

**RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)****AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS  
OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF  
SOUTH AFRICA**

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), and with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

**SCHEDULE****GENERAL EXPLANATORY NOTE:**

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

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

**Definition**

1. In this Schedule the "Rules" means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notice Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R. 1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R. 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R.

- (b) endeavour to promote agreement on limiting the number of witnesses that will be called at the trial, eliminating pointless repetition or evidence covering facts already admitted; and
- (c) identify and record the issues to be tried in the action.
- (12) The case management judge may at a case management conference—
- (a) certify the case as trial-ready;
- (b) refuse certification;
- (c) put the parties on such terms as are appropriate to achieve trial-readiness, and direct them to report to the case management judge at a further case management conference on a fixed date;
- (d) strike the matter from the case management roll and direct that it be re-enrolled only after any non-compliance with the rules or case management directions have been purged;
- (e) give directions for the hearing of opposed interlocutory applications by a motion court on an expedited basis;
- (f) order a separation of issues in appropriate cases notwithstanding the absence of agreement by the parties thereto;
- (g) at the conclusion of a case management conference, record the decisions made and, if deemed convenient, direct the plaintiff to file a minute thereof;
- (h) make any order as to costs, including an order *de bonis propriis* against the parties' legal representatives or any other person whose conduct has conducted unreasonably to frustrate the objectives of the judicial case management process.
- (13) The record of the case management conference, including the minutes submitted by the parties to the case management judge, any directions issued by the judge and the judge's record of the issues to be tried in the action, but excluding any settlement discussions and offers, shall be included in the court file to be placed before the trial judge.
- (14) The trial judge shall be entitled to have regard to the documents referred to in subrule (13) in regard to the conduct of the trial, including the determination of any applications for postponement and issues of costs.
- (15) Unless the parties agree thereto in writing, the case management judge and the trial judge shall not be the same person.
- (16) Any failure by a party to adhere to the principles and requirements of this rule may be penalised by way of an adverse costs order."

### **Amendment of rule 68 of the Rules**

7. Rule 68 of the Rules is hereby amended by—

- (a) the substitution for item 5(c) of the Tariff of the following item:

“(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	186,00
(ii) for notice of attachment to a single lessee or occupier (identical notices where there are several lessees, occupiers or owners, for each after the first)	17,50 5,50
(iii) for making valuation report for purposes of sale, per <u>half hour</u> or part thereof.	<b>[93,50]</b> <u>47,00</u>
(iv) when— (aa) a sheriff has been authorised to sell property and the property is not sold by reason of the fact that the attachment is withdrawn or stayed [ <b>irrespective of the amount of the writ</b> ], all the necessary notice for the withdrawal <u>or stay</u> of the attachment (bb) <u>upliftment of judicial attachment on immovable property occurs</u>	186,00 <u>186,00</u>
(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)	93,50
(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	17,50
(vii) for consideration of proof that a preferent creditor has complied with the requirements of rule 46(5)(a)	10,00
(viii) for the notice referred to in rule 46(6)	17,50
(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 <i>Gazette</i> <u>inclusive fee for (ix) and (x) [; and]</u>	<u>93,50</u>
(xi) for forwarding a copy of the notice of sale to every judgment creditor who had	<b>[93,50]</b>

caused the immovable property to be attached and to every mortgagee thereof whose address is known, for each copy [ <b>inclusive fee for (ix), (x), and (xi)</b> ]	<u>17,50</u>
(xii) for affixing a copy of the notice of sale to the notice board of the magistrate's court referred to in rule 46(7)(e) and at or as near as may be to the place where the sale is actually to take place, an inclusive fee of <u>R40,00 and travelling costs referred to in item 3</u>	<b>[33,50]</b>
(xiii) for—	<b>[78,50]</b>
<u>(aa) considering the conditions of sale prepared by the execution creditor</u>	<u>93,50</u>
<u>(bb) considering further or amended conditions of sale submitted by an interested party</u>	<u>93,50</u>
<u>(cc) settling of conditions of sale</u>	<u>93,50</u>
<u>(dd) all necessary attendances prescribed by any law related to auctions, in particular the Consumer Protection Act, 2008 (Act No. 68 of 2008)</u>	<u>280,50</u>
<u>(ee) the conducting of an auction, save that this fee may not be charged if commission is claimed in terms of item (xiv)</u>	<u>186,00</u>
(xiv) On the sale of immovable property by the sheriff as auctioneer, 6 per cent on the first R100 000,00, 3,5 per cent on R100 001,00 to R400 000,00 and 1,5 per cent on the balance of the proceeds of the sale, subject to a maximum commission of R40 000,00 in total and a minimum of R3 000,00 (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—	
<u>(aa) written notice to the purchaser who has failed to comply with the conditions of sale</u>	<u>47,00</u>
<u>(bb) any report referred to in rule 46(11)</u>	<u>47,00</u>
<u>(cc) informing judgment debtor of the cancellation referred to in rule 46(11)(a)(iii)</u>	<u>17,50</u>
<u>(dd) giving notice referred to in rule 46(11)(c)</u>	<u>17,50</u>
(xvi) for giving transfer to the purchaser	23,00
(xvii) for—	
<u>(aa) receipt of certificate referred to in rule 46(14)(a)</u>	<u>17,50</u>
<u>(bb) preparing a plan of distribution of the proceeds (including the necessary copies) and for forwarding a copy to the registrar</u>	<u>93,50</u>
(xviii) for giving notice to all parties who have lodged writs and to the execution	

debtor that the plan of distribution will lie for inspection, for every notice	17,50
(xix) <b>[for request to magistrate to pay out in accordance with the plan of distribution.]</b> for the report referred to in rule 46A(9)(d)	<b>[10,00]</b> <u>47,00"</u>

(b) the insertion after item 16 of the Tariff of the following item:

<p><u>"17 (a) Where the mandator instructs the sheriff, in writing, to serve or execute a document referred to in item 2 or 5 on an urgent basis or after hours, the sheriff shall charge an additional fee, irrespective of whether the service or execution was successful, and such additional fee shall be paid by the mandator, save where the court orders otherwise.</u></p> <p><u>(b) For the purpose of paragraph (a)—</u></p> <p><u>(i) "urgent" means on the same day or within twenty four hours of the written instruction; and</u></p> <p><u>(ii) "after hours" means any time—</u></p> <p><u>(aa) before 7h00 or after 19h00 on Mondays to Fridays;</u></p> <p><u>or</u></p> <p><u>(bb) on a Saturday, Sunday or public holiday."</u></p>	165,00
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#### Repeal of Forms 4, 5 and 6 of the First Schedule

8. "Forms 4, 5 and 6 of the First Schedule to the Rules are hereby repealed."

#### Commencement

9. These Rules shall come into operation on **1 JULY 2019**.