

No. R. 114

15 February 2013

**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, R. 981 of 19 November 2010, R. 464 of 22 June 2012 and R. 992 of 7 December 2012.

### Substitution of Rule 68 of the Rules

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

##### "68 Tariff for Sheriffs

(1) The fees and charges contained in the appended tariff shall be chargeable and allowed to sheriffs: Provided that no fees shall be charged for the service of process in *in forma pauperis* proceedings (but the necessary disbursements for the purpose of such service may be recovered).

(2) Where there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his expense.

(3)(a) 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.

(b) A request to tax an account of a sheriff shall be done within 90 days after the date on which the account of which the fees are disputed has been rendered.

##### "Tariff

[Tariff] Item	R c
1. For registration of any document for service or execution, upon receipt thereof	[6,00] 7,00
2. (a) For service of summonses, petitions together with notice of	[44,00]

motion or set down, other notices, orders or any other documents, each	<u>49,00</u>
Provided that -	
(i) Whenever any document to be served with any such process is mentioned in the process or forms an annexure thereto, no additional fee shall be charged for the service of such document, but otherwise a fee of <del>[6.00]</del> <u>7,00</u> may be charged in respect of each separate document served;	
(ii) No fee for the service of a separate document shall be charged in respect of the service of process in criminal cases.	
(b) Attempted service of summonses, petitions together with notice of motion or notice of set down, other notices, orders and any other documents Provided that an attempted service of more than one document on the same person shall be treated as an attempted service of one document only.	<del>[33,00]</del> <u>36,50</u>
<input type="checkbox"/> 3 Travelling allowance:	
<input type="checkbox"/> (a) For the distance actually and necessarily travelled by the sheriff or his or her officer, reckoned from the office of the sheriff, both on the forward and the return journey, per kilometer or fraction of a kilometer.	<del>[3,00]</del> <u>3,50</u>
<input type="checkbox"/> (b) When two or more summonses or other process, whether at the instance of the same party or of different parties, are capable of being served on one and the same journey, the travelling allowance for performing the round of service shall be fairly and equitably apportioned among the several cases, regard being had to the distance at which the parties against whom such process is directed respectively reside from the office of the sheriff, but the fee for service shall be payable for each service made or attempted to be made.	
<input type="checkbox"/> (c) This allowance shall be payable only in cases where the duty in question is to be performed beyond a radius of one kilometer from the office of the sheriff: Provided that if the office of the sheriff is situated more than three kilometers from the office of the magistrate of his or her district the allowance shall be payable only where such duty is to be performed beyond a distance of one kilometer from the magistrate's office.	
<input type="checkbox"/> (d) The restriction imposed by the proviso in paragraph 3(c) above may be relaxed by the Minister for Justice and Constitutional Development, in his or her discretion, where circumstances warrant this.	
<input type="checkbox"/> 4 (a) Postage in civil matters, as per postal tariff.	
<input type="checkbox"/> (b) Postage in criminal matters, free.	
<input type="checkbox"/> NOTE: The sheriff may take any postal matter to the registrar of the High Court, or if there is no registrar in his or her town or city, to the magistrate, who shall frank the envelope with his or her official franking stamp.	
<input type="checkbox"/> 5 For the execution of any writ-	

(a) (i) of personal arrest, including the conveyance of the person concerned to court, to an attorney's office or to a prison, per person	[55.00] 61.00
(ii) for conveying the person concerned to court from a place of custody on a day subsequent to the day of arrest and attending at court, per hour or part thereof	[66.00] 73.00
(iii) for attachment of property <i>ad fundandam jurisdictionem</i> or <i>ad confirmandam jurisdictionem</i>	[55.00] 61.00
(iv) where an attachment in terms of item 5(a)(iii) is withdrawn or suspended	[16.00] 18.00
<input type="checkbox"/> (b) of ejection: [R66.00] R73,00 per hour or part thereof, subject to a minimum of which shall include the first hour (in addition to reasonable expenses necessarily incurred);	[99.00] 109.50
<input type="checkbox"/> (c) against immovable property-	
(i) for execution, including service of notice of attachment upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is in occupation of some person other than the owner, also upon such occupier.	[133,00] 147,00
(ii) for notice of attachment to a single lessee or occupier	[11,00] 12.50
(identical notices where there are several lessees, occupiers or owners, for each after the first	[3,00] 3.50
(iii) for making valuation report for purposes of sale per hour or part thereof.	[66,00] 73.00
(iv) when a sheriff has been authorized to sell property and the property is not sold by reason of the fact that the attachment is withdrawn or stayed, irrespective of the amount of the writ, all the necessary notice for the withdrawal of the attachment	[133,00] 147,00
(v) for ascertaining and recording what bonds or other encumbrances are registered against the property, together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered, including any correspondence in connection therewith (in addition to reasonable expenses necessarily incurred)	[66,00] 73.00
(vi) for notifying the execution creditor of such bonds or other encumbrances and of the names and addresses of the persons in whose favour such bonds or other encumbrances are registered	[11,00] 12.50
(vii) for consideration of proof that a preferent creditor has complied with the requirements of rule 46(5)(a)	[6,00] 7.00
(viii) for the notice referred to in rule 46(6)	[11,00]

	<u>12,50</u>
(ix) for consideration of notice of sale prepared by the execution creditor in consultation with the sheriff; and	
(x) for verifying that notice of sale has been published in the newspapers indicated and in the Gazette; and	
(xi) for forwarding a copy of the notice of sale to every judgment creditor who had caused the immovable property to be attached and to every mortgagee thereof whose address is known, for each copy, inclusive fee for (ix), (x) and (xi).	<b>[66,00]</b> <u>73,00</u>
(xii) for affixing a copy of the notice of sale to the notice board of the magistrate's court referred to in rule 46(7)(e) and at or as near as may be to the place where the sale is actually to take place, an inclusive fee of	<b>[23,00]</b> <u>25,50</u>
(xiii) for considering the conditions of sale	<b>[55,00]</b> <u>61,00</u>
(xiv) on the sale of immovable property by the sheriff as auctioneer, 6 per cent on the first R30 000.00 of the proceeds of the sale and 3,5 per cent on the balance thereof, subject to a maximum commission of <b>[R8 750.00]</b> R9 655,00 in total and a minimum of <b>[R440.00]</b> R485,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser;	
(xv) for any report referred to in rule 46(11)	<b>[33,00]</b> <u>36,50</u>
(xvi) for giving transfer to the purchaser	<b>[16,00]</b> <u>18,00</u>
(xvii) for preparing a plan of distribution of the proceeds (including the necessary copies) and for forwarding a copy to the registrar	<b>[66,00]</b> <u>73,00</u>
(xviii) for giving notice to all parties who have lodged writs and to the execution debtor that the plan of distribution will lie for inspection, for every notice	<b>[11,00]</b> <u>12,50</u>
(xix) for request to magistrate to pay out in accordance with the plan of distribution	<b>[6,00]</b> <u>7,00</u>
<input type="checkbox"/> (d) against movable property-	
(i) when a writ is paid on presentation, 9 per cent on the amount so paid, with a minimum fee of <b>[R44.00]</b> R49,00 and a maximum of	<b>[440,00]</b> <u>486,00</u>
(ii) for any abortive attempt at attachment, including one hour's search	<b>[44,00]</b>

and enquiry	<u>49.00</u>
(iii) when a writ is withdrawn or stayed before any property is attached	<b>[16.00]</b> <u>18.00</u>
(iv) for making an attachment, including one hour's search and enquiry	<b>[110.00]</b> <u>121.50</u>
(v) notice of attachment, if necessary, to a single person	<b>[11.00]</b> <u>12.50</u>
(identical notices, when there is more than one person to be given notice, for each after the first)	<b>[6.00]</b> <u>7.00</u>
(vi) when an attachment is withdrawn by a judgment creditor or stayed before sale, 3 per cent on the value of the property attached or the amount of the writ, whichever is the lesser, but subject to a maximum of	<b>[330.00]</b> <u>364.50</u>
(vii) when a writ is paid by the debtor to the sheriff after attachment but before sale, 9 per cent on the amount so paid, with a minimum fee of <b>[R44.00]</b> <u>R49.00</u> and a maximum of	<b>[440.00]</b> <u>486.00</u>
(viii) when moneys are taken in execution, 9 per cent of the amount so taken, but subject to a maximum of	<b>[440.00]</b> <u>486.00</u>
(ix) for drawing up advertisements of sale of goods attached	<b>[44.00]</b> <u>49.00</u>
(x) for selling in execution (whether auctioneer employed or not), including distribution of the proceeds, on the first R15 000.00 or part thereof, 9 per cent, and thereafter, 6 per cent, with a maximum of	<b>[5 875.00]</b> <u>6843.00</u>
(xi) the sheriff him- or herself shall sell movable property in execution, but he or she shall engage the services of an auctioneer if directed thereto in writing by the judgment creditor, provided the judgment creditor bears the additional commission, if any;	
(xii) commission shall not be chargeable against a judgment debtor on the value of movable property attached and subsequently claimed by a person other than the judgment debtor and released in consequence of such claim, unless such property has been attached at the express direction of the judgment creditor, in writing, in which event the judgment creditor shall be liable to the sheriff for the commission;	
(xiii) for insuring movable property attached when it is considered	<b>[23.00]</b>

necessary and when the sheriff is directed thereto in writing by the judgment creditor, in addition to the amount of premium paid, an inclusive fee of	<u>25,50</u>
<input type="checkbox"/> (e) for keeping possession of property (money excluded)-	
(i) for each officer necessarily left in possession, a reasonable inclusive fee per officer per day not exceeding	<b>[83.00]</b> <u>92,00</u>
NOTE: 'Possession' means the continuous and necessary presence on the premises for the period in respect of which possession is reckoned, of a person employed and paid by the sheriff for the sole purpose of retaining possession.	
(ii) for removal and storage, the reasonable and necessary expenses for such removal and storage, and if an animal is to be stabled or fed, the reasonable charges for such stabling and feeding;	
(iii) for tending livestock, the necessary expenses for tending such stock;	
(iv) when no officer is left in possession and no security bond is taken, but movable property attached remains under the supervision of the sheriff, per day	<b>[1.00]</b> <u>1,50</u>
<input type="checkbox"/> 6 (a) For making an inventory, including all necessary copies and time spent in stocktaking, per hour or part thereof	<b>[83.00]</b> <u>92,00</u>
<input type="checkbox"/> (b) For assistance, where necessary, in taking inventory, a reasonable and inclusive fee per day, not exceeding	<b>[83.00]</b> <u>92,00</u>
<input type="checkbox"/> 7 (a) For making return of service or execution, including drawing up and typing of original for court, limited to one person upon each original process; and	
<input type="checkbox"/> (b) copy thereof for party desiring service or execution.	<b>[23.00]</b> <u>25,50</u>
<input type="checkbox"/> 8 Drawing and completing of bail bond, deed of suretyship or indemnity bond	<b>[16.00]</b> <u>18,00</u>
<input type="checkbox"/> 9 For the making of all necessary copies of documents per A4 size page	<b>[2.00]</b> <u>2,50</u>
<input type="checkbox"/> 10 Taking statement from accused, who is not represented and who desires witnesses to be subpoenaed at the expense of the State, as to his or her means, the names and addresses of the witnesses and what they can say in his or her defence, in order to enable the registrar or the clerk of the court on circuit to decide whether the witnesses should be subpoenaed	<b>[16.00]</b> <u>18,00</u>

<input type="checkbox"/> NOTE: This information is to be obtained at the time of serving the notice of trial and indictment and conveyed to the registrar or clerk of the court in the same letter under cover of which the documents are returned.	
<input type="checkbox"/> 11 Attending any criminal session of a superior court or any circuit court, <b>[R66.00]</b> <u>73,00</u> per hour or part thereof, with a maximum per day of	<b>[330.00]</b> <u>364,50</u>
<input type="checkbox"/> 12 Each necessary letter, excluding formal letters accompanying process or returns	<b>[11.00]</b> <u>12,50</u>
<input type="checkbox"/> 13 Each necessary attendance by telephone (in addition to prescribed trunk charges)	<b>[6.00]</b> <u>7,00</u>
<input type="checkbox"/> 14 Sending and receiving of each necessary facsimile per A4 size page (in addition to telephone charges)	<b>[3.00]</b> <u>3,50</u>
<input type="checkbox"/> 15 Bank charges: Actual costs incurred regarding bank charges and cheque forms."	

### Commencement

3. These rules shall come into operation on **22 March 2013**.