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

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

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

SCHEDULE

GENERAL EXPLANATORY NOTE:

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

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

Definition

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

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

Substitution of rule 30A of the Rules

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

"30A Non-compliance with Rules

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

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

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

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

Substitution of rule 32 of the Rules

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

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

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

(a) on a liquid document;
(b) for a liquidated amount in money;
(c) for delivery of specified movable property; or
(d) for ejectment;

together with any claim for interest and costs.";

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

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

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who can swear positively to the facts.

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

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

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

"(3) **[Upon the hearing of an application for summary judgment the]** The defendant may–

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

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

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

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

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

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

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

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

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

Substitution of rule 36 of the Rules

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

"36 Inspections, Examinations and Expert Testimony

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

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

(i) specifies **[specifying]** the nature of the examination required**[,]**;

(ii) specifies the person or persons **[by whom,]** who shall conduct the examination;

(iii) specifies the place where and the date (being not less than **[fifteen]** 15 days from the date of such notice) and time when it is desired that **[such]** the examination shall take place**[,]**; and

(iv) requires **[requiring such]** the other party to submit himself or herself for the medical examination **[then and there]**at the specified place, date and time. **[Such]**

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

(i) state that **[such other]** the party being examined may have his or her own medical adviser present at **[such]** the examination; **[,]** and**[shall]**

(ii) be accompanied by a remittance in respect of the reasonable expenses to be incurred by **[such]** the other party in attending **[such]** the examination.

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

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

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

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

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

(a) the nature of the proposed examination;

(b) the person or persons who shall conduct **[by whom]** the examination **[is to be conducted]**;

(c) the place, date or time of the examination;

(d) the amount of the expenses tendered **[to him]**;

and shall further—

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

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

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

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

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

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

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

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

(8) Any party causing an examination to be made in terms of subrules (1) and (6) shall—

(a) cause the person making the examination to give a full report in writing, within two months of the date of the examination or within such other period as may be directed by a judge in terms of rule 37(8) or in terms of rule 37A, of the results of **[his]** the examination and the opinions that **[he]** such person formed as a result thereof on any relevant matter;

(b) within five days after receipt of such report, inform all other parties in writing of the existence of the report, and upon request immediately furnish any other party with a complete copy thereof; and

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(c) bear the expense of the carrying out of any such examination: Provided that such expense shall form part of such party's costs.

(9) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless **[he shall]** —

(a) where the plaintiff intends to call an expert, the plaintiff shall not **[less than fifteen days before the hearing,]** more than 30 days after the close of pleadings, or where the defendant intends to call the expert, the defendant shall not more than 60 days after the close of pleadings, have delivered notice of intention to call such expert **[have delivered notice of his intention so to do]**; and

(b) in the case of the plaintiff not **[less]** more than **[ten]** 90 days **[before the trial,]** after the close of pleadings and in the case of the defendant not more than 120 days after the close of pleadings, such plaintiff or defendant shall have delivered a summary of **[such]** the expert's opinion and **[his]** the reasons therefor**[.]** :

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

(9A) The parties shall—

(a) endeavour, as far as possible, to appoint a single joint expert on any one or more or all issues in the case; and

(b) file a joint minute of experts relating to the same area of expertise within 20 days of the date of the last filing of such expert reports.

(10) *(a)* No person shall, save with the leave of the court or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless **[he]** such person shall not **[less]** more than **[fifteen days before the hearing]** 60 days after the close of pleadings have delivered a notice stating **[his]** an intention to do so, offering inspection **[thereof]** of such plan, diagram, model or photograph and requiring the party receiving notice to admit the same within **[ten]** 10 days after receipt of the notice.

(b) If the party receiving the notice fails within the said period so to admit, the said plan, diagram, model or photograph shall be received in evidence upon its mere production and without further proof thereof. If such party **[states that he]** does not admit them, the said plan, diagram, model or photograph may be proved at the hearing and the party receiving the notice may be ordered to pay the cost of their proof."

Substitution of rule 37 of the Rules

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

"37 Pre-trial Conference

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

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

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

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

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

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

(a) the admissions which **[he]** such party requires;

(b) the enquiries which **[he]** such party will direct and which are not included in a request for particulars for trial; and

(c) other matters regarding preparation for trial which **[he]** such party will raise for discussion.

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

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

(a) The **[place,]** date, place and duration of the conference and the names of the persons present;

(b) if a party feels that **[he]** such party is prejudiced because another party has not complied with the rules of court, the nature of such non-compliance and prejudice;

(c) that every party claiming relief has requested **[his]** such party's opponent to make a settlement proposal and that such opponent has reacted thereto;

(d) whether any issue has been referred by the parties for mediation, arbitration or decision by a third party and **[on what]** the basis on which it has been so referred;

(e) whether the case should be transferred to another court;

(f) which issues should be decided separately in terms of rule 33(4);

(g) the admissions made by each party;

(h) any dispute regarding the duty to begin or the onus of proof;

(i) any agreement regarding the production of proof by way of an affidavit in terms of rule 38(2);

(j) which party will be responsible for the copying and other preparation of documents;

(k) which documents or copies of documents will, without further proof, serve as evidence of what they purport to be, which extracts may be proved without proving the whole document or any other agreement regarding the proof of documents.

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

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

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

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

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

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

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

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

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

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

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

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

Insertion of rule 37A in the Rules

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

"**37A Judicial Case Management**

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

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

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

(2) Case management through judicial intervention—

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

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

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(c) shall be construed and applied in accordance with the principle that, notwithstanding the provisions herein providing for judicial case management, the primary responsibility remains with the parties and their legal representatives to prepare properly, comply with all rules of court, and act professionally in expediting the matter towards trial and adjudication.

(3) The provisions of rule 37 shall not apply, save to the extent expressly provided in this rule, in matters which are referred for judicial case management.

(4) In all matters designated to be subject to judicial case management in terms of subrule (1)*(a)* at any stage before the close of pleadings, the registrar may—

(a) direct compliance letters to any party which fails to comply with the time limits for the filing of pleadings or any other proceeding in terms of the rules; and

(b) in the event of non-adherence to the directions stipulated in a letter of compliance, refer a matter to a case management judge designated by the Judge President who shall have the power to deal with the matter in terms of the practice directives of the particular Division concerned.

(5)*(a)* Notwithstanding the allocation of a trial date, a case that is subject to judicial case management shall not proceed to trial unless the case has been certified trial-ready by a case management judge after a case management conference has been held, as provided for in subrule (7).

(b) A case management judge shall not certify a case as trial-ready unless the judge is satisfied—

(i) that the case is ready for trial, and in particular, that all issues that are amenable to being resolved without a trial have been dealt with;

(ii) that the remaining issues that are to go to trial have been adequately defined;

(iii) that the requirements of rules 35 and 36(9) have been complied with if they are applicable; and

(iv) that any potential causes of delay in the commencement or conduct of the trial have been pre-empted to the extent practically possible.

(c) A case management judge may order directions on the making of discovery where the judge considers that such directions may expedite the case becoming trial-ready.

(6) In every defended action in a category of case which has been identified in terms of subrule (1)*(a)* as being subject to judicial case management in which any party makes application for a trial date following the close of pleadings, the registrar shall issue a notice electronically to the parties, at the addresses furnished in terms of rules 17(3)*(b)* or 19(3)*(a)*, in respect of the holding of a case management conference.

(7) The notice by the registrar in terms of subrule (6) shall inform the parties—

(a) of the date, time and place of a case management conference in the matter to be presided over by a case management judge;

(b) of the name of the case management judge, if available;

(c) that they are required to have held a pre-trial meeting before the case management conference at which the issues identified in subrule (10) in relation to the conduct and trial of the action must have been considered; and

(d) that the plaintiff is required, not less than two days before the time appointed for the case management conference, to—

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(i) ensure that the court file has been suitably ordered, secured, paginated and indexed; and

(ii) deliver an agreed minute of the proceedings at the meeting held in terms of paragraph *(c)*, alternatively, in the event that the parties have not reached agreement on the content of the minute, a minute signed by the party filing the document together with an explanation why agreement on its content has not been obtained.

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

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

(i) the issues in the case that are not in dispute; and

(ii) the issues in the case that are in dispute, describing the nature of the dispute and setting forth the parties' respective contentions in respect of each such issue.

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

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

(a) The matters set forth in rules 35, 36 and 37(6);

(b) the soliciting of admissions and the making of enquiries from and by the parties with a view to narrowing the issues or curtailing the need for oral evidence;

(c) the time periods within which the parties propose that any matters outstanding in order to bring the case to trial readiness will be undertaken;

(d) subject to rule 36(9), the instruction of witnesses to give expert evidence and the feasibility and reasonableness in the circumstances of the case that a single joint expert be appointed by the parties in respect of any issue;

(e) the identity of the witnesses they intend to call and, in broad terms, the nature of the evidence to be given by each such witness;

(f) the possibility of referring the matter to a referee in terms of section 38 of the Act;

(g) the discovery of electronic documents in the possession of a server or other storage device;

(h) the taking of evidence by video conference;

(i) suitable trial dates and the estimated duration of the trial; and

(j) any other matter germane to expediting the trial-readiness of the case.

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

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

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(b) endeavour to promote agreement on limiting the number of witnesses that will be called at the trial, eliminating pointless repetition or evidence covering facts already admitted; and

(c) identify and record the issues to be tried in the action.

(12) The case management judge may at a case management conference—

(a) certify the case as trial-ready;

(b) refuse certification;

(c) put the parties on such terms as are appropriate to achieve trial-readiness, and direct them to report to the case management judge at a further case management conference on a fixed date;

(d) strike the matter from the case management roll and direct that it be re-enrolled only after any non-compliance with the rules or case management directions have been purged;

(e) give directions for the hearing of opposed interlocutory applications by a motion court on an expedited basis;

(f) order a separation of issues in appropriate cases notwithstanding the absence of agreement by the parties thereto;

(g) at the conclusion of a case management conference, record the decisions made and, if deemed convenient, direct the plaintiff to file a minute thereof;

(h) make any order as to costs, including an order *de bonis propriis* against the parties' legal representatives or any other person whose conduct has conduced unreasonably to frustrate the objectives of the judicial case management process.

(13) The record of the case management conference, including the minutes submitted by the parties to the case management judge, any directions issued by the judge and the judge's record of the issues to be tried in the action, but excluding any settlement discussions and offers, shall be included in the court file to be placed before the trial judge.

(14) The trial judge shall be entitled to have regard to the documents referred to in subrule (13) in regard to the conduct of the trial, including the determination of any applications for postponement and issues of costs.

(15) Unless the parties agree thereto in writing, the case management judge and the trial judge shall not be the same person.

(16) Any failure by a party to adhere to the principles and requirements of this rule may be penalised by way of an adverse costs order."

Amendment of rule 68 of the Rules

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

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

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

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

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

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

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

Repeal of Forms 4, 5 and 6 of the First Schedule

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

Commencement

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