

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)**AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF
THE MAGISTRATES' COURTS OF SOUTH AFRICA**

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

SCHEDULE**GENERAL EXPLANATORY NOTE:**

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

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

Definition

1. In this Schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011, R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, R. 183 of 18 March 2014, R. 215 of 28 March 2014 and R. 507 of 27 June 2014, R. 5 of 9 January 2015, R. 32 of 23 January 2015, R. 33 of 23 January 2015, R. 318 of 17 April 2015, R. 545 of 30 June 2015, R. 2 of 19 February 2016, R. 1055 of 29 September 2017, R. 1272 of 17 November 2017, R. 632 of 22 June 2018 and R. 1318 of 30 November 2018.

Substitution of rule 9(3) of the Rules

2. The following rule is hereby substituted for rule 9(3) of the Rules:

"(3) All process shall, subject to the provisions of this rule, be served upon the person affected thereby by **[delivery of]** delivering a copy thereof in one or other of the following manners:

- (a) To the said person personally or to **[his or her]** such person's duly authorised agent: 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;
- (b) at the residence or place of business of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose 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;

- (c) at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over **[him or her] such person** or, in the absence of **[such] a** person in authority, to a person apparently not less than 16 years of age and apparently in charge at **[his or her] such person's** place of employment;
- (d) if the person so to be served has chosen a *domicilium citandi*, by delivering **[or leaving]** a copy thereof at the *domicilium* so chosen: Provided that the sheriff shall set out in the return of service the details of the manner and circumstances under which such service was effected;
- (e) 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 is 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;
- (f) if the plaintiff or his or her authorised agent has given instructions in writing to the sheriff to serve by registered post, the process shall be so served: Provided that a debt counsellor who makes a referral to court in terms of section 86(7)(c) or 86(8)(b) of the National Credit Act, 2005 may cause the referral to be served by registered post or by hand;
- (g) in proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person's official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council;
- (h) to any agent or attorney who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected in any applicable manner prescribed in this rule;
- (i) where a local authority or statutory body is to be served, on the town clerk or assistant town clerk or mayor of such local authority or the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or
- (j) 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 the proceedings:

Provided that where **[such]** service has been effected in the manner prescribed by paragraphs *(b)*, *(c)*, *(e)* or *(g)*, the sheriff shall **[indicate] set out** in the return of service of the process the name of the person to whom it has been delivered and the capacity in which such person stands in relation to the person, corporation, company, body corporate or institution affected by the process: **[and where such service has been effected in the manner prescribed by paragraphs *(b)*, *(c)*, *(d)* or *(f)*, the court may, if there is reason to doubt whether the process served has come to the actual knowledge of the person to be served, and in the absence of satisfactory evidence, treat such service as invalid]** Provided further that whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit. Provided **[further] furthermore** that service of any process through which a divorce action or action for nullity of marriage is instituted shall only be effected by the sheriff on the defendant personally.”

Amendment of rule 19 of Rules

3. The following rule is hereby substituted for rule 19 of the Rules:

“19. Exceptions and applications to strike out

(1)(a) 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] who intends to take an exception shall, within the period allowed for filing any subsequent pleading, deliver an exception thereto [and may set it down for hearing in terms of rule 55(1)(j): Provided that where a party intends to take an exception that a pleading is vague and embarrassing such party shall within the period allowed as aforesaid by notice afford such party's opponent an opportunity of removing the cause of complaint within 15 days: Provided further that the party excepting shall within 10 days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver the exception], as provided in paragraphs *(b)* and *(c)*.

(b) A party who intends to take an exception shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity of removing the cause of complaint within 15 days of such notice.

(c) A party who intends to take an exception shall, within 10 days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver the exception.

(d) The exception may be set down for hearing in terms of rule 55 within 10 days after delivery thereof, failing which the exception shall lapse.

(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 rule 55 **[(1)(j), but] within 10 days of expiry of the time limit for the delivery of an answering affidavit or, if an answering affidavit is delivered, within five days after the delivery of a replying affidavit or expiry of the time limit for delivery of a replying affidavit: Provided that—**

(a) the party intending to make an application to strike out shall, by notice, delivered within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity to remove the cause of complaint within 15 days of delivery of the notice of intention to strike out; and

(b) the court shall not grant the [same] application, unless it is satisfied that the applicant will be prejudiced in the conduct of [his or her] any claim or defence if [it be] the application is 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.”

Amendment of rule 55 of the Rules

4. Rule 55 of the Rules is hereby amended:

(a) by the substitution for paragraph (e) of subrule (1) of the following paragraph:

“(e) In a notice of motion the applicant **[shall] must**—

(i) appoint a physical address, which address **[shall] must**, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the office of the registrar or clerk of court, at which notice and service of all documents in such proceedings will be accepted;

(ii) state the applicant's postal, facsimile or electronic mail addresses where available; and

(iii) set forth a day, not less than **[5] five** days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether he or she intends to oppose such application, and 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 respondent of the notice.”

(b) by the substitution for paragraph (f) of subrule (1) of the following paragraph:

“(f) If the respondent does not, on or before the day mentioned for that purpose in a notice of motion, notify the applicant of his or her intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar or clerk of the court notice of set down **[5] five** days before the day upon which the application is to be heard.”

(c) by the substitution for the words preceding subparagraph (i) of paragraph (g)

of subrule (1) of the following words:

“(g) Any party opposing the grant of an order sought in a notice of motion **[shall] must**”

(d) by the substitution for subparagraph (i) of paragraph (g) of subrule (1) of the following subparagraph:

“(i) within the time stated in the notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint an address, which address **[shall] must**, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the office of the registrar or clerk of the court, at which he or she will accept notice and service of all documents, as well as such party’s postal, facsimile or electronic mail addresses where available;”

(e) by the substitution for subparagraph (i) of paragraph (h) of subrule (1) of the following subparagraph:

“(h)(i) After receipt of a notice of intention to oppose, the applicant **[shall] must** lodge forthwith with the registrar or clerk of the court the original notice of motion plus annexures thereto and, where applicable, the return of service.”

(f) by the substitution for subparagraphs (i) and (ii) of paragraph (j) of subrule (1) of the following subparagraphs:

“(j)(i) Where no answering affidavit, or notice in terms of paragraph (g)(iii), is delivered within the period referred to in paragraph (g)(ii) the applicant may within **[5] five** days of the expiry thereof apply to the registrar or clerk of the court to allocate a date for the hearing of the application.” and

“(ii) Where an answering affidavit is delivered the applicant may apply for an allocation of the date for the hearing of the application within **[5] five** days of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within **[5] five** days of the expiry of the period referred to in paragraph (h) and where such notice is delivered the applicant may apply for such allocation within **[5] five** days after delivery of such notice.”

(g) by the substitution for subparagraph (iv) of paragraph (j) of subrule (1) of the following subparagraph:

“(iv) Notice in writing of the date allocated by the registrar or clerk of the court **[shall] must** be delivered by applicant or respondent, as the case may be, to the opposite party not less than 10 days before the date allocated for the hearing.”

(h) by the substitution for paragraph (b) of subrule (2) of the following paragraph:

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

(i) by the substitution for the words preceding subparagraph (i) of paragraph (a)

of subrule (3) of the following words:

“(3)(a) No application in which relief is claimed against another party **[shall] must** be considered *ex parte* unless the court is satisfied that—”

(j) by the substitution for paragraphs (b); (c); (e); and (f) of subrule (3) of the

following paragraphs:

“(b) The notice of motion in every application brought *ex parte* **[shall be similar to] must correspond substantially with** Form 1 of Annexure 1.

(c) Any order made against a party on an *ex parte* basis **[shall] must** be of an interim nature and **[shall] must** call upon the party against whom it is made to appear before the court on a specified return date to show cause why the order should not be confirmed.

(e) A copy of any order made *ex parte* and of the affidavit, if any, on which it was made **[shall] must** be served on the respondent thereto.

(f) Where cause is shown against any order made *ex parte* against a party the court may order the applicant or respondent or the deponent to any affidavit on which it was made to attend court for examination or cross-examination.”

(k) by the substitution for paragraph (a) of subrule (5) of the following paragraph:

“(5)(a) A court, if satisfied that a matter is urgent, may make an order dispensing with the forms and service provided for in these **[Rules] rules** and may dispose of the matter at such time and place and in accordance with such procedure (which **[shall] must** as far as practicable be in terms of these **[Rules] rules**) as the court deems appropriate.”

(l) by the substitution for subrule (6) of the following subrule:

“(6) In any application against **[any Minister, Deputy Minister, Provincial Premier, officer or servant of the State, in his or her capacity as such, the State or the administration of any province] the State or an organ of State, a Minister, Deputy Minister, Premier, Member of the Executive Council, or official appointed in the public service, in such person’s official capacity,** the respective periods referred to in subrule (1)(e), or for the return of a *rule nisi*, **[shall] must** 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 authorised a shorter period.”

(m) by the substitution for subrule (8) of the following subrule:

“(8)(a) The minutes of any order required for service or execution **[shall] must** be drawn up by the party entitled thereto and **[shall]** be approved and signed by the registrar or clerk of the court.

(b) The copies of the minutes referred to in paragraph (a) for record and service **[shall] must** be made by the party indicated in that paragraph and the copy for record **[shall] must** be signed by the registrar or clerk of the court.

(c) Rules 41 and 42 **[shall]**, in so far as it may be necessary in the execution of an order under this rule, **[mutatis mutandis]** apply with appropriate changes to such execution."

(n) by the substitution for paragraph (b) of subrule (9) of the following paragraph:

"(b) The court **[shall] may** not grant an application referred to in paragraph (a) unless it is satisfied that the applicant will be prejudiced **[in his or her case if it be] if the application is not granted.**"

(o) by the substitution for subrule (10) of the following subrule:

"(10) The provisions of rules [Rules] 28 and 28A [shall] apply equally to all applications."

(p) by the insertion of the following sub-rule (11):

"(11) The days from 21 December to 7 January, both inclusive, must not be counted in the time allowed for delivery of any notice or affidavit contemplated in this rule: Provided that the provisions of this subrule do not apply to applications brought under subrule (5) or rule 58."

Amendment of Part I of Table A of Annexure 2 to the Rules

5. Part I of Table A of Annexure 2 to the Rules is hereby amended by –

(a) the substitution for subparagraph (b) of paragraph 2 of Part I of the following subparagraph:

(b) Where the amount in dispute is not apparent on the face of the proceedings and –

- (i) the matter is instituted in the Magistrates' Court for a District, costs shall be computed on Scale C; or
- (ii) the matter is instituted in the Regional Court for a Regional Division, costs shall be computed on Scale D,

unless the court orders otherwise.

(b) the substitution for paragraph 6 of the following paragraph:

"6. Fees to counsel shall be allowed on taxation only in cases falling within scale B, C or D or where the court has made an order in terms of rule 33(8) [and shall not be so allowed unless payment thereof is vouched by the signature of counsel]."

(c) the substitution for paragraph 7 of the following paragraph:

" 7. Where the amount allowed for an item is specified, the amount shall be inclusive of all necessary copies, attendances and services (other than services by the sheriff for the Magistrate's Court) in connection therewith [.] save that for the necessary filing of documents at court a charge shall be allowed at R27,00 per document."

(d) the substitution for paragraph 8 of the following paragraph:

"8 Where the amount allowed for an item is left blank-

(a) the drawing of documents (not pleadings) shall be allowed at R27,00 for each folio;

(b) copies for filing, service and an attorney's copy to retain shall also be allowed;

(c) R27,00 [17,00] shall be allowed for each necessary service;

(d) R27,00 shall be allowed per document for the necessary filing of documents at court."

(e) the substitution for paragraph 16 of the following paragraph:

"16. Any amount necessarily and actually disbursed in tracing the debtor [.] shall be allowed in addition to the fees laid down in this tariff." and

(f) the insertion after paragraph 16 of the following paragraph:

"17. Item 10A and 14A of Part III in the tariff to Table A are also applicable to Part IV of the tariff to Table A."

Amendment of Part III of Table A of Annexure 2 to the Rules

6. Part III of Table A of Annexure 2 to the Rules is hereby amended by –

(a) the insertion after item 10 of the appended tariff, of the following item:

<u>"10A Pagination and indexing of pleadings per quarter of an hour or part thereof :</u>	<u>R108,00</u>	<u>R108,00</u>	<u>R131,50</u>	<u>R171,00"</u>
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(b) the insertion after item 14 of the appended tariff, of the following item:

<u>"14A Drawing up heads of argument per quarter of an hour or part thereof:</u>	<u>R160,50</u>	<u>R160,50</u>	<u>R202,50</u>	<u>R261,00"</u>
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Amendment of Part IV of Table A of Annexure 2 to the Rules

7. Item 21 of Part IV of Table A of Annexure 2 to the Rules is hereby amended by the deletion of the words "Note: A fee to counsel on application shall be allowed only where the court certifies that the briefing of counsel was warranted".

Amendment of Part III of Table B of Annexure 2 to the Rules

8. Part III of Table B of Annexure 2 to the Rules is amended by the substitution in paragraph 1 for subparagraph (b) of the following subparagraph:

“(b) In addition to the fees stated below, the administrator shall be entitled to a fee of 10% on each instalment collected for the redemption of capital and costs[.], which amount is included in the 12,5% in terms of section 74L(2) of the Act.”

Amendment of Part II of Table C of Annexure 2 to the Rules

9. Part II of Table C of Annexure 2 to the Rules is hereby amended by the substitution for Part II of the following Part:

“PART II

SHERIFFS WHO ARE NOT OFFICERS OF THE PUBLIC SERVICE

1A. For registration of any document for service or execution upon receipt thereof: R10,00.

1B. (a) For the service of a summons, subpoena, notice, order or other document not being a document mentioned in item 2, the journey to and from the place of service of any of the above-mentioned documents—

(i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R40,00;

(ii) within a distance of 12 kilometres, but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R47,00;

(iii) within a distance of 20 kilometres, but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R63,00;

[(iv) where a mandator instructs the sheriff in writing to serve a document referred to in item 1B(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 1B(a)(i), (ii) and (iii), respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.]

(b) For the attempted service of the documents mentioned in paragraph (a), the journey to and from the place of attempted service of any of the above-mentioned documents—

(i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R33,50;

(ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R40,00;

(iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R56,00;

[(iv) where a mandator instructs the sheriff in writing to serve a document referred to in item 1B(a) urgently on the day of receipt of such document or after normal office hours and the sheriff is unsuccessful in his or her attempt to effect service, the costs shall be calculated at double the tariff in item 1B(b)(i), (ii) and (iii) respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.]

(c) (i) Where a document must be served together with a process of the court and is mentioned in such process or is an annexure thereto, no additional fees shall be charged for service of the document, otherwise R10,00 may be charged for every separate document served.

(ii) No fees shall be charged for a separate document when process in criminal matters is served.

(iii) The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.

(iv) Where a mandator instructs the sheriff, in writing, to serve or execute a document referred to in item 1B(a) or (2)(a) on an urgent basis or after hours, the sheriff shall charge an additional fee of R165,00 for such service irrespective of whether the service or execution was successful, which additional fee shall be paid by the mandator, save where the court orders otherwise.

(v) For the purpose of sub-paragraph (iv)—

(aa) “urgent” means on the same day or within twenty four hours of the written instruction; and

(bb) “after hours” means any time –

(aaa) before 7h00 or after 19h00 on Mondays to Fridays; or

(bbb) on a Saturday, Sunday or public holiday.

2. (a) For the execution of a warrant (other than against immovable property), interdict, garnishee order or emoluments attachment order, the journey to and from the place of execution of the above-mentioned documents—

(i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R56,00;

(ii) within a distance of 12 kilometres, but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R63,00;

(iii) within a distance of 20 kilometres, but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R78,50;

[(iv) where a mandator instructs the sheriff in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 2(a)(i), (ii) and (iii), respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.]

(b) For the attempted execution of the documents mentioned in paragraph (a), the journey to and from the place of attempted execution of the above-mentioned documents —

(i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R47,00;

(ii) within a distance of 12 kilometres, but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R56,00;

(iii) within a distance of 20 kilometres, but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R70,50;

[(iv) where a mandator instructs the sheriff in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours and the sheriff is unsuccessful in his or her attempt to effect execution, the costs shall be calculated at double the tariff in item 2(b)(i), (ii) and (iii) respectively, which costs shall be paid by the mandator, save where the court orders otherwise.]

(c) (i) For the ejectment of a defendant from the premises referred to in the warrant of ejectment: R33,50 per half hour or part thereof (except extraordinary expenses necessarily incurred).

(ii) A further fee of R22,50 shall be paid after execution for every person over and above the person named or referred to in the process of ejectment, in fact ejected from separate premises: Provided that where service on any person other than the judgment debtor, respondent or garnishee is necessary in order to

complete the execution, the fee laid down in item 1B(a) may be charged in respect of each such service.

(d) for the execution of any writ 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 office charged with the registration of such property, and if the property is in occupation of some other person other than the owner, also upon such occupier: R186,00;

(ii) for notice of attachment to a single lessee or occupier: R17,50;

(iii) identical notices where there are several lessees, occupiers or owners, for each after the first: R5,50;

(iv) for making valuation report for purposes of sale, per half hour or part thereof: R47,00;

(v) when 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, all the necessary notice for the withdrawal or stay of the attachment: R186,00; Upliftment of judicial attachment on immovable property: R186,00;

(vi) 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): R93,50;

(vii) 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: R17,50;

(viii) for consideration of proof that a preferent creditor has complied with the requirements of rule 43(5)(a): R10,00;

(ix) for notice referred to in rule 43(6): R17,50;

(x) for considering of notice of sale prepared by the execution creditor in consultation with the sheriff; and

for verifying that notice of sale has been published in the newspapers indicated and in the Gazette, inclusive fee for such consideration and verification: R93,50;

(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: R17,50;

(xii) for affixing a copy of the notice of sale to the notice board of the magistrates' court referred to in rule 43(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 R40,00 and travelling costs referred to in item 4(a);

(xiii) for considering the conditions of sale prepared by execution creditor; for considering further or amended conditions of sale submitted by interested party; settling of conditions of sale: R93,50 for each attendance;

(xiv) for all necessary attendances prescribed by any law related to auctions, in particular the Consumer Protection Act, 2008 (Act No. 68 of 2008): R280,50;

(xv) for the conducting of an auction, save that this fee may not be charged if commission is claimed in terms of items 2(d)(xvi) and (xvii): R186,00;

(xvi) 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;

(xvii) If an auctioneer is employed as provided in rule 43(10), 3 per cent on the first R100 000,00, 2 per cent on R100 001,00 to R400 000,00 and 1 per cent on the balance thereof, subject to a maximum commission of R22 850,00, 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;

(xviii) for written notice to the purchaser who has failed to comply with the conditions of sale: R47,00;

(xix) for any report referred to in rule 43(11): R47,00;

(xx) for informing judgment debtor of the cancellation referred to in rule 43(11)(a)(iii): R17,50;

(xxi) for giving notice referred to in rule 43(11)(c): R17,50;

(xxii) for giving transfer to the purchaser: R23,00;

(xxiii) for receipt of certificate referred to in rule 43(14)(a): R17,50;

(xxiv) for preparing a plan of distribution of the proceeds (including necessary copies) and for forwarding a copy to the registrar: R93,50;

(xxv) 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: R17,50;

(xxvi) for the report referred to in rule 43A(9)(d): R47,00.

3. **Compilation of any return in terms of rule 8, in duplicate: R16,00.**
4. **(a) The Sheriff shall, in addition to the fees mentioned in items 1B(a), 1B(b), 2(a) and 2(b), but subject to item 4(b) and (c), be allowed a travelling allowance of R5,00 per kilometre, or part thereof, for the shortest possible forward and return journey from the office of the Sheriff to the place of service or execution and back.**

(b) The travelling allowance mentioned in items 4(a), 5(a) and 5(c)(i) shall be calculated on the distance reckoned from the office of the sheriff if—

 - (i) the sheriff's office is situated within the area of jurisdiction allocated to the sheriff by the Minister; and**
 - (ii) the distance from the sheriff's office is less than the distance reckoned from the court-house closest to the address for service.**

(c) If the requirement in item 4(b) is not met, then the travelling allowance mentioned in items 4(a), 5(a) and 5(c)(i) shall be calculated on the distance reckoned from the court-house closest to the address for service.
5. **(a) In respect of the discharge of any official duty other than those mentioned in items 1 and 2, but subject to item 4(b) and (c), a travelling allowance of R5,00 per kilometre for every kilometre, or part thereof, shall be payable to the sheriff for going and returning.**

(b) A travelling allowance shall include all the expenses incurred in travelling, including train fares.

(c) A travelling allowance shall be calculated in respect of each separate service, except that—

 - (i) where more services than one can be done on the same journey, the distance from the sheriff's office to the first place of service may be taken into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services; and**
 - (ii) where service of the same process has to be effected by a sheriff on more than one person at the same service address, only one charge for travelling shall be allowed.**

- (d) When it is necessary for the sheriff to convey any person under arrest, an allowance of R5,00 per kilometre in respect of that portion of his or her journey on which he or she was necessarily accompanied by such person shall be allowed.
6. (a) Making an inventory, including the making of all necessary copies and time spent on stock-taking: R33,50 per half hour or part thereof.
- (b) For assistance, if necessary, with the making of an inventory, R33,50 per half hour or part thereof.
7. The perusing, drawing up and completing of a bail bond, deed of suretyship or indemnity bond: R10,00.
8. Charge or custody of property (money excluded):
- (a) (i) For each officer necessarily left in possession, a reasonable inclusive amount not exceeding R117,00 per day.
- (ii) Travelling allowances, to include board in every case.
- (b) If livestock is attached, only the necessary expenses of herding and preserving the stock shall be allowed.
- (c) If the goods are removed and stored, only the cost of removal and storage shall be allowed.
9. (a) **'possession'** shall mean actual physical possession by a person employed and paid by the sheriff, whose sole work for the time being is to remain on the premises where the goods have been attached, and who, in fact, remains in possession for the period for which possession is charged.
- (b) **'cost of removal'** shall mean the amount actually and necessarily disbursed for removal or attempted removal if the goods were removed by a third party or an attempt was made to remove them, if they were removed by the sheriff him- or herself, such amount as would fairly be allowable in the ordinary course of business if the goods were removed by a third party, or an attempt was made to so remove them.
- (c) **'cost of storage'** shall mean the amount actually and necessarily paid for storage if the goods were stored with a third person or, if the sheriff provided the storage, such amount as would fairly be allowable in the ordinary course of business if the goods were stored with a third person.
10. (a) Where a warrant of execution or garnishee order is paid in full, or in part, to the sheriff or moneys attached in execution against movables, 9 per cent of the amounts so paid or attached, with a minimum of R63,00 and a maximum of R614,00.
- (b) Notice of attachment to defendant and to each person to be notified: R10,00.

11. Where property is released from attachment in terms of rule 41(7)(f)(i), or the warrant of execution is withdrawn or stayed, or the judgment debtor's estate is sequestrated after the attachment, but before the sale, 2.3 per cent of the value of the goods attached, subject to a maximum of R186,00: Provided that if a sale subsequently takes place in consequence of the said attachment, the amount so paid shall be deducted from the commission payable under item 12.
12. Where the warrant of execution against movables is completed by sale, 9 per cent for the first R15 000,00 or part thereof, and thereafter 6 per cent, with a maximum of R8 178,50.
13. For the insurance of attached property, if deemed necessary, and on written instructions of the judgment creditor to the sheriff, in addition to the premium to be paid, an all-inclusive amount of R33,50.
- [14. (a) When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or stayed, or of the sequestration of the estate of the execution debtor, the expenses in connection with the attempted sale and the sum of R186,00 shall be payable to the sheriff or the person in fact authorised to act as auctioneer, as the case may be.**
- (b) The drawing up of a report of the improvements on the property for the purpose of sale: R33,50 per half hour or part thereof.**
- (c) Written notice to the purchaser who has failed to comply with the conditions of sale: R47,00.**
- (d) Consideration of conditions of sale: R93,50.]**
15. When immovable property has been attached in execution and the attachment lapses, as referred to in section 66(4) of the Act: R56,00.
- [16. When an execution against immovable property is completed by sale, the following fees shall be allowed to the sheriff on the proceeds of the sale:**
- (a) 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.**
- (b) If an auctioneer is employed as provided in rule 43(9), 3 per cent on the first R100 000,00, 2 per cent on R100 001,00 to R400 000,00 and 1 per cent on the balance thereof, subject to a maximum commission of R22 850,00, 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.]

17. In addition to the fees allowed by items 10 to ~~[15]~~ 13, both inclusive, there shall be allowed—
- (a) the sum actually and reasonably paid by the sheriff or the auctioneer for printing, advertising and giving publicity to any sale or intended sale in execution; and
- [(b) the sum of R23,50 to the sheriff for giving transfer to the purchaser.]**
18. Where the sheriff is in possession under more than one warrant of execution, he or she may charge fees for only one possession, and such possession shall, as far as possible, be apportioned equally to the several warrants issued during the same period: Provided that each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding what would have been due under his or her execution if it had stood alone.
19. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds so far as they are in excess of the amount of the warrant.
20. The fees and expenses of the sheriff in execution of a garnishee order shall be added to the amount to be recovered under the order, and shall be chargeable against the judgment debtor.
21. If it is necessary for the sheriff to return a document received by him or her for service or execution to the mandator because—
- (a) the address of service which appears on the process does not fall within his or her jurisdiction; or
- (b) the mandator requested, before an attempted service or execution of the process, that it be returned to him or her,
- an amount of R10,00 shall be payable.
22. For the conveyance of any person arrested by the sheriff or committed to his or her custody from the place of custody to the court on a day subsequent to the day of arrest: R33,50 per journey and R63,00 per hour, or part thereof, for attending at court.
23. For the examination of indicated newspapers and the *Gazette* in which the notice of sale has been published, as referred to in rule **[43(6)(c) and rule] 41(8)(c)**: R10,00.
- [24. For forwarding a copy of the notice to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property concerned whose address is reasonably ascertainable, for each copy: R10,00.]**

25. **[(a)]** For affixing a copy of the notice of sale on the notice board or door of the court-house or other public building[,] and at or as near as may be to the place where the said sale is actually to take place referred to in rule **[43(6)(e) and rule] 41(8)(b): R23,50[.]**
- [(b) For affixing a copy of the notice of sale on the property due to be sold, the amount in paragraph (a)]** and travelling costs, referred to in item 5(a).
26. For the drawing up and issuing of an interpleader summons: R93,50.
27. In addition to the fees prescribed in this Table, the sheriff shall be entitled to the amount actually disbursed for postage and telephone calls.
28. For the writing of each necessary letter, facsimile or electronic mail, excluding formal letters accompanying process or returns: R17,50.
29. Each necessary attendance by telephone: R16,00.
30. Sending and receiving of each necessary facsimile or electronic mail per page (in addition to telephone charges): R5,50.
- [31. For the perusal of the records of the Registrar of Deeds, in terms of rule 43(3), to determine the order of precedence of creditors:**
- (a) If investigated by the sheriff him or herself: R56,00 per case.**
- (b) If the sheriff utilises the services of a third party for the investigation, the actual cost, as required by the third party, provided that it is reasonable.]**
32. For the making of all necessary copies of documents: R4,00, per A4 size page.
33. (a) 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.
- (b) For the drawing up of the bill for taxation and attendance of the taxation by the sheriff: R63,00.
34. Bank charges: Actual costs incurred relating to bank charges and cheque forms.
35. (a) Drafting of notice to the judgment debtor in terms of section 65A(8)(b) of the Act: R17,50.
- (b) Service of the notice referred to in paragraph (a): Tariff as prescribed in item 1B(a).

(c) Attempted service of the notice referred to in paragraph (a): Tariff as prescribed in item 1B(b).

(d) The tariff, as prescribed in item 4, shall apply to paragraphs (b) and (c).

36. (a) For the arrest or attempted arrest of a judgment debtor in terms of section 65A(6) of the Act:

(i) The tariff as prescribed in item 2(a) or item 2(b), as the case may be.

(ii) The tariff, as prescribed in item 4, shall apply to this item.

(b) For the handing over of the judgment debtor to the South African Police Service, prisoners' friend or clerk of the court or other lawful place of detention:

(i) The tariff, as prescribed in item 2(a).

(ii) Travelling costs from place of arrest to place of handing over to the relevant authority, referred to in paragraph (b), per kilometre or part thereof: R5,00.

(iii) Waiting time in regard to handing over the judgment debtor to the relevant authority, referred to in paragraph (b): R33,50, per half hour or part thereof, with a maximum of R124,00."

Commencement

10. These rules come into operation on **1 JULY 2019**.