Legislation updated to: 26 June 2009

UNIFORM RULES OF COURT[1]*

RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA

The Chief Justice after consultation with the judges president of the several divisions of the Supreme Court of South Africa has, in terms of paragraph *(a)* of subsection (2) of section 43 of the Supreme Court Act, 1959 (Act 59 of 1959), with the approval of the State President made, with effect from the 15th January, 1965, the rules contained in the Annexure regulating the conduct of the proceedings of the provincial and local divisions of the Supreme Court of South Africa.

[NB: GN R315 (*GG* 19834) of 12 March 1999 provided as follows, with effect from 5 May 1999:

'The rules made under any provisions of any law which regulates the operation of the Supreme Courts of the following areas which immediately before 27 April 1994 formed part of the territory of the Republic of-

(a) Transkei;

(b) Bophuthatswana;

(c) Venda; or

(d) Ciskei,

and which laws have been amended to the extent reflected in the Schedule of the Attorneys and Matters relating to Rules of Court Amendment Act, 1998 (Act 115 of 1998), are hereby repealed.

The operation of the Rules is hereby made applicable to every area which immediately before 27 April 1994 formed part of the territory of the Republic of-

(a) Transkei;

(b) Bophuthatswana;

(c) Venda; or

(d) Ciskei.'.**]**

as amended by

GN R235 of 18 February 1966
GN R2004 of 15 December 1967
GN R33553 of 17 October 1969
GN R2021 of 5 November 1971
GN R1985 of 3 November 1972
GN R480 of 30 March 1973
GN R639 of 4 April 1975
GN R1816 of 8 October 1976
GN R1975 of 29 October 1976

GN R2477 of 17 December 1976
GN R2365 of 18 November 1977
GN R1546 of 28 July 1978
GN R1577 of 20 July 1979
GN R1535 of 25 July 1980
GN R2527 of 5 December 1980
GN R500 of 12 March 1982
GN R773 of 23 April 1982
GN R775 of 23 April 1982
GN R1873 of 3 September 1982
GN R2171 of 6 October 1982
GN R645 of 25 March 1983
GN R841 of 22 April 1983
GN R1077 of 20 May 1983
GN R1996 of 7 September 1984
GN R2094 of 13 September 1985
GN R810 of 2 May 1986
GN R2164 of 2 October 1987
GN R2642 of 27 November 1987
GN R1421 of 15 July 1988
GN R210 of 10 February 1989
GN R608 of 31 March 1989
GN R2628 of 1 December 1989
GN R185 of 2 February 1990
GN R1929 of 10 August 1990
GN R1262 of 30 May 1991
GN R2410 of 30 September 1991
GN R2845 of 29 November 1991
GN R406 of 7 February 1992
GN R1883 of 3 July 1992
GN R109 of 22 January 1993
GN R960 of 28 May 1993
GN R974 of 1 June 1993
GN R1356 of 30 July 1993
GN R1843 of 1 October 1993
GN R2365 of 10 December 1993
GN R2529 of 31 December 1993
GN R181 of 28 January 1994
GN R411 of 11 March 1994
GN R873 of 31 May 1996
GN R1063 of 28 June 1996
GN R1557 of 20 September 1996
GN R1746 of 25 October 1996
GN R2047 of 13 December 1996
GN R417 of 14 March 1997
GN R491 of 27 March 1997
GN R700 of 16 May 1997
GN R765 of 6 June 1997
GN R766 of 6 June 1997
GN R798 of 13 June 1997
GN R1352 of 10 October 1997
GN R785 of 5 June 1998
GN R881 of 26 June 1998

GN R1024 of 7 August 1998
GN R1723 of 30 December 1998
GN R568 of 30 April 1999
GN R1084 of 10 September 1999
GN R1299 of 29 October 1999
GN R502 of 19 May 2000
GN R849 of 25 August 2000
GN R373 of 30 April 2001
GN R1088 of 26 October 2001
GN R1755 of 5 December 2003
GN R229 of 20 February 2004
GN R1343 and GN R1345 of 12 December 2008
[with effect from 12 January 2009]
GN R516 and GN R518 of 8 May 2009
[with effect from 15 June 2009]

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1 Definitions

In these Rules and attached forms, unless the context otherwise indicates-

'Act' shall mean the Supreme Court Act, 1959 (Act 59 of 1959);

'action' shall mean a proceeding commenced by summons or by writ in terms of rule 9;

'advocate' shall include a person referred to in section *one* of the Natal Advocates and Attorneys Preservation of Rights Act, 1939 (Act 27 of 1939);

'attorney' shall mean an attorney admitted, enrolled and entitled to practise as such in the division concerned;

'civil summons' means a civil summons as defined in the Act;

'combined summons' shall mean a summons with a statement of claim annexed thereto in terms of subrule (2) of rule 17;

'court' in relation to civil matters shall mean a court constituted in terms of section *thirteen* of the Act;

'court day' shall mean any day other than a Saturday, Sunday or Public Holiday, and only court days shall be included in the computation of any time expressed in days prescribed by these Rules or fixed by any order of court;

'deliver' shall mean serve copies on all parties and file the original with the registrar;

'judge' shall mean a judge sitting otherwise than in open court;

'judge-president' .....

[Definition of 'judge-president' deleted by GN R480 of 30 March 1973.]

'Master' shall mean the Master of the Supreme Court;

[Definition of 'Master' inserted by GN R2410 of 30 September 1991.]

'party' or any reference to a plaintiff or other litigant in terms, shall include his attorney with or without an advocate, as the context may require;

'registrar' shall include assistant registrar;

'Republic' shall include the territory of South West Africa;

'sheriff' shall mean a person appointed in terms of section 2 of the Sheriffs' Act, 1986 (Act 90 of 1986), and shall include a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively.

[Definition of 'sheriff' substituted by GN R2410 of 30 September 1991.]

2 Sittings of the Court and Vacations

(1) Notice of the terms and sessions of the court of every provincial or local division prescribed by the Judge-President in terms of section *forty-three* of the Act shall be published in the *Government Gazette* and a copy thereof shall be affixed to the public notice-board at the office of the registrar.

(2) If the day prescribed for the commencement of a civil term or a criminal session is not a court day, the term or session shall commence on the next succeeding court day and, if the day prescribed for the end of a term or session is not a court day, the term or session shall end on the court day preceding.

(3) The periods between the said terms shall be vacations, during which, subject to the provisions of subrule (4), the ordinary business of the court shall be suspended, but at least one judge shall be available on such days to perform such duties as the Judge-President shall direct.

[Subrule (3) substituted by GN 235 of 18 February 1966.]

(4) During and out of term such judges shall sit on such days for the discharge of such business as the Judge-President may direct.

(5) If it appears convenient to the presiding judge, the court may sit at any place or at a time other than a time prescribed in terms of these Rules or any rules under paragraph *(b)* of sub-section (2) of section *forty-three* of the Act, and may sit at any time during vacation.

3 Registrar's Office Hours

Except on Saturdays, Sundays and Public Holidays, the offices of the registrar shall be open from 9:00 to 13:00 and from 14:00 to 16:00, save that, for the purpose of issuing any process or filing any document, other than a notice of intention to defend, the offices shall be open from 9:00 to 13:00, and from 14:00 to 15:00. The registrar may in exceptional circumstances issue process and accept documents at any time, and shall do so when directed by a judge.

[Rule 3 amended by GN R2410 of 30 September 1991.]

3A Admission of Advocates

(1) Subject to the provisions of rule 6 in so far as they are not inconsistent with the provisions of this rule, a person applying for admission to practise and for authority to be enrolled as an advocate shall, at least six weeks before the day on which his application is to be heard by the court-

(a) give written notice to the registrar of the date on which the application is to be made;

(b) (i) deliver to the registrar the original and a copy of the documents in support of the application and an affidavit stating his identity number and whether or not he has at any time been struck off

the roll of advocates or suspended from his practice by the court;

(ii) deliver to the registrar an affidavit from his attorney or a commissioner of oaths stating that the attorney or commissioner of oaths has examined his identity document and that the attorney or commissioner is satisfied that the applicant is the person referred to in the identity document;

[Para. *(b)* substituted by GN R608 of 31 March 1989.]

*(b*A*)* if he previously was admitted or practised as an attorney, submit to the registrar a certificate from the law society of the province in which he was so admitted or practised to the effect that, in the opinion of the law society concerned, he is a fit and proper person;

[Para. *(b*A*)* inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(c) serve a copy of the documents and affidavit referred to in paragraphs *(a)*, *(b)* and *(b*A*)* on the Secretary of the Bar Council or the Society of Advocates of the division concerned.

[Para. *(c)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) .....

[Subrule (2) deleted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(3) If the applicant at any time prior to the hearing of the application delivers any documents or declarations, other than the documents or affidavit referred to in paragraphs *(b)* and *(b*A*)* of subrule (1), to the registrar, he shall forthwith serve a copy thereof on the Secretary of the Bar Council or the Society of Advocates of the division concerned.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) .....

[Subrule (4) deleted by GN R2164 of 2 October 1987.]

(5) Any person who is admitted to practice and authorized to be enrolled as an advocate shall upon being so admitted and authorized take an oath or make an affirmation before the registrar in court, which shall be subscribed by him, in the form set out hereunder, namely-

'I, ... do hereby swear/solemnly and sincerely affirm and declare/that I will truly and honestly demean myself in the practice of advocate according to the best of my knowledge and ability, and further, that I will be faithful to the Republic of South Africa.'

[Subrule (5) added by GN R235 of 18 February 1966.]

[Rule 3A, previously Rule 3*bis*, renumbered by GN R2410 of 30 September 1991.]

4 Service

(1) *(a)* Service of any process of the court directed to the sheriff and subject to the provisions of paragraph *(a*A*)* any document initiating application proceedings

shall be effected by the sheriff in one or other of the following manners:

(i) By delivering a copy thereof to the said person personally: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;

(ii) by leaving a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age. For the purposes of this paragraph when a building, other than an hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;

(iii) by delivering a copy thereof at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than sixteen years of age and apparently in authority over him;

(iv) if the person so to be served has chosen a *domicilium citandi*, by delivering or leaving a copy thereof at the *domicilium* so chosen;

(v) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;

(vi) by delivering a copy thereof to any agent who is duly authorized in writing to accept service on behalf of the person upon whom service is to be effected;

(vii) where any partnership, firm or voluntary association is to be served, service shall be effected in the manner referred to in paragraph (ii) at the place of business of such partnership, firm or voluntary association and if such partnership, firm or voluntary association has no place of business, service shall be effected on a partner, the proprietor or the chairman or secretary of the committee or other managing body of such association, as the case may be, in one of the manners set forth in this rule;

(viii) where a local authority or statutory body is to be served, service shall be effected by delivering a copy to the town clerk or assistant town clerk or mayor of such local authority or to the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or

(ix) if two or more persons are sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon each of them in any manner set forth in this rule.

[Rule 4 (1) *(a)* amended by GN R2410 of 30 September 1991.]

*(a*A*)* Where the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings.

[Para. *(a*A*)*, previously para. *(a)*bis, renumbered by GN R2410 of 30 September 1991.]

(b) Service shall be effected as near as possible between the hours of 7:00 and 19:00.

[Para. *(b)* amended by GN R2410 of 30 September 1991.]

(c) No service of any civil summons, order or notice and no proceedings or act required in any civil action, except the issue or execution of a warrant of arrest, shall be validly effected on a Sunday unless the court or a judge otherwise directs.

(d) It shall be the duty of the sheriff or other person serving the process or documents to explain the nature and contents thereof to the person upon whom service is being effected and to state in his return or affidavit or on the signed receipt that he has done so.

[Subrule (1) substituted by GN R235 of 18 February 1966 and by GN R2004 of 15 December 1967.]

(2) If it is not possible to effect service in any manner aforesaid, the court may, upon the application of the person wishing to cause service to be effected, give directions in regard thereto. Where such directions are sought in regard to service upon a person known or believed to be within the Republic, but whose whereabouts therein cannot be ascertained, the provisions of subrule (2) of rule 5 shall, *mutatis mutandis*, apply.

(3) Service of any process of the court or of any document in a foreign country shall be effected-

(a) by any person who is, according to a certificate of-

(i) the head of any South African diplomatic or consular mission, any person in the administrative or professional division of the public service serving at a South African diplomatic or consular mission or trade office abroad;

[Sub-para. (i) substituted by GN R2004 of 15 December 1967 and by GN R2047 of 13 December 1996.]

(ii) any foreign diplomatic or consular officer attending to the service of process or documents on behalf of the Republic in such country;

(iii) any diplomatic or consular officer of such country serving in the Republic; or

[Sub-para. (iii) amended by GN R2410 of 30 September 1991.]

(iv) any official signing as or on behalf of the head of the department dealing with the administration of justice in that country,

authorized under the law of such country to serve such process or document; or

(b) by any person referred to in sub-paragraph (i) or (ii) of paragraph *(a)*, if the law of such country permits him to serve such process or document or if there is no law in such country prohibiting such service and the authorities of that country have not interposed any objection thereto.

(4) Service of any process of the court or of any document in Australia, Botswana, Finland, France, Hong Kong, Lesotho, Malawi, New Zealand, Spain, Swaziland, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe may, notwithstanding the provisions of subrule (3), also be effected by an attorney,

solicitor, notary public or other legal practitioner in the country concerned who is under the law of that country authorized to serve process of court or documents and in the state concerned who is under the law of that state authorized to serve process of court or documents.

[Subrule (4) substituted by GN R1535 of 25 July 1980.]

(5) *(a)* Any process of court or document to be served in a foreign country shall be accompanied by a sworn translation thereof into an official language of that country or part of that country in which the process or document is to be served, together with a certified copy of the process or document and such translation.

(b) Any process of court or document to be served as provided in subrule (3), shall be delivered to the registrar together with revenue stamps to the value of R150,00 fixed thereto: Provided that no revenue stamps shall be required where service is to be effected on behalf of the Government of the Republic.

[Para. *(b)* substituted by GN R2021 of 5 November 1971 and amended by GN R185 of 2 February 1990, by GN R2410 of 30 September 1991 and by GN R491 of 27 March 1997.]

(c) Any process of court or document delivered to the registrar in terms of paragraph *(b)* shall, after defacement of the revenue stamps affixed thereto, be transmitted by him together with the translation referred to in paragraph *(a)*, to the Director-General of Foreign Affairs or to a destination indicated by the Director-General of Foreign Affairs, for service in the foreign country concerned. The registrar shall satisfy himself that the process of court or document allows a sufficient period for service to be effected in good time.

[Para. *(c)* amended by GN R2410 of 30 September 1991.]

(6) Service shall be proved in one of the following manners:

(a) Where service has been effected by the sheriff; by the return of service of such sheriff;

(b) where service has not been effected by the sheriff, nor in terms of subrule (3) or (4), by an affidavit of the person who effected service, or in the case of service on an attorney or a member of his staff, the Government of the Republic, the Administration of any Province or on any Minister, Administrator, or any other officer of such Government or Administration, in his capacity as such, by the production of a signed receipt therefor.

[Para. *(b)* substituted by GN R235 of 18 February 1966 and amended by GN R2410 of 30 September 1991.]

(6A) *(a)* The document which serves as proof of service shall, together with the served process of court or document, without delay be furnished to the person at whose request service was effected.

(b) The said person shall file each such document on behalf of the person who effected service with the registrar when-

(i) he sets the matter in question down for any purpose;

(ii) it comes to his knowledge in any manner that the matter is being defended;

(iii) the registrar requests filing;

(iv) his mandate to act on behalf of a party, if he is a legal practitioner, is terminated in any manner.

[Subrule (6A) inserted by GN R1356 of 30 July 1993.]

(7) Service of any process of court or document in a foreign country shall be proved-

(a) by a certificate of the person effecting service in terms of paragraph *(a)* of subrule (3) or subrule (4) in which he identifies himself, states that he is authorized under the law of that country to serve process of court or documents therein and that the process of court or document in question has been served as required by the law of that country and sets forth the manner and the date of such service: Provided that the certificate of a person referred to in subrule (4) shall be duly authenticated; or

(b) by a certificate of the person effecting service in terms of paragraph *(b)* of subrule (3) in which he states that the process of court or document in question has been served by him, setting forth the manner and date of such service and affirming that the law of the country concerned permits him to serve process of court or documents or that there is no law in such country prohibiting such service and that the authorities of that country have not interposed any objection thereto.

(8) Whenever any process has been served within the Republic by a sheriff outside the jurisdiction of the court from which it was issued, the signature of such sheriff upon the return of service shall not require authentication by the sheriff.

[Subrule (8) amended by GN R2410 of 30 September 1991.]

(9) In every proceeding in which the State, the administration of a province or a Minister, Deputy Minister or Administrator in his official capacity is the defendant or respondent, the summons or notice instituting such proceeding may be served at the Office of the State Attorney situated in the area of jurisdiction of the court from which such summons or notice has been issued: Provided that such summons or notice issued in the Transvaal Provincial Division shall be served at the Office of the State Attorney, Pretoria, and such summons or notice issued in the Northern Cape Division shall be served at the Bloemfontein Branch Office of the State Attorney.

[Subrule (9) substituted by GN R1873 of 3 September 1982 and by GN R608 of 31 March 1989 and amended by GN R2410 of 30 September 1991.]

(10) Whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as to it seems meet.

(11) Whenever a request for the service on a person in the Republic of any civil process or citation is received from a State, territory or court outside the Republic and is transmitted to the registrar of a provincial or local division in terms of subsection (2) of section *thirty-three* of the Act, the registrar shall transmit to the sheriff or a sheriff or any person appointed by a judge of the division concerned for service of such process or citation-

(a) two copies of the process or citation to be served; and

(b) two copies of a translation in English or Afrikaans of such process or citation if the original is in any other language.

[Subrule (11) amended by GN R2410 of 30 September 1991.]

(12) Service shall be effected by delivering to the person to be served one copy of the process or citation to be served and one copy of the translation (if any) thereof in accordance with the provisions of this rule.

(13) After service has been effected the sheriff or the sheriff or the person appointed for the service of such process or citation shall return to the registrar of the division concerned one copy of the process or citation together with-

(a) proof of service, which shall be by affidavit made before a magistrate, justice of the peace or commissioner of oaths by the person by whom service has been effected and verified, in the case of service by the sheriff or a sheriff, by the certificate and seal of office of such sheriff or, in the case of service by a person appointed by a judge of the division concerned, by the certificate and seal of office of the registrar of the division concerned; and

(b) particulars of charges for the cost of effecting such service.

[Subrule (13) amended by GN R2410 of 30 September 1991.]

(14) The particulars of charges for the cost of effecting service under subrule (11) shall be submitted to the taxing officer of the division concerned, who shall certify the correctness of such charges or other amount payable for the cost of effecting service.

[Subrule (14) substituted by GN R235 of 18 February 1966.]

(15) The registrar concerned shall, after effect has been given to any request for service of civil process or citation, return to the Director-General of Justice-

(a) the request for service referred to in subrule (11);

(b) the proof of service together with a certificate in accordance with Form 'J' of the Second Schedule duly sealed with the seal of the division concerned for use out of the jurisdiction; and

(c) the particulars of charges for the cost of effecting service and the certificate, or copy thereof, certifying the correctness of such charges.

[Subrule (15) amended by GN R2410 of 30 September 1991.]

5 Edictal Citation

(1) Save by leave of the court no process or document whereby proceedings are instituted shall be served outside the Republic.

(2) Any person desiring to obtain such leave shall make application to the court setting forth concisely the nature and extent of his claim, the grounds upon which it is based and upon which the court has jurisdiction to entertain the claim and also the manner of service which the court is asked to authorize. If such manner be other than personal service, the application shall further set forth the last-known whereabouts of the person to be served and the inquiries made to ascertain his present whereabouts. Upon such application the court may make such order as to the manner of service as to it seems meet and shall further order the time within which notice of intention to defend is to be given or any other step that is to be taken by the person to be served. Where service by publication is ordered, it may be in a form as near as may be in accordance with Form 1 of the First Schedule, approved and signed by the registrar.

(3) Any person desiring to obtain leave to effect service outside the Republic of any document other than one whereby proceedings are instituted, may either make application for such leave in terms of subrule (2) or request such leave at any hearing at which the court is dealing with the matter, in which latter event no papers need be filed in support of such request, and the court may act upon such information as may be given from the bar or given in such other manner as it may

require, and may make such order as to it seems meet.

6 Applications

(1) Save where proceedings by way of petition are prescribed by law, every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion shall be addressed to both the registrar and such person, otherwise it shall be addressed to the registrar only.

[Subrule (2) substituted by GN R2642 of 27 November 1987.]

(3) Every petition shall conclude with the form of order prayed and be verified upon oath by or on behalf of the petitioner.

(4) *(a)* Every application brought *ex parte* (whether by way of petition or upon notice to the registrar supported by an affidavit as aforesaid) shall be filed with the registrar and set down, before noon on the court day but one preceding the day upon which it is to be heard. If brought upon notice to the registrar, such notice shall set forth the form of order sought, specify the affidavit filed in support thereof, request him to place the matter on the roll for hearing, and be as near as may be in accordance with Form 2 of the First Schedule.

[Para. *(a)* substituted by GN R235 of 18 February 1966.]

(b) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application by him for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which he desires to be heard, whereupon the registrar shall set such application down for hearing at the same time as the application first mentioned.

(c) At the hearing the court may grant or dismiss either of or both such applications as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicant or otherwise as to it seems meet.

[Subrule (4) substituted by GN R235 of 18 February 1966 and by GN R2004 of 15 December 1967.]

(5) *(a)* Every application other than one brought *ex parte* shall be brought on notice of motion as near as may be in accordance with Form 2 *(a)* of the First Schedule and true copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.

(b) In such notice the applicant shall appoint an address within eight kilometres of the office of the registrar, at which he will accept notice and service of all documents in such proceedings, and 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 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.

[Para. *(b)* substituted by GN R2021 of 5 November 1971 and amended by GN R2410 of 30 September 1991 and by GN R960 of 28 May 1993.]

(c) If the respondent does not, on or before the day mentioned for that purpose in such notice, notify the applicant of his intention to oppose, the applicant

may place the matter on the roll for hearing by giving the registrar notice of set down before noon on the court day but one preceding the day upon which the same is to be heard.

(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 intends to oppose the application, and in such notice appoint an address within eight kilometres of the office of the registrar, at which he will accept notice and service of all documents;

[Sub-para. (i) substituted by GN R2021 of 5 November 1971 and amended by GN R960 of 28 May 1993.]

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

[Sub-para. (ii) substituted by GN R235 of 18 February 1966 and amended by GN R1929 of 10 August 1990.]

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

(e) Within 10 days of the service upon him of the affidavit and documents referred to in sub-paragraph (ii) of paragraph *(d)* of subrule (5) the applicant may deliver a replying affidavit. The court may in its discretion permit the filing of further affidavits.

[Para. *(e)* amended by GN R2410 of 30 September 1991.]

(f) Where no answering affidavit, or notice in terms of sub-paragraph (iii) of paragraph *(d)*, is delivered within the period referred to in sub-paragraph (ii) of paragraph *(d)* the applicant may within five days of the expiry thereof apply to the registrar to allocate a date for the hearing of the application. Where an answering affidavit is delivered the applicant may apply for such allocation within five days of the delivery of his replying affidavit or, if no replying affidavit is delivered, within five days of the expiry of the period referred to in paragraph *(e)* and where such notice is delivered the applicant may apply for such allocation within five days after delivery of such notice. If the applicant fails so to apply within the appropriate period aforesaid, the respondent may do so immediately upon the expiry thereof. Notice in writing of the date allocated by the registrar shall forthwith be given by applicant or respondent, as the case may be, to the opposite party.

[Para. *(f)* substituted by GN R235 of 1 February 1966 and by GN R2004 of 1 December 1967 and amended by GN R2410 of 30 September 1991.]

(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as to it seems meet with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the aforegoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

(h) The provisions of paragraphs *(c)* and *(f)* shall *mutatis mutandis* apply to

petitions.

[Para. *(h)* added by GN R2021 of 5 November 1971.]

(6) The court, after hearing an application whether brought *ex parte* or otherwise, may make no order thereon (save as to costs if any) but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.

(7) *(a)* Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event rule 10 shall apply *mutatis mutandis*.

(b) The periods prescribed with regard to applications shall apply *mutatis mutandis* to counter-applications: Provided that the court may on good cause shown postpone the hearing of the application.

(8) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than twenty-four hours' notice.

(9) A copy of every application to court in connection with the estate of any person deceased, or alleged to be a prodigal, or under any legal disability, mental or otherwise, shall, before such application is filed with the registrar, be submitted to the Master for consideration and report; and if any person is to be suggested to the court for appointment as curator to property, such suggestion shall likewise be submitted to the Master for report. Provided that the provisions of this subrule shall not apply to any application under rule 57 except where that rule otherwise provides.

[Subrule (9) substituted by GN R235 of 18 February 1966.]

(10) The provisions of subrule (9) shall further apply to all applications for the appointment of administrators and trustees under deeds or contracts relating to trust funds or to the administration of trusts set up by testamentary disposition.

(11) Notwithstanding the aforegoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge.

(12) *(a)* In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as to it seems meet.

(b) In every affidavit or petition filed in support of any application under paragraph *(a)* of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.

(c) A person against whom an order was granted in his absence in an urgent application may by notice set down the matter for reconsideration of the order.

[Para. *(c)* inserted by GN R2845 of 29 November 1991.]

(13) In any application against any Minister, Deputy Minister, Administrator, officer or servant of the State, in his capacity as such, the State or the administration of any province, the respective periods referred to in paragraph *(b)* of subrule (5), or for the return of a rule *nisi*, shall not be less than 15 days after the service of the notice of motion, or the rule *nisi*, as the case may be, unless the court has specially authorized a shorter period.

[Subrule (13) substituted by GN R2021 of 5 November 1971 and by GN R2410 of 30

September 1991.]

(14) Rules 10, 11, 12, 13 and 14 shall *mutatis mutandis* apply to all applications.

[Subrule (14) substituted by GN R2004 of 15 December 1967.]

(15) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client. The court shall not grant the application unless it is satisfied that the applicant will be prejudiced in his case if it be not granted.

7 Power of Attorney

(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.

[Subrule (1) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.

[Subrule (2) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(3) An attorney instructing an advocate to appear in an appeal on behalf of any party other than a party who has caused the appeal to be set down shall, before the hearing thereof, file with the registrar a power of attorney authorising him so to act.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power.

(5) *(a)* No power of attorney shall be required to be filed by the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or a deputy state attorney or any attorney instructed, in writing, or by telegram by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting in his capacity as such by virtue of any provision of the State Attorney Act, 1957 (Act 56 of 1957).

[Para. *(a)* substituted by GN R2021 of 5 November 1971.]

(b) .....

[Para. *(b)* deleted by GN R2021 of 5 November 1971.]

8 Provisional Sentence

(1) Where by law any person may be summoned to answer a claim made for provisional sentence, proceedings shall be instituted by way of a summons as near as may be in accordance with Form 3 of the First Schedule calling upon such person to pay the amount claimed or, failing such payment, to appear personally or by counsel or by an attorney who, under section 4 (2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court upon a day named in such summons, not being less than 10 days after the service upon him or her of such summons, to admit or deny his or her liability.

[Subrule (1) amended by GN R2410 of 30 September 1991 and substituted by GN R1746 of 25 October 1996.]

(2) Such summons shall be issued by the registrar and the provisions of subrules (3) and (4) of rule 17 shall *mutatis mutandis* apply.

(3) Copies of all documents upon which the claim is founded shall be annexed to the summons and served with it.

(4) The plaintiff shall set down the case for hearing before noon on the court day but one preceding the day upon which it is to be heard.

(5) Upon the day named in the summons the defendant may appear personally or by an advocate or by an attorney who, under section 4 (2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court to admit or deny his liability and may, not later than noon of the court day but one preceding the day upon which he or she is called upon to appear in court, deliver an affidavit setting forth the grounds upon which he or she disputes liability in which event the plaintiff shall be afforded a reasonable opportunity of replying thereto.

[Subrule (5) substituted by GN R1746 of 25 October 1996.]

(6) If at the hearing the defendant admits his liability or if he has previously filed with the registrar an admission of liability signed by himself and witnessed by an attorney acting for him and not acting for the opposite party, or, if not so witnessed, verified by affidavit, the court may give final judgment against him.

(7) The court may hear oral evidence as to the authenticity of the defendant's signature, or that of his agent, to the document upon which claim for provisional sentence is founded or as to the authority of the defendant's agent.

[Subrule (7) substituted by GN R235 of 18 February 1966.]

(8) Should the court refuse provisional sentence it may order the defendant to file a plea within a stated time and may make such order as to the costs of the proceedings as to it may seem just. Thereafter the provisions of these Rules as to pleading and the further conduct of trial actions shall *mutatis mutandis* apply.

(9) The plaintiff shall on demand furnish the defendant with security *de restituendo* to the satisfaction of the registrar, against payment of the amount due under the judgment.

(10) Any person against whom provisional sentence has been granted may enter into the principal case only if he shall have satisfied the amount of the judgment of provisional sentence and taxed costs, or if the plaintiff on demand fails to furnish due security in terms of subrule (9).

(11) A defendant entitled and wishing to enter into the principal case shall, within two months of the grant of provisional sentence, deliver notice of his intention to do so, in which event the summons shall be deemed to be a combined summons and he shall deliver a plea within 10 days thereafter. Failing such notice or such plea

the provisional sentence shall *ipso facto* become a final judgment and the security given by the plaintiff shall lapse.

[Subrule (11) amended by GN R2410 of 30 September 1991.]

9 Arrest

(1) No civil process whereby any person may be arrested or held to bail in order to compel his appearance to answer any claim and to abide the judgment of the court thereon shall be sued out against any person where the cause of action is not of the value of R400 or upwards, exclusive of any costs.

(2) In all cases where any person may be arrested or held to bail, the process shall be by writ of arrest addressed to the sheriff and to the officer commanding the gaol and signed as is required in the case of a summons and shall, as near as may be, in accordance with Form 4 of the First Schedule.

(3) The writ of arrest when delivered to the registrar for signature shall be accompanied by an affidavit sworn by the plaintiff or his agent.

(4) The affidavit shall contain a true description of the person making the same, setting forth his place of residence, and a statement of the sum due to the plaintiff, and the cause of the claim and where incurred, or in the case of the unlawful detention of any movable property, the value and description thereof: Provided that if the plaintiff sues as executor or administrator of any deceased person, or as a trustee of an insolvent estate, or in any similar representative capacity, it shall be sufficient in any such affidavit to aver that the said defendant is indebted as stated, as appears by the books or documents in the possession of the deponent and as the deponent verily believes. The affidavit shall further contain an allegation that the plaintiff has no or insufficient security for his demand, specifying the nature and extent of the security, if any, and that a sum or value of R400 or upwards remains wholly unsecured; and if the said claim is one for damages, that the said plaintiff has sustained damage to an amount of R400 or upwards.

(5) In all cases the affidavit shall contain an allegation that the deponent believes that the defendant is about to depart, or is making preparations to depart, from the Republic and shall state fully the grounds for such belief.

(6) The writ of arrest and affidavit shall be filed by the registrar, and the defendant or his attorney shall be at liberty at all reasonable times and without charge to peruse and copy them.

(7) Where any sum of money or a specific thing is claimed, it shall be set forth in the writ of arrest. The costs of issuing any such writ shall be endorsed thereon by the registrar, and the sheriff shall, upon an arrest made by virtue thereof, give to the defendant a copy of the same, together with copies of the affidavit aforesaid and any documents upon which the claim is founded, which copies shall be furnished by the plaintiff: Provided that where a warrant of arrest has been telegraphically transmitted the original warrant shall be sent by the first post to the place where such person has been arrested or detained and shall be accompanied by a copy thereof and a copy of the affidavit in terms of subrules (4) and (5). After the arrival of the warrant at the place where such person has been arrested or detained, a copy of the original warrant and affidavit shall forthwith be served upon him.

(8) If on arrest the defendant or anyone on his behalf gives to the sheriff adequate security by bond or obligation of the said defendant and of another person residing and having sufficient means within the Republic that the defendant will appear according to the exigency of the said writ, and will abide the judgment of the court thereon, or if the said defendant pays or delivers to the sheriff the sum of money or thing mentioned in the said writ, together with the costs endorsed thereon and costs of the execution of the writ as prescribed, the sheriff shall permit the

defendant to go free of the said writ of arrest. The bond or obligation to be given to the sheriff under this rule shall be as near as may be in accordance with Form 5 of the First Schedule: Provided that the personal bond of the defendant without a surety shall be sufficient for the purposes of this rule if accompanied by a deposit of the amount or thing claimed and costs as aforesaid, such deposit being referred to in the bond as one of the conditions thereof.

[Subrule (8) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(9) If the defendant at any time after his arrest satisfies the claim contained in the writ, including the costs and charges endorsed thereon, and the costs of the execution of the writ or if he gives a bond or obligation in terms of subrule (8), he shall be entitled to immediate release.

(10) If a bond or obligation has been given by or on behalf of the defendant, in terms of subrule (8), the plaintiff shall proceed with his action as if there had been no arrest, and save in those cases where summons has already been issued, the writ of arrest and affidavit shall stand as a combined summons in the action.

(11) Any person arrested shall be entitled to anticipate the day of appearance and to apply to the court for his release, upon giving notice to the plaintiff and to the registrar.

(12) If the sheriff takes from the party arrested any bond or obligation by virtue of any writ, he shall, as soon as practicable, assign to the plaintiff such bond or obligation, by an endorsement thereon under his hand, as near as may be in accordance with Form 6 of the First Schedule.

(13) If on the return day or anticipated return day the defendant admits the whole or a part of the plaintiff's claim, the court may hear the parties and in its discretion give final judgment against him for the amount admitted, whereupon he shall be released.

[Subrule (13) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(14) If the defendant has not satisfied or admitted the plaintiff's claim and has not given security as aforesaid, the plaintiff may, on the return or anticipated return day, apply for confirmation of the arrest, whereupon the court, unless sufficient cause to the contrary is shown, shall confirm such arrest and order the return of the defendant to prison, and shall make such further order as to it seems meet for the speedy termination of the proceedings.

(15) If in any such proceedings judgment is given against the defendant, he shall be entitled to his release.

[Rule 9 amended by GN R2410 of 30 September 1991.]

10 Joinder of Parties and Causes of Action

(1) Any number of persons, each of whom has a claim, whether jointly, jointly and severally, separately or in the alternative, may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of such persons proposing to join as plaintiffs would, if he brought a separate action, be entitled to bring such action, provided that the right to relief of the persons proposing to join as plaintiffs depends upon the determination of substantially the same question of law or fact which, if separate actions were instituted, would arise on each action, and provided that there may be a joinder conditionally upon the claim of any other plaintiff failing.

(2) A plaintiff may join several causes of action in the same action.

(3) Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action.

(4) In any action in which any causes of action or parties have been joined in accordance with this rule, the court at the conclusion of the trial shall give such judgment in favour of such of the parties as shall be entitled to relief or grant absolution from the instance, and shall make such order as to costs as shall to it seem to be just, provided that without limiting the discretion of the court in any way-

(a) the court may order that any plaintiff who is unsuccessful shall be liable to any other party, whether plaintiff or defendant, for any costs occasioned by his joining in the action as plaintiff;

(b) if judgment is given in favour of any defendant or if any defendant is absolved from the instance, the court may order:

(i) the plaintiff to pay such defendant's costs, or

(ii) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the successful defendant, he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess, and the court may further order that, if the successful defendant is unable to recover the whole or any part of his costs from the unsuccessful defendants, he shall be entitled to recover from the plaintiff such part of his costs as he cannot recover from the unsuccessful defendants;

(c) if judgment is given in favour of the plaintiff against more than one of the defendants, the court may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the plaintiff he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess.

(5) Where there has been a joinder of causes of action or of parties, the court may on the application of any party at any time order that separate trials be held either in respect of some or all of the causes of action or some or all of the parties; and the court may on such application make such order as to it seems meet.

10A Joinder of Provincial or National Executive Authorities

If in any proceedings before the court, the constitutional validity of a law is challenged, the party challenging the validity of the law shall join the provincial or national executive authorities responsible for the administration of the law in the proceedings.

[Rule 10A inserted by GN R849 of 25 August 2000.]

11 Consolidation of Actions

Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon-

(a) the said actions shall proceed as one action;

(b) the provision of rule 10 shall *mutatis mutandis* apply with regard to the action so consolidated; and

(c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.

12 Intervention of Persons as Plaintiffs or Defendants

Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet.

13 Third Party Procedure

(1) Where a party in any action claims-

(a) as against any other person not a party to the action (in this rule called a 'third party') that such party is entitled, in respect of any relief claimed against him, to a contribution or indemnification from such third party, or

(b) any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between such party and the third party, and should properly be determined not only as between any parties to the action but also as between such parties and the third party or between any of them,

such party may issue a notice, hereinafter referred to as a third party notice, as near as may be in accordance with Form 7 of the First Schedule, which notice shall be served by the sheriff.

(2) Such notice shall state the nature and grounds of the claim of the party issuing the same, the question or issue to be determined, and any relief or remedy claimed. In so far as the statement of the claim and the question or issue are concerned, the rules with regard to pleadings and to summonses shall *mutatis mutandis* apply.

(3) *(a)* The third party notice, accompanied by a copy of all pleadings filed in the action up to the date of service of the notice, shall be served on the third party and a copy of the third party notice, without a copy of the pleadings filed in the action up to the date of service of the notice, shall be filed with the registrar and served on all other parties before the close of pleadings in the action in connection with which it was issued.

(b) After the close of pleadings, such notice may be served only with the leave of the court.

[Subrule (3) substituted by GN R2021 of 5 November 1971 and by GN R2047 of 13 December 1996.]

(4) If the third party intends to contest the claim set out in the third party notice he shall deliver notice of intention to defend, as if to a summons. Immediately upon receipt of such notice, the party who issued the third party notice shall inform all other parties accordingly.

(5) The third party shall, after service upon him of a third party notice, be a party to the action and, if he delivers notice of intention to defend, shall be served with all documents and given notice of all matters as a party.

(6) The third party may plead or except to the third party notice as if he were a defendant to the action. He may also, by filing a plea or other proper pleading contest the liability of the party issuing the notice on any ground notwithstanding that such ground has not been raised in the action by such latter party: Provided however that the third party shall not be entitled to claim in reconvention against any person other than the party issuing the notice save to the extent that he would be entitled to do so in terms of rule 24.

(7) The rules with regard to the filing of further pleadings shall apply to third parties as follows:

(a) In so far as the third party's plea relates to the claim of the party issuing the notice, the said party shall be regarded as the plaintiff and the third party as the defendant.

(b) In so far as the third party's plea relates to the plaintiff's claim, the third party shall be regarded as a defendant and the plaintiff shall file pleadings as provided by the said rules.

(8) Where a party to an action has against any other party (whether either such party became a party by virtue of any counter-claim by any person or by virtue of a third party notice or by any other means) a claim referred to in subrule (1), he may issue and serve on such other party a third party notice in accordance with the provisions of this rule. Save that no further notice of intention to defend shall be necessary, the same procedure shall apply as between the parties to such notice and they shall be subject to the same rights and duties as if such other party had been served with a third party notice in terms of subrule (1).

(9) Any party who has been joined as such by virtue of a third party notice may at any time make application to the court for the separation of the trial of all or any of the issues arising by virtue of such third party notice and the court may upon such application make such order as to it seems meet, including an order for the separate hearing and determination of any issue on condition that its decision on any other issue arising in the action either as between the plaintiff and the defendant or as between any other parties, shall be binding upon the applicant.

14 Proceedings by and against Partnerships, Firms and Associations

(1) In this rule-

'Association' means any unincorporated body of persons, not being a partnership.

'Firm' means a business, including a business carried on by a body corporate, carried on by the sole proprietor thereof under a name other than his own.

[Definition of 'firm' substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

'Plaintiff' and 'Defendant' include applicant and respondent.

'Relevant date' means the date of accrual of the cause of action.

'Sue' and 'sued' are used in relation to actions and applications.

(2) A partnership, a firm or an association may sue or be sued in its name.

(3) A plaintiff suing a partnership need not allege the names of the partners. If he does, any error of omission or inclusion shall not afford a defence to the partnership.

(4) The previous subrule shall apply *mutatis mutandis* to a plaintiff suing a firm.

(5) *(a)* A plaintiff suing a firm or a partnership may at any time before or after judgment deliver to the defendant a notice calling for particulars as to the full name and residential address of the proprietor or of each partner, as the case may

be, as at the relevant date.

[Para. *(a)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(b) The defendant shall within 10 days deliver a notice containing such information.

[Para. *(b)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(c) Concurrently with the said statement the defendant shall serve upon the persons referred to in paragraph *(a)* a notice as near as may be *mutatis mutandis*, in accordance with Form 8 of the First Schedule and deliver proof by affidavit of such service.

(d) A plaintiff suing a firm or a partnership and alleging in the summons or notice of motion that any person was at the relevant date the proprietor or a partner, shall notify such person accordingly by delivering a notice as near as may be, *mutatis mutandis*, in accordance with Form 8 of the First Schedule.

(e) Any person served with a notice in terms of paragraph *(c)* or *(d)* shall be deemed to be a party to the proceedings, with the rights and duties of a defendant.

(f) Any party to such proceedings may aver in the pleadings or affidavits that such person was at the relevant date the proprietor or a partner, or that he is estopped from denying such status.

(g) If any party to such proceedings disputes such status, the court may at the hearing decide that issue *in limine*.

(h) Execution in respect of a judgment against a partnership shall first be levied against the assets thereof, and, after such excussion, against the private assets of any person held to be, or held to be estopped from denying his status as, a partner, as if judgment had been entered against him.

(6) The preceding subrule shall apply *mutatis mutandis* to a defendant sued by a firm or a partnership.

(7) If a partnership is sued and it appears that since the relevant date it has been dissolved, the proceedings shall nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners, as if sued individually.

(8) The preceding subrule shall apply *mutatis mutandis* where it appears that a firm has been discontinued.

(9) *(a)* A plaintiff suing an association may at any time before or after judgment deliver a notice to the defendant calling for a true copy of its current constitution and a list of the names and addresses of the officebearers and their respective offices as at the relevant date.

[Para. (9) *(a)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(b) Such notice shall be complied with within 10 days.

[Para. (9) *(b)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(c) Paragraphs *(a)* and *(b)* shall apply *mutatis mutandis* to a defendant sued by an association.

(10) Paragraphs *(d)* to *(h)* of subrule (5) shall apply *mutatis mutandis* when-

(a) a plaintiff alleges that any member, servant or agent of the defendant association is liable in law for its alleged debt;

(b) a defendant alleges that any member, servant or agent of the plaintiff association will be responsible in law for the payment of any costs which may be awarded against the association.

(11) Subrule (7) shall apply *mutatis mutandis* in regard to the continuance of the proceedings against any member, servant or agent referred to in paragraph *(a)* of subrule (10).

(12) Subrule (4) of rule 21 shall apply *mutatis mutandis* in the circumstances set out in paragraphs *(a)* and *(b)* of subrule (5) and in subrule (9) hereof.

[Subrule (12) amended by GN R1262 of 1991.]

15 Change of Parties

(1) No proceedings shall terminate solely by reason of the death, marriage or other change of status of any party thereto unless the cause of such proceedings is thereby extinguished.

(2) Whenever by reason of an event referred to in subrule (1) it becomes necessary or proper to introduce a further person as a party in such proceedings (whether in addition to or in substitution for the party to whom such proceedings relate) any party thereto may forthwith by notice to such further person, to every other party and to the registrar, add or substitute such further person as a party thereto, and subject to any order made under subrule (4) hereof, such proceedings shall thereupon continue in respect of the person thus added or substituted as if he had been a party from the commencement thereof and all steps validly taken before such addition or substitution shall continue of full force and effect: Provided that save with the leave of the court granted on such terms (as to adjournment or otherwise) as to it may seem meet, no such notice shall be given after the commencement of the hearing of any opposed matter; and provided further that the copy of the notice served on any person joined thereby as a party to the proceedings shall (unless such party is represented by an attorney who is already in possession thereof), be accompanied in application proceedings by copies of all notices, affidavits and material documents previously delivered, and in trial matters by copies of all pleadings and like documents already filed of record, such notice, other than a notice to the registrar, shall be served by the sheriff.

[Subrule (2) substituted by GN R235 of 18 February 1966.]

(3) Whenever a party to any proceedings dies or ceases to be capable of acting as such, his executor, curator, trustee or similar legal representative, may by notice to all other parties and to the registrar intimate that he desires in his capacity as such thereby to be substituted for such party, and unless the court otherwise orders, he shall thereafter for all purposes be deemed to have been so substituted.

(4) The court may upon a notice of application delivered by any party within 20 days of service of notice in terms of subrule (2) and (3), set aside or vary any addition or substitution of a party thus affected or may dismiss such application or confirm such addition or substitution, on such terms, if any, as to the delivery of any affidavits or pleadings, or as to postponement or adjournment, or as to costs or otherwise, as to it may seem meet.

[Subrule (4) amended by GN R1262 of 1991.]

16 Representation of Parties

(1) If an attorney acts on behalf of any party in any proceedings, he shall notify all other parties of his name and address.

[Subrule (1) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) *(a)* Any party represented by an attorney in any proceedings may at any time, subject to the provisions of rule 40, terminate such attorney's authority to act for him, and thereafter act in person or appoint another attorney to act for him therein, whereupon he shall forthwith give notice to the registrar and to all other parties of the termination of his former attorney's authority and if he has appointed a further attorney so to act for him, of the latter's name and address.

(b) If such party does not appoint a further attorney, such party shall in the notice of termination appoint an address within eight kilometres from the office of the registrar for the service on him of all documents in such proceedings.

[Para. *(b)* substituted by GN R960 of 28 May 1993.]

[Subrule (2) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(3) Upon receipt of a notice in terms of subrule (1) or (2) the address of the attorney or of the party, as the case may be, shall become the address of such party for the service upon him of all documents in such proceedings, but any service duly effected elsewhere before receipt of such notice shall, notwithstanding such change, for all purposes be valid, unless the court orders otherwise.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) *(a)* Where an attorney acting in any proceedings for a party ceases so to act, he shall forthwith deliver notice thereof to such party, the registrar and all other parties: Provided that notice to the party for whom he acted may be given by registered post.

(b) After such notice, unless the party formerly represented within 10 days after the notice, himself notifies all other parties of a new address for service as contemplated in subrule (2), it shall not, be necessary to serve any documents upon such party unless the court otherwise orders: Provided that any of the other parties may before receipt of the notice of his new address for service of documents, serve any documents upon the party who was formerly represented.

(c) The notice to the registrar shall state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them.

(d) The notice to the party formerly represented shall inform the said party of the provisions of paragraph *(b)*.

[Subrule (4) substituted by GN R235 of 18 February 1966, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

16A Submissions by an *amicus curiae*

(1) *(a)* Any person raising a constitutional issue in an application or action shall give notice thereof to the registrar at the time of filing the relevant affidavit or pleading.

(b) Such notice shall contain a clear and succinct description of the constitutional issue concerned.

(c) The registrar shall, upon receipt of such notice, forthwith place it on a notice board designated for that purpose.

(d) The notice shall be stamped by the registrar to indicate the date upon

which it was placed on the notice board and shall remain on the notice board for a period of 20 days.

(2) Subject to the provisions of national legislation enacted in accordance with section 171 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and these Rules, any interested party in a constitutional issue raised in proceedings before a court may, with the written consent of all the parties to the proceedings, given not later than 20 days after the filing of the affidavit or pleading in which the constitutional issue was first raised, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

(3) The written consent contemplated in subrule (2) shall, within five days of its having been obtained, be lodged with the registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

(4) The terms and conditions agreed upon in terms of subrule (2) may be amended by the court.

(5) If the interested party contemplated in subrule (2) is unable to obtain the written consent as contemplated therein, he or she may, within five days of the expiry of the 20-day period prescribed in that subrule, apply to the court to be admitted as an *amicus curiae* in the proceedings.

(6) An application contemplated in subrule (5) shall-

(a) briefly describe the interest of the *amicus curiae* in the proceedings;

(b) clearly and succinctly set out the submissions which will be advanced by the *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court and are different from those of the other parties; and

(c) be served upon all parties to the proceedings.

(7) *(a)* Any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae*, shall file an answering affidavit within five days of the service of such application upon such party.

(b) The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

(8) The court hearing an application to be admitted as an *amicus curiae* may refuse or grant the application upon such terms and conditions as it may determine.

(9) The court may dispense with any of the requirements of this rule if it is in the interests of justice to do so.

[Rule 16A inserted by GN R849 of 25 August 2000.]

17 Summons

(1) Every person making a claim against any other person may, through the office of the registrar, sue out a summons or a combined summons addressed to the sheriff directing him to inform the defendant *inter alia* that, if he disputes the claim, and wishes to defend he shall-

(a) within the time stated therein, give notice of his intention to defend;

(b) thereafter, if the summons is a combined summons, within twenty days after giving such notice, deliver a plea (with or without a claim in reconvention), an exception or an application to strike out.

[Subrule (1) *(b)* substituted by GN R235 of 18 February 1966, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 and amended by GN R1843 of 1 October 1993.]

(2) *(a)* In every case where the claim is not for a debt or liquidated demand the summons shall be as near as may be in accordance with Form 10 of the First Schedule, to which summons shall be annexed a statement of the material facts relied upon by the plaintiff in support of his claim, which statement shall *inter alia* comply with rule 18.

(b) In every case where the claim is for a debt or liquidated demand the summons shall be as near as may be in accordance with Form 9 of the First Schedule.

[Subrule (2) substituted by GN R1843 of 1 October 1993.]

(3) Every summons shall be signed by the attorney acting for the plaintiff and shall bear an attorney's address, within eight kilometres of the office of the registrar, or, if no attorney is acting, it shall be signed by the plaintiff, who shall in addition append an address within eight kilometres of the office of the registrar at which he will accept service of all subsequent documents in the suit; and shall thereafter be signed and issued by the registrar and made returnable by the sheriff to the court through the registrar.

[Subrule (3) substituted by GN R2021 of 5 November 1971 and amended by GN R960 of 28 May 1993.]

(4) Every summons shall set forth-

(a) the name (including where possible the first name or initials) by which the defendant is known to the plaintiff, his residence or place of business and, where known, his occupation and, if he is sued in any representative capacity, such capacity. The summons shall also state the defendant's sex and, if a female, her marital status;

(b) the full names, sex and occupation and the residence or place of business of the plaintiff, and where he sues in a representative capacity, such capacity. If the plaintiff is a female the summons shall state her marital status.

18 Rules relating to Pleading generally

(1) A combined summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4 (2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party.

[Subrule (1) substituted by GN R873 of 31 May 1996.]

(2) The title of the action describing the parties thereto and the number assigned thereto by the registrar, shall appear at the head of each pleading, provided that where the parties are numerous or the title lengthy and abbreviation is reasonably possible, it shall be so abbreviated.

(3) Every pleading shall be divided into paragraphs (including sub-paragraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct averment.

(4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

(5) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but shall answer the

point of substance.

(6) A party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.

[Subrule (6) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(7) It shall not be necessary in any pleading to state the circumstances from which an alleged implied term can be inferred.

(8) A party suing or bringing a claim in reconvention for divorce shall, where time, date and place or any other person or persons are relevant or involved, give details thereof in the relevant pleading.

[Subrule (8) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(9) A party claiming division, transfer or forfeiture of assets in divorce proceedings in respect of a marriage out of community of property, shall give details of the grounds on which he claims that he is entitled to such division, transfer or forfeiture.

[Subrule (9) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(10) A plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof: Provided that a plaintiff suing for damages for personal injury shall specify his date of birth, the nature and extent of the injuries, and the nature, effects and duration of the disability alleged to give rise to such damages, and shall as far as practicable state separately what amount, if any, is claimed for-

(a) medical costs and hospital and other similar expenses and how these costs and expenses are made up;

(b) pain and suffering, stating whether temporary or permanent and which injuries caused it;

(c) disability in respect of-

(i) the earning of income (stating the earnings lost to date and how the amount is made up and the estimated future loss and the nature of the work the plaintiff will in future be able to do);

(ii) the enjoyment of amenities of life (giving particulars);

and stating whether the disability concerned is temporary or permanent; and

(d) disfigurement, with a full description thereof and stating whether it is temporary or permanent.

[Subrule (10) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(11) A plaintiff suing for damages resulting from the death of another shall state the date of birth of the deceased as well as that of any person claiming damages as a result of the death.

(12) If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30.

[Subrules (11) and (12) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

19 Notice of Intention to Defend

(1) Subject to the provisions of section 27 of the Act, the defendant in every civil action shall be allowed ten days after service of summons on him within which to deliver a notice of intention to defend, either personally or through his attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.

[Subrule (1) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) In an action against any Minister, Deputy Minister, Administrator, officer or servant of the State, in his official capacity, the State or the administration of a province, the time allowed for delivery of notice of intention to defend shall not be less than 20 days after service of summons, unless the court has specially authorised a shorter period.

[Subrule (2) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987, by GN R608 of 31 March 1989 and by GN R2410 of 30 September 1991.]

(3) When a defendant delivers notice of intention to defend, he shall therein give his full residential or business address, and shall also appoint an address, not being a post office box or *poste restante*, within eight kilometres of the office of the registrar, for the service on him 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.

[Subrule (3) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 and amended by GN R960 of 28 May 1993.]

(4) A party shall not by reason of his delivery of notice of intention to defend be deemed to have waived any right to object to the jurisdiction of the court or to any irregularity or impropriety in the proceedings.

(5) Notwithstanding the provisions of subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.

[Subrule (5) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

20 Declaration

(1) In all actions in which the plaintiff's claim is for a debt or liquidated demand and the defendant has delivered notice of intention to defend, the plaintiff shall, except in the case of a combined summons, within fifteen days after his receipt thereof, deliver a declaration.

[Subrule (1) substituted by GN R235 of 18 February 1966, by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November

1987.]

(2) The declaration shall set forth the nature of the claim, the conclusions of law which the plaintiff shall be entitled to deduce from the facts stated therein, and a prayer for the relief claimed.

(3) Where the plaintiff seeks relief in respect of several distinct claims founded upon separate and distinct facts, such claims and facts shall be separately and distinctly stated.

21 Further Particulars

(1) Subject to the provisions of subrules (2) to (4) further particulars shall not be requested.

(2) After the close of pleadings any party may, not less than twenty days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within ten days after receipt thereof.

(3) The request for further particulars for trial and the reply thereto shall, save where the party is litigating in person, be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4 (2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court, only by such attorney.

[Subrule (3) substituted by GN R873 of 31 May 1996.]

(4) If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.

(5) The court shall at the conclusion of the trial *mero motu* consider whether the further particulars were strictly necessary, and shall disallow all costs of and flowing from any unnecessary request or reply, or both, and may order either party to pay the costs thereby wasted, on an attorney and client basis or otherwise.

[Rule 21 substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

22 Plea

(1) Where a defendant has delivered notice of intention to defend, he shall within twenty days after the service upon him of a declaration or within twenty days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.

[Subrule (1) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies.

(3) Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted. If any explanation or qualification of any denial is necessary, it shall be stated in the plea.

(4) If by reason of any claim in reconvention, the defendant claims that on

the giving of judgment on such claim, the plaintiff's claim will be extinguished either in whole or in part, the defendant may in his plea refer to the fact of such claim in reconvention and request that judgment in respect of the claim or any portion thereof which would be extinguished by such claim in reconvention, be postponed until judgment on the claim in reconvention. Judgment on the claim shall, either in whole or in part, thereupon be so postponed unless the court, upon the application of any person interested, otherwise orders, but the court, if no other defence has been raised, may give judgment for such part of the claim as would not be extinguished, as if the defendant were in default of filing a plea in respect thereof, or may, on the application of either party, make such order as to it seems meet.

(5) If the defendant fails to comply with any of the provisions of subrules (2) and (3), such plea shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30.

[Subrule (5) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

23 Exceptions and Applications to Strike Out

(1) Where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may set it down for hearing in terms of paragraph *(f)* of subrule (5) of rule (6): Provided that where a party intends to take an exception that a pleading is vague and embarrassing he shall within the period allowed as aforesaid by notice afford his opponent an opportunity of removing the cause of complaint within 15 days: Provided further that the party excepting shall within ten days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver his exception.

[Subrule (1) amended by GN R2164 of 1987, by GN R2642 of 1987 and by GN R1262 of 1991.]

(2) Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the matter aforesaid, and may set such application down for hearing in terms of paragraph *(f)* of subrule (5) of rule (6), but the court shall not grant the same unless it is satisfied that the applicant will be prejudiced in the conduct of his claim or defence if it be not granted.

(3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.

(4) Wherever any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary.

24 Claim in Reconvention

(1) A defendant who counterclaims shall, together with his plea, deliver a claim in reconvention setting out the material facts thereof in accordance with rules 18 and 20 unless the plaintiff agrees, or if he refuses, the court allows it to be delivered at a later stage. The claim in reconvention shall be set out either in a separate document or in a portion of the document containing the plea, but headed 'Claim in Reconvention'. It shall be unnecessary to repeat therein the names or descriptions of the parties to the proceedings in convention.

[Subrule (1) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) If the defendant is entitled to take action against any other person and the plaintiff, whether jointly, jointly and severally, separately or in the alternative, he may with the leave of the court proceed in such action by way of a claim in reconvention against the plaintiff and such other persons, in such manner and on such terms as the court may direct.

(3) A defendant who has been given leave to counterclaim as aforesaid, shall add to the title of his plea a further title corresponding with what would be the title of any action instituted against the parties against whom he makes claim in reconvention, and all further pleadings in the action shall bear such title, subject to the proviso to subrule (2) of rule 18.

(4) A defendant may counterclaim conditionally upon the claim or defence in convention failing.

(5) If the defendant fails to comply with any of the provisions of this rule, the claim in reconvention shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30.

[Subrule (5) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

25 Replication and Plea in Reconvention

(1) Within fifteen days after the service upon him of a plea and subject to subrule (2) hereof, the plaintiff shall where necessary deliver a replication to the plea and a plea to any claim in reconvention, which plea shall comply with rule 22.

[Subrule (1) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) No replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading shall be necessary, and issue shall be deemed to be joined and pleadings closed in terms of paragraph *(b)* of rule 29.

(3) Where a replication or subsequent pleading is necessary, a party may therein join issue on the allegations in the previous pleading. To such extent as he has not dealt specifically with the allegations in the plea or such other pleading, such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined.

(4) A plaintiff in reconvention may, subject to the provisions *mutatis mutandis* of subrule (2) hereof, within ten days after the delivery of the plea in reconvention deliver a replication in reconvention.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(5) Further pleadings may, subject to the provisions *mutatis mutandis* of subrule (2), be delivered by the respective parties within ten days after the previous pleading delivered by the opposite party. Such pleadings shall be designated by the names by which they are customarily known.

[Subrule (5) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

26 Failure to Deliver Pleadings - Barring

Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 25 shall be *ipso facto* barred. If any party fails to deliver any other pleading within the time laid down in these Rules or within any extended time

allowed in terms thereof, any other party may by notice served upon him require him to deliver such pleading within five days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to in the notice within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and *ipso facto* barred: Provided that for the purposes of this rule the days between 16 December and 15 January, both inclusive shall not be counted in the time allowed for the delivery of any pleading.

[Rule 26 substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

27 Extension of Time and Removal of Bar and Condonation

(1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these Rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.

(2) Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these Rules.

(3) The court may, on good cause shown, condone any non-compliance with these Rules.

[Subrule (3) substituted by GN R235 of 18 February 1966.]

(4) After a rule *nisi* has been discharged by default of appearance by the applicant, the court or a judge may revive the rule and direct that the rule so revived need not be served again.

[Subrule (4) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

28 Amendment of Pleadings and Documents

(1) Any party desiring to amend a pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected.

(3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.

(4) If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.

(5) If no objection is delivered as contemplated in subrule (4), every party who received notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days after the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7).

(6) Unless the court otherwise directs, an amendment authorized by an order

of the court may not be effected later than 10 days after such authorization.

(7) Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.

(8) Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him, and may also take the steps contemplated in rules 23 and 30.

(9) A party giving notice of amendment in terms of subrule (1) shall, unless the court otherwise directs, be liable for the costs thereby occasioned to any other party.

(10) The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.

[Rule 28 amended by GN R235 of 18 February 1966, by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R2410 of 30 September 1991 and substituted by GN R181 of 28 January 1994.]

29 Close of Pleadings

Pleadings shall be considered closed-

(a) if either party has joined issue without alleging any new matter, and without adding any further pleading;

(b) if the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed;

(c) if the parties agree in writing that the pleadings are closed and such agreement is filed with the registrar; or

(d) if the parties are unable to agree as to the close of pleadings, and the court upon the application of a party declares them closed.

30 Irregular Proceedings

(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

[Subrule (1) substituted by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R1883 of 3 July 1992.]

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if-

(a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days;

(c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph *(b)* of subrule (2).

[Para. *(c)* amended by GN R2047 of 13 December 1996.]

[Subrule (2) substituted by GN R1883 of 3 July 1992.]

(3) If at the hearing of such application the court is of opinion that the

proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.

(4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(5) .....

[Subrule (5) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 and deleted by GN R2047 of 13 December 1996.]

30A Non-compliance with rules

(1) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days, to apply for an order that such rule, notice or request be complied with or that the claim or defence be struck out.

(2) Failing compliance within 10 days, application may on notice be made to the court and the court may make such order thereon as to it seems meet.

[Rule 30A inserted by GN R881 of 26 June 1998.]

31 Judgment on Confession and by Default

(1) *(a)* Save in actions for relief in terms of the Divorce Act, 1979 (Act 70 of 1979), or nullity of marriage, a defendant may at any time confess in whole or in part the claim contained in the summons.

(b) Such confession shall be signed by the defendant personally and his signature shall either be witnessed by an attorney acting for him, not being the attorney acting for the plaintiff, or be verified by affidavit.

(c) Such confession shall then be furnished to the plaintiff, whereupon the plaintiff may apply in writing through the registrar to a judge for judgment according to such confession.

[Subrule (1) substituted by GN R1843 of 1 October 1993.]

(2) *(a)* Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as to it seems meet.

(b) A defendant may within 20 days after he has knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as to it seems meet.

[Subrule (2) amended by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 and substituted by GN R417 of 14 March 1997.]

(3) Where a plaintiff has been barred from delivering a declaration the defendant may set the action down as provided in subrule (4) and apply for absolution from the instance or, after adducing evidence, for judgment, and the

court may make such order thereon as to it seems meet.

(4) The proceedings referred to in subrules (2) and (3) shall be set down for hearing upon not less than five days' notice to the party in default: Provided that no notice of set down need be given to any party in default of delivery of notice of intention to defend.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 and amended by GN R2410 of 30 September 1991.]

(5) *(a)* Whenever a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff, if he or she wishes to obtain judgment by default, shall where each of the claims is for a debt or liquidated demand, file with the registrar a written application for judgment against such defendant: Provided that when a defendant is in default of delivery of a plea, the plaintiff shall give such defendant not less than 5 days' notice of his or her intention to apply for default judgment.

[Para. *(a)* substituted by GN R417 of 14 March 1997 and by GN R785 of 5 June 1998.]

(b) The registrar may-

(i) grant judgment as requested;

(ii) grant judgment for part of the claim only or on amended terms;

(iii) refuse judgment wholly or in part;

(iv) postpone the application for judgment on such terms as he may consider just;

(v) request or receive oral or written submissions;

(vi) require that the matter be set down for hearing in open court.

(c) The registrar shall record any judgment granted or direction given by him.

(d) Any party dissatisfied with a judgment granted or direction given by the registrar may, within 20 days after he has acquired knowledge of such judgment or direction, set the matter down for reconsideration by the court.

(e) The registrar shall grant judgment for costs in an amount of R200 plus the sheriff's fees if the value of the claim as stated in the summons, apart from any consent to jurisdiction, is within the jurisdiction of the magistrate's court and, in other cases, unless the application for default judgment requires costs to be taxed or the registrar requires a decision on costs from the Court, R650 plus the sheriff's fees.

[Subrule (5) added by GN R2365 of 10 December 1993.]

32 Summary Judgment

(1) Where the defendant has delivered notice of intention to defend, the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only-

(a) on a liquid document;

(b) for a liquidated amount in money;

(c) for delivery of specified movable property; or

(d) for ejectment;

together with any claim for interest and costs.

(2) The plaintiff shall within 15 days after the date of delivery of notice of intention to defend, deliver notice of application for summary judgment, together with an affidavit made by himself or by any other person who can swear positively to

the facts verifying the cause of action and the amount, if any, claimed and stating that in his opinion there is no *bona fide* defence to the action and that notice of intention to defend has been delivered solely for the purpose of delay. If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 10 days from the date of the delivery thereof.

[Subrule (2) substituted by GN R1262 of 30 May 1991.]

(3) Upon the hearing of an application for summary judgment the defendant may-

(a) give security to the plaintiff to the satisfaction of the registrar for any judgment including costs which may be given, or

(b) satisfy the court by affidavit (which shall be delivered before noon on the court day but one preceding the day on which the application is to be heard) or with the leave of the court by oral evidence of himself or of any other person who can swear positively to the fact that he has a *bona fide* defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

(4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence *viva voce* or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.

(5) If the defendant does not find security or satisfy the court as provided in paragraph *(b)* of subrule (3), the court may enter summary judgment for the plaintiff.

(6) If on the hearing of an application made under this rule it appears-

(a) that any defendant is entitled to defend and any other defendant is not so entitled; or

(b) that the defendant is entitled to defend as to part of the claim,

the court shall-

(i) give leave to defend to a defendant so entitled thereto and give judgment against the defendant not so entitled; or

(ii) give leave to defend to the defendant as to part of the claim and enter judgment against him as to the balance of the claim, unless such balance has been paid to the plaintiff; or

[Subpara. (ii) substituted by GN R1883 of 3 July 1992.]

(iii) make both orders mentioned in sub-paragraphs (i) and (ii).

(7) If the defendant finds security or satisfies the court as provided in subrule (3), the court shall give leave to defend, and the action shall proceed as if no application for summary judgment had been made.

(8) Leave to defend may be given unconditionally or subject to such terms as to security, time for delivery of pleadings, or otherwise, as the court deems fit.

(8A) Where delivery of a declaration is required by these Rules and the court, when giving leave to defend in terms of this rule, has not made an order for the delivery of such declaration within a specified time, such declaration shall be delivered within 20 days of the date leave to defend has been given.

[Subrule 8A, previously subrule (8)*bis*, inserted by GN R2004 of 1967, amended by GN R1262 of 1991 and renumbered GN R2410 of 30 September 1991.]

(9) The court may at the hearing of such application make such order as to costs as to it may seem just: Provided that if-

(a) the plaintiff makes an application under this rule, where the case is not within the terms of subrule (1) or where the plaintiff, in the opinion of the court, knew that the defendant relied on a contention which would entitle him to leave to defend, the court may order that the action be stayed until the plaintiff has paid the defendant's costs; and may further order that such costs be taxed as between attorney and client; and

(b) in any case in which summary judgment was refused and in which the court after trial gives judgment for the plaintiff substantially as prayed, and the court finds that summary judgment should have been granted had the defendant not raised a defence which in its opinion was unreasonable, the court may order the plaintiff's costs of the action to be taxed as between attorney and client.

33 Special Cases and Adjudication upon Points of Law

(1) The parties to any dispute may, after institution of proceedings, agree upon a written statement of facts in the form of a special case for the adjudication of the court.

(2) *(a)* Such statement shall set forth the facts agreed upon, the questions of law in dispute between the parties and their contentions thereon. Such statement shall be divided into consecutively numbered paragraphs and there shall be annexed thereto copies of documents necessary to enable the court to decide upon such questions. It shall be signed by an advocate and an attorney on behalf of each party or, where a party sues or defends personally, by such party.

(b) Such special case shall be set down for hearing in the manner provided for trials or opposed applications, whichever may be more convenient.

[Para. *(b)* inserted by GN R2021 of 5 November 1971.]

(c) If a minor or person of unsound mind is a party to such proceedings the court may, before determining the questions of law in dispute, require proof that the statements in such special case so far as concerns the minor or person of unsound mind are true.

(3) At the hearing thereof the court and the parties may refer to the whole of the contents of such documents and the court may draw any inference of fact or of law from the facts and documents as if proved at a trial.

(4) If, in any pending action, it appears to the court *mero motu* that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the questions cannot conveniently be decided separately.

[Subrule (4) substituted by of GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R1883 of 3 July 1992.]

(5) When giving its decision upon any question in terms of this rule the court may give such judgment as may upon such decision be appropriate and may give any direction with regard to the hearing of any other issues in the proceeding which

may be necessary for the final disposal thereof.

(6) If the question in dispute is one of law and the parties are agreed upon the facts, the facts may be admitted and recorded at the trial and the court may give judgment without hearing any evidence.

34 Offer to Settle

(1) In any action in which a sum of money is claimed, either alone or with any other relief, the defendant may at any time unconditionally or without prejudice make a written offer to settle the plaintiff's claim. Such offer shall be signed either by the defendant himself or by his attorney if the latter has been authorised thereto in writing.

(2) Where the plaintiff claims the performance of some act by the defendant, the defendant may at any time tender, either unconditionally or without prejudice, to perform such act. Unless such act must be performed by the defendant personally, he shall execute an irrevocable power of attorney authorising the performance of such act which he shall deliver to the registrar together with the tender.

(3) Any party to an action who may be ordered to contribute towards an amount for which any party to the action may be held liable, or any third party from whom relief is being claimed in terms of rule 13, may, either unconditionally or without prejudice, by way of an offer of settlement-

(a) make a written offer to that other party to contribute either a specific sum or in a specific proportion towards the amount to which the plaintiff may be held entitled in the action; or

(b) give a written indemnity to such other party, the conditions of which shall be set out fully in the offer of settlement.

(4) One of several defendants, as well as any third party from whom relief is claimed, may, either unconditionally or without prejudice, by way of an offer of settlement make a written offer to settle the plaintiff's or defendant's claim or tender to perform any act claimed by the plaintiff or defendant.

(5) Notice of any offer or tender in terms of this rule shall be given to all parties to the action and shall state-

(a) whether the same is unconditional or without prejudice as an offer of settlement;

(b) whether it is accompanied by an offer to pay all or only part of the costs of the party to whom the offer or tender is made, and further that it shall be subject to such conditions as may be stated therein;

(c) whether the offer or tender is made by way of settlement of both claim and costs or of the claim only;

(d) whether the defendant disclaims liability for the payment of costs or for part thereof, in which case the reasons for such disclaimer shall be given, and the action may then be set down on the question of costs alone.

(6) A plaintiff or party referred to in subrule (3) may within 15 days after the receipt of the notice referred to in subrule (5), or thereafter with the written consent of the defendant or third party or order of court, on such conditions as may be considered to be fair, accept any offer or tender, whereupon the registrar, having satisfied himself that the requirements of this subrule have been complied with, shall hand over the power of attorney referred to in subrule (2) to the plaintiff or his attorney.

(7) In the event of a failure to pay or to perform within 10 days after delivery of the notice of acceptance of the offer or tender, the party entitled to payment or

performance may, on five days' written notice to the party who has failed to pay or perform apply through the registrar to a judge for judgment in accordance with the offer or tender as well as for the costs of the application.

(8) If notice of the acceptance of the offer or tender in terms of subrule (6) or notice in terms of subrule (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 kilometres of the office of the registrar at which such notice must be delivered.

(9) If an offer or tender accepted in terms of this rule is not stated to be in satisfaction of a plaintiff's claim and costs, the party to whom the offer or tender is made may apply to the court, after notice of not less than five days, for an order for costs.

(10) No offer or tender in terms of this rule made without prejudice shall be disclosed to the court at any time before judgment has been given. No reference to such offer or tender shall appear on any file in the office of the registrar containing the papers in the said case.

(11) The fact that an offer or tender referred to in this rule has been made may be brought to the notice of the court after judgment has been given as being relevant to the question of costs.

(12) If the court has given judgment on the question of costs in ignorance of the offer or tender and it is brought to the notice of the registrar, in writing, within five days after the date of judgment, the question of costs shall be considered afresh in the light of the offer or tender: Provided that nothing in this subrule contained shall affect the court's discretion as to an award of costs.

(13) Any party who, contrary to this rule, personally or through any person representing him, discloses such an offer or tender to the judge or the court shall be liable to have costs given against him even if he is successful in the action.

(14) This rule shall apply *mutatis mutandis* where relief is claimed on motion or claim in reconvention or in terms of rule 13.

[Rule 34 substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

34A Interim Payments

(1) In an action for damages for personal injuries or the death of a person, the plaintiff may, at any time after the expiry of the period for the delivery of the notice of intention to defend, apply to the court for an order requiring the defendant to make an interim payment in respect of his claim for medical costs and loss of income arising from his physical disability or the death of a person.

(2) Subject to the provisions of rule 6 the affidavit in support of the application shall contain the amount of damages claimed and the grounds for the application, and all documentary proof or certified copies thereof on which the applicant relies shall accompany the affidavit.

(3) Notwithstanding the grant or refusal of an application for an interim payment, further such applications may be brought on good cause shown.

(4) If at the hearing of such an application, the court is satisfied that-

(a) the defendant against whom the order is sought has in writing admitted liability for the plaintiff's damages; or

(b) the plaintiff has obtained judgment against the respondent for damages to be determined,

the court may, if it thinks fit but subject to the provisions of subrule (5), order the respondent to make an interim payment of such amount as it thinks just, which

amount shall not exceed a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff taking into account any contributory negligence, set off or counterclaim.

(5) No order shall be made under subrule (4) unless it appears to the court that the defendant is insured in respect of the plaintiff's claim or that he has the means at his disposal to enable him to make such a payment.

(6) The amount of any interim payment ordered shall be paid in full to the plaintiff unless the court otherwise orders.

(7) Where an application has been made under subrule (1), the court may prescribe the procedure for the further conduct of the action and in particular may order the early trial thereof.

(8) The fact that an order has been made under subrule (4) shall not be pleaded and no disclosure of that fact shall be made to the court at the trial or at the hearing of questions or issues as to the quantum of damages until such questions or issues have been determined.

(9) In an action where an interim payment or an order for an interim payment has been made, the action shall not be discontinued or the claim withdrawn without the consent of the court.

(10) If an order for an interim payment has been made or such payment has been made, the court may, in making a final order, or when granting the plaintiff leave to discontinue his action or withdraw the claim under subrule (9) or at any stage of the proceedings on the application of any party, make an order with respect to the interim payment which the court may consider just and the court may in particular order that:

(a) the plaintiff repay all or part of the interim payment;

(b) the payment be varied or discharged; or

(c) a payment be made by any other defendant in respect of any part of the interim payment which the defendant, who made it, is entitled to recover by way of contribution or indemnity or in respect of any remedy or relief relating to the plaintiff's claim.

(11) The provisions of this rule shall apply *mutatis mutandis* to any claim in reconvention.

[Rule 34A inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

35 Discovery, Inspection and Production of Documents

(1) Any party to any action may require any other party thereto, by notice in writing, to make discovery on oath within twenty days of all documents and tape recordings relating to any matter in question in such action (whether such matter is one arising between the party requiring discovery and the party required to make discovery or not) which are or have at any time been in the possession or control of such other party. Such notice shall not, save with the leave of a judge, be given before the close of pleadings.

[Subrule (1) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) The party required to make discovery shall within twenty days or within the time stated in any order of a judge make discovery of such documents on affidavit as near as may be in accordance with Form 11 of the First Schedule, specifying separately-

(a) such documents and tape recordings in his possession or that of his

agent other than the documents and tape recordings mentioned in paragraph *(b)*;

(b) such documents and tape recordings in respect of which he has a valid objection to produce;

(c) such documents and tape recordings which he or his agent had but no longer has in his possession at the date of the affidavit.

A document shall be deemed to be sufficiently specified if it is described as being one of a bundle of documents of a specified nature, which have been initialled and consecutively numbered by the deponent. Statements of witnesses taken for purposes of the proceedings, communications between attorney and client and between attorney and advocate, pleadings, affidavits and notices in the action shall be omitted from the schedules.

[Subrule (2) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(3) If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him to make the same available for inspection in accordance with subrule (6), or to state an oath within ten days that such documents are not in his possession, in which event he shall state their whereabouts, if known to him.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) A document or tape recording not disclosed as aforesaid may not, save with the leave of the court granted on such terms as to it may seem meet, be used for any purpose at the trial by the party who was obliged but failed to disclose it, provided that any other party may use such document or tape recording.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(5) *(a)* Where a registered company as defined in the Motor Vehicle Insurance Act, 1942, as amended, is a party to any action by virtue of the provisions of the said Act, any party thereto may obtain discovery in the manner provided in paragraph *(d)* of this subrule against the driver or owner (as defined in the said Act) of the vehicle insured by the said company.

(b) The provisions of paragraph *(a)* shall apply *mutatis mutandis* to the driver of a vehicle owned by a person, state, government or body of persons referred to in sub-section (3) of section *nineteen* of the said Act.

(c) Where the plaintiff sues as a cessionary, the defendant shall *mutatis mutandis* have the same rights under this rule against the cedent.

(d) The party requiring discovery in terms of paragraph *(a)*, *(b)* or *(c)* shall do so by notice as near as may be in accordance with Form 12 of the First Schedule.

(6) Any party may at any time by notice as near as may be in accordance with Form 13 of the First Schedule require any party who has made discovery to make available for inspection any documents or tape recordings disclosed in terms of subrules (2) and (3). Such notice shall require the party to whom notice is given to deliver to him within five days a notice as near as may be in accordance with Form 14 of the First Schedule, stating a time within five days from the delivery of such latter notice when documents or tape recordings may be inspected at the office of his attorney or, if he is not represented by an attorney, at some convenient place

mentioned in the notice, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade, business or undertaking, at their usual place of custody. The party receiving such last-named notice shall be entitled at the time therein stated, and for a period of five days thereafter, during normal business hours and on any one or more of such days, to inspect such documents or tape recordings and to take copies or transcriptions thereof. A party's failure to produce any such document or tape recording for inspection shall preclude him from using it at the trial, save where the court on good cause shown allows otherwise.

[Subrule (6) substituted by GN R2004 of 15 December 1967, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(7) If any party fails to give discovery as aforesaid or, having been served with a notice under subrule (6), omits to give notice of a time for inspection as aforesaid or fails to give inspection as required by that subrule, the party desiring discovery or inspection may apply to a court, which may order compliance with this rule and, failing such compliance, may dismiss the claim or strike out the defence.

(8) Any party to an action may after the close of pleadings give notice to any other party to specify in writing particulars of dates and parties of or to any document or tape recording intended to be used at the trial of the action on behalf of the party to whom notice is given. The party receiving such notice shall not less than fifteen days before the date of trial deliver a notice-

(a) specifying the dates of and parties to and the general nature of any such document or tape recording which is in his possession; or

(b) specifying such particulars as he may have to identify any such document or tape recording not in his possession, at the same time furnishing the name and address of the person in whose possession such document or tape recording is.

[Subrule (8) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(9) Any party proposing to prove documents or tape recordings at a trial may give notice to any other party requiring him within ten days after the receipt of such notice to admit that those documents or tape recordings were properly executed and are what they purported to be. If the party receiving the said notice does not within the said period so admit, then as against such party the party giving the notice shall be entitled to produce the documents or tape recordings specified at the trial without proof other than proof (if it is disputed) that the documents or tape recordings are the documents or tape recordings referred to in the notice and that the notice was duly given. If the party receiving the notice states that the documents or tape recordings are not admitted as aforesaid, they shall be proved by the party giving the notice before he is entitled to use them at the trial, but the party not admitting them may be ordered to pay the costs of their proof.

[Subrule (9) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(10) Any party may give to any other party who has made discovery of a document or tape recording notice to produce at the hearing the original of such document or tape recording, not being a privileged document or tape recording, in such party's possession. Such notice shall be given not less than five days before the hearing but may, if the court so allows, be given during the course of the hearing. If any such notice is so given, the party giving the same may require the

party to whom notice is given to produce the said document or tape recording in court and shall be entitled, without calling any witness, to hand in the said document, which shall be receivable in evidence to the same extent as if it had been produced in evidence by the party to whom notice is given.

[Subrule (10) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(11) The court may, during the course of any proceeding, order the production by any party thereto under oath of such documents or tape recordings in his power or control relating to any matter in question in such proceeding as the court may think meet, and the court may deal with such documents or tape recordings, when produced, as it thinks meet.

[Subrule (11) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(12) Any party to any proceeding may at any time before the hearing thereof deliver a notice as near as may be in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to produce such document or tape recording for his inspection and to permit him to make a copy or transcription thereof. Any party failing to comply with such notice shall not, save with the leave of the court, use such document or tape recording in such proceeding provided that any other party may use such document or tape recording.

[Subrule (12) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(13) The provisions of this rule relating to discovery shall *mutatis mutandis* apply, in so far as the court may direct, to applications.

(14) After appearance to defend has been entered, any party to any action may, for purposes of pleading, require any other party to make available for inspection within five days a clearly specified document or tape recording in his possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof.

[Subrule (14) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(15) For purposes of rules 35 and 38 a tape recording includes a sound track, film, magnetic tape, record or any other material on which visual images, sound or other information can be recorded.

[Subrule (15) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

36 Inspections, Examinations and Expert Testimony

(1) Subject to the provisions of this rule any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed shall have the right to require any party claiming such damage or compensation, whose state of health is relevant for the determination thereof to submit to medical examination.

(2) Any party requiring another party to submit to such examination shall deliver a notice specifying the nature of the examination required, the person or persons by whom, the place where and the date (being not less than fifteen days from the date of such notice) and time when it is desired that such examination shall take place, and requiring such other party to submit himself for examination then

and there. Such notice shall state that such other party may have his own medical adviser present at such examination, and shall be accompanied by a remittance in respect of the reasonable expense to be incurred by such other party in attending such examination. Such expense shall be tendered on the scale as if such person were a witness in a civil suit before the court: Provided, however, that-

(a) if such other party is immobile, the amount to be paid to him shall include the cost of his travelling by motor vehicle and, where required, the reasonable cost of a person attending upon him;

(b) where such other party will actually lose his salary, wage or other remuneration during the period of his absence from work, he shall in addition to the aforementioned expenses be entitled to receive an amount not exceeding R75,00 per day in respect of the salary, wage or other remuneration which he will actually lose;

[Para. *(b)* amended by GN R417 of 14 March 1997.]

(c) any amounts paid by a party as aforesaid shall be costs in the cause unless the court otherwise directs.

[Subrule (2) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(3) The person receiving such notice shall within five days after the service thereof notify the person delivering it in writing of the nature and grounds of any objection which he may have in relation to-

(a) the nature of the proposed examination;

(b) the person or persons by whom the examination is to be conducted;

(c) the place, date or time of the examination;

(d) the amount of the expenses tendered to him;

and shall further-

(i) in the case of his objection being to the place, date or time of the examination, furnish an alternative date, time or place as the case may be; and

(ii) in the case of the objection being to the amount of the expenses tendered, furnish particulars of such increased amount as may be required.

Should the person receiving the notice not deliver such objection within the said period of five days, he shall be deemed to have agreed to the examination upon the terms set forth by the person giving the notice. Should the person giving the notice regard the objection raised by the person receiving it as unfounded in whole or in part he may on notice make application to a judge to determine the conditions upon which the examination, if any, is to be conducted.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) Any party to such an action may at any time by notice in writing require any person claiming such damages to make available in so far as he is able to do so to such party within ten days any medical reports, hospital records, X-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages, and to provide copies thereof upon request.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(5) If it appears from any medical examination carried out either by agreement between the parties or pursuant to any notice given in terms of this rule, or by order of a judge, that any further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of such damages, any party may require a second and final medical examination in accordance with the provisions of this rule.

(5A) If any party claims damages resulting from the death of another person, he shall undergo a medical examination as prescribed in this rule if this is requested and it is alleged that his own state of health is relevant in determining the damages.

[Subrule (5A) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(6) If it appears that the state or condition of any property of any nature whatsoever whether movable or immovable, may be relevant with regard to the decision of any matter at issue in any action, any party may at any stage give notice requiring the party relying upon the existence of such state or condition of such property or having such property in his possession or under his control to make it available for inspection or examination in terms of this subrule, and may in such notice require that such property or a fair sample thereof remain available for inspection or examination for a period of not more than ten days from the date of receipt of the notice.

[Subrule (6) substituted by GN R2004 of 15 December 1967, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(7) The party called upon to submit such property for examination may require the party requesting it to specify the nature of the examination to which it is to be submitted, and shall not be bound to submit such property thereto if this will materially prejudice such party by reason of the effect thereof upon such property. In the event of any dispute whether the property should be submitted for examination, such dispute shall be referred to a judge on notice delivered by either party stating that the examination is required and that objection is taken in terms of this subrule. In considering any such dispute the judge may make such order as to him seems meet.

[Subrule (7) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(8) Any party causing an examination to be made in terms of subrules (1) and (6) shall-

(a) cause the person making the examination to give a full report in writing of the results of his examination and the opinions that he formed as a result thereof on any relevant matter;

(b) after receipt of such report and upon request furnish any other party with a complete copy thereof; and

(c) bear the expense of the carrying out of any such examination: Provided that such expense shall form part of such party's costs.

(9) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall-

(a) not less than fifteen days before the hearing, have delivered notice of his intention so to do; and

[Para. *(a)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(b) not less than ten days before the trial, have delivered a summary of such expert's opinion and his reasons therefor.

(10) *(a)* No person shall, save with the leave of the court or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless he shall not less than fifteen days before the hearing have delivered a notice stating his intention to do so, offering inspection thereof and requiring the party receiving notice to admit the same within ten days after receipt of the notice.

[Para. *(a)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(b) If the party receiving the notice fails within the said period so to admit, the said plan, diagram, model or photograph shall be received in evidence upon its mere production and without further proof thereof. If such party states that he does not admit them, the said plan, diagram, model or photograph may be proved at the hearing and the party receiving the notice may be ordered to pay the cost of their proof.

37 Pre-trial conference

(1) A party who receives notice of the trial date of an action shall, if he has not yet made discovery in terms of rule 35, within 15 days deliver a sworn statement which complies with rule 35 (2).

(2) *(a)* A plaintiff who receives the notice contemplated in subrule (1) shall within five days deliver a notice in which he appoints a date, time and place for a pre-trial conference.

(b) If the plaintiff has failed to comply with paragraph *(a)*, the defendant may, within 30 days after the expiration of the period mentioned in that paragraph, deliver such notice.

(3) *(a)* The date, time and place for the pre-trial conference may be amended by agreement: Provided that the conference shall be held not later than six weeks prior to the date of hearing.

(b) If the parties do not agree on the date, time or place for the conference, the matter shall be submitted to the registrar for his decision.

(4) Each party shall, not later than 10 days prior to the pre-trial conference, furnish every other party with a list of-

(a) the admissions which he requires;

(b) the enquiries which he will direct and which are not included in a request for particulars for trial; and

(c) other matters regarding preparation for trial which he will raise for discussion.

(5) At the pre-trial conference the matters mentioned in subrules (4) and (6) shall be dealt with.

(6) The minutes of the pre-trial conference shall be prepared and signed by or on behalf of every party and the following shall appear therefrom:

(a) The place, date and duration of the conference and the names of the persons present;

(b) if a party feels that he is prejudiced because another party has not complied with the rules of court, the nature of such non-compliance

and prejudice;

(c) that every party claiming relief has requested his opponent to make a settlement proposal and that such opponent has reacted thereto;

(d) whether any issue has been referred by the parties for mediation, arbitration or decision by a third party and on what basis it has been so referred;

(e) whether the case should be transferred to another court;

(f) which issues should be decided separately in terms of rule 33 (4);

(g) the admissions made by each party;

(h) any dispute regarding the duty to begin or the onus of proof;

(i) any agreement regarding the production of proof by way of an affidavit in terms of rule 38 (2);

(j) which party will be responsible for the copying and other preparation of documents;

(k) which documents or copies of documents will, without further proof, serve as evidence of what they purport to be, which extracts may be proved without proving the whole document or any other agreement regarding the proof of documents.

(7) The minutes shall be filed with the registrar not later than five weeks prior to the trial date.

(8) *(a)* A judge, who need not be the judge presiding at the trial, may, if he deems it advisable, at any time at the request of a party or *meru motu*, call upon the attorneys or advocates for the parties to hold or to continue with a conference before a judge in chambers and may direct a party to be available personally at such conference.

(b) No provision of this rule shall be interpreted as requiring a judge before whom a conference is held to be involved in settlement negotiations, and the contents of a reaction to a request for a settlement proposal shall not be made known to a judge except with the consent of the judge and all parties.

(c) The judge may, with the consent of the parties and without any formal application, at such conference or thereafter give any direction which might promote the effective conclusion of the matter, including the granting of condonation in respect of this or any other rule.

(d) Unless the judge determines otherwise, the plaintiff shall prepare the minutes of the conference held before the judge and file them, duly signed, with the registrar within five days or within such longer period as the judge may determine.

(9) *(a)* At the hearing of the matter, the court shall consider whether or not it is appropriate to make a special order as to costs against a party or his attorney, because he or his attorney-

(i) did not attend a pre-trial conference; or

(ii) failed to a material degree to promote the effective disposal of the litigation.

(b) Except in respect of an attendance in terms of subrule (8) *(a)* no advocate's fees shall be allowed on a party-and-party basis in respect of a pre-trial conference held more than 10 days prior to the hearing.

(10) A judge in chambers may, without hearing the parties, order deviation from the time limits in this rule.

(11) A direction made in terms of this rule before the commencement of the trial may be amended.

[Rule 37 amended by GN R2021 of 5 November 1971 and by GN R960 of 28 May 1993 and substituted by GN R181 of 28 January 1994.]

37A[2]* .....

[Rule 37A inserted by GN 1843 of 1 October 1993, substituted by GN R1352 of 10 October 1997 and repealed by GN R373 of 30 April 2001.]

38 Procuring Evidence for Trial

(1) *(a)* Any party, desiring the attendance of any person to give evidence at a trial, may as of right, without any prior proceeding whatsoever, sue out from the office of the registrar one or more subpoenas for that purpose, each of which subpoenas shall contain the names of not more than four persons, and service thereof upon any person therein named shall be effected by the sheriff in the manner prescribed by rule 4, and the process for subpoenaing such witnesses shall be, as nearly as may be, in accordance with Form 16 in the First Schedule.

If any witness has in his possession or control any deed, instrument, writing or thing which the party requiring his attendance desires to be produced in evidence, the subpoena shall specify such document or thing and require him to produce it to the court at the trial.

[Para. *(a)* amended by GN R2410 of 30 September 1991.]

(b) Any witness who has been required to produce any deed, document, writing or tape recording at the trial shall hand it over to the registrar as soon as possible, unless the witness claims that the deed, document, writing or tape recording is privileged. Thereafter the parties may inspect such deed, document, writing or tape recording and make copies or transcriptions thereof, after which the witness is entitled to its return.

[Para. *(b)* added by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) The witnesses at the trial of any action shall be examined *viva voce*, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.

(3) A court may, on application on notice in any matter where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before or during the trial before a commissioner of the court, and permit any party to any such matter to use such deposition in evidence on such terms, if any, as to it seems meet, and in particular may order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or the furnishing of any particulars in the action.

(4) Where the evidence of any person is to be taken on commission before any commissioner within the Republic, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.

(5) Unless the court ordering the commission directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before the commissioner in terms of an order granted under subrule (3), shall be adduced upon oral examination in the presence of the parties, their

advocates and attorneys, and the witness concerned shall be subject to cross-examination and re-examination.

[Subrule (5) substituted by GN R235 of 18 February 1966.]

(6) A commissioner shall not decide upon the admissibility of evidence tendered, but shall note any objections made and such objections shall be decided by the court hearing the matter.

(7) Evidence taken on commission shall be recorded in such manner as evidence is recorded when taken before a court and the transcript of any shorthand record or record taken by mechanical means duly certified by the person transcribing the same and by the commissioner shall constitute the record of the examination: Provided that the evidence before the commissioner may be taken down in narrative form.

(8) The record of the evidence shall be returned by the commissioner to the registrar with his certificate to the effect that it is the record of the evidence given before him, and shall thereupon become part of the record in the case.

39 Trial

(1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him and judgment shall be given accordingly, in so far as he has discharged such burden. Provided that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.

(2) When a defendant has by his default been barred from pleading, and the case has been set down for hearing, and the default duly proved, the defendant shall not, save where the court in the interests of justice may otherwise order, be permitted, either personally or by an advocate, to appear at the hearing.

(3) If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant shall be entitled to an order granting absolution from the instance with costs, but may lead evidence with a view to satisfying the court that final judgment should be granted in his favour and the court, if so satisfied, may grant such judgment.

(4) The provisions of subrules (1) and (2) shall apply to any person making any claim (whether by way of claim in reconvention or third party notice or by any other means) as if he were a plaintiff, and the provisions of subrule (3) shall apply to any person against whom such a claim is made as if he were a defendant.

(5) Where the burden of proof is on the plaintiff, he or one advocate for the plaintiff may briefly outline the facts intended to be proved and the plaintiff may then proceed to the proof thereof.

(6) At the close of the case for the plaintiff, the defendant may apply for absolution from the instance, in which event the defendant or one advocate on his behalf may address the court and the plaintiff or one advocate on his behalf may reply. The defendant or his advocate may thereupon reply on any matter arising out of the address of the plaintiff or his advocate.

(7) If absolution from the instance is not applied for or has been refused and the defendant has not closed his case, the defendant or one advocate on his behalf may briefly outline the facts intended to be proved and the defendant may then proceed to the proof thereof.

(8) Each witness shall, where a party is represented, be examined, cross-examined or re-examined as the case may be by only one (though not necessarily the same) advocate for such party.

(9) If the burden of proof is on the defendant, he or his advocate shall have the same rights as those accorded to the plaintiff or his advocate by subrule (5).

(10) Upon the cases on both sides being closed, the plaintiff or one or more of the advocates on his behalf may address the court and the defendant or one or more advocates on his behalf may do so, after which the plaintiff or one advocate only on his behalf may reply on any matter arising out of the address of the defendant or his advocate.

(11) Either party may apply at the opening of the trial for a ruling by the court upon the onus of adducing evidence, and the court after hearing argument may give a ruling as to the party upon whom such onus lies: Provided that such ruling may thereafter be altered to prevent injustice.

(12) If there be one or more third parties or if there be defendants to a claim in reconvention who are not plaintiffs in the action, any such party shall be entitled to address the court in opening his case and shall lead his evidence after the evidence of the plaintiff and of the defendant has been concluded and before any address at the conclusion of such evidence. Save in so far as the court shall otherwise direct, the defendants to any counterclaim who are not plaintiffs shall first lead their evidence and thereafter any third parties shall lead their evidence in the order in which they became third parties. If the onus of adducing evidence is on the claimant against the third party or on the defendant to any claim in reconvention, the court shall make such order as may seem convenient with regard to the order in which the parties shall conduct their cases and address the court, and in regard to their respective rights of reply. The provisions of subrule (11) shall *mutatis mutandis* apply with regard to any dispute as to the onus of adducing evidence.

(13) Where the onus of adducing evidence on one or more of the issues is on the plaintiff and that of adducing evidence on any other issue is on the defendant, the plaintiff shall first call his evidence on any issues in respect of which the onus is upon him, and may then close his case. The defendant, if absolution from the instance is not granted, shall, if he does not close his case, thereupon call his evidence on all issues in respect of which such onus is upon him.

(14) After the defendant has called his evidence, the plaintiff shall have the right to call rebutting evidence on any issues in respect of which the onus was on the defendant: Provided that if the plaintiff shall have called evidence on any such issues before closing his case he shall not have the right to call any further evidence thereon.

(15) Nothing in subrule (13) and (14) contained shall prevent the defendant from cross-examining any witness called at any stage by the plaintiff on any issue in dispute, and the plaintiff shall be entitled to re-examine such witness consequent upon such cross-examination without affecting the right given to him by subrule (14) to call evidence at a later stage on the issue on which such witness has been cross-examined. The plaintiff may further call the witness so re-examined to give evidence on any such issue at a later stage.

(16) A record shall be made of-

(a) any judgment or ruling given by the court,

(b) any evidence given in court,

(c) any objection made to any evidence received or tendered,

(d) the proceedings of the court generally (including any inspection *in loco* and any matter demonstrated by any witness in court); and

(e) any other portion of the proceedings which the court may specifically order to be recorded.

(17) Such record shall be kept by such means as to the court seems appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.

(18) The shorthand notes so taken or any mechanical record shall be certified by the person taking the same to be correct and shall be filed with the registrar. It shall not be necessary to transcribe them unless the court or a judge so directs or a party appealing so requires. If and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing them and the transcript, the shorthand notes and the mechanical record shall be filed with the registrar. The transcript of the shorthand notes or mechanical record certified as correct shall be deemed to be correct unless the court otherwise orders.

(19) Any party to any matter in which a record has been made in shorthand or by mechanical means may apply in writing through the registrar to a judge to have the record transcribed if an order to that effect has not already been made. Such party shall be entitled to a copy of any transcript ordered to be made upon payment of the prescribed fees.

(20) If it appears convenient to do so, the court may at any time make any order with regard to the conduct of the trial as to it seems meet, and thereby vary any procedure laid down by this rule.

(21) Every stenographer employed to take down a record and every person employed to make a mechanical record of any proceedings shall be deemed to be an officer of the court and shall, before entering on his duties, take the following oath:

> I, A.B., do swear that I shall faithfully, and to the best of my ability, record in shorthand, or cause to be recorded by mechanical means, as directed by the judge, the proceedings in any case in which I may be employed as an officer of the court, and that I shall similarly, when required to do so, transcribe the same or, as far as I am able, any shorthand notes, or mechanical record, made by another stenographer or person employed to make such mechanical record.

[Subrule (21) substituted by GN R235 of 18 February 1966.]

(22) By consent the parties to a trial shall be entitled, at any time, before trial, on written application to a judge through the registrar, to have the cause transferred to the magistrate's court: Provided that the matter is one within the jurisdiction of the latter court whether by way of consent or otherwise.

(23) The judge may, at the conclusion of the evidence in trial actions, confer with the advocates in his chambers as to the form and duration of the addresses to be submitted in court.

(24) Where the court considers that the proceedings have been unduly prolonged by the successful party by the calling of unnecessary witnesses or by excessive examination or cross-examination, or by over-elaboration in argument, it may penalize such party in the matter of costs.

40 *In Forma Pauperis*

(1) *(a)* A person who desires to bring or defend proceedings *in forma pauperis*, may apply to the registrar who, if it appears to him that he is a person such as is contemplated by paragraph *(a)* of subrule (2), shall refer him to an attorney and at the same time inform the local society of advocates accordingly.

(b) Such attorney shall thereupon inquire into such person's means and the merits of his cause and upon being satisfied that the matter is one in which he may properly act *in forma pauperis*, he shall request the said society to nominate an advocate who is willing and able to act, and upon being so nominated such advocate shall act therein.

(c) Should such attorney or advocate thereafter become unable so to act, the registrar or the said society, as the case may be, may, upon request, nominate another practitioner to act in his stead.

(2) If when proceedings are instituted there be lodged with the registrar on behalf of such person-

(a) an affidavit setting forth fully his financial position and stating that, excepting household goods, wearing apparel and tools of trade, he is not possessed of property to the amount of R10 000 and will not be able within a reasonable time to provide such sum from his earnings;

[Para. *(a)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 and amended by GN R109 of 22 January 1993.]

(b) a statement signed by the advocate and attorney aforementioned that being satisfied that the person concerned is unable to pay fees they are acting for the said person in their respective professional capacities gratuitously in the proceedings to be instituted by him; and

(c) a certificate of *probabilis causa* by the said advocate,

the registrar shall issue all process and accept all documents in the said proceedings for the aforesaid person without fee of office.

(3) All pleadings, process and documents filed of record by a party proceeding *in forma pauperis* shall be headed accordingly.

(4) The registrar shall maintain in his office a roster of attorneys, and in referring persons desirous of bringing or defending proceedings *in forma pauperis* to practitioners in terms of subrule (1), he shall do so as far as possible in rotation.

(5) The said advocate and attorney shall thereafter act gratuitously for the said person in their respective capacities in the said proceedings, and shall not be at liberty to withdraw, settle or compromise such proceedings, or to discontinue their assistance, without the leave of a judge, who may in the latter event give directions as to the appointment of substitutes.

(6) When a person sues or defends *in forma pauperis* under process issued in terms of this rule, his opponent shall, in addition to any other right he might have, have the right at any time to apply to the court on notice for an order dismissing the claim or defence or for an order debarring him from continuing *in forma pauperis*; and upon the hearing of such application the court may make such order thereon, including any order as to costs, as to it seems meet.

(7) If upon the conclusion of the proceedings a litigant *in forma pauperis* is awarded costs, his attorney may include in his bill of costs such fees and disbursements to which he would ordinarily have been entitled, and upon receipt thereof, in whole or in part, he shall pay out in the following order of preference: first, to the registrar, such amount in revenue stamps as would have been due in respect of his fees of office; second, to the sheriff, his charges for the service and execution of process; third, to himself and the advocate, their fees as allowed on taxation, *pro rata* if necessary.

[Subrule (7) amended by GN R2410 of 30 September 1991.]

41 Withdrawal, Settlement, Discontinuance, Postponement and Abandonment

(1) *(a)* A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs; and the taxing master shall tax such costs on the request of the other party.

(b) A consent to pay costs referred to in paragraph *(a)*, shall have the effect of an order of court for such costs.

(c) If no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to court on notice for an order for costs.

[Subrule (1) substituted by GN R2021 of 5 November 1971.]

(2) Any party in whose favour any decision or judgment has been given, may abandon such decision or judgment either in whole or in part by delivering notice thereof and such judgment or decision abandoned in part shall have effect subject to such abandonment. The provisions of subrule (1) relating to costs shall *mutatis mutandis* apply in the case of a notice delivered in terms of this subrule.

[Subrule (2) substituted by GN R2004 of 15 December 1967.]

(3) If in any proceedings a settlement or an agreement to postpone or withdraw is reached, it shall be the duty of the attorney for the plaintiff or applicant immediately to inform the registrar accordingly.

(4) Unless such proceedings have been withdrawn, any party to a settlement which has been reduced to writing and signed by the parties or their legal representatives but which has not been carried out, may apply for judgment in terms thereof on at least five days' notice to all interested parties.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

42 Variation and Rescission of Orders

(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

[Para. *(a)* as substituted by GN R235 of 18 February 1966.]

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.

43 Matrimonial Matters

(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) Maintenance *pendente lite*;

(b) a contribution towards the costs of a pending matrimonial action;

(c) interim custody of any child;

(d) interim access to any child.

(2) The applicant shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds therefor, together with a

notice to the respondent as near as may be in accordance with Form 17 of the First Schedule. The statement and notice shall be signed by the applicant or his attorney and shall give an address for service within eight kilometres of the office of the registrar, and shall be served by the sheriff.

[Subrule (2) substituted by GN R2021 of 5 November 1971 and amended by GN R960 of 28 May 1993.]

(3) The respondent shall within ten days after receiving the statement deliver a sworn reply in the nature of a plea, signed and giving an address as aforesaid, in default of which he shall be *ipso facto* barred.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) As soon as possible thereafter the registrar shall bring the matter before the court for summary hearing, on ten days' notice to the parties, unless the respondent is in default.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(5) The court may hear such evidence as it considers necessary and may dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision.

[Subrules (3) and (5) substituted by GN R235 of 18 February 1966.]

(6) The court may, on the same procedure, vary its decision in the event of a material change taking place in the circumstances of either party or a child, or the contribution towards costs proving inadequate.

(7) No advocate appearing in a case under this rule shall charge a fee of more than R80 if the claim is undefended or R170 if it is defended, unless the court in an exceptional case otherwise directs.

[Subrule (7) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 and amended by GN R2845 of 29 November 1991.]

(8) No instructing attorney in cases under this rule shall charge a fee of more than R300 if the claim is undefended or R350 if it is defended, unless the court in an exceptional case otherwise directs.

[Subrule (8) inserted by GN 2171 of 6 October 1982 and amended by GN R2845 of 29 November 1991.]

44 Undefended Divorce Actions

When an undefended divorce action is postponed the action may be continued before another court notwithstanding that evidence has been given.

[Rule 44 substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

45 Execution - General and Movables

(1) The party in whose favour any judgment of the court has been pronounced may, at his own risk, sue out of the office of the registrar one or more writs for execution thereof as near as may be in accordance with Form 18 of the First Schedule: Provided that, except where immovable property has been specially declared executable by the court or, in the case of a judgment granted in terms of

rule 31 (5), by the registrar, no such process shall issue against the immovable property of any person until a return shall have been made of any process which may have been issued against his movable property, and the registrar perceives therefrom that the said person has not sufficient movable property to satisfy the writ.

[Subrule (1) substituted by GN R181 of 28 January 1994.]

(2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the taxing master or agreed to in writing by the party concerned in a fixed sum: Provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter, provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated, not lodged with the sheriff before the day of the sale, such costs shall be excluded from his account and plan of distribution.

[Subrule (2) amended by GN R2410 of 30 September 1991.]

(3) Whenever by any process of the court the sheriff is commanded to levy and raise any sum of money upon the goods of any person, he shall forthwith himself or by his assistant proceed to the dwelling-house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached), and there-

(a) demand satisfaction of the writ and, failing satisfaction,

(b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the said writ, and failing such pointing out,

(c) search for such property.

Any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of subrule (5), shall be taken into the custody of the sheriff: Provided-

(i) that if there is any claim made by any other person to any such property seized or about to be seized by the sheriff, then, if the plaintiff gives the sheriff an indemnity to his satisfaction to save him harmless from any loss or damage by reason of the seizure thereof, the sheriff shall retain or shall seize, as the case may be, make an inventory of and keep the said property; and

(ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him, unless his whereabouts are unknown.

[Subrule (3) amended by GN R2410 of 30 September 1991.]

(4) The sheriff shall file with the registrar any process with a return of what he has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.

[Subrule (4) amended by GN R2410 of 30 September 1991.]

(5) Where any movable property has been attached by the sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, unless the said

attachment shall sooner have been legally removed, whereupon the sheriff shall leave the said property attached and inventoried on the premises where it was found. The deed of suretyship shall be as near as may be in accordance with Form 19 of the First Schedule.

[Subrule (5) amended by GN R2410 of 30 September 1991.]

(6) If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the sheriff shall remove the said goods to some convenient place of security or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.

[Subrule (6) amended by GN R2410 of 30 September 1991.]

(7) *(a)* Where any movable property is attached as aforesaid the sheriff shall where practicable and subject to rule 58 sell it by public auction to the highest bidder after due advertisement by the execution creditor in a newspaper circulating in the district in which the property has been attached and after expiration of not less than 15 days from the time of seizure thereof.

(b) Where perishables are attached as aforesaid, they may with the consent of the execution debtor or upon the execution creditor indemnifying the sheriff against any claim for damages which may arise from such sale, be sold immediately by the sheriff concerned in such manner as seems expedient.

(c) The sheriff shall not later than 15 days before the date of sale either in terms of paragraph *(a)* or paragraph *(b)*, forward a notice of sale to all other sheriffs appointed in that area.

[Subrule (7) substituted by GN R2004 of 15 December 1967 and amended by GN R608 of 31 March 1989, by GN R2410 of 30 September 1991 and by GN R1343 of 12 December 2008.]

(8) If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided:

(a) Where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when-

(i) notice has been given by the sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security as the case may be, and

(ii) the sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note, bond or other security as the case may be, and

(iii) in the case of a registered lease or any registered right, notice has been given to the registrar of deeds.

(b) Where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution. The sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of the said interest.

(c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid,

(i) the attachment shall only be complete when-

(a) notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered, and

(b) the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document;

(ii) the sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

[Subrule (8) amended by GN R2410 of 30 September 1991.]

(9) Attachment of property subject to a lien shall be effected *mutatis mutandis* in accordance with the provisions of sub-paragraph *(b)* of subrule (8).

(10) Where property subject to a real right of any third person is sold in execution such sale shall be subject to the rights of such third person unless he otherwise agrees.

(11) *(a)* (i) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with any sheriff appointed for a particular area or any other sheriff before or on the day of the sale in execution shall rank *pro rata* in the distribution of the proceeds of the goods sold, in the order of preference referred to in paragraph *(c)* of subrule (14) of rule 46.

[Subpara. (i), previously para. *(a)*, renumbered and amended by GN R1343 of 12 December 2008.]

(ii) The sheriff conducting the sale in execution shall not less than 10 days prior to the date of sale forward a copy of the notice of sale to all other sheriffs appointed in the district in which he or she has been instructed to conduct a sale in respect of the attached goods.

[Subpara. (ii) added by GN R1343 of 12 December 2008.]

(iii) The sheriff conducting the sale shall accept from all other sheriffs appointed in that district or any other sheriff a certificate listing any attachment that has been made and showing the ranking of creditors in terms of warrants in the possession of those sheriffs.

[Subpara. (iii) added by GN R1343 of 12 December 2008.]

(b) If there should remain any surplus, the sheriff shall pay it over to the judgment debtor; and the sheriff shall make out and deliver to him an exact account, in writing of his costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and if upon taxation any sum shall be disallowed, the sheriff shall refund such sum to the judgment debtor.

[Subrule (11) amended by GN R2410 of 30 September 1991.]

(12) *(a)* Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment by him to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro tanto*, of the debt attached.

(b) In the event of the garnishee refusing or neglecting to comply with any such notice, the sheriff shall forthwith notify the judgment creditor and the judgment creditor may call upon the garnishee to appear before the court to show cause why he should not pay to the sheriff the debt due, or so much thereof as may be sufficient to satisfy the writ, and if the garnishee does not dispute the debt due, or claimed to be due by him to the party against whom execution is issued, or he does not appear to answer to such notice, then the court may order execution to issue, and it may issue accordingly, without any previous writ or process, for the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the writ.

(c) If the garnishee disputes his liability in part, the court may order execution to issue in respect of so much as may be admitted, but if none be admitted then the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner *mutatis mutandis* in which any issue or question in any action may be tried or determined, or the court may make any such other order in the premises as may be just.

(d) Nothing in these Rules as to the attachment of debts in the hands of a garnishee shall affect any cession, preference, or retention claimed by any third person in respect of such debts.

(e) The costs connected with any application for the attachment of debts, and the proceedings arising from or incidental thereto, shall be in the discretion of the court.

(f) Where the sheriff is of opinion that applications to the court or orders with respect to a garnishee will probably cost more than the amount to be recovered thereunder, he may sell such debts, after attachment, by auction, in the same way as any other movable property, or may cede the same at the nominal amount thereof to the judgment creditor with his consent.

(g) Payment of the amount due under and in respect of any writ, and all costs and the like, incidental thereto, shall entitle the person paying to a withdrawal thereof.

(h) to *(k)* inclusive .....

[Paras. *(h)* to *(k)* inclusive deleted by GN R608 of 31 March 1989.]

[Subrule (12) added by GN R235 of 18 February 1966.]

(13) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any of the property offered for sale either for himself or for any other person.

[Subrule (13) added by GN R1843 of 1 October 1993.]

45A Suspension of orders by the court

The court may suspend the execution of any order for such period as it may deem fit.

[Rule 45A inserted by GN R1262 of 1991.]

46 Execution - Immovables

(1) A writ of execution against immovable property shall contain a full description of the nature and situation (including the address) of the immovable property to enable it to be traced and identified by the sheriff; and shall be accompanied by sufficient information to enable him to give effect to subrule (3) hereof.

[Subrule (1) amended by GN R2410 of 30 September 1991.]

(2) An attachment shall be made by any sheriff of the district in which the property is situate or by any sheriff of the district in which the office of the registrar of deeds or other officer charged with the registration of such property is situate, upon a writ corresponding substantially* with Form 20 of the First Schedule.

[Subrule (2) amended by GN R2410 of 30 September 1991 and by GN R1343 of 12 December 2008.]

(3) The mode of attachment of immovable property shall be by notice in writing by the sheriff served upon the owner thereof, and upon the registrar of deeds or other officer charged with the registration of such immovable property, and if the property is in the occupation of some person other than the owner, also upon such occupier. Any such notice as aforesaid shall be served by means of a registered letter, duly prepaid and posted addressed to the person intended to be served.

[Subrule (3) amended by GN R2410 of 30 September 1991.]

(4) *(a)* After attachment, any sale in execution shall take place in the district in which the attached property is situate and be conducted by the sheriff of such district who first attached the property: Provided that the sheriff in the first instance and subject to the provisions of paragraph *(b)* of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

(b) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record 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 and shall thereupon notify the execution creditor accordingly.

[Subrule (4) amended by GN R2410 of 30 September 1991 and by GN R1343 of 12 December 2008.]

(5) No immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless-

(a) the execution creditor has caused notice, in writing, of the intended sale to be served by registered post upon the preferent creditor, if his address is known and, if the property is rateable, upon the local authority concerned calling upon them to stipulate within ten days of a date to be stated a reasonable reserve price or to agree in writing to a sale without reserve; and has provided proof to the sheriff that the preferent creditor has so stipulated or agreed, or

(b) the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph *(a)* of this subrule within the time stated in such notice.

[Subrule (5) amended by GN R2410 of 30 September 1991.]

(6) The sheriff may by notice served upon any person require him to deliver up to him forthwith all documents in his possession or control relating to the debtor's title to the said property.

[Subrule (6) amended by GN R2410 of 30 September 1991.]

(7) *(a)* The sheriff conducting the sale shall appoint a day and place for the sale of such property, such day being, except by special leave of a magistrate, not less than one month after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.

[Para. *(a)* amended by GN R1343 of 12 December 2008.]

(b) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the property, its situation and street number, if any, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale, and he or she shall furnish the said sheriff with as many copies of the notice as the latter may require.

[Para. *(b)* amended by GN R1343 of 12 December 2008.]

(c) The execution creditor shall publish the notice once in a newspaper circulating in the district in which the immovable property is situate and in the *Government Gazette* not less than 5 days and not more than 15 days before the date of the sale and provide the sheriff conducting the sale, by hand or by facsimile, with one photocopy of each of the notices published in the newspaper and the *Government Gazette*, respectively, or in the case of the *Government Gazette*, the number of the *Government Gazette* in which the notice was published.

[Para. *(c)* substituted by GN R2004 of 15 December 1967, by GN R785 of 5 June 1998 and by GN R1024 of 7 August 1998 and amended by GN R1343 of 12 December 2008.]

(d) Not less than 10 days prior to the sale, the sheriff conducting the sale shall forward by registered post a copy of the notice of sale referred to in paragraph *(b)* above to every judgment/execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.

[Para. *(d)* amended by GN R1343 of 12 December 2008.]

(e) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall affix one copy of the notice on the notice-board of the magistrate's court of the district in which the property is situate, or if the property be situate in the district in which the court out of which the writ issued is situate, then on the notice-board of such court, and one copy at or as near as may be to the place where the said sale is actually to take place.

[Para. *(e)* amended by GN R1343 of 12 December 2008.]

[Subrule (7) amended by GN R2410 of 30 September 1991.]

(8) *(a)* (i) The conditions of sale shall, not less than 20 days prior to the date of the sale, be prepared by the execution creditor corresponding substantially with Form 21 of the First Schedule, and the said conditions of sale shall be submitted to the sheriff conducting the sale to settle them.

(ii) The execution creditor shall thereafter supply the said sheriff with two

copies of the conditions of sale, one of which shall lie for inspection by interested parties at his or her office and the sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.

[Para. *(a)* amended by GN R2410 of 30 September 1991 and by GN R1343 of 12 December 2008.]

(b) Any interested party may, not less than 10 days prior to the date of the sale, upon twenty-four hours' notice to the execution creditor and the bondholders apply to the magistrate of the district in which the property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an order as to costs, as to him may seem meet.

[Para. *(b)* amended by GN R2410 of 30 September 1991.]

(9) The execution creditor may appoint an attorney to attend to the transfer of the property when sold in execution.

(10) Immovable property attached in execution shall be sold by the sheriff by public auction.

[Subrule (10) amended by GN R2410 of 30 September 1991.]

(11) *(a)* If the purchaser fails to carry out any of his or her obligations under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the property may again be put up for sale.

(b) The purchaser shall be responsible for any loss sustained by reason of his or her default, which loss may, on the application of any aggrieved creditor whose name appears on the said sheriff's distribution account, be recovered from him or her under judgment of the judge pronounced summarily on a written report by the said sheriff, after such purchaser shall have received notice in writing that such report will be laid before the judge for such purpose.

(c) If such purchaser is already in possession of the property, the said sheriff may, on 10 days' notice apply to a judge for an order ejecting him or her or any person claiming to hold under him or her therefrom.

[Subrule (11) amended by GN R2410 of 30 September 1991 and by GN R1343 of 12 December 2008.]

(12) Subject to the provisions of subrule (5), the sale shall be without reserve and upon the conditions stipulated under subrule (8), and the property shall be sold to the highest bidder.

(13) The sheriff conducting the sale shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration or transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.

[Subrule (13) amended by GN R2410 of 30 September 1991 and by GN R1343 of 12 December 2008.]

(14) *(a)* The sheriff conducting the sale shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, but upon receipt thereof he or she shall forthwith pay into the deposit account of the magistrate of the district all moneys received in respect of the purchase price and simultaneously inform all other sheriffs appointed in that district of such payment.

[Para. *(a)* amended by GN R2410 of 30 September 1991 and by GN R1343 of 12

December 2008.]

(b) The said sheriff shall as soon as possible after the sale prepare in order of preference, as hereinafter provided, a plan of distribution of the proceeds and shall forward a copy of such plan to the registrar of the court and to all other sheriffs appointed in that district. Immediately thereafter the said sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for 15 days from a date mentioned at his or her office and at the office of the registrar, and unless such parties shall signify, in writing, their agreement to the plan, such plan shall so lie for inspection.

[Para. *(b)* substituted by GN R2021 of 5 November 1971 and amended by GN R2410 of 30 September 1991and by GN R1343 of 12 December 2008.]

(c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference:

(i) The claims of preferent creditors ranking in priority in their legal order of preference; and thereafter

(ii) the claims of other creditors whose writs have been lodged with the sheriff in the order of preference appearing from sections *ninety-six* and *ninety-nine* to *one hundred and three* (inclusive) of the Insolvency Act, 1936 (Act 24 of 1936) as amended.

(d) Any interested person objecting to such plan shall, within five days of the expiry of the period referred to in paragraph *(b)* of this subrule give notice in writing to the sheriff and all other interested persons of the particulars of his objection and shall bring such objection before a judge for review on 10 days' notice to the sheriff and the said persons.

[Para. *(d)* amended by GN R2410 of 30 September 1991.]

(e) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as to him seems meet.

(f) If-

(i) no objection be lodged to such plan, or

(ii) the interested parties signify their concurrence therein, or

(iii) the plan is confirmed or amended on review,

the magistrate shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser and on the request of the sheriff, pay out in accordance with the plan of distribution. If the address of a payee is not known the amount due to him shall be paid into the Guardian's Fund established under any law relating to the administration of estates.

[Subrule (14) amended by GN R2410 of 30 September 1991.]

(15) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any of the property offered for sale either for himself or for any other person.

[Subrule (15) added by GN R1843 of 1 October 1993.]

(16) In this rule, the word 'days' shall have the same meaning as 'court days' as defined in rule 1 of these Rules.

[Subrule (16) added by GN R1746 of 25 October 1996.]

47 Security for costs

(1) A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.

(2) If the amount of security only is contested the registrar shall determine the amount to be given and his decision shall be final.

(3) If the party from whom security is demanded contests his liability to give security or if he fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within ten days of the demand or the registrar's decision, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

(4) The court may, if security be not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as to it may seem meet.

(5) Any security for costs shall, unless the court otherwise directs, or the parties otherwise agree, be given in the form, amount and manner directed by the registrar.

(6) The registrar may, upon the application of the party in whose favour security is to be provided and on notice to interested parties, increase the amount thereof if he is satisfied that the amount originally furnished is no longer sufficient; and his decision shall be final.

47A

Notwithstanding anything contained in these Rules a person to whom legal aid is rendered by a statutorily established legal aid board is not compelled to give security for the costs of the opposing party, unless the court directs otherwise.

[Rule 47A inserted by GN R2477 of 17 December 1976.]

48 Review of Taxation

(1) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within 15 days after the *allocatur* by notice require the taxing master to state a case for the decision of a judge.

(2) The notice referred to in subrule (1) must-

(a) identify each item or part of an item in respect of which the decision of the taxing master is sought to be reviewed;

(b) contain the allegation that each such item or part thereof was objected to at the taxation by the dissatisfied party, or that it was disallowed *mero motu* by the taxing master;

(c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof; and

(d) contain any finding of fact which the dissatisfied party contends the taxing master has made and which the dissatisfied party intends to challenge, stating the ground of such challenge, but not argument in support thereof.

(3) The taxing master must-

(a) supply his or her stated case to each of the parties within 20 days after he or she has received a notice referred to in subrule (1); and

(b) set out any finding of fact in the stated case.

(4) Save with the consent of the taxing master, no case shall be stated where

the amount, or the total of the amounts, which the taxing master has disallowed or allowed, as the case may be, and which the dissatisfied party seeks to have allowed or disallowed respectively, is less than R100.

(5) *(a)* The parties to whom a copy of the stated case has been supplied, may within 15 days after receipt thereof make submissions in writing thereon, including grounds of objection not raised at the taxation, in respect of any item or part of an item which was objected to before the taxing master or disallowed *mero motu* by the taxing master.

(b) The taxing master must within 20 days after receipt of the submissions referred to in paragraph *(a)*, supply his or her report to each of the parties.

(c) The parties may within 10 days after receipt of the report by the taxing master, make further written submissions thereon to the taxing master, who shall forthwith lay the case together with the submissions before a judge.

(6) *(a)* The judge may-

(i) decide the matter upon the merits of the case and submissions so submitted.

(ii) require any further information from the taxing master;

(iii) if he or she deems it fit, hear the parties or their advocates or attorneys in his or her chambers; or

(iv) refer the case for decision to the court.

(b) Any further information to be supplied by the taxing master to the judge must also be supplied to the parties who may within 10 days after receipt thereof, make written submissions thereon to the taxing master, who shall forthwith lay such information together with any submissions of the parties thereon before the judge.

(7) The judge or court deciding the matter may make such order as to costs of the case as he or she or it may deem fit, including an order that the unsuccessful party pay to the successful party the costs of review in a sum fixed by the judge or court.

[Rule 48 amended by GN R235 of 18 February 1966, by GN R2004 of 15 December 1967, by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 and substituted by GN R849 of 25 August 2000.]

49 Civil Appeals from the High Court

[Heading substituted by GN R518 of 2009.]

(1) *(a)* When leave to appeal is required, it may on a statement of the grounds therefor be requested at the time of the judgment or order.

(b) When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within fifteen days after the date of the order appealed against: Provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within fifteen days after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of fifteen days.

[Para *(b)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(c) When in giving an order the court declares that the reasons for the order will be furnished to any of the parties on application, such application shall be delivered within ten days after the date of the order.

[Para *(c)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(d) The application mentioned in paragraph *(b)* above shall be set down on a date arranged by the registrar who shall give written notice thereof to the parties.

(e) Such application shall be heard by the judge who presided at the trial or, if he is not available, by another judge of the division of which the said judge, when he so presided, was a member.

(2) If leave to appeal to the full court is granted the notice of appeal shall be delivered to all the parties within twenty days after the date upon which leave was granted or within such longer period as may upon good cause shown be permitted.

[Subrule (2) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(3) The notice of appeal shall state whether the whole or part only of the judgment or order is appealed against and if only part of such judgment or order is appealed against, it shall state which part and shall further specify the finding of fact and/or ruling of law appealed against and the grounds upon which the appeal is founded.

(4) A notice of cross-appeal shall be delivered within ten days after delivery of the notice of appeal or within such longer period as may upon good cause shown be permitted and the provisions of these Rules with regard to appeals shall *mutatis mutandis* apply to cross-appeals.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(5) In the case of an appeal against the judgment or order of the court of the Witwatersrand Local Division, the judge president of the Transvaal Provincial Division shall determine whether the appeal should be heard by the full court of the said local division. As soon as possible after receipt of the notice of appeal or cross-appeal, if any, the registrar of the local division shall ascertain from the judge president his direction in the particular case. If the judge president has directed that the appeal be heard by the full court of the Witwatersrand Local Division, the said registrar shall immediately inform the parties of the direction. If not so directed by the judge president, the said registrar shall inform the registrar of the provincial division as well as the parties accordingly.

(6) *(a)* Within sixty days after delivery of a notice of appeal, an appellant shall make written application to the registrar of the division where the appeal is to be heard for a date for the hearing of such appeal and shall at the same time furnish him with his full residential address and the name and address of every other party to the appeal and if the appellant fails to do so a respondent may within ten days after the expiry of the said period of sixty days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which he may have noted. If no such application is made by either party the appeal and cross-appeal shall be deemed to have lapsed: Provided that a respondent shall have the right to apply for an order for his wasted costs.

[Para *(a)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(b) The court to which the appeal is made may, on application of the appellant or cross-appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed.

(7) *(a)* At the same time as the application for a date for the hearing of an

appeal in terms of subrule (6) *(a)* of this rule the appellant shall file with the registrar three copies of the record on appeal and shall furnish two copies to the respondent. The registrar shall further be provided with a complete index and copies of all papers, documents and exhibits in the case, except formal and immaterial documents: Provided that such omissions shall be referred to in the said index. If the necessary copies of the record are not ready at that stage, the registrar may accept an application for a date of hearing without the necessary copies if-

(i) the application is accompanied by a written agreement between the parties that the copies of the record may be handed in late; or

(ii) failing such agreement, the appellant delivers an application together with an affidavit in which the reasons for his omission to hand in the copies of the record in time are set out and in which is indicated that an application for condonation of the omission will be made at the hearing of the appeal.

(b) The two copies of the record to be served on the respondent shall be served at the same time as the filing of the aforementioned three copies with the registrar.

(c) After delivery of the copies of the record, the registrar of the court that is to hear the appeal or cross-appeal shall assign a date for the hearing of the appeal or for the application for condonation and appeal, as the case may be, and shall set the appeal down for hearing on the said date and shall give the parties at least twenty days' notice in writing of the date so assigned.

[Para *(c)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(d) If the party who applied for a date for the hearing of the appeal neglects or fails to file or deliver the said copies of the record within 40 days after the acceptance by the registrar of the application for a date of hearing in terms of subrule (7) *(a)* the other party may approach the court for an order that the application has lapsed.

(8) *(a)* Copies referred to in subrule (7) shall be clearly typed on A.4 standard paper in double spacing, paginated and bound and in addition every tenth line on every page shall be numbered.

(b) The left side of each page shall be provided with a margin of at least 35 mm that shall be left clear, except in the case of exhibits that are duplicated by photoprinting, where it is impossible to obtain a margin with the said dimensions. Where the margin of the said exhibits is so small that parts of the documents will be obscured by binding, such documents shall be mounted on sheets of A4 paper and folded back to ensure that the prescribed margin is provided.

(9) By consent of the parties, exhibits and annexures having no bearing on the point at issue in the appeal and immaterial portions of lengthy documents may be omitted. Such consent, setting out what documents or parts thereof have been omitted, shall be signed by the parties and shall be included in the record on appeal. The court hearing the appeal may order that the whole of the record be placed before it.

(10) When the decision of an appeal turns exclusively on a point of law, the parties may agree to submit such appeal to the court in the form of a special case, in which event copies shall be submitted of only such portions of the record as may be necessary for a proper decision of the appeal: Provided that the court hearing the appeal may require that the whole of the record of the case be placed before it.

(11) Where an appeal has been noted or an application for leave to appeal against or to rescind, correct, review or vary an order of a court has been made, the operation and execution of the order in question shall be suspended, pending the

decision of such appeal or application, unless the court which gave such order, on the application of a party, otherwise directs.

(12) If the order referred to in subrule (11) is carried into execution by order of the court the party requesting such execution shall, unless the court otherwise orders, before such execution enter into such security as the parties may agree or the registrar may decide for the restitution of any sum obtained upon such execution. The registrar's decision shall be final.

(13) *(a)* Unless the respondent waives his or her right to security or the court in granting leave to appeal or subsequently on application to it, has released the appellant wholly or partially from that obligation, the appellant shall, before lodging copies of the record on appeal with the registrar, enter into good and sufficient security for the respondent's costs of appeal.

(b) In the event of failure by the parties to agree on the amount of security, the registrar shall fix the amount and the appellant shall enter into security in the amount so fixed or such percentage thereof as the court has determined, as the case may be.

[Subrule (13) substituted by GN R1299 of 29 October 1999.]

(14) The provisions of subrules (12) and (13) shall not be applicable to the Government of the Republic of South Africa or any provincial administration.

(15) Not later than fifteen days before the appeal is heard the appellant shall deliver a concise and succinct statement of the main points (without elaboration) which he intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not later than ten days before the appeal is heard the respondent shall deliver a similar statement. Three additional copies shall in each case be filed with the registrar.

[Subrule (15) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(16) A notice of appeal in terms of section 76 of the Patents Act, 1978 (Act 57 of 1978), or section 63 of the Trade Marks Act, 1963 (Act 62 of 1963), may be served on the patent agent referred to in the Patents Act, 1978, or the agent referred to in section 8 of the Trade Marks Act, 1963, who represented the respondent in the proceedings in respect of which an appeal is noted.

(17) In the case of appeals to the full court in terms of the provisions of a statute in which the procedure to be followed is laid down, this rule is applicable as far as provision is made for matters not regulated by the statute.

(18) Notwithstanding the provisions of this rule the judge president may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him seems meet.

[Subrule (18) added by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

[Rule 49 substituted by GN R645 of 25 March 1983 and corrected by GN R841 of 22 April 1983.]

49A Criminal Appeals to the Full Court

(1) *(a)* Within 10 days of leave to appeal being granted in terms of sections 316 up to and including 319 of the Criminal Procedure Act 51 of 1977, the appellant shall deliver to the registrar and the director of public prosecutions concerned, a notice containing the full residential and postal address of the appellant and the

address of his or her legal representative.

(b) In the case of an appeal in terms of section 315 (3) of the Criminal Procedure Act 51 of 1977 to the full court, the registrar shall, subject to the provisions of section 316 (5) *(b)* of the said Act, prepare three additional copies of the case record or parts thereof, as the case may be, and shall furnish the State with the number it requires and, on payment of the prescribed fee, shall furnish the appellant with the number he or she requires: Provided that if the registrar is of the opinion that the appellant is too poor to pay the prescribed fee, such copies may be furnished without payment of any fee, in which case the registrar's decision shall be final.

(c) (i) In the case of an appeal against the judgment or order of the court of the Witwatersrand Local Division, the judge president of the Transvaal Provincial Division shall determine whether the appeal should be heard by the full court of the said local division

(ii) If the judge president has directed that the appeal should be heard by the full court of the Witwatersrand Local Division the registrar of the said local division shall immediately inform the director of public prosecutions and the appellant or his or her legal representative.

(iii) If the judge president has not so directed, the registrar shall inform the registrar of the provincial division as well as the director of public prosecutions and the appellant or his or her legal representative accordingly

(2) *(a)* Written argument shall be delivered on behalf of the appellant and the director of public prosecutions within the time periods prescribed by the registrar.

(b) The written argument contemplated in paragraph *(a)* shall contain references to the record and to the authorities relied upon in support of each point, together with a list of such authorities.

(c) In each case, four copies of the written argument shall simultaneously be filed with the registrar.

(3) The appeal shall be set down by the registrar of the court where the appeal is to be heard on a date assigned by him or her with written notice to the director of public prosecutions and the appellant or his or her legal representative

(4) The ultimate responsibility for ensuring that all copies of the record on appeal and all the necessary exhibits are in all respects properly before the court shall rest on the appellant or his or her attorney: Provided that where the appellant is not represented by an attorney, such responsibility shall rest on the director of public prosecutions.

[Rule 49A inserted by GN R645 of 1983, amended by GN R2164 of 1987, by GN R2642 of 1987 and by GN R2410 of 1991 and substituted by GN R518 of 2009.]

50 Civil Appeals from Magistrates' Courts

(1) An appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed.

[Subrule (1) substituted by GN R2164 of 2 October 1987 and GN R2642 of 27 November 1987 and amended by GN R185 of 2 February 1990.]

(2) The prosecution of an appeal shall *ipso facto* operate as the prosecution of any cross-appeal which has been duly noted.

(3) If a cross-appeal has been noted, and the appeal lapses, the cross-appeal shall also lapse, unless application for a date of hearing for such cross-appeal is made to the registrar within twenty days after the date of the lapse of such appeal.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) *(a)* The appellant shall, within 40 days of noting the appeal, apply to the registrar in writing and with notice to all other parties for the assignment of a date for the hearing of the appeal and shall at the same time make available to the registrar in writing his full residential and postal addresses and the address of his attorney if he is represented.

(b) In the absence of such an application by the appellant, the respondent may at any time before the expiry of the period of 60 days referred to in subrule (1) apply for a date of hearing in like manner.

(c) Upon receipt of such an application from appellant or respondent, the appeal shall be deemed to have been duly prosecuted.

[Subrule (4) substituted by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R185 of 2 February 1990.]

(5) *(a)* Upon receipt of such application, the registrar shall forthwith assign a date of hearing, which date shall be at least 40 days after the receipt of the said application, unless all parties consent in writing to an earlier date: Provided that the registrar shall not assign a date of hearing until the provisions of subrule (7) *(a)*, *(b)*, and *(c)* have been duly complied with.

(b) The registrar shall forthwith give the applicant written notice of the date of hearing, whereupon the applicant shall forthwith deliver a notice of set down and in writing give notice thereof to the clerk of the court from which the appeal emanated.

[Subrule (5) substituted by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R185 of 2 February 1990.]

(6) A notice of set down of a pending appeal shall *ipso facto* operate as a set down of any cross-appeal and *vice versa*.

(7) *(a)* The applicant shall simultaneously with the lodging of the application for a date for the hearing of the appeal referred to in subrule (4) lodge with the registrar two copies of the record: Provided that where such an appeal is to be heard by more than two judges, the applicant shall, upon the request of the registrar, lodge a further copy of the record for each additional judge.

[Para *(a)* substituted by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R185 of 2 February 1990.]

(b) Such copies shall be clearly typed on foolscap paper in double spacing, and the pages thereof shall be consecutively numbered and as from second January 1968, such copies shall be so typed on A4 standard paper referred to in rule 62 (2) or on foolscap paper and after expiration of a period of twelve months from the aforesaid date on such A4 standard paper only. In addition every tenth line on each page shall be numbered.

(c) The record shall contain a correct and complete copy of the pleadings, evidence and all documents necessary for the hearing of the appeal, together with an index thereof, and the copies lodged with the registrar shall be certified as correct by the attorney or party lodging the same or the person who prepared the record.

[Para. *(c)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(d) The party lodging the copies of the record shall not less than fifteen days prior to the date of the hearing of the appeal also furnish each of the other parties

with two copies thereof, certified as aforesaid.

[Para. *(d)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

[Subrule (7) substituted by GN R2004 of 15 December 1967 and by GN R2021 of 5 November 1971.]

(8) *(a)* Save in so far as these affect the merits of an appeal, subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect, and other documents of a formal nature shall be omitted from the copies of the record prepared in terms of the aforegoing subrule. A list thereof shall be included in the record.

(b) (i) With the written consent of the parties any exhibit or other portion of the record which has no bearing on the point in issue on appeal may be omitted from the record.

(ii) If a portion has been so omitted from the record, the written consent signed by or on behalf of the parties and noting the omission shall be filed, together with the incomplete record, with the Registrar.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii) the court hearing the appeal may at any time request the complete original record and take cognisance of everything appearing therein.

[Para. *(b)* substituted by GN R608 of 31 March 1989.]

(c) When an appeal is to be decided exclusively on a point of law, the parties may agree to submit such appeal to the court in the form of a special case, as referred to in rule 33 of the Rules, in which event copies may be submitted to the court of such portions only of the record which in the opinion of the parties may be necessary for a proper decision of the appeal: Provided that the court hearing the appeal may request that the entire original record of the case be placed before the court.

[Para. *(c)* added by GN R608 of 31 March 1989.]

(9) Not less than fifteen days before the appeal is heard the appellant shall deliver one copy of a concise and succinct statement of the main points (without elaboration) which he intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not less than ten days before the appeal is heard the respondent shall deliver a similar statement. Three additional copies shall be lodged with the registrar in each case.

[Subrule (9) added by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(10) Notwithstanding the provisions of this rule the judge president may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him seems meet.

[Subrule (10) added by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

51 Criminal Appeals from Magistrates' Courts

(1) An appeal by a convicted person against a conviction, sentence or order made by a magistrate's court in a criminal matter, or an appeal by the director of public prosecutions or other prosecutor against a dismissal of a summons or charge

or other decision of a magistrate's court in such a matter, shall be set down by the director of public prosecutions or registrar on notice to the appellant or his or her legal representative for hearing on such day as the judge president may appoint for such matters

(2) Notwithstanding anything to the contrary in any rule contained, a notice may be served on an appellant or his or her legal representative by sending it by registered post, addressed to the appellant or his or her legal representative at an address appearing on the notice of appeal or at an address which the appellant or his or her legal representative has subsequently furnished to the registrar in writing

(3) The ultimate responsibility for ensuring that all copies of the record on appeal are in all respects properly before the court shall rest on the appellant or his or her legal representative: Provided that where the appellant is not represented by a legal representative, such responsibility shall rest on the director of public prosecutions.

(4) *(a)* Written argument shall be delivered on behalf of the appellant and the director of public prosecutions within the time periods prescribed by the registrar.

(b) The provisions of rule 49A (2) *(b)* and *(c)* shall apply *mutatis mutandis* to the written argument.

(5) *(a)* Notice in terms of section 309C (9) of the Criminal Procedure Act 51 of 1977 shall be given by the registrar at least 10 days before the date fixed for the hearing of any of the applications referred to in section 309C, unless the appellant or his or her legal representative and the director of public prosecutions concerned or a person designated by him or her have agreed to a shorter period, and shall correspond substantially to Form 25.

(b) The notice referred to in paragraph *(a)* shall-

(i) be handed to the appellant or his or her legal representative and the director of public prosecutions concerned or a person designated by him or her and proof of receipt of such notice shall be indicated on a copy of the notice, which shall be kept by the registrar; or

(ii) be sent by registered post.

[Rule 51 amended by GN R185 of 1990, by GN R2164 of 1987, by GN R2642 of 1987, by GN R568 of 1999 and by GN R1084 of 1999 and substituted by GN R518 of 2009.]

52 Criminal Appeals to the Supreme Court of Appeal

(1) Whenever-

(a) an appellant has been granted leave to appeal in terms of section 316 of the Criminal Procedure Act 51 of 1977;

(b) an appellant has noted an appeal in terms of section 318 of the said Act; or

(c) a court has reserved a question of law arising on the trial of an appellant in terms of section 319 of the said Act-

(i) the registrar of the court which tried the appellant shall lodge with the registrar of the Supreme Court of Appeal six copies of the record (one of which shall be certified by the first-named registrar) of the proceedings in the trial court and deliver such number of copies to the State as may be considered necessary: Provided that instead of the whole record, with the consent of the appellant and the State, copies (one of which shall be certified by the first-named registrar) may be transmitted of such

parts of the record as may be agreed upon by the appellant and the State to be sufficient, in which event the Supreme Court of Appeal may nevertheless call for copies of the whole record;

(ii) the appellant may, on payment of the prescribed fees, obtain from the registrar of the court which tried the appellant such number of copies of the record or parts of the record (as the case may be) as may be necessary for his or her purpose: Provided that if the appellant is unable by reason of poverty to pay the prescribed fees the appellant shall be entitled to obtain the same without payment of any fees.

(2) Any question arising as to the appellant's inability to pay the prescribed fees shall be decided by the registrar of the court which tried the appellant, in which case the registrar's decision shall be final.

(3) The words 'the registrar of the court which tried the appellant' shall mean, where the trial court was a Circuit Local Division, the registrar of the division of the High Court in whose custody the records of the Circuit Court Division concerned are lodged.

[Rule 52 amended by GN R2021 of 1971 and by GN R2628 of 1989 and substituted by GN R518 of 2009.]

53 Reviews

(1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairman of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected-

(a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and

(b) calling upon the magistrate, presiding officer, chairman or officer, as the case may be, to despatch, within fifteen days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he is by law required or desires to give or make, and to notify the applicant that he has done so.

[Para. *(b)* substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

[Subrule (1) substituted by GN R2004 of 15 December 1967.]

(2) The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which applicant relies to have the decision or proceedings set aside or corrected.

(3) The registrar shall make available to the applicant the record despatched to him as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall

be borne by the applicant and shall be costs in the cause.

(4) The applicant may within ten days after the registrar has made the record available to him, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his notice of motion and supplement the supporting affidavit.

[Subrule (4) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(5) Should the presiding officer, chairman or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he shall-

(a) within fifteen days after receipt by him of the notice of motion or any amendment thereof deliver notice to the applicant that he intends so to oppose and shall in such notice appoint an address within eight kilometres of the office of the registrar at which he will accept notice and service of all process in such proceedings; and

(b) within thirty days after the expiry of the time referred to in subrule (4) hereof, deliver any affidavits he may desire in answer to the allegations made by the applicant.

[Subrule (5) substituted by GN R2164 of 2 October 1987.]

(6) The applicant shall have the rights and obligations in regard to replying affidavits set out in rule 6.

(7) The provisions of rule 6 as to set down of applications shall *mutatis mutandis* apply to the set down of review proceedings.

54 Criminal Proceedings - Provincial and Local Divisions

(1) The process for summoning an accused to answer any indictment shall be by writ sued out by the chief clerk to the Attorney-General who presents the indictment, or in the case of a private prosecution by the prosecutor or his attorney, and shall be directed to the sheriff: Provided that in the case of the Witwatersrand Local Division the writ may be sued out of the office of the registrar of that division by the Deputy Attorney-General, Johannesburg.

[Subrule (1) substituted by GN R480 of 30 March 1973 and amended by GN R2410 of 30 September 1991.]

(2) When any person committed for sentence under the provisions of section 121 of the Criminal Procedure Act, 1977 (Act 51 of 1977), is indicted before a superior court he may be brought up for sentence at any sitting for criminal business of the court before which he is indicted.

[Subrule (2) amended by GN R2410 of 30 September 1991.]

(3) The Attorney-General or other prosecutor or his attorney shall endorse on, or annex to, every indictment and every copy of any indictment delivered to the sheriff for service thereof, a notice of trial, which notice shall specify the court before which, and the particular session and time when, he will bring the accused to trial on the said indictment.

[Subrule (3) amended by GN R2410 of 30 September 1991.]

(4) The Attorney-General or other prosecutor or his attorney shall deliver to the sheriff for service the writ, a copy of the indictment and notice of trial or, if there are more than one accused, as many writs and copies of the indictment and notice of trial as there are accused. In the case of a private prosecution the prosecutor or his

attorney shall at the same time hand to the sheriff his lawful costs and charges for serving the same.

[Subrule (4) amended by GN R2410 of 30 September 1991.]

(5) The subpoena or process for procuring the attendance of any person before a superior court (other than a Circuit Court) to give evidence in any criminal case or to produce any books, documents or things, shall be sued out of the office of the registrar of that court, by the chief clerk to the Attorney-General (or where the prosecution is at the instance of a private party, by himself or his attorney); and the same shall be delivered to the sheriff, at his office, for service thereof, together with so many copies of the subpoena or process as there are persons to be served. In the case of the Witwatersrand Local Division, the process may also be sued out by the Deputy Attorney-General, Johannesburg, and delivered to the sheriff concerned.

[Subrule (5) substituted by GN R480 of 30 March 1973 and amended by GN R2410 of 30 September 1991.]

(6) The subpoena shall be served upon the witness *(a)* personally, or *(b)* at his residence or place of business or employment by delivering it to some person thereat who is apparently not less than sixteen years of age and apparently residing or employed thereat.

(7) The person serving the subpoena shall, if required by the person upon whom it was served, exhibit to him the original.

(8) If the person to be served with a subpoena keeps his residence or place of business closed so as to prevent the service of the subpoena, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

(9) When a court imposes upon any person whatsoever a fine for contempt of court for default in appearance or otherwise, and such fine is not duly paid, the registrar of the court shall furnish the sheriff with particulars of such fine and deliver to him a completed warrant. The sheriff, immediately on such warrant being delivered to him, shall execute it.

[Subrule (9) amended by GN R2410 of 30 September 1991.]

(10) An application under section 149 of the Criminal Procedure Act, 1977 (Act 51 of 1977), to change the place of trial in criminal proceedings may be made to the court, upon notice, by or on behalf or the Attorney-General or the accused. The court may thereupon make such order thereon as to it seems meet.

[Subrule (10) amended by GN R2410 of 30 September 1991.]

55 Criminal Proceedings - Circuit Court

(1) The process of a Circuit Court for any district for summoning any person, either as an accused or as a witness in any criminal case before such court, may be sued out at any time, whether the date for holding such court shall have been appointed or not. It may be issued by the registrar of the Provincial Division or of the Circuit Court or when the latter is not in the place where the court is to be held then by the clerk of the magistrate's court of the district or by the clerk to any judge in that court: Provided that the process for summoning any person required by the Attorney-General or his deputy as a witness in a criminal case in such court need not be endorsed or formally sued out by or on behalf of the Attorney-General.

(2) The process of the Circuit Court for any district for arresting and holding to bail any person in order to compel his appearance before such court shall be issued by the magistrate for such district, or by any judge.

(3) All process of the Circuit Court shall be dated on the day on which it is issued, shall be signed by the officer issuing it, shall be endorsed by the person suing out the same and shall be directed to the sheriff.

[Subrule (3) substituted by GN R2004 of 15 December 1967 and amended by GN R2410 of 30 September 1991.]

(4) The registrar of every Circuit Court shall, on the closing of the same, cause to be transmitted to the sheriff a list of all warrants of execution in criminal cases which have been issued by him.

(5) In all cases wherein process is required for the execution of any sentence, judgment, or order of any Circuit Court in a criminal case, after the records thereof have been deposited in the office of the registrar of the Provincial Division, the process of that division for the execution of any such sentence, judgment or order may be issued to the party requiring the execution of the same.

(6) When a Circuit Court imposes upon any party whatsoever a fine for contempt of court, for default of appearance or otherwise, and such fine is not duly paid, the registrar of the Circuit Court shall furnish to the sheriff the particulars of such fine, and deliver to him a warrant in respect thereof.

[Subrule (6) amended by GN R2410 of 30 September 1991.]

(7) The registrar of every Circuit Court shall, immediately upon the closing of the court in each circuit town, make out and transmit to the registrar of the Provincial Division a return showing all the fines which have, during the sitting of the court in that town, been imposed by the said court, specifying therein the names of the parties, the amount of the fine, the date when imposed, and the date when a warrant was delivered to the sheriff for its levy, the extent, if any, to which the fine was remitted, and whether it was paid without issue of a warrant.

[Subrule (7) amended by GN R2410 of 30 September 1991.]

(8) Whenever a Circuit Court district comprises more than one magisterial district, the clerk of the magistrate's court of each such magisterial district shall, within the limits of his district, perform the duties devolving on clerks of magistrates under these Rules.

56 Criminal Proceedings - General

(1) Any process or document referred to in rules 54 and 55 may be served by a police officer referred to in section 329 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

[Subrule (1) amended by GN R2410 of 30 September 1991.]

(2) The provisions of subrules (16) - (19) and (21) of rule 39 shall apply *mutatis mutandis* to all proceedings in criminal cases.

57 *De Lunatico Inquirendo*, Appointment of Curators in Respect of Persons under Disability and Release from Curatorship

(1) Any person desirous of making application to the court for an order declaring another person (hereinafter referred to as 'the patient') to be of unsound mind and as such incapable of managing his affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator *ad litem* to such patient.

(2) Such application shall be brought *ex parte* and shall set forth fully-

(a) the grounds upon which the applicant claims *locus standi* to make such

application;

(b) the grounds upon which the court is alleged to have jurisdiction;

(c) the patient's age and sex, full particulars of his means, and information as to his general state of physical health;

(d) the relationship (if any) between the patient and the applicant, and the duration and intimacy of their association (if any);

(e) the facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his affairs;

(f) the name, occupation and address of the respective persons suggested for appointment by the court as curator *ad litem*, and subsequently as curator to the patient's person or property, and a statement that these persons have been approached and have intimated that, if appointed, they would be able and willing to act in these respective capacities.

(3) The application shall, as far as possible, be supported by-

(a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponent's own knowledge concerning the patient's mental condition. If such person is related to the patient, or has any personal interest in the terms of any order sought, full details of such relationship or interest, as the case may be, shall be set forth in his affidavit; and

(b) affidavits by at least two medical practitioners, one of whom shall, where practicable, be an alienist, who have conducted recent examinations of the patient with a view to ascertaining and reporting upon his mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinions found by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the same and whether the patient is in their opinion incapable of managing his affairs. Such medical practitioners shall, as far as possible, be persons unrelated to the patient, and without personal interest in the terms of the order sought.

(4) Upon the hearing of the application referred to in subrule (1), the court may appoint the person suggested or any other suitable person as curator *ad litem*, or may dismiss the application or make such further or other order thereon as to it may seem meet and in particular on cause shown, and by reason of urgency, special circumstances or otherwise, dispense with any of the requirements of this rule.

(5) Upon his appointment the curator *ad litem* (who shall if practicable be an advocate, or failing such, an attorney), shall without delay interview the patient, and shall also inform him of the purpose and nature of the application unless after consulting a medical practitioner referred to in paragraph *(b)* of subrule (3) he is satisfied that this would be detrimental to the patient's health. He shall further make such inquiries as the case appears to require and thereafter prepare and file with the registrar his report on the matter to the court, at the same time furnishing the applicant with a copy thereof. In his report the curator *ad litem* shall set forth such further facts (if any) as he has ascertained in regard to the patient's mental condition, means and circumstances and he shall draw attention to any consideration which in his view might influence the court in regard to the terms of any order sought.

(6) Upon receipt of the said report the applicant shall submit the same, together with copies of the documents referred to in subrules (2) and (3) to the

Master of the Supreme Court having jurisdiction for consideration and report to the court.

(7) In his report the Master shall, as far as he is able, comment upon the patient's means and general circumstances, and the suitability or otherwise of the person suggested for appointment as curator to the person or property of the patient, and he shall further make such recommendations as to the furnishing of security and rendering of accounts by, and the powers to be conferred on, such curator as the facts of the case appear to him to require. The curator *ad litem* shall be furnished with a copy of the said report.

(8) After the receipt of the report of the Master, the applicant may, on notice to the curator *ad litem* (who shall if he thinks fit inform the patient thereof), place the matter on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind and as such incapable of managing his affairs and for the appointment of the person suggested as curator to the person or property of the patient or to both.

(9) At such hearing the court may require the attendance of the applicant, the patient, and such other persons as it may think fit, to give such evidence *viva voce* or furnish such information as the court may require.

(10) Upon consideration of the application, the reports of the curator *ad litem* and of the Master and such further information or evidence (if any) as has been adduced *viva voce*, or otherwise, the court may direct service of the application on the patient or may declare the patient to be of unsound mind and incapable of managing his own affairs and appoint a suitable person as curator to his person or property or both on such terms as to it may seem meet, or it may dismiss the application or generally make such order (including an order that the costs of such proceedings be defrayed from the assets of the patient) as to it may seem meet.

(11) Different persons may, subject to due compliance with the requirements of this rule in regard to each, be suggested and separately appointed as curator to the person and curator to the property of any person found to be of unsound mind and incapable of managing his own affairs.

(12) The provisions of subrules (1), (2) and (4) to (10) inclusive shall in so far as the same are applicable thereto, also apply *mutatis mutandis* to any application for the appointment by the court of a curator under the provisions of section 56 of the Mental Health Act, 1973 (Act 18 of 1973), to the property of a person detained as or declared mentally disordered or defective, or detained as a mentally disordered or defective prisoner or as a State President's decision patient and who is incapable of managing his affairs.

[Subrule (12) amended by GN R2410 of 30 September 1991.]

(13) Save to such extent as the court may on application otherwise direct, the provisions of subrules (1) to (11) shall, *mutatis mutandis*, apply to every application for the appointment of a curator *bonis* to any person on the ground that he is by reason of some disability, mental or physical, incapable of managing his own affairs.

(14) Every person who has been declared by a court to be of unsound mind and incapable of managing his affairs, and to whose person or property a curator has been appointed, and who intends applying to court for a declaration that he is no longer of unsound mind and incapable of managing his affairs or for release from such curatorship, as the case may be, shall give 15 days' notice of such application to such curator and to the Master.

[Subrule (14) amended by GN R1262 of 1991.]

(15) Upon receipt of such notice and after due consideration of the application and such information as is available to him, the Master shall, without delay, report

thereon to the court, at the same time commenting upon any aspect of the matter to which, in his view, its attention should be drawn.

(16) The provisions of subrules (14) and (15) hereof shall also apply to any application for release from curatorship by a person who has been discharged under section 53 of the Mental Health Act, 1973 (Act 18 of 1973), from detention in an institution, but in respect of whom a curator *bonis* has been appointed by the court under section 56 of the said Act.

[Subrule (16) amended by GN R2410 of 30 September 1991.]

(17) Upon the hearing of any application referred to in subrules (14) and (16) hereof the court may declare the applicant as being no longer of unsound mind and as being capable of managing his affairs, order his release from such curatorship, or dismiss the application, or *mero motu* appoint a curator *ad litem* to make such inquiries as it considers desirable and to report to it, or call for such further evidence as it considers desirable and postpone the further hearing of the matter to permit of the production of such report, affidavit or evidence, as the case may be, or postpone the matter *sine die* and make such order as to costs or otherwise as to it may seem meet.

58 Interpleader

(1) Where any person, in this rule called 'the applicant', alleges that he is under any liability in respect of which he is or expects to be sued by two or more parties making adverse claims, in this rule referred to as 'the claimants', in respect thereto, the applicant may deliver a notice, in terms of this rule called an 'interpleader notice', to the claimants. In regard to conflicting claims with respect to property attached in execution, the sheriff shall have the rights of an applicant and an execution creditor shall have the rights of a claimant.

[Subrule (1) amended by GN R2410 of 30 September 1991.]

(2) *(a)* Where the claims relate to money the applicant shall be required, on delivering the notice mentioned in subrule (1) hereof, to pay the money to the registrar who shall hold it until the conflicting claims have been decided.

(b) Where the claims relate to a thing capable of delivery the applicant shall tender the subject-matter to the registrar when delivering the interpleader notice or take such steps to secure the availability of the thing in question as the registrar may direct.

(c) Where the conflicting claims relate to immovable property the applicant shall place the title deeds thereof, if available to him, in the possession of the registrar when delivering the interpleader notice and shall at the same time hand to the registrar an undertaking to sign all documents necessary to effect transfer of such immovable property in accordance with any order which the court may make or any agreement of the claimants.

(3) The interpleader notice shall-

(a) state the nature of the liability, property or claim which is the subject-matter of the dispute;

(b) call upon the claimants within the time stated in the notice, not being less than 15 days from the date of service thereof, to deliver particulars of their claims; and

[Para. *(b)* amended by GN R1262 of 1991.]

(c) state that upon a further date, not being less than 15 days from the date specified in the notice for the delivery of claims, the applicant will

apply to court for its decision as to his liability or the validity of the respective claims.

[Para. *(c)* amended by GN R1262 of 1991.]

(4) There shall be delivered together with the interpleader notice an affidavit by the applicant stating that-

(a) he claims no interest in the subject-matter in dispute other than for charges and costs;

(b) he does not collude with any of the claimants;

(c) he is willing to deal with or act in regard to the subject-matter of the dispute as the court may direct.

(5) If a claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his claim within the time stated or, having delivered such particulars, fails to appear in court in support of his claim, the court may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject-matter of the dispute.

(6) If a claimant delivers particulars of his claim and appears before it, the court may-

(a) then and there adjudicate upon such claim after hearing such evidence as it deems fit;

(b) order that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant;

(c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant;

(d) if it considers that the matter is not a proper matter for relief by way of interpleader notice dismiss the application;

(e) make such order as to costs, and the expenses (if any) incurred by the applicant under paragraph *(b)* of subrule (2), as to it may seem meet.

(7) If an interpleader notice is issued by a defendant in an action, proceedings in that action shall be stayed pending a decision upon the interpleader, unless the court upon an application made by any other party to the action otherwise orders.

59 Sworn Translators

(1) Any person may be admitted and enrolled by any division of the Supreme Court as a sworn translator between any two or more specified official languages of the Republic of South Africa or between any specified official language of the Republic of South Africa and any specified foreign language, upon satisfying the court of his or her competency.

[Subrule (1) substituted by GN R700 of 16 May 1997.]

(2) No person shall be admitted and enrolled as a sworn translator unless his or her competency in the languages from and into which he or she intends to translate has been duly certified in writing, after examination, held not more than six months before the date of the application by an appropriately qualified sworn translator, or unless his or her competency is otherwise proved to the satisfaction of the court.

[Subrule (2) substituted by GN R700 of 16 May 1997.]

(3) Every sworn translator duly admitted and enrolled shall, to the extent of such admission and enrolment, be deemed to be a sworn translator for all divisions of the Supreme Court, and the registrar of the division in which he is admitted shall notify the registrars of all other divisions of such admission and enrolment, and furnish his address.

(4) *(a)* Any person admitted and enrolled under subrule (1) shall before commencing to exercise the functions of his office take an oath or make an affirmation which shall be subscribed by him, in the form set out below, namely-

'I .....(full name) do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as a translator of the Supreme Court of South Africa faithfully and correctly translate, to the best of my knowledge and ability, any document into an official language of the Republic of South Africa from any other language in respect of which I have been admitted and enrolled as a translator'.

(b) Any such oath or affirmation shall be taken or made before a judge of the division of the Supreme Court of South Africa admitting and enrolling the translator and the judge concerned shall at the foot thereof endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

60 Translation of Documents

(1) If any document in a language other than an official language of the Republic is produced in any proceedings, it shall be accompanied by a translation certified to be correct by a sworn translator.

[Subrule (1) substituted by GN R235 of 18 February 1966.]

(2) A translation so certified by a sworn translator shall be deemed *prima facie* to be a correct translation and admissible as such upon its production.

(3) If no sworn translator is available or if, in the opinion of the court, it would not be in the interests of justice to require a sworn translation, whether by reason of the expense, inconvenience or delay involved, the court may, notwithstanding the provisions of subrule (1), admit in evidence a translation certified to be correct by any person who it is satisfied is competent to make such translation.

61 Interpretation of Evidence

(1) Where evidence in any proceedings is given in any language with which the court or a party or his representative is not sufficiently conversant, such evidence shall be interpreted by a competent interpreter, sworn to interpret faithfully and to the best of his ability in the languages concerned.

(2) Before any person is employed as an interpreter the court may, if in its opinion it is expedient to do so, or if any party on reasonable grounds so desires, satisfy itself as to the competence and integrity of such person after hearing evidence or otherwise.

(3) Where the services of an interpreter are employed in any proceedings, the costs (if any) of interpretation shall, unless the court otherwise orders, be costs in the cause: Provided that where the interpretation of evidence given in one of the official languages of the Republic is required by the representative of a party, such costs shall be at such party's expense.

62 Filing, Preparation and Inspection of Documents

(1) Where a matter has to be heard by more than one judge, a copy of all pleadings, important notices, annexures, affidavits and the like shall be filed for the

use of each additional judge.

(2) All documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blueblack ink on one side only of paper of good quality and of A 4 standard size. A document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.

[Subrule (2) substituted by GN R2021 of 5 November 1971.]

(3) Stated cases, petitions, affidavits, grounds of appeal and the like shall be divided into concise paragraphs which shall be consecutively numbered.

(4) An applicant or plaintiff shall not later than five days prior to the hearing of the matter collate, and number consecutively, and suitably secure, all pages of the documents delivered and shall prepare and deliver a complete index thereof.

[Subrule (4) substituted by GN R2004 of 15 December 1967 and amended by GN R2410 of 30 September 1991.]

(5) Every affidavit filed with the registrar by or on behalf of a respondent shall, if he is represented, on the first page thereof bear the name and address of the attorney filing it.

(6) The registrar may reject any document which does not comply with the requirements of this rule.

(7) Any party to a cause, and any person having a personal interest therein, with leave of the registrar on good cause shown, may at his office, examine and make copies of all documents in such cause.

63 Authentication of Documents Executed Outside the Republic for Use Within the Republic

(1) In this rule, unless inconsistent with the context-

'document' means any deed, contract, power of attorney, affidavit or other writing, but does not include an affidavit or solemn or attested declaration purporting to have been made before an officer prescribed by section *eight* of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963);

'authentication' means, when applied to a document, the verification of any signature thereon.

(2) Any document executed in any place outside the Republic shall be deemed to be sufficiently authenticated for the purpose of use in the Republic if it be duly authenticated at such foreign place by the signature and seal of office-

(a) of the head of a South African diplomatic or consular mission or a person in the administrative or professional division of the public service serving at a South African diplomatic, consular or trade office abroad; or

[Para. *(a)* substituted by GN R755 of 23 April 1982 and by GN R2047 of 13 December 1996.]

(b) of a consul-general, consul, vice-consul or consular agent of the United Kingdom or any other person acting in any of the aforementioned capacities or a pro-consul of the United Kingdom;

[Para. *(b)* substituted by GN R2004 of 15 December 1967.]

(c) of any Government authority of such foreign place charged with the authentication of documents under the law of that foreign country; or

(d) of any person in such foreign place who shall be shown by a certificate of any person referred to in paragraph *(a)*, *(b)* or *(c)* or of any diplomatic or consular officer of such foreign country in the Republic to be duly authorised to authenticate such document under the law of that foreign country; or

[Para. *(d)* substituted by GN R2047 of 13 December 1996.]

(e) of a notary public in the United Kingdom of Great Britain and Northern Ireland or in Zimbabwe, Lesotho, Botswana or Swaziland; or

[Para. *(e)* amended by GN R960 of 28 May 1993.]

(f) of a commissioned officer of the South African Defence Force as defined in section *one* of the Defence Act, 1957 (Act 44 of 1957), in the case of a document executed by any person on active service.

(3) If any person authenticating a document in terms of subrule (2) has no seal of office, he shall certify thereon under his signature to that effect.

(4) Notwithstanding anything in this rule contained, any court of law or public office may accept as sufficiently authenticated any document which is shown to the satisfaction of such court or the officer in charge of such public office, to have been actually signed by the person purporting to have signed such document.

[Subrule (4) substituted by GN R235 of 18 February 1966.]

(5) No power of attorney, executed in Lesotho, Botswana or Swaziland, and intended as an authority to any person to take, defend or intervene in any legal proceedings in a magistrate's court within the Republic, shall require authentication: Provided that any such power of attorney shall appear to have been duly signed and the signature to have been attested by two competent witnesses.

[Subrule (5) amended by GN R960 of 28 May 1993.]

[Rule 63 amended by GN R2410 of 30 September 1991.]

64 Destruction of Documents

In any matter which has not been adjudicated upon by the court or a judge, and has not been withdrawn, the registrar may, subject to the provisions of the Archives Act, 1962 (Act 6 of 1962), after the lapse of three years from the date of the filing of the last document therein, authorize the destruction of the documents filed in his office relating to such matter.

64A

Records of minutes of evidence and proceedings in criminal cases shall be transferred to an archives depot as contemplated in section 5 of the Archives Act, 1962 (Act 6 of 1962), 30 years after disposal of such cases.

[Rule 64A inserted by GN R773 of 23 April 1982.]

65 Commissioners of the Court

Every person duly appointed as a commissioner of any division of the Supreme Court of South Africa for taking affidavits in any place outside the Republic shall, by virtue of such appointment, become a commissioner of the said Supreme Court, and shall, as such, be entitled to be enrolled by the registrar of every other division as a commissioner thereof. For the purpose of facilitating such enrolment the

registrar of each division shall transmit the names of those who are appointed as commissioners of such division, as well as their respective addresses, to the registrars of all the other divisions: Provided that no person residing within the Republic shall hereafter be appointed as such commissioner.

66 Superannuation

(1) After the expiration of three years from the day whereon a judgment has been pronounced, no writ of execution may be issued unless the debtor consents to the issue of the writ or unless the judgment is revived by the court on notice to the debtor, but in such case no new proof of the debt shall be required. In the case of judgment for periodic payments, the three years shall run, in respect of any payment, from the due date thereof.

(2) Writs of execution of a judgment once issued remain in force, and may, subject to the provisions of subparagraph (ii) of paragraph *(e)* of sub-section (2) of section *three* of the Prescription Act, 1943 (Act 18 of 1943), or subparagraph (ii) of paragraph *(a)* of section 11 of the Prescription Act, 1969 (Act 68 of 1969), at any time be executed without being renewed until judgment has been satisfied in full.

[Subrule (2) amended by GN R2410 of 30 September 1991.]

67 Tariff of Court Fees

The court fees payable in respect of the various provincial and local divisions are as follows:

		R c
(a) (i)	On every original initial document whereby an action is instituted or application is made	80,00
(ii)	on every bill of costs to be taxed which is not related to an action or application already registered in the court	60,00
(iii)	on every power of attorney (to be filed with the registrar) to appeal against the judgment of an inferior court, excluding appeals in criminal cases	80,00
(iv)	on every notice of appeal against the judgment of a single judge to the full court	80,00:
Provided that no fee shall be levied on the document whereby an in forma pauperis action is instituted.		
(b)	For the registrar's certificate on certified copies of documents (each)	2,00
(c)	For each copy of an order of court made by the registrar-	
(i)	for every 100 typed words or part thereof	2,00
(ii)	for every photocopy of an A4-size page or part thereof	1,00

[Rule 67 amended by GN R2021 of 5 November 1971, substituted by GN R1929 of 10 August 1990, amended by GN R411 of 11 March 1994 and substituted by GN R491 of 27 March 1997.]

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).

[Subrule (1) amended by GN R2410 of 30 September 1991.]

(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.

[Subrule (3) amended by GN R 502 of 19 May 2000.]

Tariff

	R c
1. For registration of any document for service or execution, upon receipt thereof	5,00
2. *(a)* For service of summonses, petitions together with notice of motion or notice of set down, other notices, orders or any other documents, each 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 R6,00 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.	40,00
(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.	R30,00
3. Travelling allowance:	
(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 kilometre or fraction of a kilometre.	3,00
(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.	
	(c) This allowance shall be payable only in cases where the duty in question is to be performed beyond a radius of one kilometre from the office of the sheriff: Provided that if the office of the sheriff is situated more than three kilometres 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 kilometre from the magistrate's office.	
	(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.	
4.	*(a)* Postage in civil matters, as per postal tariff.	
	(b) Postage in criminal matters, free.	
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.		
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	51,00
	(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	61,00
	(iii) for attachment of property *ad fundandam jurisdictionem* or *ad confirmandam jurisdictionem*	51,00
	(iv) where an attachment in terms of item 5 *(a*) (iii) is withdrawn or suspended	15,00
	(b) of ejectment: R61,00 per hour or part thereof, subject to a minimum of ..... which shall include the first hour (in addition to reasonable expenses necessarily incurred);	91,00
	(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	122,00
	(ii) for notice of attachment to a single lessee or occupier	10,00
	(identical notices where there are several lessees, occupiers or owners, for each after the first	R3,00
	(iii) for making valuation or report for purposes of sale, per hour, or part thereof	61,00

	part thereof	
(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 notices for the withdrawal of the attachment	122,00
(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)	61,00
(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	10,00
(vii)	for consideration of proof that a preferent creditor has complied with the requirements of rule 46 (5) *(a)*	5,00
(viii)	for the notice referred to in rule 46 (6)	10,00
(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)	61,00
(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	21,00
(xiii)	for considering the conditions of sale	51,00
(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 R8 050,00 in total and a minimum of R405,00 (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)	30,00
(xvi)	for giving transfer to the purchaser	15,00
(xvii)	for preparing a plan of distribution of the proceeds (including the necessary copies) and for forwarding a copy to the registrar	61,00
(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	10,00

(xix)	for request to magistrate to pay out in accordance with the plan of distribution	5,00
(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 R40,00 and a maximum of	405,00
(ii)	for any abortive attempt at attachment, including one hour's search and enquiry	40,00
(iii)	when a writ is withdrawn or stayed before any property is attached	15,00
(iv)	for making an attachment, including one hour's search and enquiry	101,00
(v)	notice of attachment, if necessary, to a single person	10,00
	(identical notices, when there is more than one person to be given notice, for each after the first)	5,00
(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	304,00
(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 R40,00 and a maximum of	405,00
(viii)	when moneys are taken in execution, 9 per cent of the amount so taken, but subject to a maximum of	405,00
(ix)	for drawing up advertisements of sale of goods attached	40,00
(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	5
(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 necessary and when the sheriff is directed thereto in writing by	21,00

the judgment creditor, in addition to the amount of premium paid, an inclusive fee of	
(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	76,00
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	1,00
6. *(a)* For making an inventory, including all necessary copies and time spent in stocktaking, per hour or part thereof	76,00
(b) For assistance, where necessary, in taking inventory, a reasonable and inclusive fee per day, not exceeding	76,00
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	
(b) copy thereof for party desiring service or execution	21,00
8. Drawing and completing of bail bond, deed of suretyship or indemnity bond	15,00
9. For the making of all necessary copies of documents per A4 size page	2,00
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	15,00
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.	
11. Attending any criminal session of a superior court or any circuit court, R61,00 per hour, or part thereof, with a maximum per day of	304,00
12. Each necessary letter, excluding formal letters accompanying process or returns	10,00
13. Each necessary attendance by telephone (in addition to prescribed trunk charges)	5,00
14. Sending and receiving of each necessary facsimile per A4 size page (in addition to telephone charges)	3,00
15. Bank charges: Actual costs incurred regarding bank charges and cheque forms.	

forms.	

[Rule 68 amended by GN R1985 of 3 November 1972, by GN R2164 of 2 October 1987 (subsequently repealed by GN R2642 of 27 November 1987), by GN R1421 of 15 July 1988 and by GN 2628 of 1 December 1989, substituted by GN R2410 of 30 September 1991 (as corrected by GN R2479 of 18 October 1991) and amended by GN R1356 of 30 July 1993, by GN R2529 of 31 December 1993, by GN R1063 of 28 June 1996, by GN R502 of 19 May 2000, by GN R229 of 20 February 2004 and by GN R1345 of 12 December 2008.]

69 Tariff of Maximum Fees for Advocates on Party and Party Basis in certain Civil Matters

[Heading substituted by GN R235 of 18 February 1966.]

(1) Save where the court authorizes fees consequent upon the employment of more than one advocate to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate shall be allowed as between party and party.

(2) Where fees in respect of more than one advocate are allowed in a party and party bill of costs, the fees to be permitted in respect of any additional advocate shall not exceed one half of those allowed in respect of the first advocate.

(3) Save where the defendant or respondent is awarded costs, the tariff of maximum fees for advocates between party and party referred to in Part IV of Table A of Annexure 2 to the Rules for the Magistrates' Court (hereunder referred to as 'the tariff') shall apply where the amount or value of the claim falls within the jurisdiction of the magistrates' court, unless the court, on request made before or immediately after the giving of judgment, otherwise directs.

[Subrule (3) substituted by GN R185 of 2 February 1990.]

(4) .....

[Subrule (4) deleted by GN R185 of 2 February 1990.]

(5) The taxation of advocates' fees as between party and party shall be effected by the taxing master in accordance with this rule and, where applicable, the tariff. Where the tariff does not apply, he shall allow such fees (not necessarily in excess thereof) as he considers reasonable.

TARIFF OF MAXIMUM FEES FOR ADVOCATES ON PARTY AND PARTY BASIS IN CERTAIN CIVIL MATTERS

[Tariff amended by GN R480 of 30 March 1973 and deleted by GN R185 of 2 February 1990.]

70 Taxation and Tariff of Fees of Attorneys

(1) *(a)* The taxing master shall be competent to tax any bill of costs for services actually rendered by an attorney in his capacity as such in connection with litigious work and such bill shall be taxed subject to the provisions of subrule (5), in accordance with the provisions of the appended tariff: Provided that the taxing master shall not tax costs in instances where some other officer is empowered so to do.

(b) The provisions relating to taxation existing prior to the promulgation of

this subrule shall continue to apply to any work done or to be done pursuant to a mandate accepted by a practitioner prior to such date.

(2) At the taxation of any bill of costs the taxing master may call for such books, documents, papers or accounts as in his opinion are necessary to enable him properly to determine any matter arising from such taxation.

(3) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation, allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.

(3A) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.

[Subrule (3A) inserted by GN R406 of 7 February 1992 and substituted by GN R798 of 13 June 1997.]

(4) The taxing master shall not proceed to the taxation of any bill of costs unless he is satisfied that the party liable to pay the same has received due notice as to the time and place of such taxation and notice that he is entitled to be present thereat: Provided that such notice shall not be necessary-

(a) if the party against whom costs have been awarded has not appeared at the hearing either in person or through his legal representative;

(b) if the person liable to pay costs has consented in writing to taxation in his absence; and

(c) for the taxation of writ and postwrit bills.

(5) *(a)* The taxing master shall be entitled, in his discretion, at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

(b) In computing the fee to be allowed in respect of items 1, 2, 3, 6, 7 and 8 of Section A; 1, 2 and 6 of Section B and 2, 3, 4 and 7 of Section C, the taxing master shall take into account the time necessarily taken, the complexity of the matter, the nature of the subject matter in dispute, the amount in dispute and any other factors which he considers relevant.

(5A) *(a)* The taxing master may grant a party wasted costs occasioned by the failure of the taxing party or his or her attorney or both to appear at a taxation or by the withdrawal by the taxing party of his or her bill of costs.

(b) The taxing master may order in appropriate circumstances that the wasted costs be paid *de bonis propriis* by the attorney.

(c) In the making of an order in terms of paragraphs *(a)* or *(b)*, the taxing master shall have regard to all the appropriate facts and circumstances.

(d) Where a party or his or her attorney or both misbehave at a taxation, the taxing master may-

(i) expel the party or attorney or both from the taxation and proceed with and complete the taxation in the absence of such party or attorney or both; or

(ii) adjourn the taxation and refer it to a judge in chambers for directions with regard to the finalisation of the taxation; or

(iii) adjourn the taxation and submit a written report to a judge in chambers on the misbehaviour of the party or attorney or both with the view to obtaining directions from the judge as to whether contempt of court proceedings would be appropriate.

(e) Contempt of court proceedings as contemplated in paragraph *(d)* (iii) shall be held by a judge in chambers at his or her direction.

[Subrule (5A) inserted by GN R1723 of 30 December 1998.]

(6) *(a)* In order to diminish as far as possible the costs arising from the copying of documents to accompany the briefs of advocates, the taxing master shall not allow the costs of any unnecessary duplication in briefs.

(b) Fees may be allowed by the taxing master in his discretion as between party and party for the copying of any document which, in his view, was reasonably required for any proceedings.

(7) Fees for copying shall be disallowed to the extent by which such fees could reasonably have been reduced by the use of printed forms in respect of bonds, credit agreements or other documents.

(8) Where, in the opinion of the taxing master, more than one attorney has necessarily been engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him.

(9) Save for the forms set out in the First Schedule to these Rules, a page shall contain at least 250 words and four figures shall be counted as a word.

[Subrule (9) substituted by GN R1557 of 20 September 1996.]

(10) The costs taxed and allowed in terms of the tariff for acts performed after the date of commencement[3]* of the rules published by Government Notice R210 of 10 February 1989 shall be increased by an amount equal to 70 per cent of the total amount of such costs, for acts performed after the date of commencement[4]* of the rules published by Government Notice R2410 of 30 September 1991 shall be increased by an amount equal to 100 per cent of the total amount of such costs and for acts performed after 1 July 1993 only the Tariff of Fees of Attorneys in rule 70, published by Government Notice R974 of 1 June 1993, shall apply.

[Subrule (10) inserted by GN R1996 of 7 September 1984, amended by GN R2094 of 13 September 1985, by GN R2164 of 2 October 1987 and by GN R210 of 10 February 1989, substituted by GN R2410 of 30 September 1991 (as corrected by GN R2479 of 18 October 1991) and by GN R974 of 1 June 1993 and amended by GN R1557 of 20 September 1996.]

TARIFF OF FEES OF ATTORNEYS

A - CONSULTATIONS, APPEARANCES, CONFERENCES AND INSPECTIONS

		R c	R c
1	Consultation with a client and witnesses to institute or to defend an action, for advice on evidence or advice on commission, for obtaining an opinion or an advocate's guidance in preparing pleadings, including exceptions, and to draft a petition or affidavit, per quarter of an hour or part thereof-		

	(a) by an attorney	R177,50
	(b) by a candidate attorney	R54,00
2	Consultation to note, prosecute or defend an appeal, per quarter of an hour or part thereof-	
	(a) by an attorney	R177,50
	(b) by a candidate attorney	R54,00
3	Attendance by an attorney in court at proceedings in terms of rule 37 of these Rules, per quarter of an hour or part thereof	R177,50
4	Attendance by a candidate attorney, where necessary, to assist at a contested proceeding, per quarter of an hour or part thereof	R54,00
5	Any conference with an advocate, with or without witnesses, on pleadings, including exceptions and particulars to pleadings, applications, petitions, affidavits and testimony, and on any other matter which the taxing officer may consider necessary, per quarter of an hour or part thereof-	
	(a) by an attorney	R177,50
	(b) by a candidate attorney	R54,00

		R c	**R c**
6	Any other conference which the taxing officer may consider necessary, per quarter of an hour or part thereof-		
	(a) by an attorney		R177,50
	(b) by a candidate attorney		R54,00
7	Any inspection *in situ*, or otherwise, per quarter of an hour or part thereof-		
	(a) by an attorney		R177,50
	(b) by a candidate attorney		R54,00
8	Attending to give or take disclosure, per quarter of an hour or part thereof-		
	(a) by an attorney		R177,50
	(b) by a candidate attorney		R54,00
9	Inclusive fee for necessary consultations and discussions with a client, witness, other party or advocate not		

otherwise provided for, per quarter of an hour or part thereof-

(a) by an attorney — R177,50

(b) by a candidate attorney — R54,00

10 Appearance by an attorney in court or the performance by an attorney of any of the other functions of an advocate, in terms of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995) — The tariff under rule 69 shall apply.

11 The rates of remuneration in items 1 to 9 do not include time spent travelling or waiting and the taxing officer may, in respect of time necessarily so spent, allow such additional remuneration as he or she in his or her discretion considers fair and reasonable, but not exceeding R177,50 per quarter of an hour or part thereof in the case of an attorney and R54,00 per quarter of an hour or part thereof in the case of a candidate attorney plus a reasonable amount for necessary conveyance

B - DRAFTING AND DRAWING

	R c	**R c**
1 The drawing up of a formal statement in a matrimonial matter, verifying affidavits, affidavits of service or other formal affidavits, index to brief, short brief, statements of witnesses, powers of attorney to sue or defend, as well as other formal documents and summonses, including all documents such as the prescribed forms in the First Schedule to these Rules, but not the particulars of claim in an annexure to the summons: an inclusive tariff - drawing up, checking, typing, printing, copies, delivery and filing thereof, per page of the original only		R71,00
2 The drawing up of other necessary documents, including-		
(a) instructions for an opinion, for an advocate's guidance in preparing pleadings, including further particulars and requests for same, including exceptions;		
(b) instructions to advocate in respect of all classes of pleadings;		
(c) a petition, exception or affidavit, any notice (except a formal notice), particulars of claim or an annexure to the summons, opinion by an attorney or any other important document not otherwise provided for,		R177,50
an inclusive tariff - drawing up, checking, typing, printing, copies, delivery and filing thereof, per page of the original only		

3	Letters, telegrams and facsimiles: Inclusive tariff for drawing up, checking, typing, printing, delivery, copies, postage, posting thereof, per page	R71,00

NOTE 1: Particulars of dispatched letters, telegrams and facsimiles need not be specified in a bill of costs. The number of letters written must be specified, as well as the total amount charged. The opposing party, as well as the taxing officer, is entitled to inspect the papers should the correctness of the item be disputed

NOTE 2: Whenever an attorney performs any of the work listed in this section, the fees set out herein in respect of such work shall apply and not any fees which would be applicable in terms of the tariff under Rule 69 if an advocate had performed the work in question

C - ATTENDANCE AND PERUSAL

1	Attending the receipt, entry, perusing, considering and filing of-	
	(a) any summons, petition, affidavit, pleading, advocate's advice and drafts, report, important letter, notice or document;	
	(b) any formal letter, record stock sheets in voluntary surrenders, judgments or any other material document not elsewhere specified;	
	(c) any plan or exhibit or other material document which was necessary for the conduct of the	R35,50
	action, per page	
2	Sorting, arranging and paginating papers for pleadings, advice on evidence or brief on trial or appeal, per quarter of an hour or part thereof-	
	(a) by an attorney	R177,50
	(b) by a candidate attorney	R54,00

NOTE: Particulars of received papers need not be specified in bills of costs The number of papers and pages received, as well as the total amount charged therefor must be specified. The opposing party as well as the taxing officer is entitled to inspect the papers received if the correctness of the item is disputed

D - MISCELLANEOUS

1	For making necessary copies, including photocopies, of any document or papers not already provided for in this tariff, per A4 size page	R1,80
2	Attending to arrange translation and thereafter to procure same, per quarter of an hour or part thereof-	

(a) by an attorney R177,50

(b) by a candidate attorney R54,00

3 Necessary telephone calls: The actual cost thereof, plus per quarter of an hour or part thereof-

(a) by an attorney R177,50

(b) by a candidate attorney R54,00

4 Sending facsimile letters: The actual cost of sending the facsimile letter, in addition to the fee allowed for the drawing thereof under item B3 above.

5 Testimony: Fair and reasonable charges and expenses which in the opinion of the taxing officer were duly incurred in the procurement of the evidence and the attendance of witnesses whose witness fees have been allowed on taxation: Provided that the preparation fees of a witness shall not be allowed without an order of the court or the consent of all interested parties.

E - BILL OF COSTS

	R c	**R c**

In connection with a bill of costs for services rendered by an attorney, the attorney shall be entitled to charge:

1 For drawing the bill of costs, making the necessary copies and attending settlement, 8.88 percent of the attorney's fees, either as charged in the bill, if not taxed, or as allowed on taxation.

2 In addition to the fees charged under item 1, if recourse is had to taxation for arranging and attending taxation and obtaining consent to taxation, 8.88 percent on the first R10 000,00 or portion thereof, 4.26 percent on the next R10 000,00 or portion thereof and 2.10 percent on the balance of the total amount of the bill.

3 *(a)* Whenever an attorney employs the services of another person to draft his or her bill of costs, a certificate shall accompany that bill of costs in which that attorney certifies that-

(i) the bill of costs thus drafted was properly perused by him or her and found to be correct; and

(ii) every description in such bill with reference to work, time and figures is consistent with what was necessarily done by him or her.

(b) The taxing officer may-

(i) if he or she is satisfied that one or more of the requirements referred to in item 3*(a)* has not

been complied with, refuse to tax such bill;

(ii) if he or she is satisfied that fees are being charged in a party-and-party bill of costs-

(aa) for work not done;

(bb) for work for which fees are to be charged in an attorney-and-client bill of costs; or

(cc) which are excessively high,

deny the attorney the remuneration referred to in items 1 and 2 of this section, if more than 20 percent of the number of items in the bill of costs, including expenses, or of the total amount of the bill of costs, including expenses, is taxed off.

NOTE: The minimum fees under items 1 and 2 shall be R142,00 for each item.

F - EXECUTION

1	Drafting, issue and execution of a warrant of execution and attendances in connection therewith, excluding sheriffs fees (if not taxed)	R355,00
2	Reissue	R90,00

[Rule 70 amended by GN R3553 of 1969, substituted by GN 2171 of 1982 and by GN R1262 of 1991, amended by GN R974 of 1993, by GN R2365 of 1993, by GN R1557 of 1996, by GN R1755 of 2003 and by GN R516 of 2009.]

71 Repeal of Rules

All rules made under any provision of a law repealed by section *forty-six* of the Act or under paragraph *(a)* of subsection (2) of section *forty-three* of the Act, as substituted by section *eleven* of the Supreme Court Amendment Act, 1963 (Act 85 of 1963) regulating the conduct of the proceedings of the various provincial and local divisions are hereby repealed in terms of sub-section (5) of section *forty-three* of the Act, save to the extent indicated in the appended schedule.

Schedule

[Schedule amended by GN R2410 of 30 September 1991.]

TRANSVAAL RULES			
Rule No.	**Subject-matter**	**Government Notice**	**Date**
1	Terms	153 as amended from time to time	1.5.1902
2	Vacations	do.	1.5.1902
47	Set Down	do.	1.5.1902
48	do.	do.	1.5.1902
49	do.	do.	1.5.1902

108	Criminal Sessions	1425	23.9.1960
109	Sittings of Witwatersrand Local Division	1130	3.6.1955
	Cases in Last Week of Term	1093	30.9.1903
1-26	Circuit Court Rules	678	August 1905
163	Admission of Advocates	1266	14.12.1906
	ORANGE FREE STATE		
1	Terms	221 as amended from time to time	23.7.1902
2	Vacation	do.	23.7.1902
47	Set down	do.	23.7.1902
48	do.	do.	23.7.1902
49	do.	do.	23.7.1902
103	Admission of Advocates	do.	23.7.1902
107-124	Circuit Courts Rules	do.	23.7.1902
	CAPE PROVINCE DIVISION		
3	Sittings of the Court and vacations	41 as amended from time to time	13.1.1938
5 (1)	Admission of advocates	do.	13.1.1938
7	Derelict Lands Act	do.	13.1.1938
34	Set Down	do.	13.1.1938
39(22)-(32)	Execution	do.	13.1.1938
50	Jurors	do.	13.1.1938
52, 54-63	Circuit Courts Rules	do.	13.1.1938
	NATAL PROVINCIAL DIVISION		
Order III 1-12, 14	Sittings of the Court	79 and Set Down from time to time	2.1907 as amended
Order XI 61	Set Down	do.	2.1907
Order XI 62	Withdrawal of Set Down	do.	2.1907
Order XI 67	Set Down	79 as amended from time to time	2.1907
Order XXVIII The Whole	Executive Dative and others	do.	2.1907
Order XXXII Where not already repealed	Admission of Advocates and Attorneys	do.	2.1907
Order XXXIV The Whole	Circuit Court Rules	do.	2.1907
	EASTERN CAPE COURTS		
2*(b)* and (c)	Sittings and Vacations		
2 *(d)*	Admission of Advocates	1639	25.10.1957
2 *(n)*	Circuit Court Rules		

34	Setting down of defended cases and exceptions	43 as amended from time to time	13.1.1938
39(22)-(32)	Execution	do.	13.1.1938
	GRIQUALAND WEST LOCAL DIVISION		
2 *(b)* being rule 3(1) and (4)	Sittings and Vacations	280	6.2.1953
2 (c)	Admission of Advocates	42 as amended from time to time	13.1.1938
34	Setting down of defended cases and exceptions	do.	13.1.1938
39(22)-(32)	Execution	do.	13.1.1938

First Schedule

FORM 1
EDICTAL CITATION: SHORT FORM OF PROCESS

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

In the matter between:

Plaintiff

and

Defendant

To:

A ..... B .....(sex)
.....(occupation) formerly residing at
....., but whose present whereabouts are unknown:

TAKE NOTICE that by summons sued out of this court, you have been called upon to give notice, within ..... days after publication hereof, to the registrar and to the plaintiff's attorney of your intention to defend (if any) in an action wherein

C ..... D .....claims:

(a) .....

(b) .....

(c) .....

TAKE NOTICE FURTHER that if you fail to give such notice, judgment may be granted against you without further reference to you.

DATED at ..... this .....day of .....19.....

Plaintiff's Attorney
Address for service:
.....
.....

.....
.....
Registrar of the Supreme Court

FORM 2
NOTICE OF MOTION
(To Registrar)

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

In the matter:

Applicant

TAKE NOTICE that application will be made on behalf of the above-named applicant on the ..... day of ..... at 10:00 or as soon thereafter as counsel may be heard for an order in the following terms:

(a) .....

(b) .....

(c) .....

and that the affidavit of ..... annexed hereto will be used in support thereof.

Kindly place the matter on the roll for hearing accordingly.

DATED at .....

.....
..
Applicant's Attorney

To the Registrar of the above-named Court.

[Form 2 amended by GN R2410 of 30 September 1991.]

FORM 2(a)
NOTICE OF MOTION
(To Registrar and Respondent)

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

In the matter between:

Applicant

and

Respondent

TAKE NOTICE that ..... (hereinafter called the applicant) intends to make application to this Court for an order *(a)* ..... *(b)* ..... *(c)* ..... (here set forth the form of order prayed) and that the accompanying affidavit of ..... (or petition where required by law) will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed ..... (here set forth an address referred to in rule 6(5)*(b)*) at which he will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required *(a)* to notify applicant's attorney in writing on or before the ..... *(b)* and within *fifteen* days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in rule 6(5)*(b)* at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the ....at .....(time)

DATED at .....this .....day of .....19.....

.....
..
Applicant or his Attorney
(address)

To:

(1) C.D.

(Address),

RESPONDENT.

(2) The Registrar of the above Court,

.....

[Form 2*(a)* substituted by GN R2021 of 5 November 1971 and amended by GN R1929 of 10 August 1990 and by GN R2410 of 30 September 1991.]

FORM 3
SUMMONS: PROVISIONAL SENTENCE

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

In the matter between:

Plaintiff

and

Defendant

To the sheriff or his deputy:

INFORM A ..... B .....(sex), ...(occupation), of .... (residence or place of business) and hereinafter called the defendant:

(1) that he is hereby called upon immediately to pay to C ..... D .....(sex) .....(occupation) of .....(residence or place of business) .....(hereinafter called the plaintiff) an amount of .....together with interest thereon at the rate of .....% per annum as from .....claimed by plaintiff.....(here set out the cause of action) ....., and a copy of which document is annexed hereto:

(2) that failing such payment, he or she is hereby called upon to appear before this Court personally or by an advocate or by an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court, at ..... on .....the .....day of .....19.....at.....(time) in the forenoon (or as soon thereafter as the matter can be heard) to admit or deny his or her liability for the said claim, and to state why the mortgaged property should not be declared executable;

(3) that if he denies liability for the same, he shall not later than noon on .....the day of .....19....., file an affidavit with the registrar of this court, and serve a copy thereof on plaintiff's attorney, which affidavit shall set forth the grounds of his defence to the said claim, and in particular state whether he admits or denies his signature to the said ..... or whether he admits or denies the signature or authority of his agent.

AND INFORM the said defendant further that in the event of his not paying the amount and interest above-mentioned to the plaintiff immediately and if he (the said defendant) further fails to file an affidavit as aforesaid, and to appear, before this Court at the time above stated, provisional sentence may forthwith be granted against him with costs, and the mortgaged property may be declared executable, but that against payment of the said amount, interest and costs, he will be entitled to demand security for the restitution thereof if the said sentence should thereafter be reversed.

AND serve a copy of this summons and of the said ..... on the said defendant and then return this summons to the registrar with your return of what you have done thereon.

DATED at.....this..... day of .....19.....

.....
.....
Registrar of the Supreme Court

Plaintiff's Attorney
Address for service:
.....
.....

[Form 3 amended by GN R235 of 18 February 1966, by GN R2410 of 30 September 1991 and by GN R1746 of 25 October 1996.]

FORM 4
WRIT OF ARREST

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

In the matter between:

Plaintiff

and

Defendant

To the sheriff or his deputy:

You are hereby commanded to apprehend A .....B.....
.....(sex) .....(occupation), of..... .....(residence or place of business) in the district of ..... (hereinafter called the defendant) and to detain and bring him before this Court on the .....day of .....19.....at .....(time) in the forenoon (to answer C ..... D.....(sex)..... .....(occupation), of .....(residence or place of business) in the district of ..... (hereinafter called the plaintiff) in an action wherein the plaintiff claims (1) .....(2) ..... and (3) .....from defendant, and to abide the judgment of this Court thereon):
(or if writ issued after institution of proceedings, to show cause why he should not be ordered to abide the judgment of the Court or to furnish security for his further presence within its jurisdiction until its judgment has been delivered in the action instituted therein, by C ..... D .....(sex), ...(occupation), of .....(residence or place of business), in the district of .....(hereinafter called the plaintiff), and in which the said plaintiff claims (1) ..... (2) ..... and (3) .....from defendant, or failing the due provisions of such security, why he should not be committed to prison and detained pending the judgment of this Court in the said action).

(2) To the Officer Commanding the Prison to whom the sheriff presents this writ.

You are thereby commanded and required to receive the said C.D. and to keep him safely until such time as he shall be removed to have him before the Court in accordance with the first part of this writ or until he shall be otherwise lawfully discharged.

DATED at .....this .....day of .....19....

.....
.....
Registrar of the Supreme Court

Plaintiff's Attorney
Address for service:
.....
.....

NOTE: The costs of this writ have been taxed and allowed at .....

exclusive of the sheriff's caption fee of .....

.....
.....
Registrar of the Supreme Court

[Form 4 amended by GN R2410 of 30 September 1991.]

FORM 5
ARREST - BAIL BOND

We, the undersigned, C ..... D ..... of .....and L .....M ..... of ....., hereby acknowledge ourselves to be firmly bound to the sheriff of the province of .....(or the sheriff for the district of .....), in an amount of ..... to be paid to the said sheriff (or sheriff) or his cessionaries or assigns, for which payment we bind ourselves jointly and severally, and our respective executors and administrators in like manner, the condition of this bond being that if the said C ..... D ..... duly appear before the ..... Division of the Supreme Court of South Africa at .....on the .....day of .....19....., at .....(time) in the forenoon to answer A ....., B ..... of .....in the district of ..... (hereinafter called the plaintiff) in an action wherein the said plaintiff claims (1) ..... (2) ..... (3) ..... from the said C ..... D ..... and thereafter remains within the jurisdiction of this Court until its judgment has been delivered in the said action, and abides such judgment, this bond shall be void; otherwise it shall be of full force and effect.

SIGNED by us in the presence of the subscribing witnesses at .....on this the .....day of .....19.....

.....
.....
C.D. (Defendant)

.....
.....
L.M. (Surety)

AS WITNESSES:
1 .....
2 .....

[Form 5 amended by GN R2410 of 30 September 1991.]

FORM 6
ASSIGNMENT OF BAIL BOND

I, ..., in my capacity as sheriff of the province of .....(or sheriff for the district of .....) hereby cede, assign and make over to him all my right, title and interest in the aforegoing Bail Bond to A ..... B ..... the above-named plaintiff.

SIGNED by me in the presence of the subscribing witnesses at ..... this .....day of .....19 .....

.....
.....
Sheriff

AS WITNESSES:

1 .....

2 .....

[Form 6 amended by GN R2410 of 30 September 1991.]

FORM 7
NOTICE TO THIRD PARTY

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

In the matter between:

Plaintiff

and

Defendant

and

.....
Third Party

TO THE ABOVE-NAMED THIRD PARTY:

TAKE NOTICE that the above-named plaintiff has commenced proceedings against the above-named defendant for the relief set forth in the summons, a copy of which is herewith served upon you.

The above-named defendant claims a contribution or indemnification (or such other grounds as may be sufficient to justify a third-party notice) on the grounds set forth in the annexure hereto.

If you dispute those grounds or if you dispute the claim of the plaintiff against the defendant you must give notice of your intention to defend, within .....days. Such notice must be in writing and filed with the registrar and a copy thereof served on the above-named defendant at the address set out at the foot of this notice. It must give an address (not being a post office box or *poste restante)* referred to in rule 6(5)*(b)* for the service upon you of notices and documents in the action. Within 20 days of your giving such notice you must file a plea to the plaintiff's claim against the defendant or a plea to the defendant's claim against you, or both such pleas.

DATED at .....this .....day of .....19 .....

.....
.....
Defendant's Attorney
(Address)

To .....
and to Plaintiff's Attorney,
(Address)

[Form 7 substituted by GN R2021 of 5 November 1971 and amended by GN R2410

of 30 September 1991.]

FORM 8
NOTICE TO ALLEGED PARTNER

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

and

.....
Defendant

To: A ..... B .....

TAKE NOTICE that action has been instituted by the above-named plaintiff against the above-named defendant for the sum of ..... and that it is alleged that the above-named defendant is a partnership of which you were from ..... to ..... a partner.

If you dispute that you were a partner or that the above-mentioned period is in any way relevant to your liability as a partner, you must within 10 days of the service of this notice give notice of your intention to defend. Upon your giving such notice a copy of the summons served upon the above-named defendant will be served upon you.

To give such notice you must file with the registrar and serve a copy thereof upon the plaintiff at the address set out at the foot hereof a notice stating that you intend to defend. Your notice must give an address (not being a post office box or *poste restante)* referred to in rule 6(5)*(b)* for the service upon you of notices and documents in the action. Unless you do all these things your notice will be invalid.

Thereafter you should file a plea in which you may dispute that you were a partner or that the period alleged above is relevant or that the defendant is liable, or all three of these matters.

If you do not give such notice you will not be at liberty to contest any of the above issues. If the above-named defendant is held liable you will be liable to have execution issued against you, should the defendant's assets be excussed in execution and be insufficient.

DATED at .....this ..... day of .....19.....

.....
.....
Attorney for
.....
.....
(Address)

(N.B. In application proceedings this form should be appropriately altered.)

[Form 8 substituted by GN R2021 of 1971 and amended by GN R1262 of 1991.]

FORM 9
SUMMONS

(Claim in respect of debt or liquidated demand)

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

and

.....
Defendant

To the sheriff or his deputy:

INFORM A.B., of .....(state sex and occupation) .....(hereinafter called the defendant), that C.D., of ..... (state sex and occupation) ..... (hereinafter called the plaintiff), hereby institutes action against him in which action the plaintiff claims:

(Here set out in concise terms plaintiff's cause of action)

INFORM the defendant further that if he disputes the claim and wishes to defend the action he shall within .....days of the service upon him of this summons file with the registrar of this court at .....(here set out the address of the registrar's office) notice of his intention to defend and serve a copy thereof on the plaintiff's attorney, which notice shall give an address (not being a post office box or *poste restante)* referred to in rule 19(3) for the service upon the defendant of all notices and documents in the action.

INFORM the defendant further that if he fails to file and serve notice as aforesaid, judgment as claimed may be given against him without further notice to him.

And immediately thereafter serve on the defendant a copy of this summons and return the same to the registrar with whatsoever you have done thereupon.

DATED at .....this .....day of .....19....

.....
.....
Registrar of the Supreme Court

.....
.....
Plaintiff's Attorney

(Address)

.....
.....
.....
.....

[Form 9 substituted by GN R2021 of 5 November 1971 and amended by GN R960 of 28 May 1993.]

FORM 10
COMBINED SUMMONS

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

and

.....
Defendant

To the sheriff or his deputy:

INFORM A.B., of .....(state sex and occupation) ..... (hereinafter called the defendant), that C.D., of .....(state sex and occupation) .....(hereinafter called the plaintiff), hereby institutes action against him in which action the plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the defendant further that if he disputes the claim and wishes to defend the action he shall-

(i) within ..... days of the service upon him of this summons file with the registrar of this court at .....(set out the address of the registrar) notice of his intention to defend and serve a copy thereof on the plaintiff's attorney, which notice shall give an address (not being a post office box or *poste restante)* referred to in rule 19(3) for the service upon the defendant of all notices and documents in the action;

(ii) thereafter, and within 20 days after filing and serving notice of intention to defend as aforesaid, file with the registrar and serve upon the plaintiff a plea, exception, notice to strike out, with or without a counter-claim.

INFORM the defendant further that if he fails to file and serve notice as aforesaid judgment as claimed may be given against him without further notice to him, or if, having filed and served such notice, he fails to plead, except, make application to strike out or counter-claim, judgment may be given against him. And immediately thereafter serve on the defendant a copy of this summons and return the same to the registrar with whatsoever you have done thereupon.

DATED at .....this .....day of .....19.....

.....
.....
Registrar of the Supreme Court

ANNEXURE

Particulars of Plaintiff's Claim

.....
.....
.....
.....
.....
.....

.....
..
Plaintiff's Attorney

Address of Plaintiff's Attorney

.....
.....

.....
..
Plaintiff's Advocate

[Form 10 substituted by GN R235 of 18 February 1966 and by GN R2021 of 5 November 1971 and amended by GN R2410 of 30 September 1991 and by GN R960 of 28 May 1993.]

FORM 11
DISCOVERY - FORM OF AFFIDAVIT

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

A.B.
and
C.D.

.....
Defendant

I, C.D., the above-named defendant, make oath and say:

(1) I have in my possession or power the documents relating to the matters in question in this cause set forth in the first and second parts of the First Schedule hereto.

(2) I object to produce the said documents set forth in the second part of the said schedule hereto.

(3) I do so for the reason that ..... (here state upon what grounds the objection is made, and verify the fact as far as may be).

(4) I have had, but have not now in my possession or power, the documents relating to the matters in question in this action, set forth in the Second Schedule hereto.

(5) The last-mentioned documents were last in my possession or power.....
.....(state when).

(6) The .....(here state what has become of the last-mentioned documents, and in whose possession they are now).

(7) According to the best of my knowledge and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody or power of my attorney, or agent, or any other person on my behalf, any document, or copy of, or extract from any document, relating to any matters in question in this cause, other than the documents set forth in the First and Second Schedules hereto.

DATED at .....this .....day of .....19.....

.....
Defendant

FORM 12
NOTICE IN TERMS OF RULE 35(5)

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

AB Plaintiff

and

CD Defendant

To: .....

Please take notice that the abovenamed plaintiff requires you within 15 days to deliver to the under-mentioned address a written statement setting out what documents of the following nature you have presently or had previously in your possession:

(a) .....

(b) .....

(c) .....

(d) .....

In such statement you must specify in detail which documents are still in your possession. If you no longer have any such documents which were previously in your possession you must state in whose possession they now are.

If you fail to deliver the statement within the time aforesaid, application will be made to court for an order compelling you to do so and directing you to pay the costs of such application.

.....
Plaintiff's Attorney
(Address)

[Form 12 amended by GN R1262 of 1991.]

FORM 13
DISCOVERY - NOTICE TO PRODUCE

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

.....
Defendant

TAKE NOTICE that the .....(plaintiff or defendant) requires you to produce within five days for his inspection the following documents referred to in your affidavit, dated the ..... day of ..... 19 .....

(Describe documents required)

DATED at ..... this .....day of .....19.....

.....
Attorney for .....
(Address)

To:

.....
Attorney for the .....
(Address)

[Form 13 amended by GN R2410 of 30 September 1991.]

FORM 14
DISCOVERY - NOTICE TO INSPECT DOCUMENTS

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....

Plaintiff

.....
Defendant

TAKE NOTICE that you may inspect the documents mentioned in your notice of the ..... day of .....19 ....., at my office, or at ..... and between the hours of ..... and on the following days.

(or)

That the (plaintiff or defendant) objects to giving you inspection of the documents mentioned in your notice of the ..... day of ..... 19....., on the grounds that .....

(State the grounds)

DATED at ..... this .....day of .....19....

.....
Attorney for .....
(Address)

To:

.....

Attorney for the .....
(Address)

FORM 15
DISCOVERY - NOTICE TO PRODUCE DOCUMENTS IN PLEADINGS, ETC.

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

.....
Defendant

TAKE NOTICE that the plaintiff (or defendant) requires you to produce for his inspection the following documents referred to in your ....(declaration or plea, or affidavit).

(Describe documents required)

To:

.....

Attorney for the .....
(Address)

.....
Attorney for .....
(Address)

FORM 16
SUBPOENA

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

.....
Defendant

To the sheriff or his deputy:
INFORM:

(1)

(2) (State names, sex, occupation, race and place of

(3) business or residence of each witness)

(4)

that each of them is hereby required to appear in person before this court at ..... on the .....day of .....19..... at .....(time) in the forenoon and thereafter to remain in attendance until excused by the said court, in order to testify on behalf of the above-named plaintiff/defendant in regard to all matters within his knowledge relating to an action now pending in the said court and wherein the plaintiff claims (1).....
(2).....(3)..... from the defendant.

AND INFORM him that he is further required to bring with him and to produce to the said court .....(here describe accurately each document, book or other thing to be produced).....

AND INFORM each of the said persons further that he should on no account neglect to comply with this subpoena as he may thereby render himself liable to a fine of R300, or to imprisonment for *three* months.

DATED at.....this .....day of.....19....

.....
Registrar of the Supreme Court

.....
Plaintiff's/Defendant's
Attorney

[Form 16 amended by GN 2628 of 1 December 1989 and by GN R2410 of 30 September 1991.]

FORM 17
NOTICE IN TERMS OF RULE 43

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Applicant

and

.....
Respondent

To the above-named respondent:

TAKE NOTICE that if you intend to defend this claim you must, within 10 days, file a reply with the Registrar of this court, giving an address for service referred to in rule 6(5)*(b)*, and serve a copy thereof on the applicant's attorney. If you do not do these things you will be automatically barred from defending, and judgment may be given against you as claimed. Your reply must indicate what allegations in the applicant's statement you admit or deny, and must concisely set out your defence.

DATED at.....this.....day of.....19....

.....
Applicant's Attorney

Address for service:
.....
.....

[Form 17 substituted by GN R2021 of 1971 and amended by GN R1262 of 1991 and by GN R2410 of 1991.]

FORM 17A
RESTITUTION OF CONJUGAL RIGHS

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

To:

A.B., formerly of ....., but whose present address is unknown;

TAKE NOTICE that by order of Court dated the .....day of.....
19....., you are required to return, and restore conjugal rights, to C.D. your .....(wife/husband) on or before the .....day of .....19.....
Should you fail to do so, and not show cause to the contrary before the above-mentioned court at 10:00 on the .....day of ..... 19....., an order of divorce may be granted against you, with costs, and your (wife/husband) may be granted custody of the ..... minor child(ren) of the marriage, and you may be ordered to pay maintenance for .....at the rate of.....
DATED at.....this .....day of.....19....

.....
Registrar of the Court

.....
Plaintiff's Attorney
(Address)

[Form 17A amended by GN R2410 of 30 September 1991.]

FORM 18
WRIT OF EXECUTION

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....

Plaintiff

.....
Defendant

To the sheriff

for the district of .....

You are hereby directed to attach and take into execution the movable goods of ....., the above-mentioned defendant of .....(address) ....., and of the same to cause to be realized by public auction the sum of ..... together with interest thereon at the rate of .....per centum per annum from the .....day of.....19....., and the sum of .....for the taxed costs and charges of the said ....., which he recovered by judgment of this Court dated the .....day of .....19 ....., in the above-mentioned case, and also all other costs and charges of the plaintiff in the said case to be hereafter duly taxed according to law, besides all your costs thereby incurred.

Further pay to the said .....or his attorney the sum or sums due to him with costs as above-mentioned, and for your so doing this shall be your warrant.

And return you this writ with what you have done thereupon.

DATED at .....this.....day of .....19....

.....
Registrar of the Supreme Court

.....
Plaintiff's Attorney
(Address)

[Form 18 amended by GN R2410 of 30 September 1991.]

FORM 19
FORM OF SECURITY UNDER RULE 45(5)

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

.....
Defendant

WHEREAS by virtue of certain writ of the Supreme Court of South Africa, ...Division, dated the ..... day of .....19 ....., issued at the instance of A.B. against C.D. of .....the sheriff has seized and laid under attachment the undermentioned articles, namely:

10 oxen
1 plough
1 harrow
etc., etc., etc.

Now, therefore, we, the said C.D. and G.H.,

of ..... a .....(occupation), as surety for him, bind ourselves severally and *in solidum*, hereby undertaking to the said sheriff or his cessionaries, assigns or successors in office, that the said goods shall not be made away with or disposed of, but shall remain in possession of the said C.D. under the said attachment, and be produced to the said sheriff (or

other person authorized by him to receive the same) on the ..... day of .....19 ..... (the day appointed for the sale), or on any other day when the same may be required in order to be sold, unless the said attachment shall legally be removed, failing which I, the said G.H., hereby bind myself, my person, goods and effects, to pay and satisfy the sum of

..... (estimated value of the effects seized) to the said sheriff, his cessionaries, assigns or successors in office, for and on account of the said A.B.

In witness whereof we, the said C.D. and G.H., have hereunto set our hands on this .....day of .....19.....

DATED at .....this.....day of .....19....

C.D.

.....

Judgment debtor

G.H.

.....

Surety

.....

Deputy-Sheriff

ASSIGNMENT OF SURETY BONDS

I, ..., in my capacity as Deputy-Sheriff for the district of .....hereby cede, assign and make over to A.B. all my right, title and interest in the aforegoing surety bond.

Signed by me in the presence of the subscribing witnesses at..... this .....day of .....19.....

.....

Sheriff

AS WITNESSES:

1. .....
2. .....

[Form 19 amended by GN R2410 of 30 September 1991.]

FORM 20
WRIT OF ATTACHMENT - IMMOVABLE PROPERTY

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....

Plaintiff

.....

Defendant

To the sheriff for:

The district of .....

WHEREAS you were directed to cause to be realized the sum of ..... in satisfaction of a judgment debt and costs obtained by A.B. against the said C.D. in this court on the .....day of ..... 19.....

AND WHEREAS your return stated .....(here quote the sheriff's return on the writ against movables).

NOW, THEREFORE, you are directed to attach and take into execution the immovable property of the said C.D., being ..... (here give the description of the property) .....to cause to be realized therefrom the sum of .....together with the costs hereof and of the prior writ amounting to ..... and your charges in and about the same, and thereafter to dispose of the proceeds thereof in accordance with Rule of Court No. 46.

FOR WHICH this shall be your warrant.

DATED at .....this .....day of .....19...

.....
Registrar of the Supreme Court

.....
Plaintiff's Attorney
(Address)

[Form 20 substituted by GN R2004 of 15 December 1967 and amended by GN R2410 of 30 September 1991.]

FORM 21
CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

In re:

.....
Plaintiff

.....
Defendant

The property which will be put up to auction on the .....day of ..... 19....., consists of:

The sale shall be subject to the following conditions:

1. The property shall be sold by the sheriff of ..... at .....to the highest bidder without reserve/with a reserve price of .....

2. The sale shall be for rands, and no bid for less than *one* rand shall be accepted.

3. If any dispute arises about any bid the property may be again put up to auction.

4. If the auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified. If the auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 6 or the balance of the purchase price he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the property may immediately be again put up to auction.

5. The purchaser shall, as soon as possible after the sale, and immediately on being requested by the ....., sign these conditions, and if he has bought *qua qualitate*, state the name of his principal.

6. *(a)* The purchaser shall pay a deposit of ten per cent of the purchase price in cash on the day of sale, the balance against transfer to be secured by a bank or building society guarantee, to be approved by plaintiff's attorney, to be furnished to the sheriff within .....days after the date of sale.

(b) If transfer of the property is not registered within *one* month after the sale, the purchaser shall be liable for payment of interest to the plaintiff at the rate of .....per cent p.a. and to the .....bondholder at the rate of ..... per cent p.a. on the respective amounts of the award to the plaintiff and the .....bondholder in the plan of distribution as from the expiration of *one* month after the sale to date of transfer.

7. Inasmuch as the defendant is a member of the ..... Group, no bids will be accepted by or on behalf of a person who is not a member of such Group, unless such person

exhibits to the auctioneer at the sale a permit from the Minister of the Interior authorizing him to acquire such property.

8. If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff after due notice to the purchaser, and the property may again be put up for sale; and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from him under judgment of the judge pronounced summarily on a written report by the sheriff, after such purchaser shall have received notice in writing that such report will be laid before the judge for such purpose; and if he is already in possession of the property, the sheriff may, on *seven* days' notice, apply to a judge for an order ejecting him or any person claiming to hold under him therefrom.

9. The purchaser shall pay auctioneer's charges on the day of sale and in addition, transfer dues, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer, upon request by the attorney for the execution creditor.

10. The property may be taken possession of immediately after payment of the initial deposit, and shall after such deposit be at the risk and profit of the purchaser.

11. The purchaser may obtain transfer forthwith if he pays the whole price and complies with condition 9, in which case any claim for interest shall lapse, otherwise transfer shall be passed only after the purchaser has complied with the provisions of conditions 6 and 9 hereof.

12. The sheriff may demand that any buildings standing on the property sold shall be immediately insured by the purchaser for the full value of the same, and the insurance policy handed to him and kept in force as long as the whole price has not been paid: and if he does not do so, the sheriff may effect the insurance at the purchaser's expense.

13. The property is sold as represented by the title deeds and diagram, the sheriff not holding himself liable for any deficiency that may be found to exist and renouncing all excess. The property is also sold subject to all servitudes and conditions specified in the deed of transfer.

14. The execution creditor shall be entitled to appoint an attorney to attend to transfer.

AT .....this .....day of .....19.....

.....
Sheriff

I certify hereby that to-day the .....in my presence the hereinbefore-mentioned property was sold for .....to .....

.....

I, the undersigned ....., residing at ..... in the district of .....do hereby bind myself as the purchaser of the hereinbefore-mentioned property to pay the purchase price and to perform all and singular the conditions mentioned above.

.....

[Form 21 amended by GN R2410 of 30 September 1991.]

FORM 22

[Form 22 inserted by GN R1352 of 10 October 1997 and by GN R568 of 30 April 1999, deleted by GN R1084 of 10 September 1999 and repealed by GN R373 of 30 April 2001.]

FORM 23

[Form 23 inserted by GN R1352 of 10 October 1997 and repealed by GN R373 of 30 April 2001.]

FORM 24

[Form 24 inserted by GN R1352 of 10 October 1997 and repealed by GN R373 of 30 April 2001.]

FORM 25
NOTICE IN TERMS OF SECTION 309C(6) OF THE CRIMINAL PROCEDURE ACT, 1977 (ACT 51 OF 1977)

[Form 25 inserted by GN R1084 of 10 September 1999 and substituted by GN R518 of 2009.]

In the High Court of South Africa

(.....) Division

CASE NO ..... (HIGH COURT)
CASE NO ..... (LOWER COURT) HELD AT ..... (LOWER COURT)
THE STATE vs
.....
.....
CHARGE:
.....
.....
TO THE DIRECTOR OF PUBLIC PROSECUTIONS, OR PERSON DESIGNATED BY HIM OR HER,
.....
.....
AND TO THE APPELLANT,
.....
TAKE NOTICE THAT the application by the appellant-

[5]* for condonation referred to in the proviso to section 309(2) or referred to in section 309B(1)*(b)*(ii) of the Criminal Procedure Act 51 of 1977; or

[6]* for leave to appeal referred to in section 309B(1)*(a)* of the Act; or

[7]* to adduce further evidence referred to in section 309B(5)*(a)* of the Act,

has been set down for hearing on ..... (date) at ..... (time) or as soon thereafter as the matter may be heard.

THE matter will be heard at
..... (place).
TO THE DIRECTOR OF PUBLIC PROSECUTIONS OR DESIGNATED PERSON
.....
.....
.....
.....
(Address)
AND TO THE APPELLANT,
.....
.....

.....
.....
.....
(Address)
OR TO:
.....
.....
.....
.....
.....
.....
(Address of appellant's legal representative, if any)
REGISTRAR OF THE HIGH COURT,
.....

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE IN TERMS OF SECTION 309 (9) OF THE CRIMINAL PROCEDURE ACT, 1977
Receipt of the above-mentioned notice is hereby acknowledged.
FOR DIRECTOR OF PUBLIC PROSECUTIONS OR PERSON DESIGNATED BY HIM OR HER
.....
..... (Signature)
.....
(Name in print)
FOR APPELLANT .....
(Signature)
.....
(Name in print)

Second Schedule

(Published for the guidance of practitioners)

FORM A
WRIT OF EXECUTION - MOVABLE PROPERTY, PROVISIONAL SENTENCE

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

A.B.
and
C.D.

.....
Defendant

To the sheriff for the
District of .....
YOU are hereby directed to attach and take into execution the movable goods of C.D., the abovementioned defendant, of ..... (address).....and of the same to

cause to be realized by public auction the sum of .....together with interest thereon at .....per centum per annum from the .....day of .....19..... and the sum of .....for the taxed costs and charges of the said A.B. which he recovered provisionally by judgment of this court on the .....day of .....19..... in the abovementioned suit, and also all other costs and charges of the said plaintiff in the said suit to be hereafter taxed according to law, besides all your costs thereby incurred, and two rand ten cents in addition in case the said defendant shall require security *de restituendo* and further to pay to the said A.B. or his attorney the sum or sums due to him with costs as above-mentioned upon sufficient security (if required) being given by him for the restitution thereof, if in the principal case the said sentence is reversed, and for so doing this shall be your warrant.

AND return this writ with what you have done thereupon.

.....
Registrar

.....
Plaintiff's Attorneys
(Address)

[Form A amended by GN R2410 of 30 September 1991.]

FORM B
WRIT OF ATTACHMENT - PROVISIONAL SENTENCE - IMMOVABLE PROPERTY DECLARED EXECUTABLE

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff

A.B.
and
C.D.

.....
Defendant

To the sheriff for the

District of.....

YOU are hereby directed to attach certain .....(here set out fully the description of the property) which was by sentence of this court bearing date the .....day of .....19... specially declared executable to satisfy the sum of ..... and interest thereon at .....per centum per annum from the .....day of .....19..... to date of payment, which A.B. by the said sentence recovered provisionally against the said C.D., together with the sum of ..... for the taxed costs and charges of the said A.B. and two rand ten cents in addition in case the defendant shall require security *de restituendo*, and also the sum of .....being the taxed costs of this writ besides all your costs thereby incurred, and pay to the said A.B. or his attorney the sum or sums due to him with costs as above-mentioned upon sufficient security (if required) being given by him for restitution thereof if in the principal case the said sentence be reversed, and for so doing this shall be your warrant.

AND return you this writ with what you have done thereupon.

DATED at .....on this.....day of .....19...

.....
Registrar

.....
Plaintiff's Attorneys
(Address)

FORM C
DE RESTITUENDO BOND AFTER LEVY OF A PROVISIONAL SENTENCE, WHEN THE DEFENDANT INTENDS TO GO INTO THE PRINCIPAL CASE

WHEREAS on the .....day of .....19.....(plaintiff) of .....did by sentence of the ..... Division of the Supreme Court of South Africa, recover provisionally against C.D. the sum of .....with interest and costs by him about his suit in that behalf expended; and whereas the sheriff has levied by virtue of the said sentence the sum of ....., and whereas the said C.D. has required security for the restitution thereof in the principal case the said sentence shall be reversed:

KNOW ALL MEN by these presents that I, A.B. of ..... and held and firmly bound to C.D. of .....in the sum of ....., to be paid to the said C.D., his executors, administrators or assigns, for which payment, to be well and truly made, I bind myself, my heirs, executors, administrators or assigns firmly by these presents under my hand:

Now the condition of this obligation is such that if the said sentence shall in the principal case be reversed, then the said sheriff shall pay to the said C.D., his heirs, executors, administrators or assigns, the said sum of .....or such part thereof as the said court may adjudge, but if the said sentence should be confirmed, or if the said C.D. does not enter appearance to defend within *two* months from date of the judgment aforesaid then this bond shall be null and void; otherwise it shall be and remains of full force and effect.

DATED at .....on this .....day of .....19....

AS WITNESSES:

.....

.....

[Form C amended by GN R2410 of 30 September 1991.]

FORM D
CERTIFICATE OF OWNERSHIP AND ENCUMBRANCES: SALE IN EXECUTION OF IMMOVABLE PROPERTY

SALE IN EXECUTION:.....

versus.....

Case No.....

I, ..., Registrar of Deeds of the Province of ....., hereby certify that ..... is the registered owner of the farm .....situate in the district of ....., in extent .....morgen ..... square roods, by virtue of Deed of Transfer No .....registered on the .....day of .....19...., and that there are no encumbrances on the said property save and except the following:

Bond

Servitudes

Etc., etc., etc.

This property/ies is/are situated in a/an .....area proclaimed under the Group Areas Act.

The search fee payable is .....

Dated at .....this .....day of.....19....

.....
Registrar of Deeds

FORM E
WRIT OF EJECTMENT

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Plaintiff
(Applicant)

A.B.
and
C.D.

.....
Defendant
(Respondent)

Whereas A.B., ...(occupation and address)..... obtained an order in the .....Division of the Supreme Court of South Africa on the .....day of .....19....., against C.D. .....(occupation and address) ....., ordering him and all persons claiming through him to be ejected from and out of .....(set out the property or premises from which the defendant is to be ejected) ....., at present occupied by the said C.D., as appears to us of record.

Now therefore you are directed to eject the said C.D. and all persons claiming through him, his goods and possessions from and out of all occupation and possession whatsoever of the said ground and/or premises, and to leave the same, to the end that the said A.B. may peaceably enter into and possess the same, and for so doing this shall be your warrant.

DATED at .....this .....day of .....19.....

.....
Registrar

.....
Plaintiff's Attorneys
(Address)

FORM F
WRIT OF COMMITMENT FOR CONTEMPT OF COURT

IN THE SUPREME COURT OF SOUTH AFRICA
(.....DIVISION)

Case No.....

In the matter between:

.....
Applicant

A.B.
and
C.D.

.....
Respondent

(1) To the Sheriff of the Province of .....
or his lawful deputy.

WHEREAS it appears of record that this court on the ..... day of .....19....., granted an order:

(set out particulars of order of Court)

AND WHEREAS it appears to record that this Court, on the ..... day of ....., 19....., granted a decree committing the respondent for contempt of Court for failing to comply with the aforesaid order of Court, in the manner following:

(here set out the terms of his omission)

YOU are hereby directed to take C.D. of .....in the Province of ....., if he be found within that Province and deliver him to the keeper of the prison of the district in which he be found, together with a duly certified copy of this writ, there to be safely kept until the expiration of..... from the date upon which he shall have been detained in the said prison by virtue of this warrant, or until the said C.D. shall be otherwise legally discharged; and for your so doing this shall be your warrant.

AND return you this writ with what you have done thereupon.

(2) To the Officer Commanding the Prison to whom the sheriff presents this writ.

YOU are hereby commanded and required to receive the said C.D. into your custody and keep him safely until the expiration of ..... from the date on which the said C.D. shall be received in the said prison by virtue of this warrant or until he shall be otherwise legally discharged.

DATED at .....this .....day of .....19.....

.....
Registrar

.....
Plaintiff's Attorneys
(Address)

[Form F amended by GN R2410 of 30 September 1991.]

FORM G

[Form G deleted by GN R2410 of 30 September 1991.]

FORM H
WRIT OF ATTACHMENT, *AD FUNDANDAM JURISDICTIONEM*

IN THE SUPREME COURT OF SOUTH AFRICA

(.....DIVISION)

Case No.....

In the matter between:

Plaintiff

A.B.

and

C.D.

Defendant

To the sheriff for the
district of.....

YOU are hereby directed pursuant to an order of the ..... Division of the Supreme Court of South Africa, bearing date the ..... day of .....19....., forthwith to attach..... (here set out the property) ..... at present at ..... (address) ....., *ad fundandam jurisdictionem* of the said Court in an action by A.B. against C.D. of ..... (address of respondent).....for .....(here set out the cause of action).....; and for so doing this shall be your warrant.

AND return you this writ with what you have done thereon.

DATED at .....on this.....day of.....19...

.....
Registrar

.....
Applicant's Attorney
(Address)

NOTE: The sheriff cannot attach merely on the order of court; he must be furnished with a writ as above.

[Form H amended by GN R2410 of 30 September 1991.]

FORM I
AUTHENTICATION OF SIGNATURE

TO ALL WHOM IT MAY CONCERN:

I, (Registrar's name in full), Registrar of the Supreme Court of South Africa, ...Division, do hereby certify that ....(Notary's or Attorney's name in full) ...., whose signature appear on the document hereto annexed marked 'A', is a Notary Public or Attorney by lawful authority duly sworn and admitted and[8]* practising as such in this Province, and that to all Acts, Instruments, Documents and Writings subscribed by him in that capacity full faith and credence are given in this Province in Court and thereout.

GIVEN UNDER MY HAND and Seal of Office, at ....., in the Province of .....on this .....day of ....in the year One Thousand Nine Hundred and .....

.....
Registrar of the Supreme Court
of South Africa

(Seal)

.....
Division

FORM J
CERTIFICATE OF SERVICE OF FOREIGN PROCESS

I, ..., registrar of the ..... division of the Supreme Court of South Africa hereby certify that the following documents are annexed:

(1) the original request for service of process or citation received from .....(state, territory or court) in the matter between .....and .....;

(2) the process received with such request;

(3) the proof of service upon ....., the person named in such request for service, together with the certificate of verification of .....

I also certify that the service so proved and the proof thereof are such as are required by the practice and rules of this division of the Supreme Court of South Africa.

I further certify that the cost of effecting such service, duly certified by the taxing officer of this division, amounts to the sum of R.....

GIVEN UNDER MY HAND and Seal of Office, at ..... this .....day of .....19 .....

.....
Registrar of the Supreme Court
of South Africa

Seal

.....
Division

---

[1]**Any reference in any law to the institution of application proceedings in any court by** *petition* **shall be construed as a reference to the institution of such proceedings by *notice of motion* in terms of s. 1 of the Petition Proceedings Replacement Act 35 of 1976 with effect from 1 July 1976.**

[2]**GN R373 in** *GG* **22265 of 30 April 2001 provides as follows:**

'Transitional Provisions

(1) The provisions of this rule shall apply to a civil action in respect of which the Cape of Good Hope Provincial Division of the High Court of South Africa has jurisdiction.

(2) In matters where directions have at any stage been issued by a judge pursuant to any provision of the repealed rule 37A, the provisions of such repealed rule shall continue to apply subject to the provisions of subrule (3).

(3) Notwithstanding the provisions of the repealed rule 37A, the registrar may, after consultation with the Judge President of a judge designated by the Judge President, convene a final conference or allocate trial dates in matters referred to in subrule (2).'.

[3]10 March 1989

[4]1 November 1991

[5]Delete what is not applicable

[6]Delete what is not applicable

[7]Delete what is not applicable

[8]If the notary or attorney has taken an affidavit, add 'and as such a Commissioner for Oaths'.