



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

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA

9 December 2024

Our ref: CK/FN/MS/13/3/2/6

Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED AMENDMENTS TO SMALL CLAIMS COURTS' RULES 2, 14(1), 16(3), 23 AND 27

The Rules Board for Courts of Law ("Rules Board") is proposing to amend Small Claims Courts' Rules 2, 14(1), 16(3), 23 and 27, that arise from comments received from role-players in respect of the Rules that came into operation on 1 April 2023, for the reasons hereinafter indicated.

Rule 2

Section 25(1)(d) of the Small Claims Courts Act, 1984 (Act No. 61 of 1984) empowers the Rules Board to make, amend or repeal rules regulating the following matter in respect of Small Claims Courts:

'(1)(d) the establishment, duties and powers of one or more boards to advise the Minister on the functioning of courts;'

Role-player/s propose that Rule 2 be amended to provide for a three-tiered reporting structure that would comprise of a National Advisory Board supported by Provincial and Local Advisory Boards for Small Claims Courts.

The proposed structure is intended to facilitate the gathering and collation of relevant information on the functioning of the courts at local level and the submission of that information to the provincial level and thereafter to the National level so that the National

Board Members appointed in terms of Section 3 of the Rules Board for Courts of Law Act, 107 of 1985

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Advisory Board can comprehensively advise the Minister on issues affecting the functioning of the Small Claims Courts.

The primary purpose of the entire structure is to enable the National Advisory Board to advise the Minister on the functioning of the Small Claims Courts as required by section 25(1)(d) of the Small Claims Courts Act. A brief overview of the proposed rule is set out below:

- (i) Subrule (1) establishes the National, Provincial and Local Advisory Boards;
- (ii) Subrules (2), (8) and (9)(c) set out the duties of the National, Provincial and Local Boards;
- (iii) Subrules (3), (6) and (9)(b) set out the composition of the National, Provincial and Local Boards;
- (iv) Subrule (10) provides for the submission of annual reports by the Local Board/s to the Provincial Board/s by the end of May, the submission of an annual report by the Provincial Board/s to the National Board by the end of July and the submission of an annual report by the National Board to the Minister by the end of September.

Rule 14(1)

Subrule (1) is proposed to be amended to address the concerns of a role-player that there should be conformity between rules 14 and 15. Rule 15 dealing with Counterclaims provides that a counterclaim may be raised orally or in writing but rule 14 does not have a similar provision.

Rule 16(3)

Subrule (3) is proposed to be amended to include a provision to inform the parties that any witnesses a party intends to call to provide evidence in person, must appear on the day and at the time specified for the hearing.

Rule 23

The Rule is proposed to be amended to address a role-player's concerns that the rule may create an erroneous impression that costs in general can be ordered by the Small Claims Courts. The amendment therefore incorporates a reference to section 37 of the Small Claims Courts Act, 1985 that provides that costs awarded may include only court fees, the prescribed amount for the issue of the summons and the fees and travelling expenses of the messenger of the court.

Rule 27

The amendment proposed to rule 27 is to correct the provision to clarify that any proceedings pending as at the date of the new rules being promulgated would not be affected by the new rules and would be concluded in accordance with the Rules in operation before 1 April 2023.

The draft proposed amendments to Small Claims Courts Rules 2, 14(1), 16(3), 23 and 27 are attached.

[ANNEXURE RB1]

As part of its consultation in the rule making process, the Rules Board invites your comments on the amendments proposed to the Small Claims Courts' Rules. Comments must be submitted on or before **21 February 2025** and may be delivered to the Secretariat of the Rules Board in any of the following ways:

Physical: 2nd Floor, East Tower, Centre Walk, 266 Pretorius Street, Pretoria.

E-mail: MoSetshedi@justice.gov.za

Enquiries may also be directed to Mrs. C. Kemp via e-mail at ChKemp@justice.gov.za.

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

Yours Sincerely



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Secretary: Rules Board for Courts of Law

Email: FNjobe@justice.gov.za

www.justice.gov.za

[ANNEXURE RB1]

PROPOSED AMENDMENTS TO THE SMALL CLAIMS COURTS' RULES ("RULE")

GENERAL: EXPLANATORY NOTE:

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

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

1. **Substitution of Rule 2****2 Advisory Boards**

2. [(1) (a) The Minister may establish one or more boards as contemplated in section 25(1)(d) of the Act and may appoint as many members to such board or boards as he or she deems fit.

(b) A member of such a board shall hold office for such period as determined by the Minister, and any such appointment may be terminated at any time by the Minister if there are sound reasons for doing so.

(c) The Minister shall appoint the chairperson and vice-chairperson of the said board.

(d) If the chairperson and vice-chairperson are not available, a chairperson shall be appointed by the members present if quorate, being 50% of the members of the Board.

(2) The Minister may dissolve the board at any time.

(3) The board must advise the Minister in regard to—

(a) the appointment of suitable persons as commissioners, in the case of an attorney or advocate, after consultation with the Legal Practice Council;

(b) the recruitment and utilisation of persons as commissioners, clerks, assistant clerks, interpreters, legal assistants and such other persons as may be necessary;

(c) suitable court and office accommodation;

(d) the times for the holding of court; and

(e) any other matter which may be necessary for the proper functioning of the court.]

(1) The following Boards are hereby established

(a) The National Advisory Board to be known as the 'National Advisory Board for Small Claims' Courts';

(b) A Provincial Advisory Board for each of the provinces of the Republic, each to be known as the 'Provincial Advisory Board for Small Claims Courts for' followed by the name of the applicable province; and

(c) A Local Advisory Board for each sub-cluster or alternatively district, in an administrative region as defined in section 1 of the Magistrates' Courts Act, 1944 (Act 32 of 1944) within each province of the Republic, each to be known as the 'Local Advisory Board for Small Claims' Courts for' followed by the name of the applicable sub-cluster or district of an administrative region.

(2) The National Advisory Board must advise the Minister in regard to-

(a) the recruitment and utilisation of persons as commissioners, clerks, assistant clerks, interpreters, legal assistants and such other persons as may be necessary;

(b) the appointment of suitable persons as commissioners, including recommending administrative processes that allow for the prompt appointment of commissioners;

(c) recommendations for the withdrawal of the appointment of a commissioner and the reason therefor;

(d) suitable court and office accommodation;

(e) the times for the holding of court;

(f) legislative amendments to the Act or the Rules to facilitate the proper functioning of the court;

(g) training requirements for commissioners and clerks of the court including training material;

(h) the establishment of Small Claims Courts at specified Magistrates' Courts not yet served by a Small Claims Court;

(i) matters reported upon by the Provincial Advisory Boards; and

(j) any other matter which is considered necessary for the proper functioning of the court.

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- (3) The National Advisory Board shall consist of the following members:
- (a) nine commissioners appointed in terms of section 9 of the Act, each from a different province of the Republic nominated by the Legal Practice Council: Provided that where an advisory board is already established in a particular province, a member of that advisory board who is an appointed commissioner shall be nominated by that advisory board: Provided that if a member of the Advisory Board nominated by an established Provincial Advisory Board is no longer a member of that particular Provincial Advisory Board, that Board shall nominate a new member to the National Advisory Board;
 - (b) one official from the Department of Justice and Constitutional Development who is directly involved in the administration and implementation of the Act to be nominated by the Director-General of the Department;
 - (c) a representative from the South African Legal Practice Council established in terms of section 4 of Legal Practice Act, 2014 (Act 28 of 2014);
 - (d) a professor of law at any university nominated by the South African Law Deans Association;
 - (e) a sheriff appointed under section 2(1) of the Sheriffs Act, 1986 (Act 90 of 1986), who is nominated by the South African Board for Sheriff's established by section 7 of the Sheriffs Act, 1986;
 - (f) a magistrate nominated by the Magistrate's Commission after consultation with the Chief Magistrates' Forum; and
 - (g) one official designated by the Minister as the Minister's representative.
- (4) (a) The National Advisory Board shall meet for the first time at the time determined by the Chairperson of the Rules Board and thereafter shall meet at least twice in every year and at such times as the chairperson of the National Advisory Board may determine.
- (b) The meetings of the National Advisory Board must be held by audio-visual means.
- (c) At the first meeting of the National Advisory Board, the members present shall elect from among their number a chairperson and vice-chairperson.
- (d) A member of the National Advisory Board shall serve for a period of five years provided that any member of the National Advisory Board whose term has expired, may be eligible for reappointment.

- (e) At the expiry of the period in paragraph (d) or in the event of the resignation of any member of the National Advisory Board, a new member shall be elected by the members present at a meeting if quorate, being 50% of the members of the National Advisory Board.
- (f) A decision of a majority of the members of the National Advisory Board present at the meeting shall constitute a decision of the Board.
- (g) The chairperson shall preside at all National Advisory Board meetings and shall be responsible for the proper conduct of its meetings.
- (h) If the chairperson is absent from a meeting, the vice-chairperson shall act as chairperson and if both the chairperson and the vice-chairperson are absent, the members present shall elect one of their member's present to preside at that meeting.
- (i) A member of a National Advisory Board shall vacate such office if such member has been absent from more than two consecutive meetings, without leave of the chairperson or the vice-chairperson.
- (5) The National Advisory Board shall from time to time inform the chairperson of the Rules Board for Courts of Law established in terms of section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985) in writing of any amendments it proposes to the Rules.
- (6) Each Provincial Advisory Board shall consist of the following members:
- (a) from each district in the applicable province, a commissioner appointed in terms of section 9 of the Act, nominated by the Local Advisory Board;
- (b) one official from the Department of Justice and Constitutional Development from the applicable province nominated by the Provincial Head of the Department of Justice and Constitutional Development: Provided that the nominated official is directly involved in the administration and implementation of the Act;
- (c) a representative from the applicable Provincial Council established in terms of section 23 of Legal Practice Act, 2014 (Act 28 of 2014);
- (d) a professor of law at a university in the applicable province nominated by the South African Law Deans Association; and
- (e) a chief magistrate who is the head of the administrative region in the applicable province.

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(7) The provisions of subrule (4) shall with the necessary changes apply to the meetings of the Provincial Advisory Boards, save that each Provincial Advisory Board shall meet for the first time at the time determined by the chief magistrate of the administrative region in the applicable province and each Provincial Advisory Board shall meet at least once every three months.

(8) Each Provincial Advisory Board must advise the National Advisory Board with regard to-

- (a) the recruitment and utilisation of persons as commissioners, clerks, assistant clerks, interpreters, legal assistants and such other persons as may be necessary;
- (b) the appointment of suitable persons as commissioners in their respective province;
- (c) recommendations for the removal of appointed commissioners and the reasons therefor;
- (d) suitable court and office accommodation;
- (e) the times for the holding of court;
- (f) legislative amendments to the Act or the Rules to facilitate the functioning of matters in the Small Claims Courts;
- (g) training requirements for commissioners and clerks of the court including proposed training material;
- (h) matters reported upon by the Local Advisory Board; and
- (i) any other matter which is considered necessary for the proper functioning of the court.

(9) (a) Each Local Advisory Board shall consist of the following members:

- (i) three or more commissioners appointed in terms of section 9 of the Act;
- (ii) one magistrate appointed for the district;
- (iii) one clerk of the Small Claims' Court within the district;
- (iv) the district court manager of that district from a Court within the district;
- and
- (v) a representative from the applicable Provincial Council established in terms of section 23 of Legal Practice Act, 2014 (Act 28 of 2014).

(b) The provisions of subrule (4) shall with the necessary changes apply to the meetings of the Local Advisory Board save that-

(i) each Local Advisory Board shall meet for the first time at the time determined by the member appointed to the Provincial Advisory Board from the province concerned;

(ii) each Local Advisory Board shall meet at once every quarter of the year;

(iii) the chairperson and vice-chairperson of the Local Advisory Board shall be a commissioner appointed in terms of section 9 of the Act; and

(iv) the chairperson or where applicable the vice-chairperson may as an alternative to the audio-visual meetings convene a physical meeting at a place and at a time determined by the chairperson or where applicable the vice-chairperson: Provided that no costs, expenses or allowances may be incurred or claimed from the Department of Justice in respect of a physical meeting.

(c) The functions of the Local Advisory Board shall be-

(i) to co-ordinate with the clerk of the Small Claims Court with a view to ensuring that sufficient Commissioners are available for the Small Claims Court;

(ii) to assist, where necessary, with the training of the clerks of the Small Claims Court;

(iii) to advise the Provincial Advisory Board on potential amendments to the Act and the Rules;

(iv) from time to time, inform the Provincial Advisory Boards on matters in subrule (8)(a) to (h), operational issues and any other matter which is considered necessary for the proper functioning of the court; and

(v) to submit by the end of May of every year an annual report to the applicable Provincial Advisory Board on the functioning of such Small Claims Court, such report to include where available the relevant statistics of cases heard, the commissioners and clerks appointed, recommendation for the improvement of the operations of the particular Small Claims Court and where applicable matters in subrule (8)(a) to (h).

(10) (a) Each Local Advisory Board must submit an annual report in terms of subrule (9)(c)(v) to the applicable Provincial Advisory Board by no later than the end of May every year.

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(b) Each Provincial Advisory Board must submit an annual report in respect of matters in subrule (8) to the Small Claims' Court National Advisory Board by no later than the end of July of every year.

(c) The National Advisory Board must submit an annual report to the Minister in respect of matters in subrule (2) and any ancillary matters the Board considers relevant, by no later than the end of September of every year.

2. Amendment to Rule 14(1)

(14)(1) A defence to the plaintiff's claim may be made orally or in writing, provided that [Where] where the defendant wishes to lodge a written statement of defence, [then] such statement must–

- (a) Set out the nature of the defence and the grounds on which it is based;
- (b) be signed by the defendant or his or her authorised representative; and
- (c) be lodged with the clerk of the court.

3. Amendment to Rule 16(3)

16. (3) The plaintiff and the defendant must ensure that any witness or witnesses in support of [his or her] plaintiff or defendant's claim or defence gives evidence on the day and at the time of the hearing in person or by audio or audio-visual means.

4. Amendment to Rule 23

23. Where a judgment or order of costs in terms of section 37 of the Act is made against two or more parties, such costs shall be payable by them jointly and severally.; and

5. Amendment to Rule 27

27. Nothing in these rules shall affect proceedings which are pending at the date of commencement of these rules and such proceedings shall be continued and concluded in every respect as if these rules had not been promulgated.