



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

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

31 May 2022

Our ref: JB/ASebola/SCC

Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED AMENDMENTS TO UNIFORM RULE 4(1)(a) (SERVICE)

As part of its rule review function, the Rules Board for Courts of Law (Rules Board) has considered amending Uniform Rule 4(1)(a) which regulates 'service'.

Uniform Rule 4(1)(a)(iv) provides:

"if the person so to be served has chosen a *domicilium citandi*, by delivering or leaving a copy thereof at the *domicilium* so chosen".

The Rules Board considers removing the portion of the rule which provides for service of the document at a chosen *domicilium* address by 'leaving' a copy of the document at a *domicilium* so chosen, but to provide that the document being served must be delivered to a person above the age of sixteen years.

The Rules Board considered potential problems which could arise where service was effected by leaving a document at a *domicilium citandi et executandi* but where there is no person to receive the document. The Rules Board considered that the provisions of rule 4(1)(a)(iv) require amendment to avoid potential injustices and problems which could occur.

The Rules Board also considers replacing the term 'leaving' with 'delivering' in paragraph (ii) of subrule 4(1)(a). The proposed amendment would bring about consistency in all subparagraphs by referring to 'delivering' of a document.

Draft amended Uniform Rule 4(1)(a) is attached for consideration.

[ANNEXURE A]

As part of its rule-making and consultation process, the Rules Board invites your comments on the draft amendments proposed to Uniform Rule 4(1)(a) (ANNEXURE A).

Your comments and inputs should be submitted to the Secretariat of the Rules Board on or before 29 July 2022 and may be sent via hand delivery, post or email to:

Physical: 2nd Floor, Centre Walk East Tower, 266 Thabo Sehume (Andries) Street, Pretoria

Postal: P.O. Box 13106, The Tramshed, 0126

Email: AmSebola@justice.gov.za

The Rules Board looks forward to receiving your inputs (if any) and thanks you for same.

Yours sincerely,



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DRAFT AMENDED UNIFORM RULE 4(1)(a)

GENERAL EXPLANATORY NOTE:

[] Words or expressions in bold type in square brackets indicate omissions from existing rules.

_____ Words or expressions underlined with a solid line indicate insertions into existing rules.

4 Service

(1)(a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (aA) 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]** delivering a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like **[with]** to 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 such person;

(iv) if the person so to be served has chosen a *domicilium citandi*, by delivering **[or leaving]** a copy thereof to a person apparently not less than sixteen years of age 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 chairperson 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 municipal manager or a person in attendance at the municipal manager's office 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.

Provided that where service has been effected in accordance with subparagraphs (ii); (iii); (iv); (v) and (vii) of subparagraph (a), the sheriff shall in the return of service set out the details of the manner and circumstances under which such service was effected.

(aA) 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.

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

(c) No service of any civil summons, order or notice and no proceeding 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 a return or affidavit or on the signed receipt that the person serving the process or document has done so.