RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA • P.O. Box 13106, The Tramshed, 0126 • Tel (012) 326 8014/ 8045, Fax (012) 326 8018

13 May 2019 Our ref: D Neke/J Balkishun/ Your ref:

Dear Sir / Madam,

PROPOSED AMENDMENTS TO RULES 76; 84 AND 86 AND FORM MED–6 AND REPEAL OF FORM MED–7 OF THE MAGISTRATES' COURTS RULES

The Rules Board for Courts of Law (Rules Board) intends to amend the following rules and form of the Chapter 2 Rules of the Magistrates' Courts, which regulate court-annexed mediation:
(a) Rule 76 (Functions and duties of clerks and registrars);
(b) Rule 84 (Fees of mediators);
(c) Rule 86 (Accreditation of mediators); and
(d) Form MED–6 (Agreement to mediate).

In addition, the Rules Board also intends to repeal Form MED–7 (Notice to receive mediator's fees).

Rule 76, is proposed to be amended by inserting the phrase "and accepted by the mediator" in subrule (2)*(c)* so as to provide for acceptance by the mediator, of the appointment and the terms of appointment.

The main amendments proposed to Rule 84 are to subrules (2) and (3), which are as follows:
(a) Subrule (2) is proposed to be amended by inserting the phrase "Unless the parties agree otherwise" and by removing the expression "offer to".
(b) Subrule (3) is proposed to be amended by inserting the expression "determined and".

The main amendments proposed to Rule 86 are to:
(a) Subrule (1) by inserting the expression "and published"; and

Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985
Justice N Dambuza(Chairperson)I Justice FE Mokgohloa(Vice-Chairperson)I Mr.M Kutama I Adv.L Haupt SC I Mr.A Essa I Ms.J Wessels
Mr.P Hundermark I Ms.N Ndlovu I Mr.R Isaacs I Mr.T Seboka I Adv.M Sishuba I Prof.E Hurter I Adv.M Basdew I Mr.G Bellairs I Mr.T Thupaatlase

(b) To subrule (2) by inserting the expression "determined and".

Form MED–6 is proposed to be amended as follows:

(a) By inserting an alternative clause 4.1, which provides an option to the parties and the mediator to record that no fees are payable to the mediator;

(b) By amending clause 4.2 to provide that the mediator shall secure his or her fees by agreement with the parties;

(c) By amending clause 4.3 to provide for the parties to be equally liable (rather than jointly and severally) for the mediator's fees and to provide an alternative option for the parties to pay the mediator's fees in certain agreed proportions;

(d) By inserting in clause 4.5, the expression "and agree" so as to be more accurate; and

(e) By inserting at the end of the Form, and after the terms "CLAIMANT" and "RESPONDENT", provision for acceptance by the mediator.

Form MED–7 is proposed to be repealed since there is no provision at courts for payment of mediator's fees to the cash halls.

As part of its consultative process in rule making and amendment, the Rules Board invites your comments on:

(a) Draft amended Rule 76 (Annexure RB 1 hereto);
(b) Draft amended Rule 84 (Annexure RB 2 hereto);
(c) Draft amended Rule 86 (Annexure RB 3 hereto);
(d) Draft amended Form MED–6 (Annexure RB 4 hereto);
(e) Draft amended Form MED–6 (Annexure RB 5 hereto); and
(f) Draft repeal of Form MED–7 (Annexure RB 6 hereto).

Your comments and input may be delivered to the Rules Board or may be emailed to JBalkishun@justice.gov.za and must reach the Rules Board on or before Friday, 28 June 2019.

The Rules Board looks forward to receiving your input and thanks you for same.

Yours sincerely,

D. NEKE
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