DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 1156 30 OCTOBER 2020

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), 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 the existing rules.

___ Words or 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 and R. 507 of 27 June 2014, 571 of 18 July 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, R. 1272 of 17 November 2017, R. 632 of 22 June 2018, R. 1318 of 30 November 2018, R. 842 of 31 May 2019, R. 1343 of 18 October 2019,R. 107 of 7 February 2020 and R. 858 of 7 August 2020.

Amendment of rule 5 of the Rules

2. Rule 5 of the Rules is hereby amended –

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

"(2)*(a)* In every case where the claim is not for a debt or liquidated demand the summons shall be a combined summons similar to Form 2B of Annexure 1, to which summons shall be annexed **[a statement]** particulars of the material facts relied upon by the plaintiff in support of plaintiff's claim, and which **[statement]** particulars shall, amongst others, comply with rule 6, but in divorce matters a combined summons substantially compliant with Form 2C shall be used.

(b) (i) Where the claim is for a debt or liquidated demand, other than a claim subject to the provisions of the National Credit Act, 2005, the summons may be a simple summons similar to Form 2 of Annexure 1.

(ii) If the cause of action is based on a contract the plaintiff shall indicate whether the contract is in writing or oral, when, where and by whom it was concluded, and if the contract is in writing a copy thereof or of the part relied on shall be annexed to the simple summons." and

(b) by the substitution for subrule (7) of the following subrule:

"(7) Where the plaintiff issues a simple summons in respect of a claim regulated by legislation the summons may contain a bare allegation of compliance with the legislation, but the declaration, if any, must allege full particulars of such compliance. **[:]**

[Provided that where the original cause of action is a credit agreement under the National Credit Act, 2005, the plaintiff seeking to obtain judgment in terms of section 58 of the Act shall in the summons deal with each one

of the relevant provisions of sections 129 and 130 of the National Credit Act, 2005, and allege that each one has been complied with.]"

Amendment of rule 33 of the Rules

3. Rule 33 of the Rules is hereby amended—

(a) by the insertion after subrule (5) of the following subrule:

"(5A). In district court and regional court civil matters, the scale of fees to be taken by advocates referred to in section 34(2)*(a)*(ii) of the Legal Practice Act, 2014 (Act No. 28 of 2014) as between party and party shall be that set out in Table A and Table B of Annexure 2 subject to any restrictions in any Part of the Tables.";

(b) by the substitution for subrule (6) of the following subrule:
"Save as to appearance in open court without **[counsel]** an advocate referred to in section 34(2)*(a)*(i) of the Legal Practice Act, 2014 (Act No. 28 of 2014), the fees in subrule (5) shall be **[allowable]** allowed whether the work has been done by an attorney or by his or her **[clerk]** candidate attorney, but shall, except in the case of the fee referred to in paragraph 13 of the general provisions under Table A of Annexure 2, be **[allowable]** allowed only in so far as the work to which such fees have been allocated has in fact and necessarily been done."; and

(c) by the substitution for subrule (10) of the following subrule:

"Where the court is of the opinion that at the hearing the party to whom costs are awarded has occupied time unnecessarily or in relation to matters not relevant to the issue, the court may disallow a proportionate part of the hearing fee payable to his or her attorney or **[counsel]** advocate.".

Amendment of rule 76 of the Rules

4. Rule 76 of the Rules is hereby amended by the substitution for paragraph *(c)* of subrule (2) of the following paragraph:

"*(c)* if the parties agree to mediation, assist them to conclude a written agreement to mediate, which must be signed by the parties and accepted by the mediator; and".

Amendment of rule 84 of the Rules

5. Rule 84 of the Rules is hereby amended—

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

"(2) **[Liability]** Unless the parties agree otherwise, liability for the fees of a mediator must be borne equally **[between opposing]** by the parties participating in mediation**[: Provided that any party may offer or undertake to pay in full the fees of a mediator]**."; and

(b) by the deletion of subrule (3).

Repeal of rule 86 of the Rules

6. Rule 86 of the Rules is hereby repealed.

Amendment of Part I of Table A of Annexure 2 to the Rules

7. Part I of Table A of Annexure 2 to the Rules is hereby amended—

(a) by the substitution for paragraph 6 of the following paragraph:

"6(i) Fees to **[counsel]** advocates referred to in section 34(2)*(a)*(i) of the Legal Practice Act, 2014 (Act No. 28 of 2014) shall be allowed on taxation only in cases falling within Scale B, C or D or where the court has made an order in terms of rule 33(8).
(ii) Fees to advocates referred to in section 34(2)*(a)*(ii) of the Legal Practice Act, 2014 (Act No. 28 of 2014) shall be allowed on taxation for Scale A, B, C or D or where the court has made an order in terms of rule 33(8)." and

(b) by the insertion of paragraph 18 after paragraph 17, of the following paragraph:

"18 Fees to advocates referred to in section 34(2)*(a)*(i) of the Legal Practice Act, 2014 (Act No. 28 of 2014) shall be allowed on taxation only for items 21 to 26 of Part IV."

Amendment of Part III of Table A of Annexure 2 to the Rules

8. Part III of Table A of Annexure 2 to the Rules is hereby amended by the substitution for item 15 of the following item:

15 Attending court during trial, or at an on-the-spot inspection, or at postponement or examination on commission, for each quarter of an hour or part thereof spent in court while the case is actually being heard-				
(a) if **[counsel]** an advocate is not employed	R180,50	R180,50	R226,50	R292,00
(b) if **[counsel]** an advocate is employed	Nil	R71,50	R88,00	R113,00

Amendment of Part IV of Table A of Annexure 2 to the Rules

9. Part IV of Table A of Annexure 2 to the Rules is hereby amended by –

(a) the substitution for item 3 of Part IV of the following item:

3 Attending court on hearing:				
(a) If unopposed or opposed (if **[counsel]** an advocate is not employed), for each quarter of an hour or part thereof actually spent in court	R180,50	R180,50	R226,50	R292,50
(b) If opposed (if **[counsel]** an advocate is employed), for each quarter of an hour actually spent in court or part thereof	Nil	R71,50	R88,50	R113,00

(b) the substitution for the heading following after item 15 of the following heading: "WHERE **[COUNSEL]** AN ADVOCATE IS EMPLOYED";

(c) the substitution for item 20 of the following item:

20 Attending each necessary consultation with **[counsel]** an advocate, per quarter of an hour or part thereof	
(a) Claim or claims where the aggregate of the claim or claims	R75,00

does not exceed the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts	
(b) Claim or claims where the aggregate of the claim or claims exceeds the maximum jurisdictional amount determined by the Minister from time to time in respect of magistrates' courts for districts and the process is issued out of a magistrate's court for a regional division	R94,00

(d) the substitution for the heading following after item 20 of the following heading: "FEES TO **[COUNSEL]** ADVOCATES";

(e) the substitution for paragraph (b) of the Notes to items 21 to 26 of the following paragraph:

(b) The court may on request allow a higher fee for **[counsel]** an advocate in regard to items 22, 24, 25 and 26.	

(f) the substitution for paragraph (c) of the Notes to items 21 to 26 of the following paragraph:

(c) A fee for travelling time by **[counsel]** an advocate shall be allowed at the same rate as for attorneys under rule 33(9).	

Amendment of Annexure 3 to the Rules

10. Annexure 3 of the Rules is hereby amended—

(a) by the substitution for Mediation FORM MED-6 of the form annexured hereto; and

(b) by the deletion of Mediation FORM MED-7.

Commencement

11. This rule comes into operation on **1 December 2020.**

ANNEXURE

"FORM MED-6

(Rules 77(4) & 78(3))

COURT:.....FILE NO:.....

AGREEMENT TO MEDIATE
(Prior to and after litigation)

PARTIES:

AA ..... Claimant

And

BB ..... Respondent

(To be completed by mediation clerk)

We, the undersigned, (hereinafter referred to as "the **[Parties]** parties") agree to mediate the dispute between us, as set out in the Application for Referral to Mediation, on the terms and conditions in this agreement.

1. PARTICULARS OF CLAIMANT:

Surname/Name .....
First Names .....
Residential address .....
Business Address .....
Postal Address .....
Telephone .....
Cellular no .....

Fax no .....

Email .....

2. PARTICULARS OF RESPONDENT:

Surname/Name .....

First Names .....

Residential address .....

Business Address .....

Postal Address .....

Telephone .....

Cellular no .....

Fax no .....

Email .....

3. MEDIATOR

The **[Parties]** parties hereby agree to appoint the under mentioned mediator:

Surname .....

First Names .....

Address .....

Telephone .....

Cellular no .....

Fax no .....

Email .....

4. MEDIATOR'S FEES

[4.1 The parties and the mediator agree that the fees to the mediator will be paid in accordance with the tariff determined by the Minister.]

4.1 The parties and the mediator record that no fees are payable to the mediator.

4.2 **[A deposit of R_____ toward the mediator's fees and expenses, as determined by the mediation clerk, will be paid to the clerk of the court prior to the commencement of mediation. Any unearned amount in fees, paid as deposit, will be refunded to the Parties.]** The mediator shall secure his or her fees by agreement with the parties.

4.3.1 The **[Parties]** parties shall be **[jointly and severally]** liable for the mediator's fees **[and expenses]** in equal shares.

OR

4.3.2 The parties undertake to pay the mediator's fees in the following proportions or amounts:

Claimant:

.....

Respondent:

.....

(Delete whichever is not applicable)

4.4 Should payment not be **[timely]** made timeously, the mediator may, at his**[/]** or her sole discretion, stop all work on behalf of the **[Parties]** parties and withdraw from the mediation.

4.5 The **[Parties]** parties understand and agree that they shall be responsible for two hours of the mediator's time at the above stated rate for any appointment which they do not attend and do not provide at least 24 hours advance notice of the cancellation.

5. DATE, TIME AND VENUE

5.1 The first mediation session will be held on...../...../.....at..... am/pm.

5.2 The mediation venue will be ..... but may be changed by agreement between the **[Parties]** parties and the mediator.

6. DURATION OF MEDIATION

The **[Parties]** parties agree that the anticipated duration of the mediation is .....hours/days.

7. MEDIATION PROCESS

7.1 The **[Parties]** parties understand that mediation is a process in which a mediator facilitates communication between the **[Parties]** parties and, without deciding the issues or imposing a solution on the **[Parties]** parties, enables them to understand the issues and reach a mutually agreeable resolution of their dispute.

7.2 The **[Parties]** parties understand that it is for the parties, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

8. NATURE OF MEDIATION

8.1 The **[Parties]** parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual and informed manner.

8.2 It is understood that the mediator has no power to decide disputed issues for the **[Parties]** parties.

8.3 The **[Parties]** parties understand that mediation is not a substitute for independent legal advice.

8.4 The **[Parties]** parties understand that the mediator's objective is to facilitate the **[Parties]** parties themselves reaching their most constructive and fairest agreement. The **[Parties]** parties also understand that the mediator has an obligation to work on behalf of each party equally and that the mediator cannot render individual legal advice to any party and will not render therapy within the mediation.

8.5 The **[Parties]** parties state their good faith intention to complete their mediation by an agreement. It is, however, understood that any party may withdraw from or suspend the mediation at any time, for any reason.

8.6 The **[Parties]** parties also understand that the mediator may suspend or terminate the mediation if she/he feels that the mediation will lead to an unjust or unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that s/he can no longer effectively perform his/her facilitative role.

9. MEDIATOR IMPARTIALITY

9.1 The **[Parties]** parties understand that the mediator must remain impartial throughout and after the mediation process. The mediator shall therefore not champion the interests of any party over another in the mediation or in any court or other proceeding.

9.2 The mediator will provide copies of correspondence, draft agreements, and written documentation to the **[Parties]** parties' legal representatives at a party's request.

9.3 The mediator may communicate separately with an individual mediating party, in which case such discussions shall be confidential between the mediator and the individual mediating party unless they agree otherwise.

10. MEDIATOR'S INDEMNITY

The **[Parties]** parties agree that the mediator shall not be liable for any act or omission directly or indirectly connected to the mediation.

11. FULL DISCLOSURE

Each of the **[Parties]** parties agrees to fully and honestly disclose all relevant information and documents, as requested by the mediator, and all information requested by any other party to the mediation, if the mediator determines that the disclosure is relevant to the mediation discussions.

12. CONFIDENTIALITY

12.1 It is understood between the **[Parties]** parties and the mediator that the mediation will be strictly confidential and without prejudice.

12.2 Mediation discussions, written and oral communications, any draft resolutions, and any unsigned mediated agreements shall not be admissible in any court proceeding, unless such information is discoverable in terms of the normal rules of court. Only a mediated agreement, signed by the **[Parties]** parties may be so admissible.

12.3 The **[Parties]** parties further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the **[Parties]** parties.

[12.3] 12.4 The **[Parties]** parties understand the mediator has an ethical responsibility to break confidentiality if he/she suspects another person may be in danger of harm.

13. LITIGATION

The **[Parties]** parties agree to refrain from pre-emptive maneuvers and adversarial legal proceedings (except in the case of an emergency necessitating such action), while actively engaged in the mediation process.

14. PRESCRIPTION

The **[Parties]** parties are aware that the process of mediation shall not suspend, stay or interrupt prescription of any of the parties' claim and the onus rests on each party to take steps to interrupt such prescription for the duration of the mediation.

15. SETTLEMENT AGREEMENT

Should the **[Parties]** parties settle the dispute between them, the **[Parties]** parties agree to reduce the terms of the settlement to writing, with the assistance of the mediator.

16. BREACH OF AGREEMENT

Any party breaching this agreement shall be liable for and shall indemnify the non-breaching parties and the mediator for any loss, including all costs, expenses, liability and fees, including attorneys' fees, which may be incurred as a result of such breach.

17. NON-VARIATION AND WAIVER

The **[Parties]** parties agree that any amendment or variation or waiver of any term of this agreement must be in writing and signed by the parties, including the mediator.

SIGNED AT..... ON.....

WITNESSES:

1. .....
2. .....

.....
CLAIMANT
PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/ resolution)

WITNESSES:

1. .....
2. .....

.....
RESPONDENT
PERSONAL CAPACITY/
DULY AUTHORISED
(Attach copy of authority/ resolution)

ACCEPTANCE BY MEDIATOR:

I .....hereby accept the terms and conditions of this agreement in so far as they relate to me.

SIGNED AT .....ON .....

.....

MEDIATOR"