

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 464

22 June 2012

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), with the approval of the Minister of Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

[] Expressions in bold type in square brackets indicate omissions from existing rules.

_____ Expressions underlined with a solid line indicate insertions into existing rules.

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 Notices No 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 10 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 and R. 981 of 19 November 2010.

Insertion of rule 4A in the Rules

2. The following rule is hereby inserted in the Rules after rule 4:

“Delivery of documents and notices

4A (1) Service of all subsequent documents and notices, not falling under rule 4(1)(a), in any proceedings on any other party to the litigation may be effected by one or more of the following manners to the address or addresses provided by that party under rules 6(5)(b), 6(5)(d)(i), 17(3), 19(3) or 34(8), by: -

- (a) hand at the physical address for service provided, or
- (b) registered post to the postal address provided, or
- (c) facsimile or electronic mail to the respective addresses provided.

(2) An address for service, postal address, facsimile address or electronic address mentioned in sub-rule (1) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that sub-rule at such new address.

(3) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) is applicable to service by facsimile or electronic mail.

(4) Service under this rule need not be effected through the Sheriff.

(5) The filing with the registrar of originals of documents and notices referred to in this rule shall not be done by way of facsimile or electronic mail."

Amendment of Rule 6 of the Rules

3. Rule 6 of the Rules is hereby amended:

(a) by the substitution for paragraph (b) of sub-rule (5) for the following paragraph:

"(b) In **[such]** a notice of motion the applicant shall: –

- (i) appoint an address within **[eight]** 15 kilometres of the office of the registrar, at which **[he]** applicant will accept notice and service of all documents in such proceedings[.];
- (ii) state the applicant's postal, facsimile or electronic mail addresses where available; and
- (iii) **[shall,]** subject to the provisions of section 27 of the Act, set forth a day, not less than five days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether **[he]** respondent intends to oppose such application, and shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the said respondent of the said notice."

(b) by the substitution for paragraph (d) of sub-rule (5) for the following paragraph:

"(d) Any person opposing the grant of an order sought in the notice of motion shall-

(i) within the time stated in the said notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint an address within **[eight] 15** kilometres of the office of the registrar, at which **[he] such person** will accept notice and service of all documents, as well as such person's postal, facsimile or electronic mail addresses where available;

(ii) within fifteen days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents; and

(iii) if he or she intends to raise any question of law only he or she shall deliver notice of his or her intention to do so, within the time stated in the preceding sub-paragraph, setting forth such question."

Amendment of Rule 17 of the Rules

4. Rule 17 of the Rules is hereby amended by the substitution for sub-rule (3) of the following sub-rule:

"(3) (a) Every summons shall be signed by the attorney acting for the plaintiff and shall bear an attorney's physical address, within **[eight] 15** kilometres of the office of the registrar, the attorney's postal address and, where available, the attorney's facsimile address and electronic mail address.

(b) **[or, if]** If no attorney is acting, **[it]** the summons shall be signed by the plaintiff, who shall in addition append an address within **[eight] 15** kilometres of the office of the registrar at which **[he]** plaintiff will accept service of all subsequent documents in the suit[;], the plaintiff's postal address and, where available, plaintiff's facsimile address and electronic mail address.

(c) **[and]** After paragraph (a) or (b) has been complied with, [shall thereafter] the summons shall be signed and issued by the registrar and made returnable by the Sheriff to the court through the registrar.

(d) The plaintiff may indicate in a summons whether the plaintiff is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(e) If an action is defended the defendant may, at the written request of the plaintiff, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(f) If the defendant refuses or fails to deliver the consent in writing as provided for in paragraph (e), the court may, on application by the plaintiff, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.”

Amendment of Rule 19 of the Rules

5. Rule 19 of the Rules is hereby amended by the substitution for sub-rule (3) of the following sub-rule:

“(3) (a) When a defendant delivers notice of intention to defend, [~~he~~] defendant shall therein give [~~his~~] defendant’s full residential or business address, postal address and where available, facsimile address and electronic mail address and shall also appoint an address, not being a post office box or *poste restante*, within [~~eight~~] 15 kilometres of the office of the registrar, for the service on [~~him~~] defendant thereat of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by any order or practice of the court personal service is required.

(b) The defendant may indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) The plaintiff may, at the written request of the defendant, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.”

Amendment of Rule 34 of the Rules

6. Rule 34 of the Rules is hereby amended by the substitution for sub-rule (8) of the following sub-rule:

“(8) If notice of the acceptance of the offer or tender in terms of sub-rule (6) or notice in terms of sub-rule (7) is required to be given at an address other than that provided in rule 19(3), then it shall be given at an address, which is not a post office box or *poste restante*, within **[eight] 15** kilometres of the office of the registrar at which such notice must be delivered.”

Commencement

7. These rules shall come into operation on **27 July 2012**.