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

24 October 2017 Our ref: Raj Daya /C Kemp Your ref:

Per email

Dear Sir/ Madam

RE: REQUEST FOR COMMENT: PROPOSED AMENDMENT TO MAGISTRATES' COURTS RULES 33 (15) AND (16) AND PROPOSED FORM 58: PRE-ENROLMENT PROCEDURE FOR TAXATION AND PERIOD OF NOTICE OF DATE OF TAXATION

The Rules Board for Courts of Law, earlier this year obtained comment from role-players on the principles of harmonising the notice period of 10 days of the date set down for taxation, between the High Court and the Lower Courts and further harmonising and introducing to the Magistrates' Courts, the pre-enrolment procedure in Uniform Rule 70(3B). The majority of role-players were in favour of the principles referred to above.

The Rules Board for Courts of Law is therefore considering amending Magistrates' Courts Rule 33 to provide for the same pre-enrolment procedure contained in Uniform Rule 70(3B) and to harmonise the period of notice of the date set down for taxation between the High Court and Lower Courts.

As part of its consultative process in rule making and amendment, the Rules Board invites your comments and input on the proposed draft amendments to Magistrates' Courts Rule 33 and proposed Form 58. Draft amended Magistrates' Courts Rule 33 and proposed Form 58 are attached as **ANNEXURE A**.

For ease of reference a copy of Magistrates' Courts Rule 33 is attached as **ANNEXURE B**

Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985
Justice SA Majiedt(Chairperson), Justice FE Mokgohloa(Vice-Chairperson)Adv.M Motimele SC, Ms. J Wessels,Mr.P Hundermark, Adv.P Farlam SC, Adv.A Platt SC, Professor.M Paleker ,Ms.E de Klerk, Mr.G Bellairs, Ms.N Ndlovu, Mr.M Kutama, Mr.A Essa ,Mr.R Isaacs

Kindly submit your comments to the Secretariat by not later than **1 December 2017**.

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

Physical address: 2nd Floor, Centre Walk East Tower, 266 Pretorius Street, Pretoria.

Postal address: P.O. Box 13106, The Tramshed, 0126

Facsimile: (012) 326-8018

Email: Charmaine Kemp (ChKemp@justice.gov.za)

Further enquiries may be directed to 012 326 8014

Yours Faithfully,

Raj Daya
Deputy Chief State Law Adviser
Secretary to the Rules Board
w: +27 (0)12 3268014 | **fx** : +27 (0)12 3268018
efx:+27 (0)86 7540681| **m** : +27 (0)834392150
rajdaya@justice.gov.za
www.justice.gov.za

ANNEXURE A

MAGISTRATES' COURTS RULES

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

33 Costs

(1) The court in giving judgment or in making any order, including any adjournment or amendment, may award such costs as it deems fit.

(2) The costs of any application or order or issue raised by the pleadings may—

(a) be awarded by the court irrespective of the judgment in the action; or

(b) may be made costs in the action; or

(c) may be reserved to be dealt with on the conclusion of the action,

but if no order is made, such costs shall be costs in the action.

(3) Unless the court shall for good cause otherwise order, costs of interim orders shall not be taxed until the conclusion of the action, and a party may present only one bill for taxation up to and including the judgment or other conclusion of the action.

(4) Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.

(5) *(a)* In district court civil matters, the scale of fees to be taken by attorneys as between party and party shall—

(i) be that set out in Table A of Annexure 2 in addition to the necessary expenses;

(ii) in relation to proceedings under sections 65, 65A to 65M, inclusive, and 72 of the Act and all matters ancillary thereto be that set out in Parts I and II, respectively, of Table B of the said Annexure; and

(iii) in relation to proceedings under sections 74 and 74A to 74W, inclusive, of the Act and all matters ancillary thereto be that set out in Part III of Table B of the said Annexure.

(b) The scale of fees referred to in paragraph *(a)*(iii) of this subrule shall also be the scale of fees to be taken between attorney and client in relation to proceedings under sections 74 and 74A to 74W, inclusive, of the Act.

(c) In regional court civil matters, including matters in respect of causes of action in terms of section 29(1B)*(a)* of the Act, the scale of fees to be taken by attorneys as between party and party shall be that set out in scale D of Table A of Annexure 2 in addition to the necessary expenses.

[Subrule (5) substituted by GN R760 of 11 October 2013 with effect from 15 November 2013.]

(6) Save as to appearance in open court without counsel, the fees in subrule (5) shall be allowable whether the work has been done by an attorney or by his or her clerk, 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 only in so far as the work to which such fees have been allocated has in fact and necessarily been done.

(7) The magistrate presiding over any civil proceedings which last for the period of a quarter of an hour or longer, shall note on the record of the proceedings in respect of each day thereof—

(a) the time of the day when the proceedings actually commenced and actually ended; and

(b) the time of the day of the commencement and conclusion of each adjournment on that day.

(8) The court may on request made at or immediately after the giving of judgment in any contested action or application in which—

(a) is involved any difficult question of law or of fact; or

(b) the plaintiff makes two or more claims which are not alternative claims; or

(c) the claim or defence is frivolous or vexatious; or

(d) costs have been reasonably incurred and in respect of which costs there is no specific provision in these rules,

award costs on any scale higher than that on which the costs of the action would otherwise be taxable: Provided that the court may give direction as to the manner of taxation of such costs as may be necessary.

(9) When it is reasonable in any proceedings for a party to employ the services of an attorney other than a local attorney, the court may on proof thereof, and if costs are awarded to him or her, order that such costs shall include the reasonable travelling time, travelling expenses and subsistence expenses of such attorney as determined by the court: Provided that the court may order that the determination of such costs be done on taxation by the registrar or clerk of the court.

(10) 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.

(11) The court may in its discretion order that the whole of the costs of an action (including the costs of any claim in reconvention) be paid by the parties in such proportions as it may direct.

(12) Where the court is of the opinion that expense has been unnecessarily incurred because of the successful party's failure to take a course which would have shortened the proceedings and decreased the costs it shall award only such costs as would have been incurred if the successful party had taken such course.

(13) Where costs in convention and reconvention are awarded to different parties, the registrar or clerk of the court shall on taxation subject to any order which has been made by the court, allow each party to submit a bill of costs in respect of all costs and charges incurred in instituting and defending the claim in convention and reconvention, and defending the claim in convention and reconvention, respectively, and then to award the successful parties a proportionate amount of their costs in accordance with the award given by the court.

(14) *(a)* The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the registrar or clerk of the court without notice and inserted in the warrant.

(b) The costs payable by the judgment debtor in respect of any proceedings under section 65 or 65A to 65M inclusive, or 72 of the Act shall be inserted by the judgment creditor or his or her attorney on the face or reverse side of any

process issued under either of those sections and assessed by the registrar or clerk of the court before issue.

(c) The registrar or clerk of the court may refuse to issue any process under section 65 or 65A to 65M, inclusive, or 72 of the Act in which the costs are not inserted or inserted but not according to tariff.

(15) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's delivery of notice of intention to defend or on the defendant's consent to judgment before the time for such notice has expired, the party to whom such costs or expenses have been awarded shall **[deliver a bill of such costs or expenses and give at least 5 days' notice of taxation for an hour to be fixed (generally or specially) by the registrar or clerk of the court and he or she may include in such bill all such payments as have been necessarily and properly made by him or her.]**

:

(a) draw a bill of such costs or expenses and he or she may include in such bill all such payments as have been necessarily and properly made by him or her; and

(b) Prior to enrolling a matter for taxation, by notice as near as may be in accordance with Form 58 of Annexure 1-

(i) afford the party liable to pay costs at the time therein stated, and for a period of ten (10) days thereafter, by prior arrangement, during normal business hours and on any one or more such days, the opportunity to inspect such documents or notes pertaining to any item on the bill of costs; and

(ii) require the party to whom notice is given, to deliver to the party giving the notice within twenty (20) days, a written notice of opposition, specifying the items on the bill of costs objected to, and a brief summary of the reason for such objection.

(16) The registrar or clerk of the court shall not proceed with the taxation of any bill of costs and allow the relevant costs and expenses unless he or she is satisfied that the party liable to pay the costs has received-

(a) due notice in terms of subrule 15*(b)*; and

(b) not less than 10 days' notice of the date, time and place of such taxation and that he or she is entitled to be present thereat: Provided that such notice shall not be necessary-

(i) if the party liable to pay the costs has consented in writing to taxation in his or her absence; or

(ii) if the party liable to pay costs failed to give notice of intention to oppose in terms of subrule (15)*(b)*(ii):

Provided further that, if any party fails to appear after having given notice of opposition in terms of subrule (15)*(b)*(ii), the taxation may proceed in their absence.

(c) Witness fees shall not be allowed in taxation unless properly vouched for. **[(16) After subrule (15) has been complied with the registrar or clerk of the court shall tax and allow the relevant costs and expenses: Provided that witness fees shall not be allowed in taxation unless properly vouched for.]**

(17)*(a)* Where more than one-fourth of the bill (excluding expenses) is taxed off, the party presenting the bill shall not be allowed any costs of taxation.

(b) Where a party to whom a bill of costs is presented makes a written offer of payment in respect of such costs, and such offer is refused, the party

presenting the bill shall not be allowed any costs of taxation if the bill is taxed in an amount which is smaller than the amount of the offer.

(18) Where a bill of costs as between attorney and client is required to be taxed, taxation shall take place on at least 5 days' notice thereof to the attorney or client, whether or not an action therefor is pending: Provided that, notwithstanding the provisions of subrule (3), a bill of costs as between attorney and client may be taxed at any time after termination of the mandate.

(19) Where liability for costs is determined without judgment of the court by virtue of the provisions of these rules or by a settlement recorded in terms of rule 27(8), such costs shall be taxable by the registrar or clerk of the court as if they had been awarded by the court.

(20) On failure of a party giving notice of taxation to appear at the appointed time for taxation, such bill of costs may be taxed in his or her absence but such party shall not be allowed any costs of taxation.

(21) If a party consents to pay the costs of another party, the registrar or clerk of the court shall, in the absence of an order of the court, tax such costs, as if they had been awarded by the court.

(22) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.

No. 58 - Notice of intention to tax bill of costs

***For use in the District Court**

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF .....

HELD AT..... Case No .....

In the matter between:

.....

Plaintiff/Applicant

A.B.

and

C.D.

.....

Defendant/Respondent

TAKE NOTICE THAT ..... (party) intends submitting the attached bill of costs to the Clerk of the court at ..... (place) for taxation.

You may inspect the documents or notes pertaining to any item on the bill of costs at .....(address) between the hours of .....(business hours) for a period of ten (10) days after receipt of this notice.

You may furthermore file a notice of intention to oppose the taxation within twenty (20) days after receipt of this notice.

In your notice of intention to oppose you shall list all the items on the bill of costs to which you object, and a brief summary of the reason of your objection.

Should you fail to file your notice of intention to oppose within the time specified, the bill of costs will be submitted to the Clerk of the court for taxation without further notice to you.

If you do give notice of intention to oppose within the specified time, you may at the taxation object to the items specified in your notice of opposition.

DATED at ..... this ..... day of ..... 20.....

.....

Plaintiff/Defendant/Plaintiff's/Defendant's Attorneys

.....

(Address)

No. 58 - Notice of intention to tax bill of costs

***For use in the Regional Court**

IN THE MAGISTRATE'S COURT FOR THE REGIONAL DIVISION OF.....

HELD AT ..... Case No .....

In the matter between:

.....

Plaintiff/Applicant

A.B.

and

C.D.

.....

Defendant/Respondent

TAKE NOTICE THAT ..... (party) intends submitting the attached bill of costs to the Registrar at ..... (place) for taxation.

You may inspect the documents or notes pertaining to any item on the bill of costs at .....(address) between the hours of .....(business hours) for a period of ten (10) days after receipt of this notice.

You may furthermore file a notice of intention to oppose the taxation within twenty (20) days after receipt of this notice.

In your notice of intention to oppose you shall list all the items on the bill of costs to which you object, and a brief summary of the reason of your objection.

Should you fail to file your notice of intention to oppose within the time specified, the bill of costs will be submitted to the Registrar for taxation without further notice to you.

If you do give notice of intention to oppose within the specified time, you may at the taxation object to the items specified in your notice of opposition.

DATED at ..... this ..... day of ..... 20.....

.....

Plaintiff/Defendant/Plaintiff's/Defendant's Attorneys

.....

(Address)

33 Costs

(1) The court in giving judgment or in making any order, including any adjournment or amendment, may award such costs as it deems fit.
(2) The costs of any application or order or issue raised by the pleadings may-
(a) be awarded by the court irrespective of the judgment in the action; or
(b) may be made costs in the action; or
(c) may be reserved to be dealt with on the conclusion of the action,

but if no order is made, such costs shall be costs in the action.
(3) Unless the court shall for good cause otherwise order, costs of interim orders shall not be taxed until the conclusion of the action, and a party may present only one bill for taxation up to and including the judgment or other conclusion of the action.
(4) Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.
(5)*(a)* In district court civil matters, the scale of fees to be taken by attorneys as between party and party shall-
(i) be that set out in Table A of Annexure 2 in addition to the necessary expenses;
(ii) in relation to proceedings under sections 65, 65A to 65M, inclusive, and 72 of the Act and all matters ancillary thereto be that set out in Parts I and II, respectively, of Table B of the said Annexure; and
(iii) in relation to proceedings under sections 74 and 74A to 74W, inclusive, of the Act and all matters ancillary thereto be that set out in Part III of Table B of the said Annexure.

(b) The scale of fees referred to in paragraph *(a)*(iii) of this subrule shall also be the scale of fees to be taken between attorney and client in relation to proceedings under sections 74 and 74A to 74W, inclusive, of the Act.
(c) In regional court civil matters, including matters in respect of causes of action in terms of section 29(1B)*(a)* of the Act, the scale of fees to be taken by attorneys as between party and party shall be that set out in scale D of Table A of Annexure 2 in addition to the necessary expenses.
[Subrule (5) substituted by GN R760 of 11 October 2013 (wef 15 November 2011).]

(6) Save as to appearance in open court without counsel, the fees in subrule (5) shall be allowable whether the work has been done by an attorney or by his or her clerk, 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 only in so far as the work to which such fees have been allocated has in fact and necessarily been done.
(7) The magistrate presiding over any civil proceedings which last for the period of a quarter of an hour or longer, shall note on the record of the proceedings in respect of each day thereof-
(a) the time of the day when the proceedings actually commenced and actually ended; and
(b) the time of the day of the commencement and conclusion of each adjournment on that day.

(8) The court may on request made at or immediately after the giving of judgment in any contested action or application in which-
(a) is involved any difficult question of law or of fact; or
(b) the plaintiff makes two or more claims which are not alternative claims; or
(c) the claim or defence is frivolous or vexatious; or
(d) costs have been reasonably incurred and in respect of which costs there is no specific provision in these Rules,

award costs on any scale higher than that on which the costs of the action would otherwise be taxable: Provided that the court may give direction as to the manner of taxation of such costs as may be necessary.

(9) When it is reasonable in any proceedings for a party to employ the services of an attorney other than a local attorney, the court may on proof thereof, and if costs are awarded to him or her, order that such costs shall include the reasonable travelling time, travelling expenses and subsistence expenses of such attorney as determined by the court: Provided that the court may order that the determination of such costs be done on taxation by the registrar or clerk of the court.

(10) 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.

(11) The court may in its discretion order that the whole of the costs of an action (including the costs of any claim in reconvention) be paid by the parties in such proportions as it may direct.

(12) Where the court is of the opinion that expense has been unnecessarily incurred because of the successful party's failure to take a course which would have shortened the proceedings and decreased the costs it shall award only such costs as would have been incurred if the successful party had taken such course.

(13) Where costs in convention and reconvention are awarded to different parties, the registrar or clerk of the court shall on taxation subject to any order which has been made by the court, allow each party to submit a bill of costs in respect of all costs and charges incurred in instituting and defending the claim in convention and reconvention, and defending the claim in convention and reconvention, respectively, and then to award the successful parties a proportionate amount of their costs in accordance with the award given by the court.

(14)*(a)* The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the registrar or clerk of the court without notice and inserted in the warrant.

(b) The costs payable by the judgment debtor in respect of any proceedings under section 65 or 65A to 65 m inclusive, or 72 of the Act shall be inserted by the judgment creditor or his or her attorney on the face or reverse side of any process issued under either of those sections and assessed by the registrar or clerk of the court before issue.

(c) The registrar or clerk of the court may refuse to issue any process under section 65 or 65A to 65 m, inclusive, or 72 of the Act in which the costs are not inserted or inserted but not according to tariff.

(15) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's delivery of notice of intention to defend or on the defendant's consent to judgment before the time for such notice has expired, the party to whom such costs or expenses have been awarded shall deliver a bill of such costs or expenses and give at least 5 days' notice of taxation for an hour to be fixed (generally or specially) by the registrar or clerk of the court and he or she may include in such bill all such payments as have been necessarily and properly made by him or her.

(16) After subrule (15) has been complied with the registrar or clerk of the court shall tax and allow the relevant costs and expenses: Provided that witness fees shall not be allowed in taxation unless properly vouched for.

(17)*(a)* Where more than one-fourth of the bill (excluding expenses) is taxed off, the party presenting the bill shall not be allowed any costs of taxation.

(b) Where a party to whom a bill of costs is presented makes a written offer of payment in respect of such costs, and such offer is refused, the party presenting the bill shall not be allowed any costs of taxation if the bill is taxed in an amount which is smaller than the amount of the offer.

(18) Where a bill of costs as between attorney and client is required to be taxed, taxation shall take place on at least 5 days' notice thereof to the attorney or client, whether or not an action therefor is pending: Provided that, notwithstanding the provisions of subrule (3), a bill of costs as between attorney and client may be taxed at any time after termination of the mandate.

(19) Where liability for costs is determined without judgment of the court by virtue of the provisions of these Rules or by a settlement recorded in terms of rule 27(8), such costs shall be taxable by the registrar or clerk of the court as if they had been awarded by the court.

(20) On failure of a party giving notice of taxation to appear at the appointed time for taxation, such bill of costs may be taxed in his or her absence but such party shall not be allowed any costs of taxation.

(21) If a party consents to pay the costs of another party, the registrar or clerk of the court shall, in the absence of an order of the court, tax such costs, as if they had been awarded by the court.

(22) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.