DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 1157 30 OCTOBER 2020

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

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

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

SCHEDULE

GENERAL EXPLANATORY NOTE:

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

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

Definition

1. In this Schedule "the rules" means the Rules Regulating the Conduct of the Proceedings of the several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notice Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1

December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R. 1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R. 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R. 516 of 8 May 2009, R. 518 of 8 May 2009, R 86 of 12 February 2010, R. 87 of 12 February 2010, R. 88 of 12 February 2010, R. 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012 R. 992 of 7 December 2012, R. 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R.31 of 23 January 2015, R. 317 of 17 April 2015, R. 781 of 31 August 2015, R. 3 of 19 February 2016, R. 678 of 3 June 2016, R. 1055 of 29 September 2017, R. 1272 of 17 November 2017, R. 1318 of 30 November 2018, R. 61 of 25 January 2019, R. 842 of 31 May 2019, R. 1343 of 18 October 2019, R. 107 of 7 February 2020 and R. 858 van 7 August 2020.

Substitution of rule 35 of the Rules

2. Rule 35 of the Rules, is hereby substituted for the following Rule:

"35 Discovery, Inspection and Production of Documents

(1) Any party to any action may require any other party thereto, by notice in writing, to make discovery on oath within **[twenty]** 20 days of all documents and tape 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. Such notice shall not, save with the leave of a judge, be given before the close of pleadings.

(2) The party required to make discovery shall within **[twenty]** 20 days or within the time stated in any order of a judge make discovery of such documents on affidavit **[as near as may be]** in accordance with Form 11 of the First Schedule, specifying separately—

(a) such documents and tape recordings in **[his]** the possession **[or that of his agent]** of a party or such party's agent other than the documents and tape recordings mentioned in paragraph *(b)*;

(b) such documents and tape recordings in respect of which **[he]** such party has a valid objection to produce;

(c) such documents and tape recordings which **[he]** a party or **[his]** such party's agent had, but no longer has **[in his]** possession of at the date of the affidavit.

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. 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 recordings disclosed as aforesaid, other documents (including copies thereof) or tape 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]** such party to make the same available for inspection in accordance with subrule (6), or to state on oath within **[ten]** 10 days that such documents or tape recordings are not in **[his]** such party's possession, in which event **[he]** the party making the disclosure shall state their whereabouts, if known **[to him]**.

(4) A document or tape recording not disclosed as aforesaid may not, save with the leave of the court granted on such terms as **[to it may seem meet]** it may deem appropriate, 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 recording.

(5) *(a)* Where **[a registered company]** the Fund, as defined in the **[Motor Vehicle Insurance Act, 1942]** Road Accident Fund Act, 1996 (Act No. 56 of 1996), as amended, is a party to any action by virtue of the provisions of the said Act, any party **[thereto]** to the action may obtain discovery in the manner provided in paragraph *(d)* of this subrule against the driver or owner or short term insurer of the vehicle or employer of the driver of the vehicle, **[(as defined in the said Act)]** referred to in the said Act **[of the vehicle insured by the said company]**.

(b) The provisions of paragraph *(a)* shall apply *mutatis mutandis* to the driver or owner or short term insurer of the vehicle or employer of the driver of a vehicle **[owned by a person, state, government or body of persons]** referred to in **[sub-section (3) of]** section **[*nineteen*]** 21 of the said Act.

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

(d) The party requiring discovery in terms of paragraph *(a)*, *(b)* or *(c)* shall do so by notice **[as near as may be]** in accordance with Form 12 of the First Schedule.

(6) Any party may at any time by notice **[as near as may be]** in accordance with Form 13 of the First Schedule require any party who has made discovery to make available for inspection any documents or tape recordings disclosed in terms of subrules (2) and (3). Such notice shall require the party to whom notice is given to deliver **[to him]** within five days, to the party requesting discovery, a notice **[as near as may be]** in accordance with Form 14 of the First Schedule, stating a time within five days from the delivery of such latter notice when documents or tape recordings may be inspected at the office of **[his]** such party's attorney or, if **[he]** such party 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. The party receiving such last-named notice shall be entitled at the time therein stated, and for a period of five days thereafter, during normal business hours and on any one or more of such days, to inspect such documents or tape recordings and to take copies or transcriptions thereof. A party's failure to produce any such document or tape recording for inspection shall preclude **[him]** such party from using it at the trial, save where the court on good cause shown allows otherwise.

(7) If any party fails to give discovery as aforesaid or, having been served with a notice under subrule (6), omits to give notice of a time for inspection as aforesaid 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.

(8) 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 recording intended to be used at the trial of the action on behalf of the party to whom notice is given. The party receiving such notice shall not less than **[fifteen]** 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 recording which is in **[his]** such party's possession; or

(b) specifying such particulars as **[he]** the party may have, to identify any such document or tape recording not in **[his]** such party's possession, at the same time furnishing the name and address of the person in whose possession such document or tape recording is.

(9) Any party proposing to prove documents or tape recordings at a trial may give notice to any other party requiring him within ten days after the receipt of such notice to admit that those documents or tape recordings were properly executed and are what they purported to be. If the party receiving the said notice does not within the said period so admit, then as against such party the party giving the notice shall be entitled to produce the documents or tape recordings specified at the trial without proof other than proof (if it is disputed) that the documents or tape recordings are the documents or tape recordings referred to in the notice and that the notice was duly given. If the party receiving the notice states that the documents or tape recordings are not admitted as aforesaid, they shall be proved by the party giving the notice before **[he is]** being entitled to use them at the trial, but the party not admitting them may be ordered to pay the costs of their proof.

(10) Any party may give to any other party who has made discovery of a document or tape recording notice to produce at the hearing the original of such document or tape recording, not being a privileged document or tape recording, in such party's possession. Such notice shall be given not less than five days before the hearing, but may, if the court so allows, be given during the course of the hearing. If any such notice is so given, the party giving the same may require the party to whom notice is given to produce the said document or tape recording in court and shall be entitled, without calling any witness, to hand in the said document, 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.

(11) The court may, during the course of any proceeding, order the production by any party thereto under oath of such documents or tape recordings in **[his]** such party's power or control relating to any matter in question in such proceeding as the court may **[think meet]** deem appropriate, and the court may deal with such documents or tape recordings, when produced, as it **[thinks meet]** deems appropriate.

(12) *(a)* Any party to any proceeding may at any time before the hearing thereof deliver a notice **[as near as may be]** in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to-

(i) produce such document or tape recording for **[his]** inspection and to permit **[him]** the party requesting production to make a copy or transcription thereof; **[.]** or

(ii) state in writing within 10 days whether the party receiving the notice objects to the production of the document or tape recording and the grounds therefor; or

(iii) state on oath, within 10 days, that such document or tape recording is not in such party's possession and in such event to state its whereabouts, if known.

(b) Any party failing to comply with **[such]** the notice referred to in paragraph *(a)* shall not, save with the leave of the court, use such document or tape recording in such proceeding provided that any other party may use such document or tape recording.

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

(14) After appearance to defend has been entered, any party to any action may, for purposes of pleading, require any other party to-

(a) make available for inspection within five days a clearly specified document or tape recording in **[his]** such party's possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof; **[.]** or

(b) state in writing within 10 days whether the party receiving the notice objects to the production of the document or tape recording and the grounds therefor; or

(c) state on oath, within 10 days, that such document or tape recording is not in such party's possession and in such event to state its whereabouts, if known.

(15) For purposes of rules 35 and 38— **[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.]**

(a) a document includes any written, printed or electronic matter, and data and data messages as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); and

(b) a tape recording includes a sound track, film, magnetic tape, record or other material on which visual images, sound or other information can be recorded or any other form of recording."

Substitution of rule 45A of the Rules

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

"45A Suspension of orders by the court
The court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of an appeal, such suspension is in compliance with section 18 of the Act.".

Substitution of rule 65 of the Rules

4. The following rule is hereby substituted for rule 65 of the Rules:

"Commissioners of the Court

65. Every person duly appointed as a commissioner of any **[division]** Division of the **[Supreme]** High Court of South Africa for taking affidavits in any place outside the Republic shall, by virtue of such appointment, become a commissioner of the said **[Supreme]** High Court, and shall, as such, be entitled to be enrolled by the registrar of every other **[division]** Division as a commissioner thereof. For the purpose of facilitating such enrolment the registrar of each **[division]** Division shall transmit the names of those who are appointed as commissioners of such **[division]** Division, as well as their respective addresses, to the registrars of all the other **[divisions]** Divisions: Provided that no person residing within the Republic shall hereafter be appointed as such commissioner.".

Amendment of rule 67 of the rules

5. Rule 67 of the rules is hereby amended by the substitution for the Tariff of Court Fees of the following Tariff:

"Tariff of court fees

67 The court fees payable in respect of the **[various provincial and local divisions are]** High Court are as follows:

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[*(a)* (i) On every original initial document whereby an action is instituted or application is made	**[80,00]**
(ii) on every bill of costs to be taxed which is not related to an action or application already registered in the court	**[60,00]**
(iii) on every power of attorney (to be filed with the registrar) to appeal against the judgment of an inferior court, excluding appeals in criminal cases	**[80,00]**

(iv) on every notice of appeal against the judgment of a single judge to the full court	**[80,00]**
Provided that no fee shall be levied on the document whereby an *in forma pauperis* action is instituted.]	
(b) For the registrar's certificate on certified copies of documents (each)	2,00
(c) For each copy of an order of court made by the registrar-	
(i) for every 100 typed words or part thereof	2,00
(ii) for every photocopy of an A4-size page or part thereof	1,00"

Amendment of rule 68 of the Rules

6. Rule 68 of the Rules is hereby amended by the substitution for item 16 of the Tariff of the following item:

"16. For **[the drawing up and issuing of an interpleader summons]** interpleaders referred to in rule 58.....**[104.50]** 800.00.".

Amendment of rule 69 of the Rules

7. Rule 69 of the Rules is hereby amended by the insertion after subrule (5) of the following subrule:

"(6) For advocates referred to in section 34(2)*(a)*(ii) of the Legal Practice Act, 2014 (Act No. 28 of 2014), the tariff of fees as between party and party shall be in accordance with this rule and the tariff in Rule 70, whichever tariff items are applicable to the services rendered by the advocate: Provided that where an attendance performed by an advocate constitutes a service ordinarily performed by an attorney, the tariff in Rule 70 shall apply to that attendance."

Amendment of rule 70 of the Rules

8. Rule 70 of the Rules is hereby amended by the deletion of item 4 of Section D of the Tariff of Fees of Attorneys.

Commencement

9. These rules come into operation on **1 December 2020.**