-paragraph (iii) of paragraph *(d)*, is delivered within the period referred to in sub-paragraph (ii) of paragraph *(d)* the applicant may within five days of the expiry thereof apply to the registrar to allocate a date for the hearing of the application.

(ii) Where an answering affidavit is delivered the applicant may apply for such allocation within five days of the delivery of [his] a replying affidavit or, if no replying affidavit is delivered, within five days of the expiry of the period referred to in paragraph

(e) and where such notice is delivered the applicant may apply for such allocation within five days after delivery of such notice.

(iii) If the applicant fails so to apply within the appropriate period aforesaid, the respondent may do so immediately upon the expiry thereof. Notice in writing of the date allocated by the registrar **[shall forthwith]** must be given by the applicant or respondent, as the case may be, to the opposite party within five days of notification from the registrar.

(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as **[to it seems meet]** it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the aforegoing, it may 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 **[him]** such deponent 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.

(h) The provisions of paragraphs *(c)* and *(f)* **[shall *mutatis mutandis*]** apply to petitions subject to the necessary changes.

(6) 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.

(7) *(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. In the latter event the provisions of rule 10 [shall] will apply **[*mutatis mutandis*]**.

(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.

(8) Any person against whom an order is granted ex *parte* may anticipate the return day upon delivery of not less than twenty-four hours' notice.

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(9) A copy of every application to court in connection with the estate of any person deceased, or alleged to be a prodigal, or under any legal disability, mental or otherwise, [shall] must, before such application is filed with the registrar, be submitted to the Master for consideration and report; and if any person is to be suggested to the court for appointment as curator to property, such suggestion [shall] must likewise be submitted to the Master for report. Provided that the provisions of this subrule [shall] do not apply to any application under rule 57 except where that rule otherwise provides.

(10) The provisions of subrule (9) [shall] further apply to all applications for the appointment of administrators and trustees under deeds or contracts relating to trust funds or to the administration of trusts set up by testamentary disposition.

(11) Notwithstanding the aforegoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge.

(12) *(a)* In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as [to it seems meet] it deems fit.

(b) In every affidavit or petition filed in support of any application under paragraph *(a)* of this subrule, the applicant [shall] must set forth explicitly the circumstances which [he avers] is averred render the matter urgent and the reasons why [he] the applicant claims that [he] applicant could not be afforded substantial redress at a hearing in due course.

(c) A person against whom an order was granted in [his] such person's absence in an urgent application may by notice set down the matter for reconsideration of the order.

(13) In any application against any Minister, Deputy Minister, [Administrator] Member of an Executive Council, officer or servant of the State, in [his] such capacity [as such], the State or the administration of any province, the respective periods referred to in paragraph *(b)* of subrule (5), or for the return of a rule *nisi*, [shall not] must be not 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 authorized a shorter period.

(14) The provisions of rules [Rules] 10, 11, 12, 13 and 14 [shall ***mutatis mutandis***] apply to all applications.

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(15) 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. The court **[shall]** may not grant the application unless it is satisfied that the applicant will be prejudiced **[in his case if it be]** if the application is not granted."

Substitution of Form 2 of the First Schedule of the Rules

3. The following Form is hereby substituted for Form 2 of the First Schedule in the Rules:

"FORM 2

NOTICE OF MOTION

(To Registrar)

IN THE **[SUPREME]** HIGH COURT OF SOUTH AFRICA
(..... DIVISION)

In the matter:

.....

Applicant

TAKE NOTICE that application will be made on behalf of the above-named applicant on the ..... day of ..... at 10:00 or as soon thereafter as counsel 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 .....

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.....
.....
Applicant's Attorney

To the Registrar of the above-named Court".

Substitution of Form 2(a) of the First Schedule of the Rules

4. The following Form is hereby substituted for Form 2(a) of the First Schedule of the Rules:

"FORM 2(a)

NOTICE OF MOTION

(TO REGISTRAR AND RESPONDENT)

IN THE [SUPREME] HIGH COURT OF SOUTH AFRICA
(..... DIVISION)

In the matter between:

Applicant

and

Respondent

TAKE NOTICE that ..... (hereinafter called the applicant) intends to make application to this Court for an order

(a)
.....
.....

(b)
.....
.....

(c) .....

(here set forth the form of order prayed) and that the accompanying affidavit of ..... (or petition where required by law) will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed ..... (here set forth an address referred to in rule 6(5)(b)) at which he will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required (a) to notify applicant's attorney in writing on or before the ..... (b) and within fifteen days after you have so given notice of your intention to

oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the ..... at ..... (time).

DATED at ..... this ..... day of .....[19]20.....

.....
Applicant or his/her Attorney
(address)

To:

(1) C.D.

(Address),

RESPONDENT.

(2) The Registrar of the above Court,

....."

Commencement

5. These rules shall come into operation on **22 March 2016**.