RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE MAGISTRATES' COURTS OF SOUTH AFRICA

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

SCHEDULE

GENERAL EXPLANATORY NOTE:

Expressions in square brackets in bold **[ ]** represent omissions from the existing rules

Expressions with solid underline represent insertions into the existing rules

Definition

1. In this Schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011, R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, R. 183 of 18 March 2014, R. 215 of 28 March 2014 and R. 507 of 27 June 2014, R. 5

of 9 January 2015, R. 32 of 23 January 2015, R. 33 of 23 January 2015, R. 318 of 17 April 2015, R. 545 of 30 June 2015, R. 2 of 19 February 2016, R. 1055 of 29 September 2017, R. 1272 of 17 November 2017 and R. 632 of 22 June 2018.

Amendment of rule 9 of the Rules

2. Rule 9 of the Rules is hereby amended by the substitution for paragraph *(g)* of subrule (3) of the following paragraph:

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

Amendment of rule 34 of the Rules

3. Rule 34 of the Rules is hereby amended by the substitution for subrule (2) of the following subrule:

"(2)(a) Every account of fees or charges furnished by a sheriff shall contain the following note:

"You may require this account to be taxed and vouched before payment.".

(b) Where any dispute arises as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question.".

Amendment of rule 52 of the Rules

4. The following rule is hereby substituted for rule 52 of the Rules:

"**52 Representation and substitution of parties**

(1)*(a)* A party may institute or defend and may carry to completion any legal proceedings either in person or by a practitioner.

(b) A local authority, company or other incorporated **[body]** entity in doing so may act through an officer thereof **[nominated]** authorised by it for that purpose.

(c) A partnership, association, body corporate or any other group of persons associated for a common purpose **[in doing so]** may act through a member thereof **[nominated]** authorised by it for that purpose.

(d) No person acting under paragraphs *(a)*, *(b)* or *(c)* other than a practitioner shall be entitled to recover **[therefor]** any **[costs]** legal fees other than necessary disbursements.

(2)*(a)* It shall not be necessary for any person to file a power of attorney to act, but the authority of any person acting for a party may be challenged on notice by the other party within 10 days **[after he or she has noticed]** of such party becoming aware that such person is so acting or with the leave of the court **[for]** on good cause shown at any time before judgment **[and thereupon such person]**.

(b) If a person's authority to act for a party is challenged, he or she may not, without the leave of the court, so act further until **[he or she has satisfied]** the court is satisfied that he or she has authority so to act, and the court may adjourn the hearing of the **[action or application]** proceedings to enable him or her to do so.

[: Provided that no power of attorney shall be required to be filed by the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or to a deputy state attorney or any attorney instructed in writing by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting in his or her capacity as such.]

(3) If a party dies or becomes incompetent to continue an action the action shall thereby be stayed until such time as an executor, trustee, guardian or other competent person has been appointed in his or her place or until such incompetence shall cease to exist.

(4) Where an executor, trustee, guardian or other competent person has been appointed for a party who has died or has become incompetent, the court may,on application, order that the person so appointed be substituted in the place of that party."

Insertion of rule 52A in the Rules

5. The following rule is hereby inserted in the Rules after rule 52:

"52A Notice of withdrawal, appointment or substitution as attorney of record

(1)*(a)* Where an attorney acting in any proceedings for a party ceases so to act, such attorney shall forthwith deliver notice thereof to–

(i) such party at the party's last known address, which address shall be stated in the notice;

(ii) the registrar or clerk of the court; and

(iii) all other parties to the proceedings:

Provided that the notice to the party for whom such an attorney acted shall be served in accordance with the provisions of rule 9(9).

(b) The notice contemplated in paragraph *(a)*(i) shall inform the said party to appoint an address for service of subsequent documents and notices on him or her, and to notify all other parties and the registrar or clerk of the court of such address within 10 days of the notice, such address being a–

(i) physical address, which 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;

(ii) postal address; and, where available,

(iii) facsimile address and electronic mail address.

(c) The notice to the registrar or clerk of the court 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) Notwithstanding the withdrawal of an attorney as the attorney of record for a party in any proceedings, all subsequent documents in the proceedings 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 period of 10 days stated in paragraph *(b)* 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.

(2)*(a)* Save as may be otherwise provided for in rules 5 and 13, whenever an attorney acts on behalf of any party in any proceedings, such attorney shall notify all other parties of–

(i) the attorney's name and physical address, which 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;
(ii) the attorney's postal address; and, where available,
(iii) the attorney's facsimile address and electronic mail address.

(b) The provisions of this subrule apply, with appropriate variations, to an attorney appointed as a substitute to a party's previous attorney.

(3) Upon receipt of a notice in terms of subrule (1) or (2), the address of the attorney or of the party, becomes the address of such party for the service of all subsequent 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.".

Substitution of rule 68 of the Rules

6. The following rule is hereby substituted for rule 68 of the Rules:

"**68 Oath of office of interpreter and intermediary**

(1) Every interpreter shall upon entrance into office, in writing, take an oath or make an affirmation subscribed by him or her before a judicial officer in the form set out below, namely:

"I, ... , (full name) do hereby swear/truly affirm that whenever I may be called upon to perform the functions of an interpreter in any proceedings in any magistrate's court I shall truly and correctly to the best of my knowledge and ability interpret from the language I may be called upon to interpret into an official language of the Republic of South Africa and *vice versa*."

(1A) Every intermediary shall upon entrance into office, in writing, take an oath or make an affirmation subscribed by him or her before a judicial officer in the form set out below, namely:

"I, ..., (full name) hereby swear/truly affirm that whenever I may be called upon to perform the functions of an intermediary in any proceedings in any magistrate's court of the Republic of South Africa, I shall honestly, faithfully and correctly to the best of my knowledge and ability convey properly and accurately the witness' evidence to the court and where necessary convey the general import of what is communicated to or by the witness."

(2) **[Such]** The oath or affirmation shall be taken or made or administered in the manner prescribed for the taking or making or administration of an oath or affirmation."

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

7. Part IV of Table A of Annexure 2 to the Rules is hereby amended by the substitution for items 6 and 7 of the following items:

Item	**Scale**
"TAXATION OF COSTS In connection with a bill of costs for services rendered by an attorney, the attorney shall be entitled to charge:	**R**
[Drawing up bill of costs:] 6 For drawing the bill of costs, making the necessary copies and attending settlement, 11 per cent of the attorney's fees, either as charged in the bill, if not taxed, or as allowed on taxation.	**[5% of the fees allowed]**
[Attending taxation:] 7 In addition to the fees charged under item 6, if recourse is had to taxation for arranging and attending taxation, and obtaining consent to taxation, 11 per cent on the first R10 000,00 or portion thereof, 6 per cent on the next R10 000,00 or portion thereof and 3 per cent on the balance of the total amount of the bill.".	**[5% of the total of the bill allowed]**

Amendment of Part II of Table C of Annexure 2 to the Rules

8. Part II of Table C of Annexure 2 to the Rules is hereby amended –

(a) by the substitution for item 28 of the following item:

"28.For the writing of each necessary letter, facsimile or electronic mail, excluding formal letters accompanying process or returns: **[10,00]** 17,50.".

(b) by the substitution of item 29 of the following item:
"29. Each necessary attendance by telephone **[(in addition to prescribed trunk charges and cellular charges)]**: **[10,00]** 16,00.".

(c) by the substitution of item 30 of the following item:
"30. Sending and receiving of each necessary facsimile**[,]** or electronic mail per **[A4 size]** page (in addition to telephone charges): 5,50.".

9. APPENDIX A

CORRECTION NOTICE

The Rules Board for Courts of Law, 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, hereby removes Appendix A (Tariff of allowances payable to witnesses in civil cases) from the Schedule to Government Notice No. R. 740 of 23 August 2010.

Commencement

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