

RULES BOARD FOR COURTS OF LAW ACT 107 OF 1985

[ASSENTED TO 10 JULY 1985] [DATE OF COMMENCEMENT: 20 FEBRUARY 1987]

(Afrikaans text signed by the State President)

as amended by

Judicial Matters Amendment Act 77 of 1989
General Law Amendment Act 139 of 1992
Justice Laws Rationalisation Act 18 of 1996
Judicial Matters Amendment Act 62 of 2000
Judicial Matters Amendment Act 42 of 2001

also amended by

Magistrates' Courts Amendment Act 120 of 1993
General Law Third Amendment Act 129 of 1993
[both with effect from a date to be proclaimed - see PENDLEX]

ACT

To provide for the making of rules for the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, High Courts and lower courts; for that purpose to make provision for the establishment of the Rules Board for Courts of Law; and to provide for matters connected therewith.

[Long title substituted by s. 25 of Act 62 of 2000.]

1 Definitions

In this Act, unless the context indicates otherwise-

'Appellate Division'

[Definition of 'Appellate Division' deleted by s. 1 (a) of Act 77 of 1989.]

'Board' means the Rules Board for Courts of Law established by section 2;

'clerk of the court' means a person appointed as such in terms of section 13 (1) of the Magistrates' Courts Act, 1944 (Act 32 of 1944);

'commissioner' means a commissioner referred to in section 32 of the Supreme Court Act, 1959 (Act 59 of 1959);

'committee' means a committee of the Board established under section 5 (1);

'lower court' means a court of a regional division and a magistrate's court established in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and **'lower courts'** has a corresponding meaning;

[NB: The definition of 'lower court' has been substituted by s. 74 of the Magistrates' Courts Amendment Act 120 of 1993, a provision which will be put into operation by proclamation. See PENDLEX .]

'Minister' means the Minister of Justice;

'registrar' means a person appointed as such under section 34 (1) of the Supreme

Court Act, 1959 (Act 59 of 1959);

'Supreme Court'

[Definition of 'Supreme Court' substituted by s. 1 (b) of Act 77 of 1989 and deleted by s. 21 of Act 62 of 2000.]

2 Establishment of Rules Board for Courts of Law

There is hereby established a board called the Rules Board for Courts of Law and having the powers and duties conferred or imposed upon it by this Act or any other law.

3 Constitution of Board and period of office of members

(1) The Board shall consist of the following members appointed by the Minister, namely-

- (a) a judge of the Constitutional Court, the Supreme Court of Appeal or a High Court, whom the Minister designates as the chairperson;

[Para. (a) substituted by s. 22 of Act 62 of 2000 and by s. 9 of Act 42 of 2001.]

- (b) a judge or retired judge of the Constitutional Court, the Supreme Court of Appeal or a High Court, whom the Minister designates as the vice-chairperson;

[Para. (b) substituted by s. 2 (a) of Act 77 of 1989, by s. 22 of Act 62 of 2000 and by s. 9 of Act 42 of 2001.]

- (c) a magistrate appointed under section 9 (1) (a) of the Magistrates' Courts Act, 1944 (Act 32 of 1944);
- (d) two practising advocates, after consultation with the General Council of the Bar of South Africa;
- (e) two practising attorneys, after consultation with the Association of Law Societies of the Republic of South Africa;
- (f) a lecturer in law at a university in the Republic;
- (g) an officer of the Department of Justice;
- (h) not more than three persons who, in the opinion of the Minister, have the necessary expertise to serve as members of the Board.

(1A) The Minister may in respect of a member referred to in paragraph (d) or (e) of subsection (1) appoint a practising advocate or practising attorney, as the case may be, as an alternate member after consultation as required by the paragraph in question has taken place, to act during the absence from any meeting of the Board of the member in respect of whom he or she is so appointed, in the place of that member.

[Sub-s. (1A) inserted by s. 2 (b) of Act 77 of 1989 and amended by s. 26 (c) of Act 62 of 2000.]

(2) A member of the Board shall be appointed for a period of not more than five years, and any such appointment may be terminated at any time by the Minister if in his or her opinion there are sound reasons for doing so.

[Sub-s. (2) amended by s. 26 (d) of Act 62 of 2000.]

(3) Any person whose period of office as a member of the Board has expired, may be reappointed.

[NB: S. 3 has been substituted by s. 61 of the General Law Third Amendment Act 129 of

1993, a provision which will be put into operation by proclamation. See PENDLEX .]

4 Meetings of Board

(1) Meetings of the Board shall be held at the times and places determined by the chairperson or, if he or she is not available, by the vice-chairperson of the Board.

[Sub-s. (1) amended by s. 26 (a) , (b) and (c) of Act 62 of 2000.]

(2) The majority of the members of the Board shall constitute a quorum for a meeting.

(3) If the chairperson is absent from a meeting, the vice-chairperson shall act as chairperson, and if both the chairperson and the vice-chairperson are absent, the members present shall elect one of their number to preside at that meeting.

[Sub-s. (3) amended by s. 26 (a) and (b) of Act 62 of 2000.]

(4) The Board may regulate the proceedings at its meetings as it may think fit and shall cause minutes to be kept of the proceedings.

5 Committees of Board

(1) The Minister or the Board may establish committees consisting of such members of the Board as may be designated by the Board and such other persons, as if any, as the Minister may appoint for that purpose and for the period determined by him or her.

[Sub-s. (1) amended by s. 26 (e) of Act 62 of 2000.]

(2) The Minister may at any time extend the period of any appointment made by him or her under subsection (1) or, if in his or her opinion there are sound reasons for doing so, terminate such appointment.

[Sub-s. (2) amended by s. 26 (d) and (e) of Act 62 of 2000.]

(3) The Board shall designate a chairperson for every committee and, if the Board deems it necessary, a vice-chairperson.

[Sub-s. (3) amended by s. 26 (a) and (b) of Act 62 of 2000.]

(4) A committee shall, subject to the directions of the Board, perform such functions of the Board as either the Minister or the Board may assign to it.

(5) On completion of all functions assigned to it in terms of subsection (4), a committee shall submit a full report thereon to the Board, whereupon the committee shall automatically dissolve.

(6) The Minister or the Board may at any time dissolve any committee.

(7) The provisions of section 4 shall *mutatis mutandis* apply to meetings of a committee.

5A Executive committee

(1) The Board may appoint an executive committee of the Board consisting of the chairperson, the vice-chairperson and such other members of the Board as may be determined by the Board.

[Sub-s. (1) amended by s. 26 (a) and (b) of Act 62 of 2000.]

(2) The chairperson of the Board shall be the chairperson of the executive committee.

[Sub-s. (2) amended by s. 26 (a) of Act 62 of 2000.]

(3) The executive committee may with regard to any matter referred to in paragraphs (a) to (t), inclusive, of subsection (1) of section 6, read with subsections (7) and (8) of that section, or any other matter entrusted to the Board, formulate and adopt a draft resolution, which shall become a decision of the Board when a document setting out that draft resolution has been submitted to all members of the Board and has been approved by the majority of such members.

(4) The Minister may in his or her discretion determine any matter which shall not be dealt with under this section.

[Sub-s. (4) amended by s. 26 (d) of Act 62 of 2000.]

[S. 5A inserted by s. 3 of Act 77 of 1989.]

6 Powers of Board

(1) The Board may, with a view to the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, the High Courts and the lower courts, from time to time on a regular basis review existing rules of court and, subject to the approval of the Minister, make, amend or repeal rules for the Supreme Court of Appeal, the High Courts and the lower courts regulating-

(a) the practice and procedure in connection with litigation, including the time within which and the manner in which appeal shall be noted;

[Para. (a) substituted by s. 4 of Act 77 of 1989.]

(b) the form, contents and use of process;

(c) the practice and procedure in connection with the service of process or other documents, including the issue of interrogatories;

(d) the practice and procedure in connection with the execution of process, including writs and warrants;

(e) the practice and procedure in connection with the reference of any matter to a referee under section 19 of the Supreme Court Act, 1959 (Act 59 of 1959), and the remuneration payable to any such referee;

(f) the compulsory examination by one or more registered medical practitioners of any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed and whose state of health is relevant for the determination of such damages or compensation, as well as the manner, time, place and responsibility for the cost of the examination, and the making available to the opposing party of any documentary report on the examination;

(g) the procedure at or in connection with any enquiry as to the mental state of any person, and the findings or orders which may be made or issued at any such enquiry;

(h) the appointment and admission of commissioners to take evidence and examine witnesses;

(i) the manner in which documents executed outside the Republic may be authenticated to permit of their being produced or used in any court or produced or lodged in any public office in the Republic;

(j) the appointment and admission of sworn translators;

(k) the duties of sheriffs and other officers of court;

- (l) fees and costs, including the fees payable in respect of the service or execution of process (except subpoenas or warrants issued at the request of the State in criminal matters) or in respect of the summoning of persons to answer interrogatories;
- (m) the manner of determining the amount of security in any case where it is required that security shall be given, and the form and manner in which such security may be given;
- (n) the hours during which the offices of registrars and clerks of the court shall be open for official purposes;
- (o) the manner or recording or noting evidence and proceedings;
- (p) the custody and disposal of records or minutes of evidence and proceedings in the Supreme Court of Appeal and the High Courts;

[Para. (p) substituted by s. 23 (b) of Act 62 of 2000.]

- (q) the appointment of assessors in proceedings in lower courts;
- (r) the tariff of fees chargeable by advocates, attorneys and notaries;
- (s) the taxation of bills of costs and the recovery of costs;
- (t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Supreme Court of Appeal, the High Courts and the lower courts in civil as well as in criminal proceedings.

[Para. (t) substituted by s. 23 (c) of Act 62 of 2000.]

[Sub-s. (1) amended by s. 23 (a) of Act 62 of 2000.]

(2) (a) Different rules may be made in respect of the Supreme Court of Appeal, the High Courts and the lower courts and in respect of different kinds of proceedings.

(b) The Board may, with the approval of the Minister, make different rules in respect of-

- (i) the Supreme Court of Appeal and the High Courts;
- (ii) the different High Courts; or
- (iii) the lower courts in different magisterial districts,

which shall be of force for the period or periods determined by the Board.

[Sub-s. (2) substituted by s. 24 of Act 139 of 1992 and by s. 23 (d) of Act 62 of 2000.]

(3) Rules made under any provision of a law repealed by this Act and in force at the commencement of this Act, shall, subject to the provisions of this Act and notwithstanding the repeal of that provision by section 10 or 11 of this Act, remain in force until amended or repealed under this section.

(4) No new rule or amendment or repeal of a rule shall commence unless it was published in the *Gazette* at least one month before the day upon which such rule, amendment or repeal is determined to commence.

(5) Every rule and every amendment or repeal thereof shall within 14 days after it commenced be laid upon the Table in Parliament if Parliament is then in session, or if it is not then in session, within 14 days after the commencement of its next ensuing session.

(6) The Board may advise the Minister on the monetary jurisdiction limits of lower courts, the limitation of the costs of litigation and any other matter referred to the Board by the Minister.

[NB: A sub-s. (6A) has been inserted by s. 62 of the General Law Third Amendment Act 129 of 1993, a provision which will be put into operation by proclamation. See PENDLEX .]

(7) The power to make, amend or repeal rules under subsection (1) shall include the power to make, amend or repeal rules in order to give effect to the provisions of sections 2 and 3 of the Foreign Courts Evidence Act, 1962 (Act 80 of 1962).

(8) The power to make, amend or repeal rules under subsection (1) shall include the power to make, amend or repeal rules in relation to the application of the Admiralty Jurisdiction Regulation Act, 1983 (Act 105 of 1983), prescribing the following:

- (a) The appointment of any person or body for the assessment of fees and costs, and the manner in which such fees and costs are to be assessed;
- (b) measures aimed at avoiding circuity or multiplicity of actions;
- (c) the practice and procedure for referring to arbitration any matter arising out of proceedings relating to a maritime claim, and the appointment, remuneration and powers of an arbitrator.

7 Reports of Board

The Board shall submit a full report to the Minister-

- (a) regarding each function of the Board or a committee, on completion thereof;
- (b) annually, on the date determined by the Minister from time to time, regarding all the functions of the Board and its committees during the period determined by the Minister.

8 Remuneration and expenses of members

(1) A member of the Board who is a judge of the Constitutional Court, the Supreme Court of Appeal or a High Court shall be entitled to such allowance for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister with the concurrence of the Minister of Finance may determine.

[Sub-s. (1) substituted by s. 24 of Act 62 of 2000 and by s. 10 of Act 42 of 2001.]

(2) A member of the Board or of a committee who is not a judge or who is not subject to the provisions of the Public Service Act, 1994 (Proclamation 103 of 1994), shall be entitled to such remuneration, including reimbursement for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, as the Minister with the concurrence of the Minister of Finance may determine.

[Sub-s. (2) amended by s. 4 of Act 18 of 1996 and by s. 26 (d) and (e) of Act 62 of 2000.]

[NB: S. 8 has been substituted by s. 63 of the General Law Third Amendment Act 129 of 1993, a provision which will be put into operation by proclamation. See PENDLEX .]

9 Secretary and staff

The work incidental to the performance by the Board of its functions shall be

performed by the Secretary of the Board and such other officers and employees as may be required, who shall be appointed in terms of the laws governing the public service.

[NB: A sub-s. (2) has been added to s. 9, the existing section becoming sub-s. (1), by s. 64 of the General Law Third Amendment Act 129 of 1993, a provision which will be put into operation by proclamation. See PENDLEX .]

10 Repeals section 25 of the Magistrates' Courts Act 32 of 1944.

11 Amends section 43 of the Supreme Court Act 59 of 1959 , as follows: paragraph (a) deletes subsection (2) (a) ; and paragraph (b) deletes subsection (3).

12 Short title and commencement

This Act shall be called the Rules Board for Courts of Law Act, 1985, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette* .

PENDLEX: Rules Board for Courts of Law Act 107 of 1985 after amendment by the Magistrates' Courts Amendment Act 120 of 1993

Section 1 - definition

'**lower court**' means a court established under section 2 (g) , (h) , (i) , (j) or (k) of the Lower Courts Act, 1944 (Act 32 of 1944), and '**lower courts**' has a corresponding meaning;

PENDLEX: Rules Board for Courts of Law Act 107 of 1985 after amendment by the General Law Third Amendment Act 129 of 1993

Section 3 - Constitution of Board and period of office of members

(1) The Board shall consist of the following members appointed by the Minister, namely-

- (a) a judge of appeal of the appellate division of the Supreme Court of South Africa, as chairman;
- (b) two judges of the Supreme Court, one of whom the Minister shall designate as the vice-chairman;
- (c) one advocate, after consultation with the General Council of the Bar of South Africa;
- (d) one attorney, after consultation with the Association of Law Societies of the Republic of South Africa;
- (e) two other persons who in the opinion of the Minister have the necessary experience and knowledge to serve as members of the Board.

(2) Not more than three members of the Board designated by the Minister, shall hold their office as members of the Board, and shall perform their functions under this Act, in a full-time capacity.

(3) The Minister may appoint one or more additional members if he deems it necessary for the investigation of any particular matter by the Board.

(4) A member of the Board-

- (a) referred to in subsection (1), shall be appointed for a period of not more than five years;
- (b) referred to in subsections (2) and (3), shall be appointed for a period and on the conditions determined by the Minister,

and any such appointment may be revoked at any time by the Minister if in his opinion there are good reasons therefor.

(5) Any person whose period of office as a member of the Board has expired, shall be eligible for reappointment.

Section 6 (6A)

The Board may do research with reference to the functioning and structure of the courts, the criminal procedure law and the civil procedure law of the Republic in order to advise the Minister on the development, improvement or reform thereof.

Section 8 - Remuneration, allowances, benefits and privileges of members

(1) A member of the Board who-

- (a) is a judge of the Supreme Court of South Africa shall, notwithstanding anything to the contrary contained in any other law, in addition to his salary and any allowance, including any allowance for reimbursement of travelling and subsistence expenses, which may be payable to him in his capacity as such a judge, be entitled to such allowance (if any) in respect of the performance of his functions as such a member as the Minister with the concurrence of the Minister of State Expenditure may determine;
- (b) is not such a judge and is not subject to the provisions of the Public Service Act, 1984 (Act 111 of 1984), shall be entitled to such remuneration, allowances (including allowances for reimbursement of travelling and subsistence expenses incurred by him in the performance of his functions under this Act), benefits and privileges as the Minister with the concurrence of the Minister of State Expenditure may determine.

(2) The remuneration, allowances, benefits or privileges of different members of the Board may differ according to-

- (a) the different offices held by them in the Board; or
- (b) the different functions performed, whether in a part-time or full-time capacity, by them from time to time.

(3) In the application of subsections (1) and (2), the Minister may determine that any remuneration, allowance, benefit or privilege contemplated in those subsections, shall be the remuneration, allowance, benefit or privilege determined from time to time by or under any law in respect of any person or category of persons.

Section 9 (2)

The Board may, with the approval of the Minister and the concurrence of the Minister of State Expenditure, on a temporary basis or for a particular matter which is being investigated by it, employ any person with special knowledge of any matter relating to the work of the Board, or obtain the co-operation of any body, to advise or assist the Board in the performance of its functions under this Act, and fix the remuneration, including reimbursement for travelling, subsistence and other expenses, of such person or body.