RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT N0. 107 OF 1985)

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

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

SCHEDULE

GENERAL EXPLANATORY NOTE:

[ ] Expressions in square brackets in bold represent omissions from existing text.

_____ Expressions with solid underline represent insertions into existing text.

Definition

1. In this Schedule the **"Rules"** means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notice Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of

28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 1O August 1990, R. 1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R. 516 of 8 May 2009, R. 518 of 8 May 2009, R 86 of 12 February 2010, R 87 of 12 February 2010, R 88 of 12 February 2010, R 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012,. R. 992 of 7 December 2012, R 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R. 317 of 17 April 2015, R. 781 of 31 August 2015, R. 3 of 19 February 2016, R. 678 of 03 June 2016, R. 1055 of September 2017 and R.1272 of 17 November 2017.

Substitution of rule 16 of the Rules

2. The following rule is hereby substituted for rule 16 of the Rules:

"Rule 16 -Representation of parties

(1) If an attorney acts on behalf of any party in any proceedings, **[he]** such attorney shall notify all other parties of **[his name and address]** this fact and shall

supply an address where documents in the proceedings may be served.

(2) *(a)* Any party represented by an attorney in any proceedings may at any time, subject to the provisions of rule 40, terminate such attorney's authority to act **[for him,]** and may thereafter act in person or appoint another attorney to act **[for him therein]** in the proceedings, whereupon **[he]** such party or the newly appointed attorney on behalf of such party shall forthwith give notice to the registrar and to all other parties of the termination of **[his]** the former attorney's authority, and if **[he]** such party has appointed a further attorney **[so]** to act **[for him, of the latter's]** in the proceedings, such party or the newly appointed attorney on behalf of such party shall give the name and address of the attorney so appointed.

(b) If such party does not appoint a further attorney, such party shall in the notice of termination appoint an address within **[eight]** 15 kilometres of the office of the registrar for the service on **[him]** such party of all documents in such proceedings.

(3) Upon receipt of a notice in terms of subrule (1) or (2), the address of the attorney or of the party, as the case may be, shall become the address of such party for the service upon **[him]** such party of all documents in such proceedings, but any service duly effected elsewhere before receipt of such notice shall, notwithstanding such change, for all purposes be valid, unless the court orders otherwise.

(4) *(a)* Where an attorney acting in any proceedings for a party ceases so to act, **[he]** such attorney shall forthwith deliver notice thereof to such party, the registrar and all other parties: Provided that notice to the party for whom **[he]** such attorney acted may be given by **[registered post]** facsimile or electronic mail in accordance with the provisions of rule 4A.

(b) The party formerly represented must within 10 days after the notice of withdrawal notify the registrar and all other parties of a new address for service as contemplated in sub-rule (2) whereafter all subsequent documents in the proceedings for service on such party shall be served on such party in accordance with the rules relating to service: Provided that the party whose attorney has withdrawn and who has failed to provide an address within the said period of 10 days shall be liable for the payment of the costs occasioned by subsequent service on such party in terms of the rules relating to service, unless the court orders otherwise.

(c) The notice to the registrar shall state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them.

(d) The notice to the party formerly represented shall inform the said party of the provisions of paragraph *(b)."*

Substitution of rule 38 of the Rules

3. The following rule is hereby substituted for rule 38 of the Rules:

"**38. Procuring evidence for trial**

(1)*(a)*

(i) Any party, desiring the attendance of any person to give evidence at a trial, may as of right, without any prior proceeding whatsoever, sue out from the office of the registrar one or more subpoenas for that purpose, each of which subpoenas shall contain the names of not more than four persons, and service thereof upon any person therein named shall be effected by the sheriff in the manner prescribed by rule 4 **[, and the process for subpoenaing such witnesses shall be, as nearly as may be, in accordance with Form 16 in the First Schedule]**.

(ii) The process for subpoenaing a witness referred to in subparagraph (i) shall be by means of a subpoena in a form substantially similar to Form 16 in the First Schedule.

(iii) If any witness **[has]** is in **[his]** possession or control of any deed, **[instrument, writing]** document, book, writing, tape recording or electronic recording (hereinafter referred to as a "document") or thing which the party requiring **[his]** the attendance of such witness desires to be produced in evidence, the subpoena shall specify such document or thing and require **[him]** such witness to produce it to the court at the trial.

[*(b)* Any witness who has been required to produce any deed, document, writing or tape recording at the trial shall hand it over to the registrar as soon as possible, unless the witness claims that the deed, document, writing or tape recording is privileged. Thereafter the parties may inspect such deed, document, writing or tape recording and make copies or transcriptions thereof, after which the witness is entitled to its return.]

(b)

(i) The process for requiring the production of a document referred to in subrule (1)*(a)*(iii) shall be by means of a subpoena in a form substantially similar to Form 16A in the First Schedule.

(ii) Within 10 days of receipt of a subpoena requiring the production of any document, any person who has been required to produce a document at the trial shall lodge it with the registrar, unless such a person claims privilege.

(iii) The registrar shall set the conditions upon which the said document may be inspected and copied so as to ensure its protection.

(iv) Within five days of lodgement with the registrar, the party causing the subpoena to be issued for the production of the document shall inform all other parties that the said document is available for inspection and copying and of any conditions set by the registrar for inspection and copying.

(v) After inspection and copying, the person who produced the document is entitled to its return.

(c)

(i) The process for requiring the production of a thing referred to in subrule (1)*(a)*(iii) shall be by means of a subpoena in a form substantially similar to Form 16A in the First Schedule.

(ii) Within 10 days of receipt of a subpoena requiring the production of any thing, any person who has been required to produce a thing at the trial shall inform the registrar of the whereabouts of the thing and make the thing available for inspection, unless such person claims privilege.

(iii) The registrar shall set the conditions upon which the said thing may be inspected and copied or photographed so as to ensure its protection.

(iv) Within five days of notification from the registrar of the whereabouts of the said thing, the party causing the subpoena to be issued for the production of the thing shall inform all other parties where and when the thing may be inspected and copied or photographed and of any conditions set by the registrar for inspection, copying and photographing.

(v) After inspection and copying or photographing, the person who produced the thing is entitled to its return.

(2) The witnesses at the trial of any action shall be orally examined **[viva voce]**, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.

(3) A court may, on application on notice in any matter where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before or during the trial before a commissioner of the court, and permit any party to any such matter to use such deposition in evidence on such terms, if any, as to it seems meet, and in particular may order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or the furnishing of any particulars in the action.

(4) Where the evidence of any person is to be taken on commission before any commissioner within the Republic, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.

(5) Unless the Court ordering the commission directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before the commissioner in terms of an order granted under subrule (3) shall be adduced upon oral examination in the presence of the parties, their advocates **[and]** or attorneys, and the witness concerned **[shall]** may be subject to cross-examination and re-examination.

(6) A commissioner shall not decide upon the admissibility of evidence tendered, but shall note any objections made and such objections shall be decided by the court hearing the matter.

(7) Evidence taken on commission shall be recorded in such manner as evidence is recorded when taken before a court and the transcript of any shorthand record or record taken by mechanical means duly certified by the person transcribing the same and by the commissioner shall constitute the record of the examination: Provided that the evidence before the commissioner may be taken down in narrative form.

(8) The record of the evidence shall be returned by the commissioner to the registrar with **[his]** a certificate to the effect that it is the record of the evidence given before **[him]** the commissioner, and shall thereupon become part of the record in the case."

Substitution of rule 43 of the Rules

4. The following rule is hereby substituted for rule 43 of the Rules:

"**43 – [Matrimonial matters] Interim relief in matrimonial matters**

(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) Maintenance *pendente lite*;

(b) **[a]** A contribution towards the costs of a **[pending]** matrimonial action, pending or about to be instituted;

(c) **[interim custody]** Interim care of any child;

(d) **[interim access to]** Interim contact with any child.

(2) *(a)* **[The applicant]** An applicant applying for any relief referred to in subrule (1) shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds therefor, together with a notice to the respondent **[as near as may be in accordance]** corresponding with Form 17 of the First Schedule.

(b) The statement and notice shall be signed by the applicant or **[his]** the applicant's attorney and shall give an address for service within **[eight]** 15 kilometres of the office of the registrar, as referred to in rule 6(5)*(b)* **[and shall be served by the sheriff]**.

(c) The application shall be served by the sheriff: Provided that where the respondent is represented by an attorney, the application may be served on the respondent's attorney of record, other than by the sheriff.

(3) *(a)* The respondent shall within **[ten]** 10 days after receiving the **[statement]** application deliver a sworn reply in the nature of a plea**[,]**.

(b) The reply shall be signed by the respondent or the respondent's attorney and **[giving]** shall give an address for service within 15 kilometres of the office of the registrar, as referred to in rule 6(5)*(b)*. **[as aforesaid, in default of which he shall be *ipso facto* barred.]**

(c) In default of delivery of a reply referred to in paragraph *(a)*, the respondent shall be automatically barred.

(4) As soon as possible **[thereafter]** after the expiry of the period referred to in paragraph *(a)* of subrule (3), the registrar shall bring the matter before the court for summary hearing, on **[ten]** 10 days' notice to the parties**[,]** :Provided that no notice need be given to the respondent if **[unless]** the respondent is in default.

(5) The court may hear such evidence as it considers necessary and may dismiss the application or make such order as it **[thinks]** deems fit to ensure a just and expeditious decision.

(6) The court may, on the same procedure, vary its decision in the event of a material change **[taking place]** occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate."

Amendment of rule 58 of the Rules

5. Rule 58 of the Rules is hereby amended by the substitution for subrule (5A) of the following subrule:

"(5A) Simultaneously with the delivery by a claimant of particulars of claim, such claimant shall specify an address for service within **[eight]** 15 kilometres of the office of the registrar as referred to in rule 6(5)*(b)*."

Amendment of rule 68 of the Rules

6. Rule 68 of the Rules is hereby amended –

(a) by the substitution for item 12 of the Tariff of the following item:

"12.For the writing of **[Each]** each necessary letter, facsimile or electronic mail excluding formal letters accompanying process or returns: 17,50".

(b) by the substitution for item 13 of the Tariff of the following item:

"13. Each necessary attendance by telephone **[(in addition to prescribed trunk charges)][10,00]** :16,00.".

(c) by the substitution for item 14 of the Tariff of the following item:

"14. Sending and receiving of each necessary facsimile or electronic mail per **[A4 size]** page (in addition to telephone charges): 5,50 .".

Amendment of rule 70 of the Rules

7. Rule 70 of the Rules is hereby amended by the substitution for Section E of the Tariff of the following item:

E - BILL OF COSTS
In connection with a bill of costs for services rendered by an attorney, the attorney shall be entitled to charge:
1 For drawing the bill of costs, making the necessary copies and attending settlement, **[10,60]** 11 per cent of the attorney's fees, either as charged in the bill, if not taxed, or as allowed on taxation.
2 In addition to the fees charged under item 1, if recourse is had to taxation for arranging and attending taxation and obtaining consent to taxation, **[10,60]** 11 per cent on the first R10 000,00 or portion thereof, **[5,10]** 6 per cent on the next R10 000,00 or portion thereof and **[2,12]** 3 per cent on the balance of the total amount of the bill.
3 *(a)* Whenever an attorney employs the services of another person to draft his or her bill of costs, a certificate shall accompany that bill of costs in which that attorney certifies that-
(i) the bill of costs thus drafted was properly perused by him or her and found to be correct; and
(ii) every description in such bill with reference to work, time and figures is consistent with what was necessarily done by him or her.
(b) The taxing officer may-
(i) if he or she is satisfied that one or more of the requirements referred to in item 3*(a)* has not been complied with, refuse to tax such bill;
(ii) if he or she is satisfied that fees are being charged in a party-and-party bill of costs-
(aa) for work not done;
(bb) for work for which fees are to be charged in an attorney-and-client bill of costs; or
(cc) which are excessively high,
deny the attorney the remuneration referred to in items 1 and 2 of this section, if more than 20 per cent of the number of items in the bill of costs, including expenses, or of the total amount of the bill of costs, including expenses, is taxed off.
NOTE: The minimum fees under items 1 and 2 shall be R234,50 for each item.

First Schedule

Substitution of Form 16 of the First Schedule of the Rules

8. The following form is hereby substituted for Form 16 of the First Schedule of the Rules:

"**FORM 16**

SUBPOENA

IN THE **[SUPREME]** HIGH COURT OF SOUTH AFRICA

(..... DIVISION)

Case No .....

In the matter between

.....

Plaintiff

and

.....

Defendant

To the sheriff or **[his]** deputy.

INFORM:

(1)

.....

(2)

.....

(3)

.....

(4)

.....

*(State names, sex, occupation**[, race]** and place of business or residence of each witness)*

that each of **[them]** such persons is hereby required to appear in person before **[this]** the above court at ..... on the.....day of ..... **[19]** 20.....at .....(time) **[in the forenoon]** and thereafter to remain in attendance until excused by the said Court, in order to testify on behalf of the above-named plaintiff/defendant in regard to all matters within **[his]** such person's knowledge relating to an action now pending in the said Court and wherein the plaintiff claims:

(1) .....

(2) .....

(3) .....

from the defendant.

[AND INFORM him that he is further required to bring with him and to produce to the said court (here describe accurately each document, book or other thing to be produced) .....]

AND INFORM each of the said persons that such person is required to produce the following documents or things:

(1).....

(2).....

(3).....

AND INFORM each of the said persons further that **[he]** such person should on no account **[neglect]** fail to comply with this subpoena as **[he]** such person may **[thereby render himself]** become liable to a fine **[of R300,]** or to imprisonment not exceeding **[for]** three months.

DATED at ....this ..... day of ..... **[19]** 20.....

.....

*Registrar of The **[Supreme]** High Court*

.....

[Plaintiff's / Defendant's Attorney]

Plaintiff/Defendant/Attorney"

Insertion of Form 16A into the First Schedule of the Rules

9. The following form is hereby inserted into the First Schedule of the Rules, after Form 16:

"**FORM 16A**

SUBPOENA *DUCES TECUM*

IN THE HIGH COURT OF SOUTH AFRICA

(..... DIVISION)

Case No .....

In the matter between

.....

Plaintiff

and

.....

Defendant

To the sheriff or deputy.

INFORM:

(1)

.....

(2)

.....

(3)

.....

(4)

.....

(State names, sex, occupation and place of business or residence of each witness)

that each of such persons shall within 10 days of receipt of this subpoena, lodge with the registrar of the said Court (here describe accurately each document to be produced) or inform the registrar of the whereabouts of (here describe a thing to be produced)

(1).....

(2).....

(3).....

unless such person claims privilege in respect of any document or thing.

AND INFORM each of the said persons further that:

(a) Such person should on no account fail to comply with this subpoena as such person may become liable to a fine or to imprisonment not exceeding three months;

(b) If privilege is claimed in respect of any document or thing, the party that caused the subpoena to be issued shall be informed within five days of receipt of the subpoena of the nature of the privilege claimed; and

(c) Such person is entitled to the return of the document or thing after inspection or copying or photographing by the parties.

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

.....

Registrar of The High Court

.....

Plaintiff/Defendant/Attorney"

Substitution of Form 17

10. The following Form is hereby substituted for Form 17 in the First Schedule of the Uniform Rules:

Form 17

NOTICE IN TERMS OF RULE 43

IN THE **[SUPREME]** HIGH COURT OF SOUTH AFRICA
(..... DIVISION)

In the matter between

.....
Applicant

and

.....
Respondent

To the above-named respondent:

Take Notice that.....(the applicant herein) intends to make application to the above honourable court for the following orders:

(1).....

(2).....

(3).....

And take notice that the annexed statement of the applicant will be used in support of the application.

[Take Notice that if] If you intend to defend this claim, you must, within 10 days, file a reply with the Registrar of this court , **[giving]** give an address for service referred to in rule 6(5)*(b)*, and serve a copy **[thereof]** of your reply on the applicant or the applicant's attorney.

If you do not **[do these things]** file and serve your reply as aforesaid, you will be automatically barred from defending, and judgment may be given against you as claimed.

Your reply must indicate what allegations in the applicant's statement you admit or deny, and must concisely set out your defence.

Dated at.....this.....day of.....**[19]** 20....

.....
Applicant/Applicant's Attorney

Address for service:
.....

Repeal of Form 17A

11. Form 17A in the First Schedule of the Uniform Rules is hereby repealed.

Commencement

12. These rules shall come into operation on 10 January 2019