Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette No. 9356 *Regulasiekoerant*

Vol. 542 Pretoria, 23 August Augustus 2010 No. 33487

PART 1 OF 3

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD

No.		*Page No.*	*Gazette No.*
	GOVERNMENT NOTICE		
Justice and Constitutional Development, Department of			
Government Notice			
R. 740	Rules Board for Courts of Law Act (107/1985) and the Jurisdiction of Regional Courts Amendment Act (31/2008): Rules regulating the Conduct of the Proceedings of the Magistrates' Courts Act of South Africa	3	33487

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 740 **23 August 2010**

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), read with section 9(6)(*a*) of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act No. 31 of 2008), with the approval of the Minister for Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE

TABLE OF CONTENTS AND COMPARATIVE TABLE OF NUMBERS OF NEW RULES AND CORRESPONDING NUMBERS OF PREVIOUS RULES

Rule No.	*Subject*	*Previous Rule No.*
1	Purpose and application of rules	1
2	Definitions	2
3	Duties and office hours of registrars and clerks of the court in civil matters	3 - 4
4	Applications in terms of sections 57 and 58 of the Act	4A – 4B
5	Summons	5 - 6
6	Rules relating to pleadings generally	-
7	Amendment of summons	7
8	Sheriff of the court	8
9	Service of process, notices and other documents	9

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

10	Edictal citation and substituted service	-
11	Judgment by consent	11
12	Judgment by default	12
13	Notice of intention to defend	13
14	Summary judgment	14
14A	Provisional sentence	14A
15	Declaration	-
16	Further particulars	15 - 16
17	Plea	19
18	Offer to settle	-
18A	Interim payments	-
19	Exceptions and applications to strike out	17
20	Claims in reconvention	20
21	Replication and Plea in reconvention	21
21A	Close of pleadings	-
22	Set-down of trial	22
23	Discovery of documents	23
24	Medical examinations, inspection of things, expert testimony and tendering in evidence any plan, diagram, model or photograph	24
25	Pre-trial procedure for formulating issues	25
26	Subpoenae, interrogatories and commissions *de bene esse*	26
27	Withdrawal, dismissal and settlement	27
28	Intervention, joinder, and consolidation of actions	28
28A	Third party procedure	-
29	Trial	29
30	Record of proceedings in civil matters	30
31	Adjournment and postponement	31
32	Non-appearance of a party – withdrawal and dismissal	32
33	Costs	33
34	Fees of the sheriff and the registrar or clerk of the court	34
35	Review of taxation	35
36	Process in execution	36
37	Second and further warrants or emoluments	

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

	attachment orders or garnishee orders	37
38	Security by judgment creditor	38
39	General provisions regarding execution	39
40	Execution against a partnership	40
41	Execution against movable property	41
42	Execution against movable property (continued)	42
43	Execution against immovable property	43
43A	Enforcement of foreign civil judgments	43A
44	Interpleader claims	44
45	Enquiry into financial position of judgment debtor	45
46	Attachment of emoluments by emoluments attachment order	46
47	Attachment of a debt by garnishee order	47
48	Administration orders	48
49	Rescission and variation of judgments	49
50	Appeals and transfer of actions to magistrates' courts	50
51	Appeals in civil cases	51
52	Representation of parties	52
53	Pro Deo applicants	53
54	Actions by and against partners, a person carrying on business in a name or style other than his or her own name, an unincorporated company, syndicate or association	54
55	Applications	55
55A	Amendment of pleadings	55A
56	Arrests *tanquam suspectus de fuga*, interdicts, attachments to secure claims and *mandamenten van spolie*	56
57	Attachment of property to found or confirm jurisdiction	57
58	Maintenance *pendente lite*, contribution towards costs, interim custody and access to children	-
59	Assessors	59
60	Non-compliance with rules, including time limits and errors	60
60A	Irregular proceedings	-
61	Records, entries or documents as evidence in civil matters	61
62	Security for costs	62

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

63	Filing, preparation and inspection of documents	-
64	Procedure for securing the attendance of witnesses in criminal cases	64
65	Criminal record book	65
66	Records of criminal cases	66
67	Criminal appeals	67
68	Oath of office of interpreter	68
69	Repeal of rules	69

Purpose and application of rules

1. (1) The purpose of these rules is to promote access to the courts and to ensure that the right to have disputes that can be resolved by the application of law by a fair public hearing before a court is given effect to.

(2) These rules are to be applied so as to facilitate the expeditious handling of disputes and the minimization of costs involved.

(3) In order to promote access to the courts or when it is in the interest of justice to do so, a court may, at a conference convened in terms of section 54(1) of the Act, dispense with any provision of these rules and give directions as to the procedure to be followed by the parties so as to dispose of the action in the most expeditious and least costly manner.

(4) (a) With the exception of Forms 2, 2A, 2B, 3, 5A and 5B which shall in all respects conform to the specimens, the forms contained in Annexure 1 may be used with such variation as circumstances require.

(b) Non-compliance with this subrule shall not in itself be a ground for exception, but at any court in which equipment has been installed for the purpose of facilitating the issue of summonses, the clerk or registrar of the court may refuse to issue:

(i) any summons purporting to be in the form of Form 2, 2A, 2B or 3 but which does not comply with the prescribed requirements; or

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(ii) any written request as referred to in section 59 of the Act which does not comply with a request contained in Form 5A or 5B.

(c) All process of the court for service or execution and all documents or copies to be filed of record other than documents or copies filed of record as documentary proof shall be on paper known as A4 standard paper of a size of approximately 210mm by 297 mm.

Definitions

2. (1) In these rules and in the forms annexed hereto any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context otherwise indicates-

"apply" means apply on motion and 'application' has a corresponding meaning;

"clerk of the court" means a clerk of the court appointed under section 13 of the Act and includes an assistant clerk of the court so appointed;

"Criminal Procedure Act, 1977" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"default judgment" means a judgment entered or given in the absence of the party against whom it is made;

"deliver" (except when a summons is served on the opposite party only, and in rule 9) means to file with the registrar or clerk of the court and serve a copy on the opposite party either by hand-delivery, registered post, or, where agreed between the parties or so ordered by court, by facsimile or electronic mail (in which instance Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 will apply), and "delivery", "delivered" and "delivering" have corresponding meanings;

"Divorce Act, 1979" means the Divorce Act, 1979 (Act No. 70 of 1979);

"Electronic Communications and Transactions Act, 2002" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"give security" includes the giving of a security bond either by the party with someone as his surety or by two or more other persons;

"National Credit Act, 2005" means the National Credit Act, 2005 (Act No. 34 of 2005);

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

"notice" means notice in writing;

"pending case" means a case in which summons or notice_of motion has been issued and which has not been withdrawn, discontinued or dismissed and in which judgment has not been entered or given;

"plaintiff", **"defendant"**, **"applicant"**, **"respondent"** and **"party"** include the attorney or counsel appearing for any such party and the officer of any local authority nominated by it for the purpose;

"registrar of the court" means a registrar of the court appointed under section 13A of the Act and includes an assistant registrar of the court so appointed;

"sheriff", means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and also a person appointed in

terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;

"signature", includes an advanced electronic signature as defined and described in Chapters I, II and III of the Electronic Communications and Transactions Act, 2002 and this also applies to "sign", "signing" and "signed";

"the Act" means the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(2) A Saturday, Sunday or public holiday shall not, unless the contrary appears, be reckoned as part of any period calculated in terms of these rules.

(3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

Duties and office hours of registrars and clerks of the court in civil matters

3. (1) The registrar or clerk of the court shall sign (manually or by machining a facsimile of his or her signature) and issue all such process of the court as may be sued out by any person entitled thereto or, at the request of any party by whom process was sued out, to reissue such process after its return by the sheriff.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(2) The first document filed in a case or any application not relating to a then pending case shall be numbered by the registrar or clerk of the court with a consecutive number for the year during which it is filed.

(3) Every document that has been served or delivered in an action or application referred to in subrule (2) or in any subsequent matter in continuation of any such application or action shall be marked with the relevant number by the party delivering it and shall not be received by the registrar or clerk of the court until so marked.

(4) All documents delivered to the registrar or clerk of the court to be filed and any minutes made by the court shall be filed under the number of the respective action or application.

(5) Copies of the documents referred to in rule 3(4) may be made by any person in the presence of the registrar or clerk of the court.

(6) The registrar or clerk of the court shall notify the plaintiff forthwith in writing of-

(a) the defendant's consent to judgment before the filing of any notice of intention to defend;

(b) a defective memorandum of notice of intention to defend by a defendant who is not represented by an attorney and in what respect such notice is defective as envisaged by rule 12(2)(a); and

(c) a request for a judgment by default having been refused.

(7) (a) The registrar or clerk of the court shall note on a certified copy of a judgment at the request of the party to whom such copy is issued-

(i) particulars of any other judgment by the court or any other court, stating the relevant court in that case; and

(ii) any costs incurred after judgment and payable by the judgment debtor.

(b) A second or further certified copy of a judgment may be issued upon the filing of an affidavit confirming the loss of the certified copy of a judgment which it is intended to replace.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(8) The registrar or clerk of the court shall assist litigants by explaining these rules of procedure and providing such further assistance as is reasonably possible in accordance with section 9(6)(b)(ii) of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act No. 31 of 2008).

(9) The registrar of the regional court shall keep-

(a) a register to be called the register of divorce cases, and shall enter therein-

(i) the number of the action; and

(ii) the names of the parties; and

(b) a daily index of all cases entered in the register of divorce cases.

(10) Any act to be performed or notice to be signed by the registrar or clerk of the court in terms of these rules may be performed or signed by a judicial officer, provided that no judicial officer shall write out any affidavit, pleading or process for any party or tax any bill of costs.

(11) When a court imposes upon a person any fine such person shall forthwith pay such fine to the registrar or clerk of the court.

(12) Except on Saturdays, Sundays and public holidays, the offices of the registrar or clerk of the court shall be open from 8:00 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 8:00 to 13:00, and from 14:00 to 15:00: Provided that the registrar or clerk of the court may in exceptional circumstances issue process and accept documents at any time, and shall do so when directed by a magistrate.

Applications in terms of sections 57 and 58 of the Act

4. (1) (a) The letter of demand referred to in sections 57 and 58 of the Act shall contain particulars about the nature and amount of the claim.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) Where the original cause of action is a credit agreement under the National Credit Act, 2005, the letter of demand referred to in section 58 of the Act must deal with each one of the relevant provisions of sections 129 and 130 of the National Credit Act, 2005, and allege that each one has been complied with.

(2) A request in writing referred to in section 59 of the Act shall be directed to the registrar or clerk of the court by means of Form 5A or 5B, as the case may be, supported by an affidavit containing such evidence as is necessary to establish that all requirements in law have been complied with.

(3) A consent to judgment in terms of section 58 of the Act shall be signed by the debtor and by two witnesses whose names shall be stated in full and whose addresses and telephone numbers shall also be recorded.

(4) Rules 12(6), (6A) and (7) apply to a request for judgment in terms of sections 57 and 58 of the Act.

Summons

5. (1) Every person making a claim against any other person may, through the office of the registrar or clerk of the court, sue out a simple summons or a combined summons addressed to the sheriff directing the sheriff to inform the defendant among other things that, if the defendant disputes the claim and wishes to defend, the defendant shall-

(a) within the time stated in the summons, give notice of intention to defend; and

(b) after complying with paragraph (a), if the summons is a combined summons, within 20 days after giving such notice, deliver a plea (with or without a claim in reconvention), or an exception, or an application to strike out.

(2) (a) In every case where the claim is not for a debt or liquidated demand the summons shall be a combined summons similar to Form 2B of Annexure 1, to which summons shall be annexed a statement of the material facts relied upon by the plaintiff in support of plaintiff's claim, and which statement shall, amongst others, comply with rule 6.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) Where the claim is for a debt or liquidated demand the summons may be a simple summons similar to Form 2 of Annexure 1.

(3) (a) (i) Every summons shall be signed by the attorney acting for the plaintiff and shall bear the attorney's physical address, within 15 kilometres of the courthouse, the attorney's postal address and, where available, the attorney's facsimile address and electronic mail address.

(ii) If no attorney is acting for the plaintiff, the summons shall be signed by the plaintiff, who shall in addition append a physical address within 15 kilometres of the courthouse at which plaintiff will accept service of all subsequent documents and notices in the suit, the plaintiff's postal address and, where available, plaintiff's facsimile address and electronic mail address.

(iii) After subparagraph (i) or (ii) has been complied with, the summons shall be signed and issued by the registrar or clerk of the court and shall bear the date of issue by the registrar or clerk as well as the case number allocated thereto.

(b) The plaintiff may indicate in a summons whether the plaintiff is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) If an action is defended the defendant may, at the written request of the plaintiff, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the defendant refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the plaintiff, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

(4) Every summons shall set forth-

(a) the surname and first names or initials of the defendant by which the defendant is known to the plaintiff, the defendant's residence or place of business and, where known, the defendant's occupation and employment

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

address and, if the defendant is sued in any representative capacity, such capacity; and

(b) the full names, gender (if the plaintiff is a natural person) and occupation and the residence or place of business of the plaintiff, and if the plaintiff sues in a representative capacity, such capacity.

(5) Every summons shall include-

(a) a form of consent to judgment;

(b) a form of appearance to defend;

(c) a notice drawing the defendant's attention to the provisions of section 109 of the Act; and

(d) a notice in which the defendant's attention is directed to the provisions of sections 57, 58, 65A and 65D of the Act in cases where the action is based on a debt referred to in section 55 of the Act.

(6) A summons shall also-

(a) where the defendant is cited under the jurisdiction conferred upon the court by section 28(1)(d) of the Act, contain an averment that the whole cause of action arose within the district or region, and set out the particulars in support of such averment;

(b) where the defendant is cited under the jurisdiction conferred upon the court by section 28(1)(g) of the Act, contain an averment that the property concerned is situated within the district or region; and

(c) show any abandonment of part of the claim under section 38 of the Act and any set-off under section 39 of the Act.

(7) Where the plaintiff issues a simple summons in respect of a claim regulated by legislation the summons may contain a bare allegation of compliance with the legislation, but the declaration, if any, must allege full particulars of such compliance:

Provided that where the original cause of action is a credit agreement under the National Credit Act, 2005, the plaintiff seeking to obtain judgment in terms of section 58 of the Act shall in the summons deal with each one of the relevant provisions of sections 129 and 130 of the National Credit Act, 2005, and allege that each one has been complied with.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(8) A summons for rent under section 31 of the Act shall be in the form prescribed in Annexure 1, Form 3.

(9) Where the plaintiff sues as cessionary the plaintiff shall indicate the name, address and description of the cedent at the date of cession as well as the date of the cession.

(10) A summons in which an order is sought to declare executable immovable property which is the home of the defendant shall contain a notice in the following form:

> "The defendant's attention is drawn to section 26(1) of the Constitution of the Republic of South Africa which accords to everyone the right to have access to adequate housing. Should the defendant claim that the order for eviction will infringe that right it is incumbent on the defendant to place information supporting that claim before the Court".

(11) If a party fails to comply with any of the provisions of this rule, such summons shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 60A.

Rules relating to pleadings generally

6. (1) Every pleading shall be signed by an attorney or, if a party is unrepresented, by that party.

(2) The title of the action describing the parties thereto and the number assigned thereto by the registrar or clerk of the court, 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 or her claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

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

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

(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 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 such party claims entitlement to such division, transfer or forfeiture.

(9) 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 plaintiff's 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 separately state 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); and

(ii) the enjoyment of amenities of life (giving particulars and stating whether the disability concerned is temporary or permanent); and

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

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

(10) 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.

(11) A party who relies on an agreement governed by legislation shall state the nature and extent of the party's compliance with the relevant provisions of such legislation.

(12) Where the plaintiff sues as cessionary the plaintiff shall indicate the name, address and description of the cedent at the date of cession as well as the date of the cession.

(13) 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 60A.

Amendment of summons

7. (1) Subject to the provisions of this rule, a summons may be amended by the plaintiff before service as he or she may deem fit.

(2) Any alteration or amendment of a summons before service and whether before or after issue, shall, before the summons is served, be initialled by the registrar or clerk of the court in the original summons, and, until so initialled, such alteration or amendment shall have no effect.

(3) (a) When no first name or initial or an incorrect or incorrectly spelt first name is or not all the first names of the defendant are reflected in the summons and the first name or initial or the correct or correctly spelt first name of the defendant is or all the first names of the defendant are furnished by the person on whom service of the summons was effected, and such first name or initial or correct or correctly spelt first name is disclosed in the return of the sheriff, or all the first names of the defendant are so disclosed, the registrar or clerk of the court may, at the request of the plaintiff and without notice to the defendant, insert such name or initial in the summons as being the name or initial of the defendant and such amendment shall for all purposes be considered as if it had been made before service of the summons.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) Rule 55A shall apply to the amendment of a summons after service.

Sheriff of the court

8. (1) Except as otherwise provided in these rules, the process of the court shall be served or executed, as the case may be, through the sheriff.

(2) Service or execution of process of the court shall be effected without any unreasonable delay, and the sheriff shall, in any case where resistance to the due service or execution of the process of the court has been met with or is reasonably anticipated, have power to call upon any member of the South African Police Force, as established by the South African Police Service Act, 1995 (Act No. 68 of 1995), to render him or her aid.

(3) The sheriff to whom process other than summonses is entrusted for service or execution shall in writing notify-

(a) the registrar or clerk of the court and the party who sued out the process that service or execution has been duly effected, stating the date and manner of service or the result of execution and return the said process to the registrar or clerk of the court, or

(b) the party who sued out the process that he or she has been unable to effect service or execution and of the reason for such inability, and return the said process to such party,

and keep a record of any process so returned.

(4) When a summons is entrusted to the sheriff for service, subrule (3) shall *mutatis mutandis* be applicable: Provided that the registrar or clerk of the court shall not be notified of the service and that the summons shall be returned to the party who sued out the summons.

(5) In any court for which an officer of the Public Service has been appointed sheriff, the return of any process shall be deemed to have been properly effected if the said process is placed in a receptacle specially set apart for the attorney of that party in the office of the said sheriff.

(6) After service or attempted service of any process, notice or document, the sheriff, other than a sheriff who is an officer of the Public Service, shall specify the total amount

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

of his or her charges on the original and all copies thereof and the amount of each of his or her charges separately on the return of service.

(7) The Director-General of Justice shall by notice in the Gazette publish the name of every court for which a sheriff who is an officer of the Public Service has been appointed.

Service of process, notices and other documents

9. (1) A party requiring service of any process, notice or other document to be made by the sheriff shall provide the sheriff with the original or a certified copy of such process, notice or document, together with as many copies thereof as there are persons to be served: Provided that the registrar or clerk of the court may, at the written request of the party requiring service, hand such process, notice or document and copies thereof to the sheriff.

(2) (a) Except as provided in paragraph (b) or in the case of service by post or upon order of the court, process, notices or other documents shall not be served on a Sunday or public holiday.

(b) An interdict, a warrant of arrest, and a warrant of attachment of property under section 30bis of the Act may be executed on any day at any hour and at any place.

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

(a) To the said person personally or to his or her 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

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

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 or, in the absence of such person in authority, to a person apparently not less than 16 years of age and apparently in charge at his or her 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;

(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 may cause the referral to be served by registered post or by hand.

(g) in the case of a Minister, Deputy Minister or Provincial Premier, in his or her official capacity, the State or provincial administration, at the Office of the State Attorney in Pretoria, or a branch of that Office which serves the area of jurisdiction of the court from which the process has been issued;

(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

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

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 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, subject to subrule (9), service of any process through which a divorce action is instituted shall only be affected by the sheriff on the defendant personally.

(4) (a) The sheriff shall, on demand by the person upon or against whom process is served, exhibit to that person the original or certified copy of the process.

(b) The sheriff or other person serving the process or documents shall explain the nature and contents thereof to the person upon whom service is being affected and shall state in his or her return or affidavit or on the signed receipt whether he or she has done so.

(5) Where the person to be served keeps his or her residence or place of business closed and thus prevents the sheriff from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door or security gate of such residence or place of business or to place such copy in the post box at such residence or place of business.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(6) Service of an interpleader summons where claim is made to any property attached under process of the court may be made upon the attorney, if any, of the party to be served.

(7) Where two or more persons are to be served with the same process, service shall be effected upon each, except-

(a) in the case of a partnership, when service may be affected by delivery at the office or place of business of such partnership, or if there be none such, then by service on any member of such partnership in any manner prescribed in this rule;

(b) in the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected by delivery to any one of them in any manner prescribed in this rule;

(c) in the case of a syndicate, unincorporated company, club, society, church, public institution or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairperson or secretary or similar officer thereof in any manner prescribed in this rule.

(8) Service of a subpoena on a witness may be effected at a reasonable time before attendance is required in any manner prescribed in this rule.

(9) (a) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or appearance to defend, as the case may be, or by sending it by registered post to the postal address so given: Provided that, subject to rules 5 and 13, service of such notice, request, statement or other document may be effected by sending it by facsimile or electronic mail to the facsimile address or electronic mail address given in the summons or notice of intention to defend, as the case may be.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) An address for service, postal address, facsimile address or electronic address so given as contemplated in paragraph (a) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that paragraph at such new address.

(c) (i) Service by registered post under this subrule shall, until the contrary appears, be deemed to have been effected at 10 o'clock in the forenoon on the fourth day after the postmarked date upon the receipt for registration.

(ii) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 is applicable to service by facsimile or electronic mail.

(d) Service under this subrule need not be effected through the sheriff.

(10) Subject to rule 10, where the court is satisfied that service cannot be effected in any manner prescribed in this rule and that the action is within its jurisdiction, it may make an order allowing service to be effected by the person and in the manner specified in such order.

(11) Where service of an *ex parte* order calling upon the respondent to show cause at a time stated or limited in the order or of an interpleader summons is to be effected upon any party, service of such *ex parte* order or interpleader summons shall be effected-

(a) in the case where the party to be so served is the State, at least 20 days; or

(b) in the case where any other party is to be served, at least 10 days, before the time specified in such *ex parte* order or interpleader summons for the appearance of such party.

(12) Except where otherwise provided, notice of any application to the court shall be served-

(a) in the case where the party to be served is the State or a servant of the State in his or her official capacity, at least 20 days; or

(b) in the case of any other party, at least 10 days,

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

before the day appointed for the hearing of the application, but the court may on cause shown reduce such period.

(13) (a) Unless otherwise provided, where service of process may be effected by registered post such service shall be effected by the sheriff placing a copy thereof in an envelope, addressing and posting it by pre-paid registered letter to the address of the party to be served and making application at the time of registration for an acknowledgment by the addressee of the receipt thereof as provided in regulation 44(5) of the regulations published under Government Notice R. 550 of 14 April 1960.

(b) A receipt form completed as provided in regulation 44(8) of the said regulations shall be a sufficient acknowledgment of receipt for the purposes hereof.

(c) If no such acknowledgment be received the sheriff shall state the fact in his or her return of service of the process.

(d) Every such letter shall have on the envelope a printed or typewritten notice in the following terms:

"This letter must not be readdressed. If delivery is not effected before ..... 20...., this letter must be delivered to the Sheriff of the Magistrate's Court at .....".

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

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

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

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

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

(15) 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 subrule (14), 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 authorised to serve process of court or documents and in the state concerned who is under the law of that state authorised to serve process of court or documents.

(16) (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 (14), shall be delivered to the registrar or the clerk of the court, as the case may be.

(c) Any process of court or document delivered to the registrar or clerk of the court, as the case may be, in terms of paragraph (b) shall be transmitted by him or her together with the translation referred to in paragraph (a), to the Director-General of International Relations and Cooperation or to a destination indicated by the Director-General of International Relations and Cooperation, for service in the foreign country concerned, and the registrar or clerk of the court shall satisfy himself or herself that the process of court or document allows a sufficient period for service to be effected in good time.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(17) Service shall be proved-

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

(b) where service has not been effected by the sheriff, nor in terms of subrule (14) or (15), by an affidavit of the person who effected service, or in the case of service on an attorney or a member of his or her staff, the Government of the Republic, the Administration of any Province or on any Minister, Premier, or any other officer of such Government or Administration, in his or her capacity as such, by the production of a signed receipt therefor.

(17A) (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 person at whose request service was effected shall file the document which serves as proof of service on behalf of the person who effected service with the registrar or clerk of the court when-

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

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

(iii) the registrar requests filing; or

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

(18) 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 subrule (14)(a) or subrule (15) in which he or she identifies himself or herself, states that he or she is authorised 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 (15) shall be duly authenticated; or

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) by a certificate of the person effecting service in terms of sub-rule (14)(b) in which he or she states that the process of court or document in question has been served by him or her, setting forth the manner and date of such service and affirming that the law of the country concerned permits him or her 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.

(19) 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.

(20) 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.

(21) 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 or clerk of the court, as the case may be, in terms of any applicable law, the registrar or clerk shall transmit to the sheriff or any person appointed by a magistrate of the court 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 of such process or citation if the original is in any other language.

(22) Service under subrule (21) 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 this rule.

(23) After service has been effected as provided in subrule (22) the sheriff or the person appointed for the service of such process or citation shall return to the registrar or the clerk of court 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, by the certificate and seal of office of such sheriff or, in the

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

case of service by a person appointed by the magistrate of the court concerned, by the certificate and seal of office of the registrar or clerk of the court concerned; and

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

(24) The particulars of charges for the cost of effecting service under subrule (21) shall be submitted to the taxing officer of the court concerned, who shall certify the correctness of such charges or other amount payable for the cost of effecting service.

(25) The registrar or clerk of the court 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 (21);

(b) the proof of service together with a certificate in accordance with Form 46 of Annexure 1 duly sealed with the seal of the court 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.

Edictal citation and substituted service

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

(b) If service of process or document whereby proceedings are instituted cannot be effected in any manner prescribed in rule 9, or if process or a document whereby proceedings are instituted is to be served outside the Republic, the person desiring to obtain leave to effect service may apply for such leave to a presiding officer, who may consider the application in chambers.

(2) (a) Any person desiring to obtain leave in the circumstances contemplated in subrule (1)(b) shall make application to the court setting forth concisely the nature and extent of his or her 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

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

asked to authorise: Provided that if the manner of service is 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 or her present whereabouts.

(b) Upon such application the court may make such order as to the manner of service as it deems fit 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.

(c) Where service by publication is ordered, it may be in a form similar to Form 4 of Annexure 1, approved and signed by the registrar or clerk of the court.

(3) Any person desiring to obtain leave to effect service inside or 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 it deems fit.

Judgment by consent

11. (1) Save for actions for relief in terms of the Divorce Act, 1979, or nullity of marriage, a defendant may before delivering notice of intention to defend consent to judgment by-

(a) signing the form of consent endorsed on the original summons;

(b) lodging with the registrar or the clerk of the court the copy of the summons served upon him or her with the form of consent endorsed thereon duly signed by him or her; or

(c) lodging with the registrar or clerk of the court a consent in a similar form duly signed by him or her and by two witnesses whose names are stated in full and whose addresses and telephone numbers are also recorded.

(2) Where a defendant consents to judgment as contemplated in subrule (1) before instructions for service have been given to the sheriff, it shall not be necessary to serve the summons, and the defendant shall not be chargeable with fees for service.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(3) Subject to the provisions of section 58 of the Act a defendant consenting in terms of subrule (1) before the expiration of the time within which to deliver notice of intention to defend shall not be chargeable with judgment charges.

(4) A defendant may, after delivering notice of intention to defend, save for actions for relief in terms of the Divorce Act, 1979, or nullity of marriage, consent to judgment by delivering a consent similar in form to that endorsed on the summons and such consent shall be signed by the defendant or by his or her attorney.

(5) (a) If a defendant's consent is for less than the amount claimed in the summons, he or she may deliver notice of intention to defend or may continue his or her defence as to the balance of the claim.

(b) Notwithstanding a judgment upon a consent contemplated in paragraph (a), the action may proceed as to the balance of the claim, and it shall be in all subsequent respects an action for such balance.

(6) When a defendant has consented to judgment, the registrar or clerk of the court shall, subject to section 58 of the Act and rule 12(5), (6) and (7), enter judgment in terms of the defendant's consent: Provided that where such consent to judgment is contained in defendant's plea, the registrar or clerk of the court shall refer the matter to the court and the court may thereupon exercise its powers under rule 12(7).

Judgment by default

12. (1) (a) If a defendant has failed to deliver notice of intention to defend within the time stated in the summons or before the lodgment of the request provided for in this paragraph, and has not consented to judgment, the plaintiff may lodge with the registrar or clerk of the court a request in writing similar to Form 5 of Annexure 1, in duplicate, together with the original summons and the return of service, for judgment against such defendant for-

(i) any sum not exceeding the sum claimed in the summons or for other relief so claimed;

(ii) the costs of the action; and

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(iii) interest at the rate specified in the summons to the date of payment or, if no rate is specified, at the rate prescribed under section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

(b) (i) If the defendant has delivered notice of intention to defend but has failed to deliver a plea within the time prescribed under rule 17 or within any extended time allowed, the plaintiff may deliver a notice in writing calling upon the defendant to deliver a plea within 5 days of the receipt of such notice, and, on failure of the defendant to deliver his or her plea within that period or within such further period as may be agreed between the parties, he or she shall be in default with such plea, and *ipso facto* barred.

(ii) When the plaintiff has complied with subparagraph (i) he or she may lodge with the registrar or clerk of the court a request in writing for judgment in the same manner as when the defendant has failed to deliver notice of intention to defend.

(c) When the defendant has failed to deliver notice of intention to defend or, having delivered such notice, has failed to deliver a plea within the period specified in the notice delivered to him or her in terms of paragraph (b) and the plaintiff has in either case lodged a request for judgment, the registrar or clerk of the court shall process the request in terms of the provisions of subrules (2), (3), (4), (5), (6), (6A) and (7), and notify the plaintiff of the outcome of the request by returning the duplicate copy duly endorsed as to the result and the date thereof.

(d) When a defendant has delivered notice of intention to defend but has failed to deliver a plea within the period specified in the notice delivered to him or her in terms of paragraph (b) and the registrar or clerk of the court has entered judgment in terms of a request lodged by the plaintiff, costs shall be taxed as if it had been a defended action.

(e) If the original summons cannot be filed together with the request for judgment as required by paragraph (a), the plaintiff may-

(i) file with the registrar or clerk of the court a copy or duplicate original of the summons and a copy of the signed return of service received from the sheriff; and

(ii) file an affidavit together with the documents mentioned in subparagraph (i) stating the reasons why the original summons and return of service cannot be filed:

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Provided that in divorce actions rule 22(5) shall apply.

(2) (a) If it appears to the registrar or clerk of the court that the defendant intends to defend the action but that his or her notice of intention to defend is defective, in that the notice-

(i) has not been properly delivered; or

(ii) has not been properly signed; or

(iii) does not set out the postal address of the person signing it or an address for service as provided in rule 13; or

(iv) exhibits any two or more of such defects or any other defect of form,

he or she shall not enter judgment against the defendant unless the plaintiff has delivered notice in writing to the defendant calling upon him or her to deliver a notice of intention to defend in due form within 5 days of the receipt of such notice.

(b) The notice provided for in subrule (2)(a) shall set out in what respect the defendant's notice of intention to defend is defective.

(c) On failure of the defendant to deliver a notice of intention to defend as provided in paragraph (a), the plaintiff may lodge with the registrar or clerk of the court a written request for judgment in default of due notice of intention to defend: Provided that in divorce actions rule 22(5) shall apply.

(3) Judgment in default of appearance to defend shall not be entered in an action in which the summons has been served by registered post unless the acknowledgement of receipt referred to in rule 9 (13) (a) has been filed by the sheriff with his or her return of service.

(3A) When a claim is for a debt or liquidated amount in money and the defendant has failed to deliver notice of intention to defend or, having delivered notice of intention to defend, has failed to deliver a plea within the period specified in the notice delivered in terms of subrule (1)(b)(i) and the plaintiff has in either case lodged a request for judgment, the registrar or clerk of the court may, subject to the provisions of subrules (2), (4), (5), (6) and (6A) grant judgment or refer the matter to the court in terms of subrule (7).

(4) The registrar or clerk of the court shall refer to the court any request for judgment for an unliquidated amount and the plaintiff shall furnish to the court evidence either oral

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

or by affidavit of the nature and extent of the claim, whereupon the court shall assess the amount recoverable by the plaintiff and shall give an appropriate judgment.

(5) The registrar or clerk of the court shall refer to the court any request for judgment on a claim founded on any cause of action arising out of or based on an agreement governed by the National Credit Act, or the Credit Agreements Act, 1980 (Act No. 75 of 1980), and the court shall thereupon make such order or give such judgment as it may deem fit.

(6) If the action be on a liquid document or any agreement in writing the plaintiff shall together with the request for default judgment file the original of such document or the original agreement in writing or an affidavit setting out reasons to the satisfaction of the court or the registrar or clerk of the court, as the case may be, why such original cannot or should not be filed.

(6A) If a claim is founded on any cause of action arising out of or regulated by legislation, then the plaintiff shall together with the request for default judgment file evidence confirming compliance with the provisions of such legislation to the satisfaction of the court.

(7) The registrar or clerk of the court may refer to the court any request for judgment and the court may thereupon-

(a) if a default judgment be sought, call upon the plaintiff to produce such evidence either in writing or oral in support of his or her claim as it may deem necessary;

(b) if a judgment by consent be sought, call upon the plaintiff to produce evidence to satisfy the court that the consent has been signed by the defendant and is a consent to the judgment sought;

(c) give judgment in terms of plaintiff's request or for so much of the claim as has been established to its satisfaction;

(d) give judgment in terms of defendant's consent;

(e) refuse judgment; or

(f) make such other order as it may deem fit.

(8) When one or more of several defendants in an action consent to judgment or fail to deliver notice of intention to defend or to deliver a plea, judgment may be entered

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

against the defendant or defendants who have consented to judgment or are in default, and the plaintiff may proceed on such judgment without prejudice to his or her right to continue the action against another defendant or other defendants.

(9) Judgment shall be entered by making a minute of record thereof.

Notice of intention to defend

13. (1) The defendant in every civil action shall be allowed 10 days after service of summons on defendant within which to deliver a notice of intention to defend, either personally or through defendant's 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.

(2) In an action against any Minister, Deputy Minister, Provincial Premier, officer or servant of the State, in such 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.

(3) (a) When a defendant delivers notice of intention to defend, the defendant shall therein give his or her full physical residential or business address, postal address and where available, facsimile address and electronic mail address, and shall also indicate and select therein the preferred address for service on the defendant 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: Provided that the physical address given by the defendant in the notice of intention to defend shall be an address situated within 15 kilometres of the courthouse.

(b) The defendant shall indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) The plaintiff may, at the written request of the defendant, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

(4) A party shall not by reason of 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 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 request for judgment by default.

Summary judgment

14. (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 plaintiff 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 or her 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.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(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 or clerk of the court 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 herself or of any other person who can swear positively to the fact that defendant has a *bona fide* defence to the action, and 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 orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it deems fit.

(5) If the defendant does not find security or satisfy the court as provided in subrule (3), the court may enter summary judgment in favour of 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 or her as to the balance of the claim, unless such balance has been paid to the plaintiff; or

(iii) make both orders provided for in subparagraphs (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.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(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.

(9) 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 15 days of the date leave to defend has been given.

(10) The court may at the hearing of an application for summary judgment make such order as to costs as it deems fit: 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 or her 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.

Provisional sentence

14A (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 in accordance with Form 2A of Annexure 1, calling upon such person to pay the amount claimed or failing such payment to appear personally or by practitioner 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.

(2) A summons provided for in subrule (1) shall be issued by the registrar or clerk of the court and rule 5 shall apply *mutatis mutandis*.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(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 a case for hearing for provisional sentence not later than three days before the day upon which it is to be heard.

(5) (a) Upon the day named in a summons for provisional sentence the defendant may appear personally or by a practitioner to admit or deny his or her liability or may, not later than three days before 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.

(b) In the event of delivery of an affidavit provided for in paragraph (a) the plaintiff shall be afforded a reasonable opportunity of replying thereto.

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

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

(8) (a) 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 it deems fit.

(b) When an order provided for in paragraph (a) has been made 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 or clerk of the court, against payment of the amount due under a judgment for provisional sentence.

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

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(11) (a) 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 or her intention to do so, and he or she shall deliver a plea within 10 days thereafter.

(b) Failing a notice or plea contemplated in paragraph (a) a provisional sentence shall *ipso facto* become a final judgment and the security given by the plaintiff shall lapse.

Declaration

15. (1) In all actions in which the plaintiff has issued a simple summons and the defendant has delivered a notice of intention to defend, the plaintiff shall, within 15 days after receipt of the notice of intention to defend, deliver a declaration.

(2) A declaration under subrule (1) 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.

(4) If the plaintiff has failed to deliver a declaration within the time prescribed under subrule (1) or within any extended time allowed, the defendant may deliver a notice in writing calling upon the plaintiff to deliver a declaration within five days of the receipt of such notice, and, on failure of the plaintiff to deliver his or her declaration within that period or within such further period as may be agreed between the parties, he or she shall be in default with such declaration, and *ipso facto* barred.

(5) Where a plaintiff has been barred from delivering a declaration the defendant may set the action down for hearing upon not less than 10 days' notice to the defaulting plaintiff, and apply for absolution from the instance or, after adducing evidence, for judgment, and the court may make such order thereon as it deems fit.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Further particulars

16. (1) Subject to subrules (2), (3) and (4) further particulars shall not be requested.

(2) (a) After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him or her to prepare for trial.

(b) A request contemplated in paragraph (a) shall be complied with within 10 days after receipt thereof.

(3) A request for further particulars for trial and the reply thereto shall be signed by an attorney or, if a party is unrepresented, by that party.

(4) If a party who has been requested in terms of this rule to furnish any particulars 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 it deems fit.

(5) A court shall at the conclusion of a 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.

Plea

17. (1) Where a defendant has delivered notice of intention to defend, the defendant shall within 20 days after the service upon him or her of a declaration or within 20 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.

(2) The defendant shall in defendant's 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 defendant relies.

(3) (a) 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.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) If any explanation or qualification of any denial is necessary, it shall be stated in the plea.

(4) (a) 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 the 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.

(b) In the event of a request for postponement as provided for in paragraph (a) judgment on the claim shall, either in whole or in part, 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 it deems fit.

(5) (a) Where a tender is pleaded as to part of the amount claimed, the plea shall specify the items of the plaintiff's claim to which the tender relates.

(b) A plea of tender shall not be admissible unless the amount of the alleged tender is secured to the satisfaction of the plaintiff on the delivery of the plea, if not already paid or secured to the plaintiff and the amount so secured shall be paid out to the plaintiff only on the order of the court or upon an agreement in writing of the parties.

(c) A tender after action brought shall imply an undertaking to pay the plaintiff's costs up to the date of the tender, unless such an undertaking is expressly disavowed at the time of such tender, and shall be valid without a securement of the amount at which such costs may be taxed.

(6) If the defendant fails to comply with any of the provisions of subrules (2), (3) and (5), the plea shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 60A.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Offer to settle

18. (1) (a) 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 an offer in writing to settle the plaintiff's claim.

(b) An offer to settle the plaintiff's claim shall be signed either by the defendant himself or herself or by his or her attorney if the latter has been authorised thereto in writing.

(2) (a) 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.

(b) In the event of a tender contemplated in paragraph (a) the defendant shall , unless the act must be performed by him or her personally, execute an irrevocable power of attorney authorising the performance of such act which he or she 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 28A, may, either unconditionally or without prejudice, by way of an offer of settlement-

(a) make an offer in writing 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 an indemnity in writing 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 an offer in writing 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;

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(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; and

(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 consent in writing 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 or clerk of the court, having satisfied himself or herself 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 or her 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 5 days' notice in writing to the party who has failed to pay or perform apply through the registrar or clerk of the court to a magistrate 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 13(3), then it shall be given at an address, which is not a post office box or *poste restante*, within 15 kilometres of the office of the registrar or clerk of the court 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 5 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, and no reference to such offer

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

or tender shall appear on any file in the office of the registrar or clerk of the court 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 an offer or tender in terms of this rule and it is brought to the notice of the registrar or clerk of the court, in writing, within 5 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 or her, discloses an offer or tender in terms of this rule to the magistrate or the court shall be liable to have costs given against him or her even if he or she 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 28A.

Interim payments

18A. (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 or her claim for medical costs and loss of income arising from his or her physical disability or the death of a person.

(2) Subject to rule 55 the affidavit in support of the application provided for in subrule (1) 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 an application for interim payment, the court is satisfied that-

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(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 deems fit but subject to subrule (5), order the respondent to make an interim payment of such amount as it deems fit, 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 or she has the means at his or her disposal to enable him or her 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 amount 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 or her 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 repays all or part of the interim payment;

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(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.

Exceptions and applications to strike out

19. (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 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.

(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 the court shall not grant the same unless it is satisfied that the applicant will be prejudiced in the conduct of his or her 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.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Claims in reconvention

20. (1) (a) A defendant who counterclaims shall, together with such defendant's plea, deliver a claim in reconvention setting out the material facts thereof in accordance with rules 6 and 15 unless the plaintiff agrees, or if plaintiff refuses, the court allows it to be delivered at a later stage.

(b) A 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", and it shall not be necessary to repeat therein the names or descriptions of the parties to the proceedings in convention.

(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, the defendant 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 provided for in subrule (2), shall add to the title of such defendant's plea a further title corresponding with what would be the title of any action instituted against the parties against whom such defendant makes claim in reconvention, and all further pleadings in the action shall bear such title, subject to the proviso to rule 6(2).

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

(5) A defendant delivering a claim in reconvention may by notice delivered therewith or within 5 days thereafter apply to the court to pronounce that the claim in reconvention exceeds its jurisdiction and to stay the action under section 47 of the Act.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(6) Where a court finds that the claim in reconvention exceeds its jurisdiction, the defendant may forthwith or by notice delivered within 5 days after such finding apply for stay of the action.

(7) If no application for stay is made or, having been made, has been dismissed, the court shall on the application of the plaintiff or otherwise of its own motion dismiss a claim in reconvention pronounced to exceed its jurisdiction, unless the defendant shall forthwith abandon under section 38 of the Act sufficient of such claim to bring it within the jurisdiction of the court.

(8) 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 60A.

Replication and plea in reconvention

21. (1) Within 15 days after the service upon plaintiff of a plea and subject to subrule (2), 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 17.

(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 rule 21A(b).

(3) (a) Where a replication or subsequent pleading is necessary, a party may therein join issue on the allegations in the previous pleading.

(b) To such extent as a party 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), within 10 days after the delivery of the plea in reconvention deliver a replication in reconvention.

(5) Further pleadings-

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(a) may, subject to the provisions *mutatis mutandis* of sub-rule (2), be delivered by the respective parties within 10 days after the previous pleading delivered by the opposite party; and

(b) shall be designated by the names by which they are customarily known.

Close of pleadings

21A. Pleadings shall be considered closed if-

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

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

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

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

Set-down of trial

22. (1) The trial of an action shall be subject to the delivery by the plaintiff, after the pleadings have been closed, of notice of trial for a day or days approved by the registrar or clerk of the court: Provided that, if the plaintiff does not within 15 days after the pleadings have been closed deliver notice of trial, the defendant may do so.

(2) The delivery of notice of trial shall *ipso facto* operate to set down for trial at the same time any claim in reconvention made by the defendant.

(3) Delivery of notice of trial shall be effected at least 20 days before the day so approved.

(4) On receipt of an application for a trial date the registrar or clerk of the court shall draw the court file and take it to the magistrate to enable the magistrate to consider whether a pre-trial conference in terms of section 54 of the Act is necessary: Provided that the trial date shall be allocated within 10 days of receipt of the application for trial date.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(5) In divorce actions, notwithstanding anything in this rule contained, the registrar of the court shall at the written request of the plaintiff set the action down for hearing at the time and place and on a date to be fixed by the registrar of the court, if the defendant has-

(a) failed to deliver notice of intention to defend; or

(b) failed to deliver a plea after receiving a notice in terms of rule 12(1)(b); or

(c) given written notice to the plaintiff and the registrar or clerk of the court that he or she does not intend defending the action,

but no notice of such request or set down need be served on the defendant.

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

Discovery of documents

23. (1) (a) Any party to any action may require any other party thereto, by notice in writing, to make discovery on oath within 20 days of all documents and tape, electronic, digital or other forms of 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.

(b) A notice in terms of paragraph (a) shall not, save with the leave of a magistrate, be given before the close of pleadings.

(2) (a) A party required to make discovery shall within 20 days or within the time stated in any order of a magistrate make discovery of such documents on affidavit similar to Form 13 of Annexure 1, specifying separately -

(i) such documents and tape, electronic, digital or other forms of recordings in his or her possession or that of his or her agent other than the documents and tape recordings mentioned in paragraph *(b)*;

(ii) such documents and tape, electronic, digital or other forms of recordings in respect of which he or she has a valid objection to produce; and

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(iii) such documents and tape, electronic, digital or other forms of recordings which he or she or his or her agent had but no longer has in his or her possession at the date of the affidavit.

(b) 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.

(c) 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.

(3) If any party believes that there are, in addition to documents or tape, electronic, digital or other forms of recordings disclosed in terms of this rule, other documents, including copies thereof, or tape, electronic, digital or other forms of recordings which may be relevant to any party thereto, the former may give notice to the latter requiring him or her to make the same available for inspection in accordance with subrule (6), or to state an oath within 10 days that such documents are not in his or her possession, in which event he or she shall state their whereabouts, if known to him or her.

(4) A document or tape, electronic, digital or other forms of recording not disclosed as requested in terms of this rule 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, electronic, digital or other forms of recording.

(5) (a) Where the Road Accident Fund as defined in the Road Accident Fund Act, 1996 (Act No. 56 of 1996), is a party to any action by virtue of the provisions of that Act, any party thereto may obtain discovery in the manner provided in paragraph *(d)* against the driver or owner, as defined in that Act, of that vehicle.

(b) 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 the Road Accident Fund Act, 1996.

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

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(d) A party requiring discovery in terms of paragraph (a), (b), or (c) shall do so by notice similar to Form 14 of Annexure 1.

(6) (a) Any party may at any time by notice similar to Form 15 of Annexure 1 require any party who has made discovery to make available for inspection any document or tape, electronic, digital or other form of recording disclosed in terms of subrules (2) and (3).

(b) A notice provided for in paragraph (a) shall require the party to whom notice is given to deliver to him or her within 5 days a notice similar to Form 15A of Annexure 1, stating a time within 5 days from the delivery of such latter notice when the document or tape, electronic, digital or other form of recording may be inspected at the office of his or her attorney or, if he or she 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.

(7) (a) A party receiving a notice similar to Form 15A of Annexure 1 mentioned in subrule (6)(b) shall be entitled at the time therein stated, and for a period of 5 days thereafter during normal business hours and on any one or more of such days, to inspect such document or tape, electronic, digital or other form of recording and to take copies or transcriptions thereof.

(b) A party's failure to produce any such document or tape, electronic, digital or other form of recording required for inspection shall preclude him or her from using it at the trial, save where the court on good cause shown allows otherwise.

(8) If any party fails to give discovery as aforesaid or, having been served with a notice under subrule (6)(a), omits to give notice of a time for inspection as provided for in subrule 6(b) 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.

(9) 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, electronic, digital or other form of recording intended to be used at the trial of the action

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

on behalf of the party to whom notice is given, and the party receiving such notice shall not less than 15 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, electronic, digital or other form of recording which is in his or her possession; or

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

(10) (a) Any party proposing to prove any document or tape, electronic, digital or other form of recording at a trial may give notice to any other party requiring him or her within 10 days after the receipt of such notice to admit that such document or tape, electronic, digital or other form of recording was properly executed and is what it purports to be.

(b) If a party receiving a notice under paragraph (a) does not within the said period admit as required, then as against such party the party giving the notice shall be entitled to produce the document or tape, electronic, digital or other form of recording specified at the trial without proof other than proof, if it is disputed, that the document or tape, electronic, digital or other form of recording is the document or tape, electronic, digital or other form of recording referred to in the notice and that the notice was duly given.

(c) If a party receiving a notice under paragraph (a) states that the document or tape, electronic, digital or other form of recording is not admitted as required, it shall be proved by the party giving the notice before he or she is entitled to use it at the trial, but the party not admitting it may be ordered to pay the costs of its proof.

(11) (a) Any party may give to any other party who has made discovery of a document or tape, electronic, digital or other form of recording notice to produce at the hearing the original of such document or tape, electronic, digital or other form of recording, not being a privileged document or tape, electronic, digital or other form of recording, in such party's possession.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) A notice under paragraph (a) shall be given not less than 5 days before the hearing but may, if the court so allows, be given during the course of the hearing.

(c) If any notice under paragraph (a) is so given, the party giving the same may require the party to whom notice is given to produce the said document or tape, electronic, digital or other form of recording in court and shall be entitled, without calling any witness, to hand in the said document or object, 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.

(12) The court may, during the course of any proceeding, order the production by any party thereto under oath of such document or recording in his or her power or control relating to any matter in question in such proceeding as the court may deem fit, and the court may deal with such document or tape, electronic, digital or other form of recording, when produced, as it deems fit.

(13) (a) Any party to any proceeding may at any time before the hearing thereof deliver a notice similar to Form 15B of Annexure 1 to any other party in whose pleadings or affidavits reference is made to any document or tape, electronic, digital or other form of recording to produce such document or tape, electronic, digital or other form of recording for his or her inspection and to permit him or her to make a copy or transcription thereof.

(b) Any party failing to comply with a notice under paragraph (a) shall not, save with the leave of the court, use the relevant document or tape, electronic, digital or other form of recording in such proceeding provided that any other party may use such document or tape, electronic, digital or other form of recording.

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

(15) After appearance to defend has been delivered, any party to any action may, for purposes of pleading, require any other party to make available for inspection within 5 days a clearly specified document or tape, electronic, digital or other form of recording in his or her possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(16) For purposes of this rule 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.

Medical examinations, inspection of things, expert testimony and tendering in evidence any plan, diagram, model or photograph

24. (1) Subject to this rule, any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed may require any party claiming such damages or compensation whose state of health is relevant to the determination of such damages or compensation to submit to an examination by one or more duly registered medical practitioners.

(2) (a) Any party requiring another party to submit to an examination provided for in subrule (1) shall deliver a notice specifying the nature of the examination required, the person or persons by whom it will be conducted, the place where and the date (being not less than 15 days from the date of such notice) and time it is desired that such examination shall take place and requiring such other party to submit himself or herself for examination at such place, date and time.

(b) A notice referred to in paragraph (a) shall state that the other party may have his or her own medical adviser present at such examination, and shall be accompanied by a remittance in respect of the reasonable expense to be incurred by the other party in attending such examination.

(c) The amount of the expense referred to in paragraph (b) shall be tendered on the scale as if such person were a witness in a civil suit before the court: Provided that-

(i) if the other party is physically incapable of proceeding on his or her own to attend such examination, the amount to be paid to him or her shall include the cost of his or her travelling by motor vehicle and, where required, the reasonable cost of a person attending upon him or her,

(ii) where the other party will actually forfeit any salary, wage or other remuneration during the period of his or her absence from work he or she shall in addition to his or her expenses on the basis of a witness in a civil

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

case be entitled to receive an amount not exceeding R75 per day in respect of the salary, wage or other remuneration which he or she will actually forfeit, and

(iii) any amount paid by a party in terms of this subrule shall be costs in the cause, unless the court otherwise directs.

(3) (a) Any party receiving a notice referred to in subrule (2)(a) shall, within 10 days of the service thereof, notify the party delivering it in writing of the nature and grounds of any objection which he or she may have in relation to-

(i) the nature of the proposed examination;

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

(iii) the place, date or time of the examination; and

(iv) the amount of the expenses tendered to him or her,

and shall further-

(aa) in the case of his or her objection being to the place, date or time of the examination, suggest an alternative place, date or time for the examination or;

(bb) in the case of his or her objection being to the amount of the expenses tendered, furnish particulars of such increased amount as he or she may require.

(b) If a party receiving the notice referred to in subrule (2)(a) does not deliver any objection within the period referred to in paragraph (a), he or she shall be deemed to have agreed to the examination upon the terms set forth by the party giving the notice.

(c) If a party receiving an objection is of opinion that the objection or any part thereof is not well-founded he or she may apply to the court to determine the conditions upon which the examination, if any, is to be conducted.

(4) Any party to proceedings referred to in subrule (1), may at any time by notice require any party claiming any damages or compensation so referred to, to make available and to furnish copies thereof on request, in so far as he or she is able to do so, to such first-mentioned party within 15 days any medical report, hospital record, X-ray

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

photograph, or other documentary information of a like nature relevant to the assessment of such damages or compensation.

(5) If it appears from any medical examination carried out either by agreement between the parties or in pursuance of any notice given in terms of this rule or any determination made by the court under subrule (3) that any further medical examination by any other medical practitioner is necessary or desirable for the purpose of obtaining full information on matters relevant to the assessment of such damages or compensation, any party may require a second and final examination in accordance with the provisions of this rule.

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

(6) If it appears that the state or condition of anything 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 thereto may at any stage thereof, not later than 15 days before the hearing, give notice requiring the party relying upon the existence of such state or condition of such thing or having such thing in his or her possession or under his or her control to make it available for inspection or examination and may in such notice require such party to have such thing or a fair sample thereof available for inspection or examination for a period not exceeding 10 days from the receipt of the notice.

(7) (a) A party requested under subrule (6) to submit a thing for inspection or examination may require the party so requesting to specify the nature of the inspection or examination for which such thing is to be submitted, and shall not be bound to submit such thing therefor if he or she will be materially prejudiced by reason of the effect thereof upon such thing.

(b) In the event of any dispute whether a thing should be submitted for inspection or examination, either party may on application to the court state that the inspection or examination has been required and objected to and the court may make such order as it may deem fit.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(8) Any party causing a medical examination or an inspection or examination to be made in terms of subrule (1) or (6) shall-

(a) cause the person making the medical examination or the inspection or examination to give a full report in writing of the results of such medical examination or inspection or examination, as the case may be, and the opinions that he or she 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 medical examination or inspection or examination and 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 or she shall-

(a) not less than 15 days before the hearing, have delivered notice of his or her intention to do so; and

(b) not less than 10 days before the hearing, have delivered a summary of such opinions of such expert and his or her reasons therefor.

(10) (a) No party to an action shall, except with the consent of all the other parties to the action or with the leave of the court, be entitled to tender in evidence any plan, diagram, model or photograph unless he or she shall not less than 10 days before the hearing of the action, have given every such other party notice of his or her intention to do so.

(b) A notice under paragraph (a) shall state that every party receiving it shall be entitled to inspect such plan, diagram, model or photograph and shall require such party, within 5 days of the receipt thereof, to state whether he or she has any objection to such plan, diagram, model or photograph being admitted in evidence without proof.

(c) If a party receiving a notice under paragraph (a) fails within the period specified in the notice to state whether he or she objects to the admission in evidence of the plan,

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

diagram, model or photograph referred to in the notice, such plan, diagram, model or photograph, as the case may be, shall be received in evidence upon its mere production and without further proof thereof.

(d) If a party receiving a notice under paragraph (a) objects to the admission in evidence of such plan, diagram, model or photograph, such plan, diagram, model or photograph, as the case may be, may be proved at the hearing of the action and the party receiving the notice may be ordered to pay the costs of such proof.

Pre-trial procedure for formulating issues

25. (1) The request in writing referred to in section 54 (1) of the Act shall be made in duplicate to the registrar or clerk of the court requesting the court to call a pre-trial conference and shall indicate generally the matters which it is desired should be considered at such conference.

(2) The registrar or clerk of the court shall place a request referred to in subrule (1) before a judicial officer who shall, if he or she decides to call a conference, direct the registrar or clerk of the court to issue the necessary process.

(3) The process for requiring the attendance of parties or their legal representatives at a pre-trial conference shall be by letter signed by the registrar or clerk of the court, together with a copy of the request, if any, referred to in subrule (1), which letter shall be delivered by hand or registered post at least 10 days prior to the date fixed for the said conference.

Subpoenae, interrogatories and commissions de *bene esse*

26. (1) 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 or clerk of the court one or more subpoenas for that purpose, each of which subpoena shall contain the names of not more than four persons, and the service thereof upon any person therein named shall be effected by the sheriff in the manner prescribed by rule 9, and the process of subpoenaing such witness shall correspond substantially to Form 24.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(2) (a) 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.

(b) In the case of evidence taken on commission, such process shall be sued out by the party desiring the attendance of the witness and shall be issued by the Commissioner.

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

(4) There shall be handed to the sheriff together with a subpoena so may copies thereof as there are witnesses to be summoned and also the sum of money that the party for whom they are to be summoned considers that the sheriff shall pay or offer to the said witnesses for their conduct money.

(5) The court may set aside service of any subpoena if it appears that the witness was not given reasonable time to enable him or her to appear in pursuance of the subpoena.

Withdrawal, dismissal and settlement

27. (1) Where a summons has not been served or the period limited for delivery of notice of intention to defend has expired and no such notice has been delivered, the plaintiff may withdraw the summons by notice to the registrar or clerk of the court.

(2) Save as provided by subrule (1), a plaintiff or applicant desiring to withdraw an action or application against all or any of the parties thereto shall deliver a notice of withdrawal similar to Form 6 of Annexure 1.

(3) Any party served with notice of withdrawal may within 20 days thereafter apply to the court for an order that the party so withdrawing shall pay the applicant's costs of the action or application withdrawn, together with the costs incurred in so applying: Provided that where the plaintiff or applicant in the notice of withdrawal embodies a consent to pay the costs, such consent shall have the force of an order of court and the registrar or clerk of the court shall tax the costs on the request of the defendant.

(4) Any party may by delivery of notice abandon any specified claim, exception or defence pleaded by him or her and such notice shall be taken into consideration in taxing costs.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(5) If in any proceedings a settlement or an agreement to postpone or withdraw is reached, the attorney for the plaintiff or applicant shall inform the registrar or clerk of the court and other parties to the action by delivering a notice accordingly.

(6) Application may be made to the court by any party at any time after delivery of notice of intention to defend and before judgment to record the terms of any settlement of an action without entry of judgment agreed to by the parties: Provided that if the terms of settlement so provide, the court may make such settlement an order of court.

(7) An application referred to in subrule (6) shall be on notice, except when the application is made in court during the hearing of any proceeding in the action at which the other party is represented or when a written waiver (which may be included in the statement of the terms of settlement) by such other party of notice of the application is produced to the court.

(8) At the hearing of an application referred to in subrule (6) the applicant shall lodge with the court a statement of the terms of settlement signed by all parties to the action and, if no objection thereto be made by any other party, the court shall note that the action has been settled on the terms set out in the statement and thereupon all further proceedings in the action shall, save as provided in subrules (9) and (10), be stayed.

(9) (a) When the terms of a settlement agreement which was recorded in terms of subrule (6) provide for the future fulfilment by any party of stated conditions and such conditions have not been complied with by the party concerned, the other party may at any time on notice to all interested parties apply for the entry of judgment in terms of the settlement.

(b) An application referred to in this subrule shall be on notice to the party alleged to be in default, setting forth particulars of the breach by the respondent of the terms of settlement.

(10) After hearing the parties to an application referred to in subrule (9) the court may-

(a) dismiss the application;

(b) give judgment for the applicant as specified in the terms of settlement;

(c) set aside the settlement and give such directions for the further prosecution of the action as it may deem fit; or

(d) make such order as it may deem fit as to the costs of the application.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Intervention, joinder and consolidation of actions

28. (1) The court may, on application by a person desiring to intervene in any proceedings and having an interest therein, grant leave to such person to intervene on such terms as it may deem fit.

(2) The court may, on application by any party to any proceedings, order that another person shall be added either as a plaintiff or applicant or as a defendant or respondent on such terms as it may deem fit.

(3) A plaintiff may join several causes of action in the same action and the court may at the conclusion of the proceedings make such order as to costs as it deems fit.

(4) 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 it deems fit.

(5) 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 this rule shall *mutatis mutandis* apply with regard to the action so consolidated; and

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

Third party procedure

28A. (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 or her, to a contribution or indemnification from such third party; or

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(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 third party notice, similar to Form 43 of Annexure 1, which notice shall be served by the sheriff.

(2) (a) A third party 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.

(b) In so far as the statement of the claim in a third party notice and the question or issue are concerned, the rules with regard to pleadings and to summonses shall *mutatis mutandis* apply.

(3) (a) A 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 or clerk of the court 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, a third party notice may be served only with the leave of the court.

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

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

(6) A third party may-

(a) plead or except to the third party notice as if he or she were a defendant to the action; and

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(b) 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 or she would be entitled to do so in terms of rule 20.

(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; and

(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) (a) 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 or she may issue and serve on such other party a third party notice in accordance with the provisions of this rule.

(b) Save that no further notice of intention to defend shall be necessary, the same procedure shall apply as between the parties to a notice referred to in paragraph (a) 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 it deems fit, 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.

Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

(10) Where a court makes a decision with regard to the liability of a defendant and any third party defendant and either of such defendants discharges the obligation to the plaintiff of the full amount or more than its fair share of the amount found to be due by it to the plaintiff, any of such defendants who discharges that obligation may execute against the other defendant for the amount which the court has found that defendant to be liable.

Trial

29. (1) Unless the court shall otherwise order, the trial of an action shall take place at the court-house from which the summons was issued.

(2) A witness who is not a party to the action may be ordered by the court-

(a) to leave the court until his or her evidence is required or after his evidence has been given; or

(b) to remain in court after his or her evidence has been given until the trial is terminated or adjourned.

(3) The court may, before proceeding to hear evidence, require the parties to state shortly the issues of fact or questions of law which are in dispute and may record the issues so stated.

(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 at the request of any party make such order unless it appears that the questions cannot conveniently be decided separately.

(5) If the question in dispute is a question of law and the parties are agreed upon the facts, the facts may be admitted in court, either viva voce or by written statement, by the parties and recorded by the court and judgment may be given thereon without further evidence.

(6) When questions of law and issues of fact arise in the same case and the court is of opinion that the case may be disposed of upon the questions of law only, the court