RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA • P.O. Box 13106, The Tramshed, 0126 • Tel (012) 326 8014/ 8045, Fax (012) 326 8018

29 June 2018 Our ref: Raj Daya/N Maseko Your ref:

Dear Sir/Madam,

INVITATION FOR COMMENTS ON THE PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 9(3)

The purpose of this letter is to invite comments on the proposed amendments to sub-rule 9(3) of the Magistrates' Courts Rules ("the Rules").

The Rules Board for Courts of Law ("Rules Board") is currently reviewing the rules of service of processes, notices and other documents. Included in this review is the portion dealing with service of processes on a chosen *domicilium citandi*, contained in paragraph *(d)* of sub-rule 9(3).

With a view of improving the prospects of service reasonably coming to the attention of the person to be served the Magistrates' Courts Committee of the Rulers Board resolved to amend sub-rule 9(3)*(d)* to include the following proviso: "*Provided that the sheriff shall set out in the return of service the details of the manner and circumstances under which such service was effected;*".

Further, for harmonization purposes, part of the envisaged amendments is the incorporation of High Court rule 4(10) provisions into sub-rule 9(3) of the Rules, to provide that if the court is not satisfied with the effectiveness of a service, it may order such further steps to be taken as it deems fit.

Amendments to sub-rule 9(3)*(g)*, dealing with service on State organs and related persons, have already been approved by the Rules Board, and are only included for ease of reference. The remaining amendments not specifically described above are cosmetic.

Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985
Justice N Dambuza(Chairperson)| Justice FE Mokgohloa(Vice-Chairperson)| Mr.M Kutama | Adv.L Haupt SC | Mr.A Essa | Ms.J Wessels
Mr.P Hundermark | Ms.N Ndlovu | Mr.R Isaacs | Mr.T Seboka | Adv.M Sishuba | Prof.E Hurter | Adv.M Basdew | Mr.G Bellairs | Mr.T Thupaatlase

The proposed amendments to Magistrates' Court's rule 9(3) are contained in the annexure hereto.

[ANNEXURE A – proposed rule 9(3) amendments]

As part of its consultative process, the Rules Board invites comments and input on the envisaged amendments. Your comments are invited, for submission by no later than **3 August 2018**.

Submissions can be sent via hand delivery, post, facsimile or email as follows:

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POSTAL ADDRESS: P. O. Box 13106, The Tramshed, 0126.
FACSIMILE: (012) 326 8018.
EMAIL: Nkosinathi Maseko (NMaseko@justice.gov.za).

Further enquiries may be directed to (012) 326 8014.

Yours sincerely,

Raj Daya
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ANNEXURE A

PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 9(3)

GENERAL EXPLANATORY NOTE:

[ ] Expressions in bold type in square brackets indicate omissions from the existing rules.
____ Expressions underlined with a solid line indicate insertions into the existing rules.

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

(a) To the said person personally or to **[his or her]** such person's duly authorised agent: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;

(b) at the residence or place of business of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of this paragraph, when a building, other than an hotel, boarding house, hostel or similar residential building, is occupied by more than one person or family, **'residence'** or **'place of business'** means that portion of the building occupied by the person upon whom service is to be effected;

(c) at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over **[him or her]** such person or, in the absence of **[such]** a person in authority, to a person apparently not less than 16 years of age and apparently in charge at **[his or her]** such person's place of employment;

(d) if the person so to be served has chosen a *domicilium citandi*, by delivering **[or leaving]** a copy thereof at the *domicilium* so chosen: Provided that the sheriff shall set out in the return of service the details of the manner and circumstances under which such service was effected;

(e) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there is no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;

(f) if the plaintiff or his or her authorised agent has given instructions in writing to the sheriff to serve by registered post, the process shall be so served: Provided that a debt counsellor who makes a referral to court in terms of section 86(7)*(c)* or 86(8)*(b)* of the National Credit Act, 2005 may cause the referral to be served by registered post or by hand;

(g) **[in the case of a Minister, Deputy Minister or Provincial Premier, in his or her official capacity, the State or provincial administration, at the Office of the State Attorney in Pretoria, or a branch of that Office which serves the area of jurisdiction of the court from which the process has been issued;]** in proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person's official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council;

(h) to any agent or attorney who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected in any applicable manner prescribed in this rule;

(i) where a local authority or statutory body is to be served, on the town clerk or assistant town clerk or mayor of such local authority or the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or

(j) where the person to be served with any document initiating application proceedings is already represented by an attorney of record such document may be served upon such attorney by the party initiating the proceedings:

Provided that where **[such]** service has been effected in the manner prescribed by paragraphs *(b),(c),(e)* or *(g)*, the sheriff shall **[indicate]** set out in the return of service of the process the name of the person to whom it has been delivered and the capacity in which such person stands in relation to the person, corporation, company, body corporate or institution affected by the process; **[and where such service has been effected in the manner prescribed by paragraphs *(b),(c),(d)* or *(f)*, the court may, if there is reason to doubt whether the process served has come to the actual knowledge of the person to be served, and in the absence of satisfactory evidence, treat such service as invalid]** Provided further that whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit: Provided **[further]** furthermore that service of any process through which a divorce action or action for nullity of marriage is instituted shall only be effected by the sheriff on the defendant personally.