SCHINDLERS

attorneys and notaries

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

ATTN: HONORABLE RONALD LAMOLA

Per Email**:** Ministry@justice.gov.za

COPY TO: SA BOARD FOR SHERIFFS

Per Email**:** contacts@sheriffs.org.za

COPY TO: SOUTH AFRICAN SHERIFF SOCIETY

Per Email: sass@sheriffbfne.co.za

COPY TO: SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS

Per Email: secretary@sanaps.org.za

COPY TO: JUDGE PRESIDENT MLAMBO

Per Email: nwilkinshaw@judiciary.org.za

COPY TO: JAYANTH BALKISHUN

Per Email: JBalkishun@justice.gov.za

Your Ref*: To Be Advised*

Our Ref**:** Gladwin/AN/DS

Date: 11 August 2020

*****PER ELECTRONIC MAIL****

Dear Sirs/Mesdames,

RE: PETITION TO AMEND SECTION 44 OF THE SUPERIOR COURTS ACT 10 OF 2013 IN ORDER TO ACCOMMODATE ELECTRONIC SERVICE VIA ELECTRONIC MAIL (E-MAIL)

1. This letter seeks to appeal to the Minister of Justice and Constitutional Development ("**the Minister**") to amend Section 44 of the Superior Courts Act 10 of 2013 ("Section 44") to expressly allow for the electronic execution of processes by the various sheriffs operating in the Republic.

2. This letter takes into account the comments already received by Rules Board.

The Current Position

3. Section 44 currently provides that electronic transmission of documents to a sheriff is possible, and that the sheriff may serve a printout/copy of that document received electronically, as if it were an original.

4. However, Section 44 does not authorize the sheriff to serve any document by electronic means.

Motivation for Amendment of Rule 44

5. Service via email would, by virtue of both the prevalence of the technology and the personal and unique nature of an email, in many cases be a more cost-effective measure than physical service and would in many instances be more reliable than some of the prescribed methods of service. For example, a letter left at a premises under the control of another person, is not as secure as an email sent to the defendant/respondent via email, where it is possible to track and trace that person's personal receipt of, and even reading of, the correspondence.

6. Under Level 3 restrictions the sheriffs are now finally permitted to return to "normal work" in the sense that they are permitted to serve all processes and documents again (where before in terms of Level 5 and 4 restrictions, they were limited in terms of which processes they were permitted to serve). This, however, does not address the need to deal with the enormous backlog of service requests, or the practical difficulties that sheriffs might have in getting their office staff "back to work" in terms of the social distancing and "return to work" regulations, all of which will undoubtedly delay and maybe even (in the long run) increase the cost of service of processes.

7. Moreover the functioning of the legal system as a whole has been gravely impacted by COVID, and whilst tremendous effects have been made by all role players to mitigate the impact on service delivery by our justice system,

inefficiencies and the sheer cost involved of facilitating every public office in the justice system with the proper equipment/resources to return to "normal work" is insurmountable.

8. Electronic service of processes initiating legal proceedings would reduce both the time and cost favour involved, would reduce the burden on our sheriffs in relation to service, would speed up service delivery and would thereby in turn increase access to justice for the public at large.

9. The urgency of the above request is heightened by the grave and serious threat that is posed to the effective operation of the legal system as a result of the SARS-COV-2 ("COVID") pandemic. In order to limit the spread of the virus, it has been government policy in South Africa to limit any and all unnecessary contact between people. Our government has adopted a strategy of isolation, which seeks to limit non-essential contact between people.

Our Proposal / Request

10. We accordingly request that you forthwith amend the current Section 44 of the Superior Courts Act to provide expressly that electronic service by sheriff is permissible, for the execution of process by the sheriff, especially in respect of processes that initiate legal proceedings, and in doing so, you could impose guidelines as to how such service should be carried out.

11. In essence the proposal contained herein would only require a minor variation of Section 44 as it currently stands.

12. The proposed amendment would then make the service of processes initiating legal proceedings subject to the Electronic Communications and Transactions Act 25 of 2002 ("ECTA"), in the same manner that the service of subsequent pleadings is already subjected to same.

13. The Minister may even want to consider imposing stricter conditions for the receipt of the email than provided for in ECTA. For example, the amended Section might provide that service by email would only be considered complete when both a delivery and read receipt have been obtained (this is a very strict requirement, and not even physical service requires proof of actual reading by the recipient, so this is not recommended) or that once delivery to the recipient's server is

complete and it can be shown that the recipient utilized that same email address for communications frequently in the month prior to the service, that service would be deemed to be complete. This would stop unscrupulous persons from stultifying the purpose of electronic service by simply refusing to open the document that appears in their email application because "they don't want to".

14. We accordingly request that you consider the above and revert to us. We are committed to furthering access to justice for all in South Africa, and it appears that, in these troubled times, with very little cost and effort, enormous strides can be made towards this goal simply by making an inconsequential amendment to Section 44.

15. We look forward to your favourable response herein.

Yours Faithfully,



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