Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 632 **22 JUNE 2018**

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), with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE

GENERAL EXPLANATORY NOTE:

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

_____ 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

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

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 ,R. 507 of 27 June 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 and R. 1272 of 17 November 2017.

Substitution of rule 45 of the Rules

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

"45. Enquiry into financial position of judgment debtor

(1) A notice referred to in section 65A(1) of the Act calling upon a judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as the representative of the juristic person and, in his or her personal capacity, to appear before the court in chambers shall **[be similar to]** be on a form corresponding substantially with Form 40 of Annexure 1 and shall indicate the date of the judgment or order, the amount thereof, the balance of the capital, interest, costs and collection fees which the defendant undertook to pay under section 57(1)*(c)* of the Act owing as at the date of issue or reissue of such notice and **[shall]** be supported by an affidavit **[or affirmation]** by the judgment creditor or a certificate by his or her attorney stating-

(a) the date of the judgment or the date of the expiry of the period of suspension under section 48*(e)* of the Act, as the case may be;

(b) that the judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or became payable or from the expiry of the period of suspension in terms of section 48*(e)* of the Act;

(c) in what respect the judgment debtor has failed to comply with the judgment or order referred to in section 65A(1) of the Act, the amount

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

in arrear and outstanding balance on the date on which the notice is issued;

(d) that the judgment debtor has been advised by registered letter of the terms of the judgment or of the expiry of the period of suspension under section 48*(e)* of the Act, as the case may be, and that a period of 10 days has elapsed since the date on which the said letter was posted;

(2) A notice referred to in sub-rule (1) shall state the consequences of failure to appear in court on the date determined for the enquiry.

(3) Any alteration in a notice referred to in sub-rule (1) or in a warrant of arrest in terms of section 65A(6) of the Act shall be initialled by the judgment creditor or his or her attorney and by the **[registrar or]** clerk of the court before issue or reissue thereof.

(4) When a judgment or order referred to in section 65A(1) of the Act has been given in any court other than the court of the district in which the enquiry is held, the **[registrar or]** clerk of the court shall not issue the notice until there is lodged with him or her a copy of the judgment or order of such other court duly certified by the registrar or clerk of that court.

(5) *(a)* When a judgment debtor has been arrested and is brought before a court which is not the court which authorised the warrant of arrest, that **[registrar or]** clerk of the court shall open a file, allocate a case number to it and hand it, together with the warrant, to the court.

(b) When the court referred to in paragraph *(a)* transfers the matter in terms of section 65A(11) of the Act to the court which authorised the warrant, the **[registrar or]** clerk of the court shall without delay send the original warrant and certified copies of the minutes of the proceedings and the order to that effect to the court which authorised the warrant.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(c) If the court before which proceedings in terms of section 65A(10)*(b)* or (11) are pending is not the court which authorised the warrant in terms of section 65A(6), the **[registrar or]** clerk of the former court shall by telephone or in writing by facsimile notify the [**registrar or]** clerk of the latter court of the appearance of the judgment debtor, director or officer before the former court and shall inform the judgment creditor or his or her attorney by telephone or in writing by facsimile accordingly: Provided that full particulars of telephone calls and proof of transmission of facsimiles shall be filed in the case cover.

(6) The provisions of rule 55 shall apply **[*mutatis mutandis*]**, with appropriate changes, to a request referred to in section 65A(3) of the Act.

(7) A written offer referred to in section 65 of the Act shall be **[in]** on affidavit **[or affirmation form]** setting out the following particulars pertaining to the judgment debtor—

(a) the full names of the judgment debtor, his or her identity number or passport number, residential and business address;

(b) the name and address of his or her employer and his or her employee number;

(c) his or her marital status;

(d) the number of his or her dependants, their age and their relationship to him or her;

(e) his or her assets and liabilities, substantiated where reasonably possible with the most recent proof thereof and attached as annexures;

(f) his or her gross weekly or monthly income (including that of his or her spouse and dependants) and expenses substantiated by the most recent proof in the possession of the debtor relating to his or her income and expenditure;

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(g) the **[number]** details of agreements with other creditors for payment of a debt in instalments, and of emoluments attachment orders or other court orders against him or her and the total amount payable thereunder, substantiated by copies thereof and attached as annexures; and

(h) his or her offer and the dates of the proposed instalments.

(8) A warrant in terms of section 65A(6) of the Act shall **[be similar to]** correspond substantially with Form 40A of Annexure 1.

(9) A notice in terms of section 65A(8)*(b)* of the Act shall **[be similar to]** correspond substantially with Form 40B of Annexure 1."

Substitution of rule 46 of the Rules

3. The following rule is hereby substituted for rule 46 of the Rules:

"46. Attachment of emoluments by emoluments attachment order

(1) **[When an emoluments attachment order application is issued by a judgment creditor out of any court other than the court in which the judgment or order was obtained, a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit or affirmation or certificate referred to in section 65J(2)*(b)* of the Act.]**

When an emoluments attachment order has been authorised by the court, an application to issue that order must be made on a form corresponding substantially with Form 38A of Annexure 1.

(2) An emoluments attachment order shall be issued **[in the]** on a form **[prescribed in Annexure 1, being]** corresponding substantially with Form 38 of Annexure 1, and shall contain sufficient information to enable the garnishee to identify the judgment debtor, including the date of birth, identity number or passport number and **[work]** employee number **[or date of birth]** of the judgment debtor."

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Substitution of rule 49 of the Rules

4. The following rule is hereby substituted for rule 49 of the Rules:

"49. Rescission and variation of judgments

(1) A party to proceedings in which a default judgment has been given, or any person affected by such judgment, may within 20 days after obtaining knowledge of the judgment serve and file an application to court, on notice to all parties to the proceedings, for a rescission or variation of the judgment and the court may, upon good cause shown, or if it is satisfied that there is good reason to do so, rescind or vary the default judgment on such terms as it deems fit: Provided that the 20 days' period shall not be applicable to a request for rescission or variation of judgment brought in terms of sub-rule (5) or (5A).

(2) It will be presumed that the applicant had knowledge of the default judgment 10 days after the date on which it was granted, unless the applicant proves otherwise.

(3) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who wishes to defend the proceedings, the application must be supported by an affidavit setting out the reasons for the defendant's absence or default and the grounds of the defendant's defence to the claim.

(4) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who does not wish to defend the proceedings, the applicant must satisfy the court that he or she was not in wilful default and that the judgment was satisfied, or arrangements were made to satisfy the judgment, within a reasonable time after it came to his or her knowledge.

(5)(*a*) Where a plaintiff in whose favour a default judgment was granted has **[agreed]** consented in writing that the judgment be rescinded or varied, either the plaintiff or the defendant against whom the judgment was granted,

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

or any other person affected by such judgment, may, by notice to all parties to the proceedings, apply to the court for the rescission or variation of the default judgment, which application shall be accompanied by written proof of the plaintiff's consent to the rescission or variation.

(*b*) An application referred to in paragraph *(a)* may be made at any time after the plaintiff has **[agreed]** consented in writing to the rescission or variation of the judgment.

(5A)(*a*) Where a judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid in full, a court may, on application by the judgment debtor or any other person affected by the judgment, rescind that judgment.

(*b*) The application contemplated in paragraph *(a)*—

(i) must be made on a form corresponding substantially with Form 5C of Annexure 1;

(ii) must be accompanied by an affidavit with annexures providing reasonable proof that the judgment debt, the interest and the costs have been paid; and

(iii) must be served on the judgment creditor not less than 10 days prior to the hearing of the application.

(6) Where an application for rescission or variation of a default judgment is made by any person other than an applicant referred to in sub-rule (3),(4) or (5), the application must be supported by an affidavit setting out the reasons why the applicant seeks rescission or variation of the judgment.

(7) All applications for rescission or variation of judgment other than a default judgment must be brought on notice to all parties, supported by an affidavit setting out the grounds on which the applicant seeks the rescission or variation, and the court may rescind or vary such judgment if it is satisfied that there is good reason to do so.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(8) Where the rescission or variation of a judgment is sought on the ground that it is void **[*ab origine*]** from the beginning, or was obtained by fraud or mistake, the application must be served and filed within one year after the applicant first had knowledge of such voidness, fraud or mistake.

(9) A magistrate who of his or her own accord corrects errors in a judgment in terms of section 36(1)*(c)* of the Act shall, in writing, advise the parties of the correction."

Amendment of rule 55 of the Rules

5. Rule 55 of the Rules is hereby amended by—

(a) the substitution for paragraph *(a)* of subrule (1) of the following paragraph:

"*(a)* Every application **[shall]** must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.";

(b) the substitution for paragraph *(c)* of subrule (1) of the following paragraph:

"*(c)* Where it is necessary or proper to give any person notice of an application, the notice of motion must also be addressed to **[such person]** and served on such person.";

(c) the substitution for paragraph *(d)* of subrule (1) of the following paragraph:

"**[*(d)* The notice of motion in every application other than one brought *ex parte* shall be similar to Form 1A of Annexure 1 and copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.]**

(d)(i) The notice of motion in every application other than interlocutory and other applications incidental to pending proceedings or one brought *ex parte* must correspond substantially with Form 1A of Annexure 1.

(ii) Copies of the notice and all annexures thereto must be served upon every party to whom notice is to be given."; and

(d) the substitution for paragraph *(a)* of subrule (4) of the following paragraph:

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

"**[*(a)* Interlocutory and other applications incidental to pending proceedings must be brought on notice, supported by affidavits if facts need to be placed before the court, and set down with appropriate notice.]**

(a)(i) Interlocutory and other applications incidental to pending proceedings must be brought on notice corresponding substantially with Form 1C of Annexure 1, indicating a date assigned by a registrar or clerk of the court or as directed by a magistrate before whom the matter is to be heard.

(ii) The notice must be supported by affidavits if facts need to be placed before the court.

(iii) Copies of the notice and all annexures thereto must be served upon every party to whom notice is to be given.".

Amendment of Annexure 1 to the Rules

6. Annexure 1 to the Rules is hereby amended—

(a) by the insertion after Form 1B of Form 1C contained in the Annexure hereto;

(b) by the substitution for Form 5A of Form 5A contained in the Annexure hereto;

(c) by the substitution for Form 5B of Form 5B contained in the Annexure hereto;

(d) by the insertion after Form 5B of Form 5C contained in the Annexure hereto;

(e) by the substitution for Form 38 of Form 38 contained in the Annexure hereto; and

(f) by the insertion after Form 38 of Form 38A contained in the Annexure hereto.

Commencement

7. These rules come into operation on **1 August 2018**.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

ANNEXURE

"**No. 1C – Notice of Motion (Short Form, for Interlocutory or other applications incidental to pending proceedings)**

*** For use in the District Court**

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

Held at …… Case No: ……..

In the matter between:

..... Applicant

and

…… …….. Respondent

TAKE NOTICE that application will be made on behalf of the above-named applicant on the ..... day of ..... at 9:00 or as soon thereafter as the parties may be heard for an order in the following terms:

(a) .....

(b).....

(c).....

and that the affidavit of ..... annexed hereto will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

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

.....
Applicant/Applicant's Attorney
(Physical address)
.....

To: 1. The Clerk of the above-named Court
……..

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

2. Respondent/Respondent's Attorney
(Physical address)
……

No. 1C – Notice of Motion (Short Form, for Interlocutory or other applications incidental to pending proceedings)

*** For use in the Regional Court**

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF ……...

Held at …… Case No: ……..

In the matter between:

..... Applicant

and

…… …….. Respondent

TAKE NOTICE that application will be made on behalf of the above-named applicant on the ..... day of ..... at 9:00 or as soon thereafter as the parties may be heard for an order in the following terms:

(a) .....

(b).....

(c).....

and that the affidavit of ..... annexed hereto will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

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

.....
Applicant/Applicant's Attorney
(Physical address)
.....

To: 1. The Registrar
……

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

2. Respondent/Respondent's Attorney
(Physical address)
…….

No. 5A – Request for Judgment where the defendant has admitted liability and undertaken to pay the debt in instalments or otherwise - Section 57 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the District Court**

In the Magistrate's Court for the District of .....

held at .....Case No. ..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 57**[(2)]** of the Magistrates' Courts Act, 1944, be **[noted]** entered in his/her favour against the defendant as follows:

Judgment debt: R c

Costs: R c

Outstanding balance of the debt **[section 57(2)(c)(ii)]** .....

Interest at .....per cent per annum accounted from .....

Collection fees **[section 57(1)*(c)*]** .....

Summons, if any (attorney's charges, sheriff's fees and sheriff's fees on re-issue) **[section 57(1)]** .....

Cost of affidavit or affirmation by plaintiff/certificate by plaintiff's attorney **[section 57(2)(c)]** .....

Cost of registered letter **[section 57(1)]** .....

Cost of notice in terms of rule 54(1) .....

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Letter of demand (section 56) .....

Request for judgment (section 57) .....

Admission of liability and undertaking to pay (section 57)

Totals R R

Total R

plus further interest at ..... per cent per annum as from the date of judgment to the date of payment, and that payment thereof take place in accordance with defendant's offer.

The following documents are attached:

[(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.

(b) The defendant's written acknowledgment of liability towards the plaintiff for the amount of the debt and costs claimed (or for any other amount) and his/her offer.

(c) A copy of the plaintiff's or plaintiff's attorney's written acceptance of the offer.

(d) An affidavit (or affirmation) by the plaintiff/a certificate by the plaintiff's attorney in terms of section 57(2)*(c)* of the Magistrates' Courts Act, 1944.]

(a) the summons, or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written acknowledgment of liability and offer indicating the amount of the instalment offered by the defendant;

(c) full particulars and documentary evidence of the defendant's –

(i) monthly or weekly income and expenditure, supported where reasonably possible by the most recent proof thereof in the possession of the defendant;

(ii) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments

in order for the court to be apprised of the defendant's financial position at the time the offer was made and accepted; and

(iii) if the written consent contains a consent to an emoluments attachment order, the notice to the employer and the judgment debtor of the intention to request the court to authorise an emoluments attachment order;

(d) a copy of the plaintiff's or his or her attorney's written acceptance of the offer and

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

proof of postage thereof to the defendant; and

(e) an affidavit by the plaintiff or a certificate by his or her attorney stating in which respects the defendant has failed to carry out the terms of his or her offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at.

Dated at ..... this ..... day of ....., 20.....,

Plaintiff/Plaintiff's attorney

.....

(Address)

.....

Judgment granted on the ..... day of ..... 20 ..... in favour of the plaintiff for the amount of R..... and the amount of R..... costs.

The defendant is further ordered to pay the said judgment and costs in monthly/weekly instalments of R..... /The defendant is further ordered to pay the said judgment and costs in accordance with the offer.* **

The first instalment must be paid on or before ..... and thereafter on or before the ..... day of every succeeding month/week* until the outstanding balance of the judgment debt and costs has been paid in full.

.....

[Clerk of the Court] Court

*delete whatever is not applicable

** Emoluments Attachment Order may only be issued if the court is satisfied that there is compliance with section 65J(2A)

No. 5A – Request for Judgment where the defendant has admitted liability and undertaken to pay the debt in instalments or otherwise - Section 57 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the Regional Court**

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

In the Regional Court for the Regional Division of .....

held at .....Case No. ..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 57**[(2)]** of the Magistrates' Courts Act, 1944, be **[noted]** entered in his/her favour against the defendant as follows:

Judgment debt: R c

Costs: R c

Outstanding balance of the debt **[section 57(2)(c)(ii)]** .....

Interest at .....per cent per annum accounted from .....

Collection fees **[section 57(1)*(c)*]** .....

Summons, if any (attorney's charges, sheriff's fees and sheriff's fees on re-issue) **[section 57(1)]** .....

Cost of affidavit or affirmation by plaintiff/certificate by plaintiff's attorney **[section 57(2)(c)]** .....

Cost of registered letter **[section 57(1)]** .....

Cost of notice in terms of rule 54(1) .....

Letter of demand (section 56) .....

Request for judgment (section 57) .....

Admission of liability and undertaking to pay (section 57)

Totals R R

Total R

plus further interest at ..... per cent per annum as from the date of judgment to the date of payment, and that payment thereof take place in accordance with defendant's offer.

The following documents are attached:

[(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) The defendant's written acknowledgment of liability towards the plaintiff for the amount of the debt and costs claimed (or for any other amount) and his/her offer.

(c) A copy of the plaintiff's or plaintiff's attorney's written acceptance of the offer.

(d) An affidavit (or affirmation) by the plaintiff/a certificate by the plaintiff's attorney in terms of section 57(2)*(c)* of the Magistrates' Courts Act, 1944.]

(a) the summons or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written acknowledgment of liability and offer indicating the amount of the instalment offered by the defendant;

(c) full particulars and documentary evidence of the defendant's –

(i) monthly or weekly income and expenditure, supported where reasonably possible by the most recent proof in the possession of the defendant;

(ii) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments,

in order for the court to be apprised of the defendant's financial position at the time the offer was made and accepted; and

(iii) if the written consent contains a consent to an emoluments attachment order, the notice to the employer and the judgment debtor of the intention to request the court to authorise an emoluments attachment order;

(d) a copy of the plaintiff's or his or her attorney's written acceptance of the offer and proof of postage thereof to the defendant; and

(e) an affidavit by the plaintiff or a certificate by his or her attorney stating in which respects the defendant has failed to carry out the terms of his or her offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at.

Dated at ..... this ..... day of ....., 20.....,

Plaintiff/Plaintiff's attorney

.....

(Address)

.....

Judgment granted on the ..... day of ..... 20 ..... in favour of the plaintiff for the amount of R..... and the amount of R..... costs.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

The defendant is further ordered to pay the said judgment and costs in monthly/weekly instalments of R..... /The defendant is further ordered to pay the said judgment and costs in accordance with the offer.* **

The first instalment must be paid on or before ..... and thereafter on or before the ..... day of every succeeding month/week* until the outstanding balance of the judgment debt and costs has been paid in full.

.....

[Registrar] Court

*delete whatever is not applicable

** Emoluments Attachment Order may only be issued if the court is satisfied that there is compliance with section 65J(2A)

No. 5B – Request for Judgment where the defendant has consented to judgment - Section 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the District Court**

In the Magistrate's Court for the District of .....

held at ..... Case No. ..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 58**[(1)]** of the Magistrates' Courts Act, 1944, be **[noted]** entered in plaintiff's favour against the defendant as follows:

Judgment debt: R c

Costs: R c

Amount of debt **[section 58(1)(i)]** .....

Interest at.....per cent per annum accounted from .....

Letter of demand (section 56) .....

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Summons, if any (attorney's charges, sheriff's fees and sheriff's fees on re-issue) **[section 58(1)]** .....

Cost of notice in terms of rule 54(1) .....

Request for judgment (section 58) .....

Consent to judgment (section 58) .....

Totals..... R R

Total..... R

and that payment thereof takes place in accordance with defendant's consent.

The following documents are attached:

[(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.

(b) The defendant's written consent to judgment and costs.]

(a) the summons or, if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written consent to judgment; and

(c) if the defendant consents to an order of court for payment in specified instalments-

(i) the written consent indicating the amount of the specified instalments; and

(ii) full particulars and documentary evidence of the defendant's–

(*aa*) monthly or weekly income and expenditure supported where reasonably possible by the most recent proof in the possession of the defendant;

(*bb*) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments

in order for the court to be apprised of the defendant's financial position at the time the defendant consented to judgment; and

(cc) if the written consent contains a consent to an emoluments attachment order, the notice to the employer and the judgment debtor of the intention to request the court to authorise an emoluments attachment order.

Dated at ..... this ..... day of ....., 20.....,

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Plaintiff/Plaintiff's attorney:

.....

(Address)

.....

.....

Judgment granted on the ..... day of ..... 20 .... in favour of the plaintiff for the amount of R ..... and the amount of R ..... costs for which the defendant has consented to judgment.

The defendant is further ordered to pay the said judgment and costs in monthly/weekly instalments of R..... /The defendant is further ordered to pay the said judgment and costs in accordance with the offer.* **

The first instalment must be paid on or before ..... and thereafter on or before the ..... day of every succeeding month/week* until the outstanding balance of the judgment debt and costs has been paid in full.

.....

[Clerk of the Court] Court

* Delete what is not applicable

** Emoluments Attachment Order may only be issued if the court is satisfied that there is compliance with section 65J(2A)

No. 5B – Request for Judgment where the defendant has consented to judgment - Section 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the Regional Court**

In the Regional Court for the Regional Division of .....

held at ..... Case No. ..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Plaintiff requests that judgment in the above-mentioned matter in terms of section 58**[(1)]** of the Magistrates' Courts Act, 1944, be **[noted]** entered in plaintiff's favour against the defendant as follows:

Judgment debt: R c

Costs: R c

Amount of debt **[section 58(1)(i)]** .....

Interest at.....per cent per annum accounted from .....

Letter of demand (section 56) .....

Summons, if any (attorney's charges, sheriff's fees and sheriff's fees on re-issue) **[section 58(1)]** .....

Cost of notice in terms of rule 54(1) .....

Request for judgment (section 58) .....

Consent to judgment (section 58) .....

Totals..... R R

Total..... R

and that payment thereof takes place in accordance with defendant's consent.

The following documents are attached:

[(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.

(b) The defendant's written consent to judgment and costs.]

(a) the summons, or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written consent to judgment; and

(c) if the defendant consents to an order of court for payment in specified instalments-

(i) the written consent indicating the amount of the specified instalments; and

(ii) full particulars and documentary evidence of the defendant's –

(*aa*) monthly or weekly income and expenditure supported where reasonably possible by the most recent proof in the possession of the defendant;

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(*bb*) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments

in order for the court to be apprised of the defendant's financial position at the time the defendant consented to judgment; and

(cc) if the written consent contains a consent to an emoluments attachment order, the notice to the employer and the judgment debtor of the intention to request the court to authorise an emoluments attachment order.

Dated at ..... this ..... day of ....., 20.....,

Plaintiff/Plaintiff's attorney:

.....

(Address)

.....

.....

Judgment granted on the ..... day of ..... 20 .... in favour of the plaintiff for the amount of R ..... and the amount of R ..... costs for which the defendant has consented to judgment.

The defendant is further ordered to pay the said judgment and costs in monthly/weekly instalments of R..... /The defendant is further ordered to pay the said judgment and costs in accordance with the offer.* **

The first instalment must be paid on or before ..... and thereafter on or before the ..... day of every succeeding month/week* until the outstanding balance of the judgment debt and costs has been paid in full.

.....

[Registrar] Court

* Delete what is not applicable
** Emoluments Attachment Order may only be issued if the court is satisfied that there is compliance with section 65J(2A)

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

No. 5C – Application for rescission of judgment in terms of Section 36(3) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the District Court**

In the Magistrate's Court for the District of.....

held at .....Case No. ..... of 20.....

In the matter between

..... Applicant

and

..... Respondent

KINDLY TAKE NOTICE that application will be made, to the above honourable court, on at 9:00, or so soon thereafter as the matter may be heard for an order in the following terms:

1. Rescinding the judgment that was granted in this matter against the applicant on …….. (specify date of judgment).
2. No costs order / Costs to be paid by respondent if opposed.*

TAKE NOTICE FURTHER that the attached affidavit of the applicant containing reasonable proof that the judgment debt, the interest and the costs have been paid and that the application has been served on the judgment creditor, at least 10 court days prior to the hearing, will be used in support of this application.

Signed at on this day of 20 .

……
Signature of Applicant/Applicant's Attorney

Address of Applicant/Applicant's Attorney
……
……..
……

To: The Clerk of the Court
……
……

To: Respondent/Respondent's Attorney
……

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Address of Respondent/Respondent's Attorney
……..
……
……

*Delete whichever is not applicable.

No. 5C – Application for rescission of judgment in terms of Section 36(3) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

***For use in the Regional Court**

In the Regional Court for the Regional Division of.....

held at ..... Case No. ..... of 20.....

In the matter between

..... Applicant

and

..... Respondent

KINDLY TAKE NOTICE that application will be made to the above honourable court on _____ at 9:00, or so soon thereafter as the matter may be heard for an order in the following terms:

1. Rescinding the judgment that was granted in this matter against the applicant on …….. (specify date of judgment).
2. No costs order / Costs to be paid by respondent if opposed.*

TAKE NOTICE FURTHER that the attached affidavit of the applicant containing reasonable proof that the judgment debt, the interest and the costs have been paid and that the application has been served on the judgment creditor, at least 10 court days prior to the hearing, will be used in support of this application.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Signed at on this day of 20 .

……
Signature of Applicant/Applicant's Attorney

Address of Applicant/Applicant's Attorney
……
……
……

To: The Registrar of the Court
……
……

To: Respondent/Respondent's Attorney
……
Address of Respondent/Respondent's Attorney
……
……
……

*Delete whichever is not applicable.

No. 38 - Emoluments Attachment Order - Section 65J of the Magistrates' Courts Act 1944 (Act 32 of 1944)

***Only for use in the District Court**

[IMPORTANT NOTICE:

YOUR ATTENTION IS DIRECTED to section 65J(3) of the Magistrates' Courts Act, 1944 (read with section 3(1) of the Sheriffs Act, 1986), which provides that only a sheriff may serve this order on a garnishee in the manner prescribed by rule 9 of the Magistrates' Courts Rules. Service of this order by a person who is not a sheriff appointed in terms of section 2 of the Sheriffs Act, 1986, constitutes a criminal offence in terms of section 60(1)(*gA*) of the Sheriffs Act, 1986, and renders such service invalid and of no effect. A person who is convicted of an offence in terms of section 60(1)(*gA*) of the Sheriffs Act, 1986, shall be liable to a fine or to imprisonment for a period not exceeding three years or both such fine and such imprisonment.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

YOUR ATTENTION IS FURTHER DIRECTED to section 65J(6) of the Magistrates' Courts Act, 1944, which provides as follows:

"If, after the service of such an emoluments attachment order on the garnishee, it is shown that the judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his or her own and his or her dependants' maintenance, the court shall rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above such sufficient means.".]

In the Magistrate's Court for the District of .....

held at ..... Case No. .....of 20.....

In the matter between

.....Judgment Creditor

and

.....Judgment Debtor

Particulars **[for the identification]** of the judgment debtor (where available): **[inclusive of his or her identity or work number or date of birth and address.]**

Identity number/date of birth /Passport number:……

Employee number:.....

Address: ……..

Particulars of the Garnishee:

……..Garnishee

Address: **[of garnishee]** .....

Whereas it has been made to appear to the above-mentioned Court that emoluments are at present or in future owing or accruing to the judgment debtor by or from the garnishee and that after satisfaction of the following order sufficient means will be left to the judgment debtor to maintain himself or herself and those dependent upon him or her;

It is ordered:

(1) That the said emoluments are attached;

(2) That the garnishee pay to the judgment creditor or his or her attorney on the ..... day of each and every month/week after this order has been granted the sum of R..... of the emoluments of the said judgment debtor until a sufficient amount has been paid to satisfy a judgment or order obtained against the judgment debtor by the judgment creditor in the ..... Court at ..... on the

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

..... day of ..... for the amount of R ..... (on which judgment or order the amount of R ..... remains unpaid) with costs amounting to R ..... and the costs of attachment amounting to R ..... as well as R ..... sheriff's fees.

Dated at ..... this ..... day of ....., 20.....

By Order of the Court,

.....

Clerk of the Court.

.....

Judgment Creditor/Attorney for Judgment Creditor.

Address of Judgment Creditor/Attorney for Judgment Creditor.

.....

YOUR ATTENTION IS DIRECTED to section 65J(6) of the Magistrates' Courts Act, 1944, which provides as follows:

"(a) If, after the service of such an emoluments attachment order on the garnishee, the garnishee believes or becomes aware or it is otherwise shown that the—

(i) judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his or her own maintenance or that of his or her dependants; or

(ii) amounts claimed are erroneous or not in accordance with the law, the garnishee, judgment debtor or any other interested party must without delay and in writing notify the judgment creditor or his or her attorney accordingly.

(b) The written notification referred to in paragraph (a) must set out the reasons for believing or knowing that the judgment debtor will not have sufficient means for his or her own maintenance or that of his or her dependants or that the amounts claimed are erroneous or not in accordance with the law.

(c) The judgment creditor or his or her attorney must, after receiving the notice contemplated in paragraph (a), without delay indicate whether he or she accepts the reasons given in that notification and if not, set the matter down for hearing in court with notice to the garnishee, judgment debtor or any other interested party referred to in paragraph (a).

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(d) The court may, after hearing all parties and after satisfying itself that the order is just and equitable—

(i) rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above the sufficient means necessary for his or her maintenance and that of his or her dependants; or

(ii) make any order including an order regarding the division of the amount available to be committed to all the emoluments attachment orders, after satisfying itself that the amount is appropriate and does not exceed 25 per cent of the judgment debtor's basic salary and an order as to costs."

[Attention is directed] YOUR ATTENTION IS FURTHER DIRECTED to the provisions of **[section]** subsection 65J(10)*(a)* and *(b)* of the Magistrates' Courts Act, 1944, which read as follows:

[" Any garnishee may, in respect of the services rendered by him or her in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him or her from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor."]

"(a) Any garnishee may, in respect of the services rendered by him or her in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him or her from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor.

(b) A garnishee who—

(i) unreasonably fails to timeously deduct the amount of the emoluments attachment order provided for in subsection (4)*(a)*; or

(ii) unreasonably fails to timeously stop the deductions when the judgment debt and costs have been paid in full,
is liable to repay to the judgment debtor any additional costs and interest which have accrued or any amount deducted from the salary of the judgment debtor after the judgment debt and costs have been paid in full as a result of such failure."

IMPORTANT NOTICE:
YOUR ATTENTION IS DIRECTED to section 65J(3) of the Magistrates' Courts Act, 1944 (read with section 3(1) of the Sheriffs Act, 1986), which provides that only a sheriff may serve this order on a garnishee and, where applicable, on the judgment debtor in the manner prescribed by rule 9 of the Magistrates' Courts Rules. Service of this order by a

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

person who is not a sheriff appointed in terms of section 2 of the Sheriffs Act, 1986, constitutes a criminal offence in terms of section 60(1)(*g*A) of the Sheriffs Act, 1986, and renders such service invalid and of no effect. A person who is convicted of an offence in terms of section 60(1)(*g*A) of the Sheriffs Act, 1986, shall be liable to a fine or to imprisonment for a period not exceeding three years or both such fine and such imprisonment.

No. 38A – Notice of intention to issue an Emoluments Attachment Order - Section 65J(2A) of the Magistrates' Courts Act 1944 (Act 32 of 1944)

***Only for use in the District Court**

In the Magistrate's Court for the District of ..... held at..... Case No. .....of 20.....

In the matter between

..... Judgment Creditor

and

..... Judgment Debtor

Particulars of the judgment debtor (where available):

Identity number/date of birth /Passport number:……

Employee number:.....

Address:…….

Particulars of the Garnishee:

…….Garnishee

Address:.....

TO: THE ABOVE-MENTIONED JUDGMENT DEBTOR AND HIS OR HER EMPLOYER (HEREIN REFERRED TO AS THE "GARNISHEE"):

WHEREAS on the…….. (date) the Court authorised the attachment of the judgment debtor's emoluments and that the garnishee must pay the judgment creditor or his or her attorney R…. of the emoluments of the said judgment debtor on the ….. day of each and every month/week with effect from …..(date) until a sufficient amount has been paid to satisfy a judgment or order obtained against the judgment debtor by the judgment creditor in the ..... Court at ..... on the ..... day of ..... for the amount of R……. (on which judgment or order the amount of R….. remains unpaid) with costs

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

amounting to R ..... and the costs of attachment amounting to R ..... as well as R ..... sheriff's fees.

KINDLY TAKE NOTICE that the judgment creditor intends to apply for the issuing of the aforesaid emoluments attachment order.

TAKE FURTHER NOTICE that the full amount of the capital debt, interest and costs outstanding is the sum of R……, substantiated by the statement of account attached hereto.

TAKE FURTHER NOTICE that unless the judgment debtor or his or her employer (cited herein as the Garnishee) files a notice of intention to oppose the issuing of the emoluments attachment order within 10 court days after service of this Form 38A notice, the judgment creditor will apply to court to issue an emoluments attachment order. The notice of intention to oppose, if any, must be delivered by—

(a) serving a copy thereof on the judgment creditor or his or her attorney; and
(b) filing the original thereof with the clerk of this Court.

TAKE FURTHER NOTICE that–

(i) in your notice of intention to oppose you are required to give your full physical, residential or business address, postal address and where available, facsimile and electronic mail address; and indicate the preferred address for service upon you of all documents in this matter, and service thereof at the address so given shall be valid and effectual, except where personal service is required by an order of the court; and
(ii) if a physical address is given by you in your notice of intention to oppose and is referred to as your preferred address for the purpose of service, that address shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the courthouse.

TAKE FURTHER NOTICE that–

(1) The contemplated notice of intention to oppose must state the grounds upon which the judgment debtor or employer wishes to oppose the issuing of the emoluments attachment order;

(2) The grounds which may be used to oppose the issuing of the emoluments attachment order include, but are not limited to, the following–

(a) that the amounts claimed are erroneous or not in accordance with the law; or

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) that 25 per cent of the judgment debtor's basic salary* is already committed to other emoluments attachment orders and that the debtor will not have sufficient means left for his or her own maintenance or that of his or her dependants;

(3) The notice of intention to oppose must be accompanied by—

(a) a certificate by the employer of the judgment debtor setting out particulars of–

(i) all existing court orders against the judgment debtor or agreements with other creditors for payment of a debt and costs in instalments; and

(ii) when reasonably attainable, the amounts needed by the debtor for necessary expenses and those of the persons dependent on him or her and for the making of periodical payments which he or she is obliged to make in terms of an agreement or otherwise in respect of his or her other commitments;

(b) the contact details of all the relevant judgment creditors or their attorneys; and

(c) the latest salary advice of the judgment debtor.

TAKE FURTHER NOTICE that if this matter is opposed, it may be set down for hearing on 10 court days' notice.

TAKE FURTHER NOTICE that should you not oppose this matter, application will be made to court on the…… day of …….. at 09h00 or as soon thereafter as this matter may be heard for the issuing of an emoluments attachment order.

TAKE FURTHER NOTICE that you have a right to be assisted by a legal representative (a lawyer) of your own choice. **IF YOU CANNOT AFFORD THE SERVICES OF A LEGAL REPRESENTATIVE, YOU ARE ENTITLED TO APPLY FOR LEGAL AID IN ORDER TO BE ALLOCATED A LAWYER IF YOU QUALIFY.**

Dated at ……this……day of……20……...

.....

Judgment Creditor/Judgment Creditor's attorney

Physical address (within 15 kilometres of the courthouse):

……

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

……..
……..
Postal address: ……..
Electronic mail address: ……
Facsimile: ……
Indicate the preferred address for service: ……..

……...

See section 65J(1A)(a)* and *(b)* of the Magistrates' Courts Act, 1944, which reads as follows:

"*(a)* The amount of the instalment payable or the total amount of instalments payable where there is more than one emoluments attachment order payable by the judgment debtor, may not exceed 25 per cent of the judgment debtor's basic salary.

(b) For purposes of this section, "basic salary" means the annual gross salary a judgment debtor is employed on divided by 12 and excludes additional remuneration for overtime or other allowances."

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

NO. R. 632 **22 JUNIE 2018**

WET OP DIE REëLSRAAD VIR GEREGSHOWE, 1985 (WET NO. 107 VAN 1985)

WYSIGING VAN REëLS WAARVOLGENS DIE VOER VAN VERRIGTINGE VAN DIE LANDDROSHOWE VAN SUID-AFRIKA GEREëL WORD

Die Reëlsraad vir Geregshowe het, kragtens artikel 6 van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No. 107 van 1985), met die goedkeuring van die Minister van Justisie en Korrektiewe Dienste, die reëls in hierdie Bylae gemaak.

BYLAE

ALGEMENE VERDUIDELIKENDE NOTA:

Aangesien daar geen Afrikaanse vertaling bestaan om te wysig nie, word die wysigings nie hier aangedui nie.

Woordomskrywing

1. In hierdie Bylae beteken "die Reëls" die Reëls waarby die voer van die verrigtinge van die Landdroshowe van Suid-Afrika gereël word, waarvan die Engelse teks gepubliseer is in Goewermentskennisgewing No. R. 740 van 23 Augustus 2010, soos gewysig deur Goewermentskennisgewing No's. R. 1222 van 24 Desember 2010, R. 611 van 29 Julie 2011, R. 1085 van 30 Desember 2011, R. 685 van 31 Augustus 2012, R. 115 van 15 Februarie 2013, R. 263 van 12 April 2013, R. 760 van 11 Oktober 2013, R. 183 van 18 Maart 2014, R. 215 van 28 Maart 2014 en R. 507 van 27 Junie 2014, R. 5 van 9 Januarie 2015, R. 32 van 23 Januarie 2015, R. 33 van 23 Januarie 2015, R. 318 van 17 April 2015, R. 545 van 30 Junie 2015, R. 2 van 19 Februarie 2016, R. 1055 van 29 September 2017 en R. 1272 van 17 November 2017.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Vervanging van reël 45 van die Reëls

2. Reël 45 van die Reëls word hierby deur die volgende reël vervang:

"45. Ondersoek na finansiële posisie van vonnisskuldenaar

(1) 'n Kennisgewing in artikel 65A(1) van die Wet bedoel wat 'n vonnisskuldenaar of, indien die vonnisskuldenaar 'n regspersoon is, 'n direkteur of beampte van die regspersoon as die verteenwoordiger van die regspersoon en, in sy of haar persoonlike hoedanigheid, oproep om voor die hof in kamers te verskyn moet op 'n vorm wees wat wesenlik bewoord is soos Vorm 40 van aanhangsel 1 en moet die datum van die vonnis of bevel, die bedrag daarvan, die saldo van die kapitaal, rente, koste en insamelingsgelde verstrek wat die verweerder kragtens artikel 57(1)*(c)* van die Wet onderneem het om te betaal, verskuldig met ingang van die datum van uitreiking of heruitreiking van daardie kennisgewing en word ondersteun deur 'n beëdigde verklaring deur die vonnisskuldeiser of 'n sertifikaat van sy of haar prokureur wat stel-

(a) die datum van die vonnis of die datum van die verstryking van die tydperk van opskorting kragtens artikel 48*(e)* van die Wet, na gelang van die geval;

(b) dat die vonnis of bevel onbetaal gebly het vir 'n tydperk van 10 dae vanaf die datum waarop dit gegee is of betaalbaar geword het of vanaf die verstryking van die tydperk van opskorting ingevolge artikel 48*(e)* van die Wet;

(c) in watter opsig die vonnisskuldenaar versuim het om aan die vonnis of bevel bedoel in artikel 65A(1) van die Wet te voldoen, die agterstallige bedrag en uitstaande saldo op die datum waarop die kennisgewing uitgereik word;

(d) dat die vonnisskuldenaar per geregistreerde brief verwittig is van die terme van die uitspraak of van die verstryking van die tydperk van opskorting kragtens artikel 48*(e)* van die Wet, na gelang van die geval, en dat 'n tydperk van 10 dae verstryk het sedert die datum waarop die genoemde brief gepos is.

(2) 'n Kennisgewing in subreël (1) bedoel sit die gevolge uiteen van 'n versuim om op die datum vir die ondersoek bepaal voor die hof te verskyn.

(3) Enige verandering in 'n kennisgewing in subreël (1) bedoel of in 'n lasbrief vir arres ingevolge artikel 65A(6) van die Wet moet deur die vonnisskuldeiser of sy of haar prokureur en deur die klerk van die hof geparafeer word voor die uitreiking of heruitreiking daarvan.

(4) Wanneer 'n vonnis of bevel in artikel 65A(1) van die Wet bedoel in enige hof behalwe die hof van die distrik waarin die ondersoek gedoen word, gegee is, moet die klerk van die hof nie die kennisgewing uitreik voor 'n afskrif van die

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

vonnis of bevel van daardie ander hof behoorlik deur die griffier of klerk van daardie hof gesertifiseer, by hom of haar ingedien is nie.

(5) *(a)* Wanneer 'n vonnisskuldenaar gearresteer is en voor 'n hof verskyn wat nie die hof is wat die lasbrief vir arres gemagtig het nie, moet daardie klerk van die hof 'n lêer oopmaak, 'n saaknommer daaraan toeken en dit, saam met die lasbrief, aan die hof oorhandig.

(b) Wanneer die hof in paragraaf *(a)* bedoel die aangeleentheid ingevolge artikel 65A(11) van die Wet oordra na die hof wat die lasbrief gemagtig het, moet die klerk van die hof onverwyld die oorspronklike lasbrief en gesertifiseerde afskrifte van die notule van die verrigtinge en die bevel te dien effekte stuur aan die hof wat die lasbrief gemagtig het.

(c) Indien die hof waar verrigtinge ingevolge artikel 65A(10)*(b)* of (11) hangende is, nie die hof is wat die lasbrief ingevolge artikel 65A(6) uitgereik het nie, moet die klerk van die eersgenoemde hof die klerk van die laasgenoemde hof telefonies of skriftelik per faks in kennis stel van die verskyning van die vonnisskuldenaar, direkteur of beampte voor die eersgenoemde hof en moet die vonnisskuldeiser of sy of haar prokureur dienooreenkomstig telefonies of skriftelik per faks inlig: Met dien verstande dat die volle besonderhede van die telefoonoproepe en bewys van oorsending van die fakse in die saakomslag geliasseer word.

(6) Die bepalings van reël 55 is van toepassing, met gepaste veranderinge, op 'n versoek in artikel 65A(3) van die Wet bedoel.

(7) 'n Skriftelike aanbod in artikel 65 van die Wet bedoel moet in die vorm van 'n beëdigde verklaring wees wat die volgende besonderhede oor die vonnisskuldenaar verstrek:

(a) die volle name van die vonnisskuldenaar, sy of haar identiteitsnommer of paspoortnommer, woonadres en sakeadres;

(b) die naam en adres van sy of haar werkgewer en sy of haar werknemernommer;

(c) sy of haar huwelikstatus;

(d) hoeveel afhanklikes hy of sy het, hul ouderdom en hul verhouding met hom of haar;

(e) sy of haar bates en laste, waar moonlik gestaaf deur die mees onlangse bewys daarvan, wat aangeheg moet word;

(f) sy of haar bruto weeklikse of maandelikse inkomste (met inbegrip van dié van sy of haar gade en afhanklikes) en uitgawes gestaaf deur die jongste bewys in besit van die skuldenaar in verband met sy of haar inkomste en uitgawes;

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(g) die besonderhede van ooreenkomste met ander skuldeisers vir betaling van 'n skuld in paaiemente, en van die besoldigingbeslagbevele of ander hofbevele teen hom of haar en die totale bedrag daarkragtens betaalbaar, gestaaf deur afskrifte daarvan en as aanhangsels aangeheg; en

(h) sy of haar aanbod en die datums van die voorgestelde paaiemente.

(8) 'n Lasbrief ingevolge artikel 65A(6) van die Wet moet wesenlik dieselfde bewoord wees as Vorm 40A van aanhangsel 1.

(9) 'n Kennisgewing ingevolge artikel 65A(8)*(b)* van die Wet moet wesenlik dieselfde bewoord wees as Vorm 40B van aanhangsel 1."

Vervanging van reël 46 van die Reëls

3. Reël 46 van die Reëls word hierby deur die volgende reël vervang:

"46. Beslaglegging op besoldiging per besoldigingbeslagbevel

(1) Wanneer 'n besoldigingbeslagbevel deur die hof gemagtig is, moet 'n aansoek om daardie bevel uit te reik op 'n vorm wat wesenlik bewoord is soos Vorm 38A van aanhangsel 1 gedoen word.

(2) 'n Besoldigingbeslagbevel word uitgereik op 'n vorm wat wesenlik bewoord is soos Vorm 38 van aanhangsel 1, en moet voldoende inligting bevat om die beslagskuldenaar in staat te stel om die vonnisskuldenaar te identifiseer, met inbegrip van die geboortedatum, identiteitsnommer of paspoortnommer en werknemernommer van die vonnisskuldenaar.".

Vervanging van reël 49 van die Reëls

4. Reël 49 van die Reëls word hierby deur die volgende reël vervang:

"49. Vernietiging en wysiging van vonnisse

(1) 'n Party tot verrigtinge waarin 'n verstekvonnis gegee is, of enige persoon deur daardie vonnis geraak, kan binne 20 dae nadat hulle van die vonnis te wete gekom het, 'n aansoek aan die hof beteken en inhandig, by kennisgewing aan alle partye tot die verrigtinge, vir 'n vernietiging of wysiging van die vonnis en die hof kan, by die aanvoer van goeie gronde, of indien die hof oortuig is dat goeie rede bestaan om dit te doen, die verstekvonnis vernietig of wysig op voorwaardes wat die hof gepas ag: Met dien verstande dat die tydperk van 20 dae nie van toepassing sal wees op 'n versoek om vernietiging of of wysiging van vonnis ingevolge subreël (5) of (5A) gevel nie.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(2) Daar sal aangeneem word dat die aansoeker kennis van die verstekvonnis gehad het 10 dae na die datum waarop dit toegestaan is, tensy die aansoeker die teendeel bewys.

(3) Waar 'n aansoek om vernietiging van 'n verstekvonnis deur 'n verweerder teen wie die vonnis toegestaan is, gedoen word, wat die verrigtinge wil verdedig, moet die aansoek deur 'n beëdigde verklaring ondersteun word wat die redes vir die verweerder se afwesigheid of verstek en die gronde van die verweerder se verdedig op die eis, stel.

(4) Waar 'n aansoek om vernietiging van 'n verstekvonnis gedoen word deur 'n verweerder teen wie die vonnis toegestaan is, wat nie die verrigtinge wil verdedig nie, moet die aansoeker die hof oortuig dat hy of sy nie met opset versuim het nie en dat die vonnis betaal is, of reëlings getref is om die vonnis te betaal, binne 'n redelike tyd nadat hy of sy daarvan te wete gekom het

(5)(*a*) Waar 'n eiser ten gunste van wie 'n verstekvonnis toegestaan is, skriftelik ingestem het dat die vonnis vernietig of gewysig word, kan óf die eiser óf die verweerder teen wie die vonnis toegestaan is, of enigiemand anders deur sodanige vonnis geraak, by kennisgewing aan alle partye tot die verrigtinge, by die hof aansoek doen om die vernietiging of wysiging van die verstekvonnis, welke aansoek vergesel gegaan moet word van skriftelike bewys van die eiser se toestemming vir die vernietiging of wysiging.

(*b*) 'n Aansoek in paragraaf *(a)* bedoel, kan gedoen word wanneer die eiser skriftelik ingestem het tot die vernietiging of wysiging van die vonnis.

(5A)(*a*) Waar 'n vonnisskuld, die rente daarop teen 'n koers in die vonnis toegestaan en die koste ten volle afbetaal is, kan 'n hof, by aansoek deur die vonnisskuldenaar of enigiemand anders deur die vonnis geraak, daardie vonnis vernietig.

(*b*) Die aansoek in paragraaf *(a)* beoog—

(i) moet gedoen word op 'n wyse wat wesenlik met Vorm 5C van aanhangsel 1 ooreenstem;

(ii) moet vergesel gaan van 'n beëdigde verklaring met aanhangsels wat redelike bewys voorsien dat die vonnisskuld, die rente en die koste betaal is; en

(iii) moet aan die vonnisskuldeiser beteken word nie minder nie as 10 dae voor die beregting van die aansoek.

(6) Waar 'n aansoek om vernietiging of wysiging van 'n verstekvonnis deur enige persoon behalwe 'n aansoeker in subreël (3), (4) of (5) bedoel, gedoen word, moet die aansoek ondersteun word deur 'n beëdigde verklaring wat die redes uiteensit waarom die aansoeker die vonnis wil laat vernietig of wysig.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(7) Alle aansoeke om vernietiging of wysiging van vonnis wat nie 'n verstekvonnis is nie, moet by kennisgewing na alle partye geneem word, ondersteun deur 'n beëdigde verklaring wat die gronde stel waarop die aansoeker die vernietiging of wysiging verlang, en die hof kan sodanige vonnis vernietig of wysig indien die hof oortuig is dat daar goeie rede is om dit te doen.

(8) Waar die vernietiging of wysiging van 'n vonnis verlang word op grond daarvan dat dit van die begin af ongeldig was, of deur bedrog of fout verkry is, moet die aansoek beteken word en ingedien word binne een jaar nadat die aansoeker die eerste keer bewus geword het van sodanige ongeldigheid, bedrog of fout.

(9) 'n Landdros wat uit sy of haar eie beweging foute in 'n vonnis ingevolge artikel 36(1)*(c)* van die Wet regstel, moet die partye skriftelik meedeel van die regstelling.".

Wysiging van reël 55 van die Reëls

5. Reël 55 van Engelse teks van die Reëls word gewysig. Aangesien die reëls nog nie in Afrikaans beskikbaar is om gewysig te word nie, word Reël 55, soos in die Engels gewysig, as 'n geheel hier weergegee:

"**55. Aansoeke**

(1) *(a)* Elke aansoek word gebring by kennisgewing van mosie ondersteun deur 'n beëdigde verklaring oor die feite waarop die aansoeker vir regshulp staatmaak.

(b) Die kennisgewing van mosie moet aan die party of partye teen wie regshulp geëis word en aan die griffier of klerk van die hof gerig word.

(c) Waar dit noodsaaklik of behoorlik is om enigiemand kennis te gee van 'n aansoek, moet die kennisgewing van mosie ook aan daardie persoon gerig en aan daardie persoon beteken word.

(d) (i) Die kennisgewing van mosie in elke aansoek behalwe tussentydse en ander aansoeke insidenteel tot hangende verrigtinge of een wat *ex parte* gedoen word, moet wesenlik bewoord wees soos Vorm 1A van aanhangsel 1.

(ii) Afdrukke van die kennisgewing en alle aanhangsels daarby moet aan elke party aan wie kennis gegee staan te word, beteken word.

(e) In 'n kennisgewing van mosie moet die aansoeker-

(i) 'n fisiese adres verstrek, welke fisiese adres, in plekke waar daar drie of meer prokureurs of prokureursfirmas is wat onafhanklik van mekaar praktiseer, binne 15 kilometer van die kantoor van die griffier of klerk van die hof moet wees, waar kennisgewing en betekening van alle dokumente in sodanige verrigtinge aanvaar sal word;

(ii) die aansoeker se posadres, faksnommer of e-posadres, waar beskikbaar, verstrek; en

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(iii) 'n keerdatum, nie minder as vyf dae na betekening daarvan aan die respondent, vir skriftelike kennisgewing deur daardie respondent aan die aansoeker hetsy hy of sy voornemens is om daardie aansoek te opponeer, en stel dat indien geen sodanige kennisgewing gegee word nie, die aansoek ter rolle geplaas sal word vir beregting op 'n spesifieke dag, hoogstens 10 dae na betekening van die kennisgewing aan die respondent.

(f) Indien die respondent, voor of op die dag in die kennisgewing van mosie vir daardie doel vermeld, nie die aansoeker in kennis stel van sy of haar voorneme om teen te staan nie, kan die aansoeker die aangeleentheid ter rolle plaas om aangehoor te word deur die griffier of klerk van die hof kennis te gee vyf dae voor die dag waarop die aansoek aangehoor staan te word.

(g) Enige party wat in 'n kennisgewing van mosie versoek dat 'n bevel toegestaan word, moet-

(i) binne die tydperk in die kennisgewing gestel, die aansoeker skriftelik in kennis stel dat hy of sy voornemens is om die aansoek teen te staan, en in daardie kennisgewing 'n adres verstrek wat, in plekke waar daar drie of meer prokureurs of prokureursfirmas is wat onafhanklik van mekaar praktiseer, binne 15 kilometer van die kantoor van die griffier of klerk van die hof, waar hy of sy kennisgewing en betekening van alle dokumente sal aanvaar, asook daardie party se posadres, faksnommer of e-posadres, waar beskikbaar;

(ii) binne 10 dae nadat die aansoeker van sy of haar voornemens om die aansoek te opponeer in kennis gestel is, sy of haar antwoordverklaring, indien enige, vergesel van enige tersaaklike dokumente, lewer; en

(iii) waar hy of sy voornemens is om slegs regsvrae te vra, kennisgewing van voorneme om dit te doen, lewer binne die tyd in subparagraaf (ii) gestel, waarin daardie vraag gestel word.

(h) (i) Na ontvangs van 'n kennisgewing van voorneme om te opponeer, moet die aansoeker onverwyld die oorspronklike kennisgewing van mosie plus aanhangsels daarby en, waar van toepassing, die relaas, by die die griffier of klerk van die hof indien.

(ii) Binne 10 dae van betekening aan hom of haar van die beëdigde verklaring en dokument in paragraaf *(g)*(ii) bedoel, kan die aansoeker 'n antwoordverklaring lewer.

(i) Die hof kan op eie diskresie die indiening van verdere beëdigde verklarings toelaat.

(j) (i) Waar geen antwoordverklaring, of kennisgewing ingevolge paragraaf *(g)*(iii), binne die tydperk in paragraaf *(g)*(ii) bedoel, gelewer word nie, kan die aansoeker binne vyf dae van die verstryking daarvan by die griffier of klerk van die hof aansoek doen om 'n datum vir die beregting van die aansoek toe te wys.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(ii) Waar 'n antwoordverklaring gelewer word, kan die aansoeker aansoek doen om 'n toewysing van die datum vir die beregting van die aansoek binne vyf dae vanaf die lewering van sy of haar antwoordverklaring of indien geen antwoordverklaring gelewer word nie, binne vyf dae vanaf die verstryking van die tydperk in paragraaf *(h)* bedoel en waar daardie kennisgewing gelewer word kan die aansoeker binne vyf dae na lewering van daardie kennisgewing om daardie toewysing aansoek doen.

(iii) Indien die aansoeker versuim om aldus aansoek te doen binne die gepaste tydperk in subparagraaf (ii) voorsien, kan die respondent dit onmiddellik by verstryking van daardie tydperk doen.

(iv) Skriftelike kennisgewing van die datum deur die griffier of klerk van die hof toegewys, moet deur die aansoeker of respondent, na gelang van die geval, aan die teenoorgestelde party gelewer word minstens 10 dae voor die datum vir die beregting toegeken.

(k) (i) Waar 'n aansoek nie behoorlik op grond van beëdigde verklaring beslis kan word nie, kan die hof die aansoek afwys of sodanige bevel maak wat die hof gepas ag ten einde 'n regverdige en spoedige beslissing te verseker.

(ii) Die hof kan in die besonder, maar sonder om die algemeenheid van subparagraaf (i) te raak, beveel dat mondelinge getuienis oor spesifieke kwessies aangehoor word ten einde enige feitegeskil uit die weg te ruim en kan vir die doel beveel dat enige deponent persoonlik verskyn of toestemming gee dat daardie persoon of enige ander persoon gedagvaar word om te verskyn en as 'n getuie ondervra en kruisondervra te word of die hof kan die aangeleentheid vir verhoor verwys met gepaste voorskrifte ten opsigte van pleit of omskrywing van kwessies, of andersins.

(2) *(a)* Enige party tot enige aansoekverrigtinge kan 'n teenaansoek doen of kan by enige party aansluit tot dieselfde mate as wat geoorloof sou wees indien die party wat daardie teenaansoek wil bring of by daardie party aansluit waar 'n verweerder in 'n aksie en die ander partye tot die aansoek partye tot daardie aksie was.

(b) Die tydperke voorgeskryf ten opsigte van aansoeke is *mutatis mutandis* van toepassing op teenaansoeke: Met dien verstande dat die hof by die aanvoer van goeie gronde die beregting van die aansoek kan uitstel.

(3) *(a)* Geen aansoek waarin regshulp teen 'n ander party geëis word, word *ex parte* beskou nie, tensy die hof oortuig is dat -

(i) die gee van kennis aan die party teen wie die bevel geëis word, die doel van die aansoek sal verydel; of

(ii) die graad van dringendheid van so 'n aard is dat dit wegdoening van die kennisgewing regverdig.

(b) Die kennisgewing van mosie in elke aansoek wat *ex parte* gedoen word, moet wesenlik bewoord wees soos Vorm 1 van aanhangsel 1.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(c) Enige bevel op 'n *ex parte*-grondslag teen 'n party gegee is van 'n tussentydse aard en doen 'n beroep op die party teen wie dit gemaak word om op 'n vermelde keerdatum voor die hof te verskyn om gronde te gee waarom die bevel nie bevestig moet word nie.

(d) Enigiemand teen wie 'n bevel *ex parte* gegee word, kan die keerdatum met 24-uur kennisgewing vervroeg.

(e) 'n Afskrif van 'n bevel wat *ex parte* gegee is en van die beëdigde verklaring, indien enige, waarop dit gegee is, word aan die respondent daarop beteken.

(f) Waar goeie gronde aangevoer word teen 'n bevel wat *ex parte* teen 'n party gegee is, kan die hof beveel dat die aansoeker of respondent of die deponent van enige beëdigde verklaring waarop dit gegee is vir ondervraging of kruisondervraging verskyn.

(g) Enige bevel wat *ex parte* gegee is kan deur die hof bevestig, opgehef of gewysig word by die aanvoer van goeie gronde deur enige persoon daardeur geraak en op voorwaardes wat die hof gepas ag.

(*h)* *Ex parte*-aansoeke kan in kamers aangehoor word.

(4) *(a)*(i) Tussentydse en ander aansoeke insidenteel tot hangende verrigtinge, moet by kennisgewing gebring word wat wesenlik bewoord is soos Vorm 1C van aanhangsel 1C, wat 'n datum aandui deur 'n griffier of klerk van die hof toegewys soos deur 'n landdros voorgeskryf voor wie die aangeleentheid aangehoor staan te word.

(ii) Die kennisgewing moet deur beëdigde verklarings ondersteun word indien dit nodig is om feite aan die hof voor te lê.

(iii)Afskrifte van die kennisgewing en alle aanhangsels daarby moet aan elke party beteken word aan wie kennisgewing gegee staan te word.

(b) Aansoeke by die hof om magtiging om verrigtinge in te stel of voorskrifte ten opsigte van proses of betekening van dokumente kan *ex parte* gedoen word waar die gee van kennis van daardie aansoek nie gepas of nodig is nie.

(5) *(a)* 'n Hof, indien oortuig dat 'n aangeleentheid dringend is, kan 'n bevel gee wat wegdoen met die vorms en betekening waarvoor hierdie Reëls voorsiening maak en kan die aangeleentheid afhandel op die tyd en plek en ooreenkomstig die prosedure (wat sover moontlik ingevolge hierdie Reëls moet wees) wat die hof gepas ag.

(b) 'n Dringende aansoek moet deur 'n beëdigde verklaring ondersteun word wat die omstandighede wat die aansoeker aanvoer die aangeleentheid dringend maak, uitdruklik uiteensit en die redes waarom die aansoeker beweer dat hy of sy nie mettertyd wesenlike verhaal by 'n beregting sal kry nie.

(c) Iemand teen wie 'n bevel in sy of haar afwesigheid in 'n dringende aansoek gegee is, kan by kennisgewing die aangeleentheid ter rolle plaas vir heroorweging van die bevel.

(6) In enige aansoek teen enige Minister, adjunkminister, provinsiale premier, beampte of amptenaar van die Staat, in sy of haar hoedanigheid as sodanig, die Staat of die administrasie van enige provinsie, die tersaaklike

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

tydperke in subreël (1)*(e)* bedoel, of vir die keerdatum van 'n bevel *nisi*, minstens 15 dae na die betekening van die kennisgewing van mosie, of die bevel *nisi*, na gelang van die geval, tensy die hof spesiaal 'n korter tydperk gemagtig het.

(7) Die hof, na die beregting van 'n aansoek, hetsy *ex parte* of andersins, weier om 'n bevel te gee (behalwe oor koste indien enige), maar kan verlof aan die aansoeker toestaan om die aansoek te hernu op dieselfde papiere aangevul deur sodanige verdere beëdigde verklarings wat die saak vereis.

(8) *(a)* Die notule van enige bevel benodig vir betekening of tenuitvoerlegging word opgestel deur die party wat daarop geregtig is en word goedgekeur en onderteken deur die griffier of klerk van die hof.

(b) Die afskrifte van die notule vir rekord en betekening in paragraaf *(a)* bedoel word gemaak deur die party in daardie paragraaf aangedui en die afskrif vir rekord word deur die griffier of klerk van die hof onderteken.

(c) Reëls 41 en 42, vir sover dit nodig mag wees in die tenuitvoerlegging van 'n bevel kragtens hierdie reël, is *mutatis mutandis* van toepassing op sodanige tenuitvoerlegging.

(9) *(a)* Die hof kan by aansoek beveel dat enige aangeleentheid wat aanstootlik, kwelsugtig of irrelevant is uit 'n beëdigde verklaring geskrap word, met 'n gepaste bevel oor koste, met inbegrip van koste tussen prokureur en kliënt.

(b) Die hof staan nie die aansoek bedoel in paragraaf *(a)* toe nie, tensy die hof oortuig is dat die aansoeker in sy of haar saak benadeel sal word indien die aansoek nie toegestaan word nie.

(10) Reëls 28 en 28A is ewe veel op alle aansoeke van toepassing.

Wysiging van aanhangsel 1 tot die Reëls

6. Aanhangsel 1 tot die Reëls word hierby gewysig deur die vorms in die aanhangsel hierby, by te voeg.

Inwerkingtreding

7. Hierdie reëls tree in werking op **1 Augustus 2018.**

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

AANHANGSEL

"**No. 1C – Kennisgewing van Mosie (Kort vorm, vir tussentydse of ander aansoeke insidenteel tot hangende verrigtinge)**
*** Vir gebruik in die distrikshof**

IN DIE LANDDROSHOF VIR DIE DISTRIK VAN ……..

Gehou te ……. Saaknommer: ……..

In die aangeleentheid tussen:

..... Aansoeker

en

…… ……. Respondent

NEEM KENNIS dat aansoek namens die bogenoemde aansoeker gedoen sal word op die ..... dag van ..... om 9:00 of so gou daarna as wat die partye aangehoor kan word vir 'n bevel op die volgende voorwaardes:

(a) .....

(b).....

(c).....

en dat die hierby aangehegte beëdigde verklaring van ..... ter ondersteuning daarvan gebruik sal word.

Plaas asseblief dienooreenkomstig die aangeleentheid ter rolle vir beregting.

GEDATEER te ..... hierdie ..... dag van..... 20 .....

.....
Aansoeker/aansoeker se prokureur
(Fisiese adres)
.....

Aan: 1. Die Klerk van die bogenoemde Hof
……..

2. Respondent/respondent se prokureur
(Fisiese adres)
…….

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

No. 1C – Kennisgewing van mosie (Kort vorm, vir tussentydse of ander aansoeke insidenteel tot hangende verrigtinge)

*** Vir gebruik in die Streekhof**

IN DIE STREEKHOF VIR DIE STREEKAFDELING VAN ……...

Gehou te ……. Saaknommer: ……..…..

In die aangeleentheid tussen:

..... Aansoeker

en

…… ……. Respondent

NEEM KENNIS dat aansoek namens die bogenoemde aansoeker gedoen sal word op die ..... dag van ..... om 9:00 of so gou as moontlik daarna soos die partye aangehoor kan word vir 'n bevel op die volgende voorwaardes:

(a) .....

(b).....

(c).....

en dat die beëdigde verklaring van ..... hierby aangeheg ter ondersteuning daarvan gebruik sal word.

Plaas asseblief die aangeleentheid dienooreenkomstig ter rolle vir beregting.

GEDATEER te ..... op hierdie..... dag van ..... 20 .....

.....
Aansoeker/Aansoeker se prokureur
(Fisiese adres)
.....

To: 1. Die Registrateur
……..

2. Respondent/Respondent se prokureur
(Fisiese adres)
……..

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

No. 5A – Versoek vir vonnis waar die verweerder aanspreeklikheid erken het en onderneem het om die skuld in paaiemente of andersins te betaal – Artikel 57 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)

***Vir gebruik in die distrikshof**

In die Landdroshof vir die distrik van .....

gehou te ..... Saaknommer ..... van 20.....

In die aangeleentheid tussen

..... Eiser

en

..... Verweerder

Eiser versoek dat vonnis in die bogenoemde aangeleentheid ingevolge artikel 57 van die Wet op Landdroshowe, 1944, in sy of haar guns teen die verweerder aangeteken word soos volg:

Vonnisskuld: R c

Koste: R c

Uitstaande saldo van die skuld .....

Rente teen .....persent per jaar bereken van .....

Insamelingsgelde .....

Dagvaardings, indien enige (prokureursgelde, baljugelde en baljugede by heruitreiking) .....

Koste van beëdigde verklaring deur eiser/sertifikaat deur eiser se prokureur.....

Koste van geregistreerde brief .....

Koste van kennisgewing ingevolge reël 54(1) .....

Aanmaning (artikel 56) .....

Versoek om vonnis (artikel 57) .....

Erkenning van aanspreeklikheid en onderneming om te betaal (artikel 57)

Totale R R

Totaal R

plus verdere rente teen ..... persent per jaar met ingang van die vonnisdatum tot die datum van betaling, en dat betaling daarvan geskied ooreenkomstig die verweerder se aanbod.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Die volgende dokumente word aangeheg:

(a)Die dagvaarding, of indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning;

(b) die verweerder se skriftelike erkenning van aanspreeklikheid en aanbod wat die bedrag aandui van die paaiement deur die verweerder aangebied;

(c) volle besonderhede en dokumentêre bewys van die verweerder se–

(i) maandelikse of weeklikse inkomste, waar redelik moontlik ondersteun deur die mees onlangse bewys daarvan in besit van die verweerder;

(ii) ander hofbevele of ooreenkomste, indien enige, met ander skuldeisers vir betaling van 'n skuld en koste in paaiemente;

sodat die hof op hoogte gebring kan word van die verweerder se finansiële posisie toe die aanbod gemaak en aanvaar is; en

(iii)indien die skriftelike toestemming 'n toestemming tot 'n besoldigingsbeslagbevel bevat, die kennisgewing aan die werkgewer en die vonnisskuldeiser oor die voorneme om die hof te versoek om 'n besoldigingbeslagbevel magtig;

(d) 'n afskrif van die eiser of sy of haar skriftelike aanvaarding van die aanbod en bewys dat dit aan die verweerder gepos is; en

(e) 'n beëdigde verklaring deur die eiser of 'n sertifikaat deur sy of haar prokureur wat stel hoekom die verweerder versuim het om die terme van sy of haar aanbod uit te voer en, indien die verweerder enige betalings gemaak het sedert die aanmaning of dagvaarding, wat toon hoe die saldo wat geëis word, bereken is.

Gedateer te ..... op hierdie ..... dag van ....., 20.....,

Eiser/eiser se prokureur

.....

(Adres)

.....

Vonnis toegestaan op die ..... dag van ..... 20 ..... ten gunste van die eiser vir die bedrag van R..... en die bedrag van R..... koste.

Die verweerder word verder beveel om die voormelde vonnis en koste te betaal in maandelikse/weeklikse paaiemente van R ..... /Die verweerder word verder beveel om die genoemde vonnis en koste ooreenkomstig die aanbod te betaal.* **

Die eerste paaiement moet betaal word voor of op ..... en daarna voor of op die ..... dag van elke daaropvolgende maand/week* totdat die uitstaande saldo van die vonnisskuld en -koste ten volle betaal is.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

.....

Hof

*Skrap wat nie van toepassing is nie

** Besoldigingbeslagbevel kan slegs uitgereik word as die hof oortuig is dat aan artikel 65J(2A) voldoen word.

No. 5A – Versoek om vonnis waar die verweerder aanspreeklikheid erken het en onderneem het om die skuld in paaiemente of andersins te betaal - Artikel 57 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)

***Vir gebruik in die streekhof**

In die streekhof vir die streekafdeling van.....

gehou te ..... Saaknommer ..... van 20.....

In die aangeleentheid tussen

..... Eiser

en

..... Verweerder

Eiser versoek dat vonnis in die bogenoemde aangeleentheid ingevolge artikel 57 van die Wet op Landdroshowe, 1944, in sy of haar guns soos volg teen die verweerder aangeteken word:

Vonnisskuld: R c

Koste: R c

Uitstaande balans van die skuld .....

Rente teen .....persent per jaar bereken vanaf .....

Insamelingsgelde .....

Dagvaarding, indien enige (prokureursfooie, baljugelde en baljugelde by heruitreiking) . .....

Koste van beëdigde verklaring of bevestiging deur eiser/sertifikaat deur eiser se prokureur .....

Koste van geregistreerde brief .....

Koste van kennisgewing ingevolge reël 54(1) .....

Aanmaning (artikel 56) .....

Versoek om vonnis (artikel 57) .....

Erkenning van aanspreeklikheid en onderneming om te betaal (artikel 57)

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Totale R R

Totaal R

plus verdere rente teen ..... persent per jaar met ingang van die datum van vonnis tot die datum van betaling, en dat betaling daarvan plaasvind ooreenkomstig die verweerder se aanbod.

Die volgende dokumente is aangeheg:

(a) Die dagvaarding of indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning;

(b) die verweerder se skriftelike erkenning van aanspreeklikheid en aanbod wat die bedrag van die paaiement deur die verweerder aangebied, verstrek;

(c) volle besonderhede en dokumentêre bewyse van die verweerder se–

(i) maandelikse of weeklikse inkomste en uitgawes, waar redelik moontlik ondersteun deur die mees onlangse bewys in besit van die verweerder;

(ii) ander hofbevele of ooreenkomste, indien enige, met ander skuldeisers vir betaling van 'n skuld en koste in paaiemente,

sodat die hof op hoogte gebring kan word van die verweerder se finansiële posisie toe die aanbod gemaak en aanvaar is; en

(iii) indien die skriftelike toestemming 'n toestemming tot 'n besoldigingbeslagbevel bevat, die kennisgewing aan die werkgewer en die vonnisskuldeiser van die voorneme om te versoek dat die hof 'n besoldigingbeslagbevel magtig;

(d) 'n afskrif van die eiser of sy of haar prokureur se skriftelike aanvaarding van die aanbod en bewys dat dit aan die verweerder gepos is; en

(e) 'n beëdigde verklaring deur die eiser of 'n sertifikaat van sy of haar prokureur waarin gestel word in watter opsigte die verweerder versuim het om die terme van sy of haar aanbod uit te voer en, indien die verweerder enige betalings gemaak het sedert die datum van die aanmaning of dagvaarding, wys hoe die saldo wat geëis word, bereken word.

Gedateer te ..... hierdie ..... dag van ....., 20.....,

Eiser/Eiser se prokureur

.....

(Adres)

.....

Vonnis toegestaan op die ..... dag van ..... 20 ..... ten gunste van die eiser vir die bedrag van R..... en die bedrag van R..... koste.

Die verweerder word verder beveel om die genoemde vonnis en koste in maandelikse/weeklikse paaiemente van R..... te betaal /Die verweerder word verder

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

beveel om die genoemde vonnis en koste ooreenkomstig die aanbod te betaal.* **

Die eerste paaiement moet voor of op..... betaal word en daarna voor of op die ..... dag van elke daaropvolgende maand/week* totdat die uitstaande saldo van die vonnisskuld en koste ten volle betaal is.

.....

Hof

*Skrap wat nie van toepassing is nie

** Besoldigingbeslagbevel kan slegs uitgereik word indien die hof oortuig is dat aan artikel 65J(2A) voldoen is.

No. 5B – Versoek om vonnis waar die verweerder tot vonnis ingestem het - Artikel 58 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)

***Vir gebruik in die distrikshof**

In die Landdroshof vir die distrik van .....

gehou te ..... Saaknommer ..... van 20.....

In die aangeleentheid tussen

..... Eiser

en

..... Verweerder

Eiser versoek dat vonnis in die bogenoemde aangeleentheid ingevolge artikel 58 van die Wet op Landdroshowe, 1944, ten gunste van die eiser teen die verweerder aangeteken word:

Vonnisskuld: R c

Koste: R c

Bedrag van skuld .....

Rente teen.....persent per jaar bereken vanaf .....

Aanmaning (artikel 56) .....

Dagvaarding, indien enige (prokureursfooie, baljugelde en baljugelde by heruitreiking) .....

Koste van kennisgewing ingevolge reël 54(1) .....

Versoek om vonnis (artikel 58) .....

Toestemming tot vonnis (artikel 58) .....

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Totale..... R R

Totaal..... R

en dat betaling daarvan ooreenkomstig die verweerder se toestemming plaasvind.

Die volgende dokumente word aangeheg:

(a) Die dagvaarding, of indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning;

(b) die verweerder se skriftelike toestemming tot vonnis; en

(c) indien die verweerder instem tot 'n hofbevel vir betaling in gespesifiseerde paaiemente–

(i) die skriftelike toestemming wat die bedrag van die gespesifiseerde paaiemente aandui; en

(ii) volle besonderhede en dokumentêre bewyse van die verweerder se–

(aa) maandelikse of weeklikse inkomste en uitgawes, waar redelik moontlik ondersteun deur die mees onlangse bewys daarvan in besit van die verweerder;

(bb) ander hofbevele of ooreenkomste, indien enige, met ander skuldeisers vir betaling van 'n skuld en koste in paaiemente;

sodat die hof op hoogte gebring kan word van die verweerder se finansiële posisie toe die verweerder tot die vonnis toegestem het; en

(cc) indien die skriftelike toestemming 'n toestemming tot 'n besoldigingbeslagbevel bevat, die kennisgewing aan die werkgewer en die vonnisskuldeiser oor die voorneme om die hof te versoek om 'n besoldigingbeslagbevel te magtig.

Gedateer te ..... hierdie ..... dag van ....., 20.....

Eiser/eiser se prokureur:

.....

(Adres)

.....

.....

Vonnis toegestaan op die ..... dag van ..... 20 .... ten gunste van die eiser

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

vir die bedrag van R ..... en die bedrag van R ..... koste waarvoor die verweerder tot vonnis ingestem het.

Die verweerder word verder beveel om die genoemde vonnis en koste in maandelikse/weeklikse paaiemente van R..... te betaal/Die verweerder word verder beveel om die genoemde vonnis en koste ooreenkomstig die aanbod te betaal.* **

Die eerste paaiement moet voor of op ..... betaal word en daarna voor of op die ..... dag van elke daaropvolgende maand/week* totdat die uitstaande balans van die vonnisskuld en koste ten volle betaal is.

.....

Hof

* Skrap wat nie van toepassing is nie

** 'n Besoldigingbeslagbevel kan slegs uitgereik word indien die hof oortuig is dat aan artikel 65J(2A) voldoen word.

No. 5B – Versoek om vonnis waar die verweerder tot vonnis ingestem het – Artikel 58 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)

***Vir gebruik in die streekhof**

In die streekhof vir die streekafdeling van .....

gehou te ..... Saaknommer. ..... van 20.....

In die aangeleentheid tussen

..... Eiser

en

..... Verweerder

Eiser versoek dat vonnis in die bogenoemde aangeleentheid ingevolge artikel 58 van die Wet op Landdroshowe, 1944, ten gunste van die eiser teen die verweerder aangeteken word:

Vonnisskuld:	R	c
Koste:	R	c
Bedrag van skuld		.....
Rente teen.....persent per jaar bereken vanaf		.....
Aanmaning (artikel 56)		.....
Dagvaarding, indien enige (prokureursfooie, baljugelde en baljugelde by heruitreiking)		.....
Koste van kennisgewing ingevolge reël 54(1)		.....

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Versoek om vonnis (artikel 58)		.....
Toestemming tot vonnis (artikel 58)		.....
Totale.....	R	R
Totaal.....		R

en dat betaling daarvan plaasvind ooreenkomstig die verweerder se toestemming.

Die volgende dokumente word aangeheg:

(a) Die dagvaarding, of indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning;

(b) die verweerder se skriftelike toestemming tot vonnis; en

(c) indien die verweerder instem tot 'n hofbevel vir betaling in gespesifiseerde paaiemente–

(i) die skriftelike toestemming wat die bedrag van die gespesifiseerde paaiemente aandui; en

(ii) volle besonderhede en dokumentêre bewyse van die verweerder se–

(aa) maandelikse of weeklikse inkomste en uitgawes, waar redelik moontlik ondersteun deur die mees onlangse bewys daarvan in besit van die verweerder;

(bb) ander hofbevele of ooreenkomste, indien enige, met ander skuldeisers vir betaling van 'n skuld en koste in paaiemente;

sodat die hof op hoogte gebring kan word van die verweerder se finansiële posisie toe die verweerder tot vonnis toegestem het; en

(cc) indien die skriftelike toestemming 'n toestemming tot 'n besoldigingsbeslagbevel bevat, die kennisgewing aan die werkgewer en die vonnisskuldeiser oor die voorneme om die hof te versoek om 'n besoldigingbeslagbevel te magtig.

Gedateer te ..... op hierdie ..... dag van ....., 20.....

Eiser/Eiser se prokureur:

.....

(Adres)

.....

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

.....

Vonnis toegestaan op die ..... dag van ..... 20 .... ten gunste van die eiser vir die bedrag van R ..... en die bedrag van R ..... vir koste waarvoor die verweerder tot vonnis ingestem het.

Die verweerder word verder beveel om die voormelde vonnis en koste in maandelikse/weeklikse paaiemente van R..... te betaal/Die verweerder word verder beveel om die genoemde vonnis en koste ooreenkomstig die aanbod te betaal.* **

Die eerste paaiement moet voor of op ..... betaal word en daarna voor of op die ..... dag van elke daaropvolgende maand/week* totdat die uitstaande balans van die vonnisskuld en koste ten volle betaal is.

.....

Hof

* Skrap wat nie van toepassing is nie
** Besoldigingbeslagbevel kan slegs uitgereik word indien die hof oortuig is dat aan artikel 65J(2A) voldoen word

No. 5C – Aansoek om vernietiging van vonnis ingevolge artikel 36(3) van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)

***Vir gebruik in die distrikshof**

In die Landdroshof vir die distrik van .....

gehou te ..... Saaknommer. ..... van 20.....

In die aangeleentheid tussen

..... Aansoeker

en

..... Respondent

GELIEWE KENNIS TE NEEM dat aansoek by die bogenoemde edelagbare hof gedoen sal word, op _____ om 9:00, of so gou daarna soos die aangeleentheid bereg mag word vir 'n bevel op die volgende voorwaardes:

Vernietiging van die vonnis wat in hierdie aangeleentheid teen die aansoeker toegestaan is op …….. (vermeld datum van vonnis).

1. Geen kostebevel/Koste staan deur respondent betaal te word nie indien geopponeer.*

NEEM VERDER KENNIS dat die aangehegte beëdigde verklaring van die aansoeker, wat redelike bewyse bevat dat die vonnisskuld, die rente en die koste betaal is en dat aansoek ten minste 10 hofdae voor die beregting aan die vonnisskuldeiser beteken is, ter ondersteuning van hierdie aansoek gebruik sal word.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Geteken te _____ op hierdie dag van 20 .

…….
Handtekening van aansoeker/aansoeker se prokureur

Adres van aansoeker/aansoeker se prokureur
…….
……..
…….

Aan: Die klerk van die hof
…….
…….

Aan: Respondent/respondent se prokureur
…….
Adres van respondent/respondent se prokureur
……..
……
……

*Skrap wat nie van toepassing is nie.

No. 5C – Aansoek om vernietiging van vonnis ingevolge artikel 36(3) van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)

***Vir gebruik in die Streekhof**

In die Streekhof vir die streekafdeling van .....

gehou te ..... Saaknommer. ..... van 20.....

In die aangeleentheid tussen

..... Aansoeker

en

..... Respondent

GELIEWE KENNIS TE NEEM dat die aansoek by die bogenoemde edelagbare hof gedoen sal word op _____ om 9:00, of so gou daarna as wat die aangeleentheid aangehoor kan word vir 'n bevel op die volgende voorwaardes:

1. Vernietiging van die vonnis wat in hierdie aangeleentheid teen die aansoeker toegestaan is op …….. (vermeld datum van vonnis).
2. Geen kostebevel/ Koste moet deur respondent betaal word indien geopponeer.*

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

NEEM VERDER KENNIS dat die aangehegte beëdigde verklaring van die aansoeker, wat redelike bewyse bevat dat die vonnisskuld, die rente en die koste betaal is en dat aansoek ten minste 10 hofdae voor die beregting aan die vonnisskuldeiser beteken is, ter ondersteuning van hierdie aansoek gebruik sal word.

Geteken te _____ op hierdie dag van 20 .

…….
Handtekening van aansoeker/aansoeker se prokureur

Adres van aansoeker/aansoeker se prokureur
…….
……..
…….

Aan: Die griffier van die hof
…….
…….

Aan: Respondent/respondent se prokureur
…….
Adres van respondent/respondent se prokureur
……..
……
……

*Skrap wat nie van toepassing is nie.

No. 38 - Besoldigingbeslagbevel - Artikel 65J van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)

***Slegs vir gebruik in die distrikshof**

In die Landdroshof vir die distrik van.....

gehou te ..... Saaknommer. .....van 20.....

In die aangeleentheid tussen

.....Vonnisskuldeiser

en

.....Vonnisskuldenaar

Besonderhede van die vonnisskuldenaar (waar beskikbaar):

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Identiteitsnommer/Paspoortnommer:……..……

Werknemernommer:.....

Adres: ……..

Besonderhede van die beslagskuldenaar:

……. Beslagskuldenaar

Adres: .....

Aangesien dit aan die bogenoemde hof laat blyk is dat besoldigings tans of in die toekoms verskuldig is of toeval aan die vonnisskuldeiser deur of van die beslagskuldenaar en dat nadat die volgende bevel aan voldoen is, voldoende middele aan die vonnisskuldenaar oorgelaat sal wees om sigself en diegene wat van hom haar afhanklik is, te ondersteun;

Daar word beveel:

(1) Dat die genoemde besoldigings aangeheg is;

(2) Dat die beslagskuldenaar aan sy of haar prokureur op die ……. dag van elke maand/week nadat hierdie bevel uitgereik is, die bedrag van R….. van die besoldiging van die voormelde vonnisskuldenaar betaal totdat genoeg betaal is om te voldoen aan 'n vonnis of bevel teen die vonnisskuldenaar verkry deur die vonnisskuldeiser in die …….. hof by …….. op die …… dag van ……. vir die bedrag van R …… (op welke vonnis of bevel die bedrag van R …… steeds uitstaande is) met koste ten bedrae van R ……. en die koste van die beslaglegging ten bedrae van R …… asook R …… baljugelde.

Gedateer te ..... op hierdie ..... dag van ....., 20.....

Op las van die hof

.....

Klerk van die hof

.....

Vonnisskuldeiser/prokureur vir vonnisskuldeiser.

Adres van vonnisskuldeiser/prokureur van vonnisskuldeiser.

.....

U AANDAG WORD GEVESTIG op artikel 65J(6) van die Wet op Landdroshowe, 1944, wat soos volg bepaal:

"*(a)* Indien na betekening van so 'n besoldigingbeslagbevel aan die beslagskuldenaar, die beslagskuldenaar glo of daarvan bewus word of dit andersins bewys word dat die—

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(i) vonnisskuldenaar, nadat aan die besoldigingbeslagbevel voldoen is, nie genoegsame middele sal hê vir sy of haar eie onderhoud of dié van sy of haar afhanklikes nie; of

(ii) geëiste bedrae foutief of nie volgens die reg is nie,

moet die beslagskuldenaar, vonnisskuldenaar of 'n ander belanghebbende die vonnisskuldeiser of sy of haar prokureur onverwyld skriftelik dienooreenkomstig in kennis stel.

(b) Die skriftelike kennisgewing bedoel in paragraaf *(a)* moet die redes uiteensit waarom geglo word of vir die kennis dat die vonnisskuldenaar nie genoegsame middele sal hê vir sy of haar eie onderhoud of dié van sy of haar afhanklikes nie of die bedrae wat geëis word foutief of nie volgens die reg is nie.

(c) Die vonnisskuldeiser of sy of haar prokureur moet, na ontvangs van die kennisgewing bedoel in paragraaf *(a)*, sonder versuim aandui of hy of sy die redes in daardie kennisgewing gegee, aanvaar en indien nie, die aangeleentheid ter rolle plaas met kennisgewing aan die beslagskuldenaar, vonnisskuldenaar en enige ander belanghebbende bedoel in paragraaf *(a)*.

(d) Die hof kan, na beregting van alle partye en as die hof tevrede is dat die bevel regverdig en billik is—

(i) die besoldigingbeslagbevel vernietig of dit op so 'n wyse wysig dat dit slegs die saldo van die besoldiging van die vonnisskuldenaar bo en behalwe die genoegsame middele benodig vir sy of haar eie onderhoud of dié van sy of haar afhanklikes, sal raak; of

(ii) enige bevel gee, met inbegrip van 'n bevel rakende die verdeling van die bedrag beskikbaar vir toedeling aan al die besoldigingbeslagbevele, indien die hof tevrede is dat die bedrag gepas is en nie 25 persent van die vonnisskuldenaar se basiese salaris oorskry nie en 'n bevel rakende koste.

U AANDAG WORD VERDER GEVESTIG op die bepalings van subartikel 65J(10)*(a)* en *(b)* van die Wet op Landdroshowe, 1944, wat soos volg lui:

"*(a)* 'n Beslagskuldenaar kan vir die dienste deur hom of haar gelewer ingevolge 'n besoldigingbeslagbevel 'n kommissie van hoogstens 5 persent van alle bedrae deur hom of haar afgetrek van die vonnisskuldenaar se besoldiging op die vonnisskuldeiser verhaal deur daardie kommissie af te trek van die bedrag wat aan die vonnisskuldeiser betaalbaar is.

(b) 'n Beslagskuldenaar wat—

(i) onredelikerwys versuim om die bedrag van die besoldigingbeslagbevel betyds af te trek soos in subartikel (4)*(a)* bepaal; of

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(ii) onredelikerwys versuim om die aftrekkings betyds te stop wanneer die vonnisskuld en koste ten volle betaal is,
is aanspreeklik vir die terugbetaling aan die vonnisskuldenaar van enige ekstra koste en rente wat opgeloop het of enige bedrag wat van die besoldiging van die vonnisskuldenaar afgetrek is, nadat die vonnisskuld en koste as gevolg van so 'n versuim ten volle betaal is."

BELANGRIKE KENNISGEWING:
U AANDAG WORD GEVESTIG OP artikel 65J(3) van ie Wet op Landdroshowe, 1944 (gelees met artikel 3(1) van die Wet op Balju's, 1986), wat bepaal dat slegs 'n balju hierdie bevel aan 'n beslagskuldenaar mag beteken en, waar van toepassing, aan die vonnisskuldeiser op die wyse deur reël 9 van die Landdroshofreëls voorgeskryf. Betekening van hierdie bevel deur iemand wat nie 'n balju is wat ingevolge artikel 2 van die Wet op Balju's, 1986, aangestel is nie, stel 'n strafregtelike misdryf ingevolge artikel 60(1)*(g*A*)* van die Wet op Balju's, 1986, daar en laat sodanige betekening ongeldig en sonder gevolg. 'n Persoon wat aan 'n misdryf ingevolge artikel 60(1)*(g*A*)* van die Wet op Balju's, 1986, skuldig bevind word is strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens drie jaar of met sodanige boete sowel as sodanige gevangenisstraf.

No. 38A – Kennisgewing van voorneme om 'n besoldigingbeslagbevel uit te reik – Artikel 65J(2A) van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)

***Slegs vir gebruik in die distrikshof**

In die landdroshof vir die distrik van..... gehou te..... Saaknommer .....van 20.....

In die aangeleentheid tussen

..... Vonnisskuldeiser

en

..... Vonnisskuldenaar

Besonderhede van die vonnisskuldenaar (waar beskikbaar):

Identiteitsnommer/geboortedatum/Paspoortnommer:……p

Werknemernommer:.....

Adres:……

Besonderhede van die beslagskuldenaar:

…….Beslagskuldenaar

Adres:.....

AAN: DIE BOGENOEMDE VONNISSKULDENAAR EN SY OF HAAR WERKGEWER (HIERNA DIE "BESLAGSKULDENAAR" GENOEM):

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

AANGESIEN die hof op …….. (datum) beveel het dat beslag op die vonnisskuldenaar se besoldiging gelê word en dat die beslagskuldenaar R van die besoldiging van die genoemde vonnisskuldenaar op die …… dag van elke maand/week met ingang van ……. (datum) aan die vonnisskuldeiser of sy of haar prokureur moet betaal totdat genoeg betaal is om te voldoen aan die vonnis of bevel deur die vonnisskuldeiser teen die vonnisskuldenaar verkry in die …….. hof in …….. op die …… dag van …… vir die bedrag van R…… (op welke vonnis die bedrag van R …….steeds uitstaande is) met koste wat R…….. bedra en die koste van die beslaglegging wat R…… bedra asook R…… baljugelde.

GELIEWE KENNIS TE NEEM dat die vonnisskuldeiser voornemens is om aansoek te doen om die uitreiking van die voormelde besoldigingbeslagbevel.

NEEM VERDER KENNIS dat die volle bedrag van die uitstaande kapitaalskuld, rente en koste die som van R……,, gestaaf deur die rekeningstaat hierby aangeheg.

NEEM VERDER KENNIS dat tensy die vonnisskuldenaar of sy of haar werkgewer (hierin die beslagskuldenaar genoem) 'n kennisgewing indien van voorneme om die uitreiking van die besoldigingbeslagbevel binne 10 hofdae na betekening van hierdie vorm 38A-kennisgewing, die vonnisskuldeiser by die hof sal aansoek doen om die uitreiking van 'n besoldigingbeslagbevel. Die kennisgewing van voorneme om te bestry, indien enige, moet gelewer word deur—

(a) 'n afskrif daarvan aan die vonnisskuldeiser of sy of haar prokureur te beteken; en
(b) die oorspronklike daarvan by die klerk van hierdie hof te beteken in te dien.

NEEM VERDER KENNIS dat–

(i) van u vereis word om in u kennisgewing van voorneme om te opponeer, u volle fisiese adres, woonadres, sakeadres, posadres en waar beskikbaar, faksnommer en e-posadres, te verstrek; en die voorkeuradres vir betekening aan u van alle dokumente in hierdie aangeleentheid, en betekening daarvan by die aldus gegewe adres moet geldig en van krag wees, behalwe waar persoonlike betekening by hofbevel vereis word; en
(ii) indien u 'n fisiese adres in u kennisgewing van voorneme om te opponeer verstrek en dit as voorkeuradres aangedui word vir die doel van betekening, moet daardie adres, in plekke waar drie of meer prokureurs of prokureursfirmas is wat onafhanklik van mekaar praktiseer, binne 15 kilometer van die hofgebou wees.

NEEM VERDER KENNIS dat–

(1) Die beoogde kennisgewing van voorneme om te opponeer die gronde moet stel waarop die vonnisskuldenaar of werkgewer die uitreiking van 'n besoldigingbeslagbevel wil opponeer;

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(2) Die gronde wat gebruik kan word om die uitreiking van die besoldigingbeslagbevel te opponeer sluit die volgende in, maar is nie daartoe beperk nie:

(a) dat die bedrae wat geëis word verkeerd of nie ooreenkomstig die reg is nie; of

*(*b) dat 25 persent van die vonnisskuldenaar se basiese salaris reeds aan ander besoldigingbeslagbevele toegewys is en dat die skuldenaar nie voldoende middele oor sal hê om sigself of sy of haar afhanklikes te onderhou nie.

(3) Die kennisgewing van voorneme om te opponeer moet vergesel gaan van—

(a) 'n sertifikaat van die werkgewer van die vonnisskuldenaar wat besonderhede vermeld van–

(i) alle bestaande hofbevele teen die vonnisskuldenaar of ooreenkomste met ander skuldeisers vir betaling van 'n skuld en koste in paaiemente; en

(ii) wanneer redelikerwys bereikbaar, die bedrae deur die vonnisskuldenaar benodig vir noodsaaklike uitgawes en uitgawes van sy of haar afhanklikes vir die maak van periodieke betalings wat hy of sy verplig is om te maak ingevolge 'n ooreenkoms of andersins ten opsigte van sy of haar ander verpligtinge;

(b) die kontakbesonderhede van al die tersaakilke vonnisskuldeisers of hul prokureurs; en

(c) die jongste salarisadvies van die vonnisskuldenaar.

NEEM VERDER KENNIS dat indien hierdie aangeleentheid teengestaan word, dit ter rolle geplaas kan word vir beregting met 10 hofdae kennisgewing.

NEEM VERDER KENNIS dat indien u hierdie aangeleentheid nie opponeer nie, by die hof op die ……. dag van …….. om 09h00 aansoek gedoen sal word of so gou as moontlik daarna soos hierdie aangeleentheid bereg kan word, om die uitreiking van 'n besoldigingbeslagbevel.

NEEM VERDER KENNIS dat u 'n reg het om deur 'n regsverteenwoordiger ('n prokureur) van eie keuse bygestaan te word. **INDIEN U NIE DIE DIENSTE VAN 'N REGSVERTEENWOORDIGER KAN BEKOSTIG NIE, HET U DIE REG OM AANSOEK TE DOEN OM REGSHULP SODAT 'N PROKUREUR AAN U TOEGEKEN KAN WORD INDIEN U KWALIFISEER.**

Gedateer te ……hierdie……dag van……20……...

.....

Vonnisskuldeiser/vonnisskuldeiser se prokureur

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Fisiese adres (binne 15 kilometer van die hofgebou):

……..
……..
……..
Posadres: ……..
E-posadres: ……
Faks: ……
Dui die voorkeuradres vir betekening aan: ……..

……...

Sien artikel 65J(1A)(a)* en *(b)* van die Wet op Landdroshowe, 1944, wat soos volg lui:

"*(a)* Die bedrag van die paaiement betaalbaar of die totale bedrag van paaiemente betaalbaar waar daar meer as een besoldigingbeslagbevel deur die vonnisskuldenaar betaalbaar is, mag nie 25 persent van die vonnisskuldenaar se basiese salaris oorskry nie.

(b) By die toepassing van hierdie artikel, beteken 'basiese salaris' die jaarlikse bruto salaris van 'n vonnisskuldenaar gedeel deur 12 en sluit dit bykomende vergoeding vir oortyd en ander toelaes uit."