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may require the parties to argue upon those questions only and may give its decision thereon before taking evidence as to the issues of fact and may give final judgment without dealing with the issues of fact.

(7) (a) If on the pleadings the burden of proof is on the plaintiff he or she shall first adduce his or her evidence.

(b) If absolution from the instance is not decreed after the plaintiff has adduced evidence, the defendant shall then adduce his or her evidence.

(8) Where on the pleadings the burden of proof is on the defendant, the defendant shall first adduce his or her evidence, and if necessary the plaintiff shall thereafter adduce his or her evidence.

(9) (a) Where the burden of proving one or more of the issues is on the plaintiff and that of proving others is on the defendant, the plaintiff shall first call his or her evidence on any issues proof whereof is upon him or her, and may then close his or her case, and the defendant shall then call his or her evidence on all the issues.

(b) If the plaintiff has not called any evidence (other than that necessitated by his or her evidence on the issues proof whereof is on him or her) on any issues proof whereof is on the defendant, he or she shall have the right to do so after defendant has closed his or her case, but If he or she has called any such evidence, he or she shall have no such right.

(10) In a case of dispute as to the party upon whom the burden of proof rests, the court shall direct which party shall first adduce evidence.

(11) Any party may, with the leave of the court, adduce further evidence at any time before judgment; but such leave shall not be granted if it appears to the court that such evidence was intentionally withheld out of its proper order.

(12) The court may at any time before judgment, on the application of any party or of its own motion, recall any witness for further examination.

(13) Any witness may be examined by the court as well as by the parties.

(14) After the evidence on behalf of both parties has been adduced the party who first adduced evidence may first address the court and thereafter the other party, and the party who first adduced evidence may reply.

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(15) Where the court has authorised the evidence of any witness to be taken on interrogatories, such interrogatories shall be filed within 4 days of the order and cross-interrogatories within 5 days thereafter.

Record of proceedings in civil matters

30. (1) Minutes of record shall forthwith be made of-

(a) any judgment given by the court;

(b) any oral evidence given in court;

(c) any objection made to any evidence received or tendered; and

(d) the proceedings of the court generally, including the record of any inspection in loco.

(2) The court shall mark each document put in evidence and note such mark on the record.

(3) The minutes and marks may be made by the registrar or clerk of the court and, save as provided in subrule (4), by the presiding judicial officer.

(4) The addresses of the parties, oral evidence given, any exception or objection taken in the course of the proceedings, the rulings and judgment of the court and any other portion of the proceedings, may be noted in shorthand (also in this rule referred to as "shorthand notes") either verbatim or in narrative form or recorded by mechanical, electronic or digital means.

(5) (a) Every person employed for the taking of shorthand notes or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his or her duties in writing take an oath or make an affirmation before a judicial officer in the following form:

'I,....., swear/solemnly and sincerely affirm and declare that I will faithfully, accurately and to the best of my ability take down in shorthand or cause to be recorded by mechanical, electronic or digital means, as directed by the judicial officer, the proceedings in any case in which I may be employed thereto as an officer of the court and that I will similarly, when required to do so, transcribe the same or, as far as I

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am able to do so, any other notes taken by any officer of the court or recorded by mechanical, electronic or digital means.'.

(b) Such oath or affirmation shall be administered in the manner prescribed for the taking of an oath or affirmation.

(6) (a) Shorthand notes taken in terms of this rule shall be certified as correct by the shorthand writer and filed with the record of the case by the registrar or clerk of the court.

(b) Subject to the provisions of subrule (7), no shorthand notes taken in terms of this rule shall be transcribed unless a judicial officer so directs.

(c) The transcript of any shorthand notes transcribed in terms of paragraph (b) shall be certified as correct by the person making it and shall be filed with the record.

(7) (a) In any case in which no transcription was directed in terms of subrule (6) any person may on notice to the registrar or clerk of the court request a transcription of any shorthand note taken by virtue of a direction given under subrule (4) and shall pay, in respect of proceedings made by mechanical, electronic or digital means, the full cost thereof as predetermined by agreement between the contractor concerned and the State for such transcription.

(b) One copy of the transcript of the shorthand notes referred to in paragraph (a) shall be supplied, free of charge, to the person at whose request the transcription was made.

(c) The original copy of the transcript of any shorthand notes referred to in paragraph (a), shall be certified as correct by the person making it and shall be filed with the record of the case.

(d) A sum sufficient to cover the approximate fee payable under paragraph (a) shall be deposited with the registrar or clerk of the court in advance.

(8) Subject to the provisions of subrule (11), any shorthand notes, and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.

(9) Subject to subrule (7) (b), a copy of any transcript made simultaneously with the transcription of proceedings made by mechanical, electronic or digital means may, upon application to the registrar or clerk of the court, be supplied to any person upon payment

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of the full cost thereof as predetermined by agreement between the contractor concerned and the State, in the case of a copy of a transcript referred to in subrules (6) and (7).

(10) Any reference in this rule to shorthand notes or to a transcription or transcript of such notes, or to a copy of such transcript, or to a person employed for the taking of such notes, or to a person transcribing such notes, shall be construed also as a reference to a record of proceedings made by mechanical, electronic or digital means, to a transcription or transcript of such record, or to a copy of such transcript, to a person employed for the making of such mechanical, electronic or digital record, or to a person transcribing such record, as the case may be.

(11) Any party may, not later than 10 days after judgment, or where the proceedings have been noted in shorthand or by mechanical, electronic or digital means, within 10 days after having been notified by the registrar or clerk of the court that the transcript of the shorthand notes or mechanical, electronic or digital record has been completed, apply to the court to correct any errors in the minutes of such proceedings or in the transcript of such shorthand notes or mechanical, electronic or digital record and the court may then correct any such errors.

(12) If, before the hearing of the application, all parties affected file a consent to the corrections claimed, no costs of such application shall be allowed; otherwise, costs shall be in the discretion of the court.

Adjournment and postponement

31. (1) The trial of an action or the hearing of an application or matter may be adjourned or postponed by consent of the parties or by the court, either on application or request or of its own motion.

(2) Where an adjournment or postponement is made sine die, any party may by delivery of notice of reinstatement set down the action, application or matter for further trial or hearing on a day generally or specially fixed by the registrar or clerk of the court, not earlier than 10 days after delivery of such notice.

(3) Any adjournment or postponement shall be on such terms as to costs and otherwise as the parties may agree to or as the court may order.

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Non-appearance of a party - withdrawal and dismissal

32. (1) If a plaintiff or applicant does not appear at the time appointed for the trial of an action or the hearing of an application, the action or application may be dismissed with costs.

(2) If a defendant or respondent does not so appear, a judgment (not exceeding the relief claimed) may be given against him or her with costs, after consideration of such evidence, either oral or by affidavit, as the court deems necessary.

(3) The withdrawal or dismissal of an action or a decree of absolution from the instance shall not be a defence to any subsequent action, but if a subsequent action is brought for the same or substantially the same cause of action before payment of the costs awarded on such withdrawal, dismissal or decree of absolution, the court may on application, if it deems fit and if the said costs have been taxed and payment thereof has been demanded, order a stay of such subsequent action until such costs shall be paid and that the plaintiff shall pay the costs of such application.

Costs

33. (1) The court in giving judgment or in making any order, including any adjournment or amendment, may award such costs as it deems fit.

(2) The costs of any application or order or issue raised by the pleadings may-

(a) be awarded by the court irrespective of the judgment in the action; or

(b) may be made costs in the action; or

(c) may be reserved to be dealt with on the conclusion of the action,

but if no order is made, such costs shall be costs in the action.

(3) Unless the court shall for good cause otherwise order, costs of interim orders shall not be taxed until the conclusion of the action, and a party may present only one bill for taxation up to and including the judgment or other conclusion of the action.

(4) Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.

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(5) (a) In district court civil matters, the scale of fees to be taken by attorneys as between party and party shall-

(i) be that set out in Table A of Annexure 2 in addition to the necessary expenses;

(ii) in relation to proceedings under section 65, 65A to 65M, inclusive, and 72 of the Act and all matters ancillary thereto be that set out in Parts I and II respectively of Table B of the said Annexure; and

(iii) in relation to proceedings under section 74 and 74A to 74W, inclusive, of the Act and all matters ancillary thereto be that set out in Part III of Table B of the said Annexure.

(b) The scale of fees referred to in paragraph (a) (iii) of this subrule shall also be the scale of fees to be taken between attorney and client in relation to proceedings under section 74 and 74A to 74W, inclusive, of the Act.

(c) In regional court civil matters, including divorce or matrimonial matters, the scale of fees to be taken by attorneys as between party and party shall be that set out in table A of Annexure 2 in addition to the necessary expenses, scale C of Table A of Annexure 2 being applicable: Provided that the applicable scale of fees to be taken by attorneys as between party and party in civil claims whose monetary value falls within the jurisdiction of district courts shall be the one contained in paragraph (a) of this subrule, notwithstanding such claims having been instituted in the regional court.

(6) Save as to appearance in open court without counsel, the fees in subrule (5) shall be allowable whether the work has been done by an attorney or by his or her clerk, but shall, except in the case of the fee referred to in paragraph 13 of the general provisions under Table A of Annexure 2, be allowable only in so far as the work to which such fees have been allocated has in fact and necessarily been done.

(7) The magistrate presiding over any civil proceedings which last for the period of a quarter of an hour or longer, shall note on the record of the proceedings in respect of each day thereof-

(a) the time of the day when the proceedings actually commenced and actually ended; and

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(b) the time of the day of the commencement and conclusion of each adjournment on that day.

(8) The court may on request made at or immediately after the giving of judgment in any contested action or application in which-

(a) is involved any difficult question of law or of fact; or

(b) the plaintiff makes two or more claims which are not alternative claims; or

(c) the claim or defence is frivolous or vexatious; or

(d) costs have been reasonably incurred and in respect of which costs there is no specific provision in these rules,

award costs on any scale higher than that on which the costs of the action would otherwise be taxable: Provided that the court may give direction as to the manner of taxation of such costs as may be necessary.

(9) When it is reasonable in any proceedings for a party to employ the services of an attorney other than a local attorney, the court may on proof thereof, and if costs are awarded to him or her, order that such costs shall include the reasonable travelling time, travelling expenses and subsistence expenses of such attorney as determined by the court: Provided that the court may order that the determination of such costs be done on taxation by the registrar or clerk of the court.

(10) Where the court is of the opinion that at the hearing the party to whom costs are awarded has occupied time unnecessarily or in relation to matters not relevant to the issue, the court may disallow a proportionate part of the hearing fee payable to his or her attorney or counsel.

(11) The court may in its discretion order that the whole of the costs of an action (including the costs of any claim in reconvention) be paid by the parties in such proportions as it may direct.

(12) Where the court is of the opinion that expense has been unnecessarily incurred because of the successful party's failure to take a course which would have shortened the proceedings and decreased the costs it shall award only such costs as would have been incurred if the successful party had taken such course.

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(13) Where costs in convention and reconvention are awarded to different parties, the registrar or clerk of the court shall on taxation subject to any order which has been made by the court, allow each party to submit a bill of costs in respect of all costs and charges incurred in instituting and defending the claim in convention and reconvention, and defending the claim in convention and reconvention, respectively, and then to award the successful parties a proportionate amount of their costs in accordance with the award given by the court.

(14) (a) The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the registrar or clerk of the court without notice and inserted in the warrant.

(b) The costs payable by the judgment debtor in respect of any proceedings under section 65 or 65A to 65M inclusive, or 72 of the Act shall be inserted by the judgment creditor or his or her attorney on the face or reverse side of any process issued under either of those sections and assessed by the registrar or clerk of the court before issue.

(c) The registrar or clerk of the court may refuse to issue any process under section 65 or 65A to 65M, inclusive, or 72 of the Act in which the costs are not inserted or inserted but not according to tariff.

(15) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's delivery of notice of intention to defend or on the defendant's consent to judgment before the time for such notice has expired, the party to whom such costs or expenses have been awarded shall deliver a bill of such costs or expenses and give at least 5 days' notice of taxation for an hour to be fixed (generally or specially) by the registrar or clerk of the court and he or she may include in such bill all such payments as have been necessarily and properly made by him or her.

(16) After subrule (15) has been complied with the registrar or clerk of the court shall tax and allow the relevant costs and expenses: Provided that witness fees shall not be allowed in taxation unless properly vouched for.

(17) (a) Where more than one-fourth of the bill (excluding expenses) is taxed off, the party presenting the bill shall not be allowed any costs of taxation.

(b) Where a party to whom a bill of costs is presented makes a written offer of payment in respect of such costs, and such offer is refused, the party presenting the bill

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shall not be allowed any costs of taxation if the bill is taxed in an amount which is smaller than the amount of the offer.

(18) Where a bill of costs as between attorney and client is required to be taxed, taxation shall take place on at least 5 days' notice thereof to the attorney or client, whether or not an action therefor is pending: Provided that, notwithstanding the provisions of subrule (3), a bill of costs as between attorney and client may be taxed at any time after termination of the mandate.

(19) Where liability for costs is determined without judgment of the court by virtue of the provisions of these rules or by a settlement recorded in terms of rule 27 (8), such costs shall be taxable by the registrar or clerk of the court as if they had been awarded by the court.

(20) On failure of a party giving notice of taxation to appear at the appointed time for taxation, such bill of costs may be taxed in his or her absence but such party shall not be allowed any costs of taxation.

(21) If a party consents to pay the costs of another party, the registrar or clerk of the court shall, in the absence of an order of the court, tax such costs, as if they had been awarded by the court.

(22) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.

Fees of the sheriff

34. (1) The fees and charges to be taken by a sheriff who is an officer of the Public Service shall be those prescribed in Part I of Table C of Annexure 2 and in the case of any other sheriff those prescribed in Part II of the said Table and Annexure.

(2) Every account of fees or charges furnished by a sheriff shall contain the following note:

"You may require this account to be taxed and vouched before payment.".

(3) (a) Any party having an interest may by notice in writing require the fees and charges claimed by or paid to the sheriff to be taxed by the registrar or clerk of the court, and may attend on such taxation.

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(b) Upon a taxation referred to in paragraph (a) the sheriff shall vouch to the satisfaction of the registrar or clerk of the court all charges claimed by him or her.

(c) A fee for the attending of the taxation shall be allowed-

(i) to the sheriff if the sheriff's fees or charges are taxed and passed in full, as allowed for in Table C; and

(ii) to the interested party concerned if the sheriff's fees or charges are taxed but not passed in full, on the same basis as the fee allowed to the sheriff under subparagraph (i).

Review of taxation

35. (1) Any interested party may, within 15 days after he or she has knowledge thereof, bring before a judicial officer for review-

(a) the costs and expenses claimed in any undefended action;

(b) the assessment by the registrar or clerk of the court of any costs and expenses;

(c) the taxation by the registrar or clerk of the court of any costs awarded in any action or matter; or

(d) the taxation by the registrar or clerk of the court of any fees or charges of the sheriff.

(2) A review in terms of subrule (1) shall be on 10 days' notice to the party entitled to receive or liable to pay such costs and expenses or to the sheriff, as the case may be.

(3) Any party dissatisfied with the decision of the judicial officer as to any item or part of an item which was objected to before the registrar or clerk of the court, may, after notice to the other party, within 10 days of the decision require the judicial officer to state a case for the decision of a judge, which case shall embody all relevant findings of fact by the judicial officer: Provided that, save with the consent of such officer, no case shall be stated where the total of the amounts which he or she has disallowed or allowed, as the case may be, and which the dissatisfied party seeks to have allowed or disallowed, respectively, is less than R1000.

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(4) Any party may within 10 days after the judicial officer has stated a case in terms of subrule (3) submit contentions in writing to the judicial officer.

(5) The judicial officer shall lay the case together with the written contentions submitted and his or her own report not later than 15 days after receipt of such contentions, before a judge of the court of appeal who may then-

(a) decide the matter upon the case and contentions so submitted, together with any further information which he or she may require from the judicial officer; or

(b) decide if after hearing the parties or their counsel or attorneys in chambers; or

(c) refer the case for decision to the court of appeal.

(6) The judge or the court deciding a matter in terms of subrule (5) may make such order as he or she or it deems fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge or the court as costs.

Process in execution

36. (1) The process for the execution of any judgment for the payment of money, for the delivery of property whether movable or immovable, or for ejectment shall be by warrant issued and signed by the registrar or clerk of the court and addressed to the sheriff.

(2) A process issued under subrule (1) may be sued out by any person in whose favour any such judgment shall have been given, if such judgment is not then satisfied, stayed or suspended.

(3) A process issued under subrule (1) may at any time, on payment of the fees incurred, be withdrawn or suspended by notice to the sheriff by the party who has sued out such process: Provided that a request in writing made from time to time by such party to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.

(4) Any alteration in a process issued under subrule (1) shall be initialled by the registrar or clerk of the court before it is issued by him or her.

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(5) The registrar or clerk of the court shall at the request of a party entitled thereto reissue process issued under subrule (1) without the court having sanctioned the reissue.

(6) Any process issued under subrule (1) shall be invalid if a wrong person is named therein as a party, but no such process shall be invalid merely by reason of the misspelling of any name therein, or of any error as to date.

(7) Except where judgment has been entered by consent or default, process in execution of a judgment shall not be issued without leave of the court applied for at the time of granting the judgment, before the day following that on which the judgment is given.

Second or further warrants or emoluments attachment orders or garnishee orders

37. (1) Where any warrant or emoluments attachment order or garnishee order has been lost or mislaid, the court may on the application of any interested party and after notice to any person affected thereby, authorise the issue of a second or further warrant or emoluments attachment order or garnishee order, as the case may be, on such conditions as the court may determine and may make such order as to costs as it may deem fit.

(2) Notice of an application in terms of subrule (1) shall be on not less than 5 days' notice and shall state the reasons for the application.

(3) Sub-rules (1) to (6), inclusive, of rule 36 shall *mutatis mutandis* apply to any warrant or emoluments attachment order or garnishee order authorised by the court in terms of subrule (1) and in addition such warrant or garnishee order shall clearly be endorsed as follows:

"This second or further warrant .... (describe nature of warrant) of emoluments attachment order or garnishee order (as the case may be) was authorised by the court on ..... and replaces any warrant .... (describe nature of warrant) or emoluments attachment order or garnishee order (as the case may be) instead of which it is issued or reissued".

(4) (a) When any warrant or emoluments attachment order or garnishee order which has been replaced by a warrant or emoluments attachment order or garnishee

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order issued in terms of subrule (1) becomes available it shall immediately be cancelled by the registrar or clerk of the court by endorsing across the face thereof between two parallel transverse lines the following words:

"Cancelled. Fresh warrant .... (describe nature of warrant) or emoluments attachment order or garnishee order (as the case may be) issued in terms of an order of the court dated ....".

(b) An endorsement in terms of paragraph (a) shall be signed and dated by the registrar or clerk of the court.

(5) The fact that a second or further warrant or emoluments attachment order or garnishee order has been issued and the date and amount thereof shall be endorsed on the record of the case by the registrar or clerk of the court.

Security by judgment creditor

38. (1) Where the sheriff is in doubt as to the validity of any attachment or contemplated attachment, he or she may require that the party suing out the process in execution shall give security to indemnify him or her.

(2) Unless the summons commencing the action has been served upon the defendant personally or he or she has delivered notice of intention to defend or notice of attachment has been given to him or her personally-

(a) if any property corporeal or incorporeal is attached in execution, the execution creditor shall, at least 10 days before the day appointed for the sale of such property give security to the satisfaction of the sheriff for the payment to the execution debtor if such attachment be set aside of any sum which the execution debtor may in law be entitled to recover from the execution creditor for damages suffered by reason of such attachment or of any proceedings consequent thereon; and if security be not given the attachment shall cease to have effect: Provided that the execution debtor may by endorsement to that effect on the warrant of execution dispense with the giving of security under this rule; or

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(b) if moneys are received by the sheriff under any form of execution otherwise than as the proceeds of the sale in execution of property in respect of the attachment of which security has been given in terms of paragraph (a), such moneys shall not be paid to the execution creditor until he or she has given security for the restitution of the full amount received by the sheriff if the attachment be thereafter set aside: Provided that the execution debtor may in writing over his or her signature dispense with the giving of such security.

(3) The prescribed fee for security given under this rule shall without taxation be recoverable as part of the costs of execution.

(4) Any surety bond or other document of security given in terms of this rule may be sued upon by the execution debtor without formal transfer thereof to him.

(5) This rule shall not apply where the party suing out the process in execution or the execution creditor is a Minister, a Deputy Minister or a Provincial Premier, in his or her official capacity, the State or a provincial government.

General provisions regarding execution

39. (1) Unless otherwise ordered by the court, the costs and expenses of issuing a warrant and levying execution shall be a first charge on the proceeds of the property sold in execution and may so far as such proceeds are insufficient be recovered from the execution debtor as costs awarded by the court.

(2) (a) Subject to any hypothec existing prior to attachment, all warrants of execution lodged with any sheriff appointed for a particular area or any other sheriff on or before the day immediately preceding the date of the sale in execution shall rank pro rata in the distribution of the proceeds of the goods sold in execution.

(b) The sheriff conducting a sale in execution shall not less than 10 days prior to the date of sale forward a copy of the notice of sale to all other sheriffs appointed for the area in which he or she has been instructed to conduct a sale in respect of the attached goods.

(c) The sheriff conducting a sale in execution shall accept from all other sheriffs appointed for that area or any other sheriff a certificate listing any attachment that has

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been made and showing the ranking of creditors in terms of warrants in the possession of those sheriffs.

(3) (a) Withdrawal of attachment shall be effected by note made and signed by the sheriff on the warrant of execution that the attachment is withdrawn, stating the time and date of the making of such note.

(b) The sheriff shall give notice in writing of a withdrawal of attachment and of the time and date thereof to the execution creditor, the execution debtor, all other sheriffs appointed for that area or any other sheriff who has submitted a certificate referred to in subrule (2)(c) and to any other person by whom a claim to the property attached has been lodged with him or her: Provided that the property shall not be released from attachment for a period of four months if a certificate referred to in subrule (2)(c) or an unsatisfied warrant of execution lodged under subrule (2) remains in the hands of the sheriff.

(4) If any property attached in execution is claimed by any third party as his or her property or any third party makes any claim to the proceeds of property so attached and sold in execution, the sheriff shall, subject to subrule (5), deal with such matter as provided in rule 44.

(5) Notwithstanding a claim to property referred to in subrule (4) by a third party the sheriff shall attach such property if he or she has not yet done so and the property shall remain under attachment pending the outcome of interpleader proceedings unless sooner released from attachment upon order of the court or otherwise, and rule 41 (7) shall *mutatis mutandis* apply to property so attached.

(6) (a) On completion of any sale in execution of property, whether movable or immovable, the sheriff shall attach to his or her return a vendue roll showing details of the property sold, the prices realised, and, where known, the names and addresses of the purchasers and an account of the distribution of the proceeds and shall send a copy of such vendue roll to all other sheriffs appointed for that area who have submitted certificates referred to in subrule (2)(c).

(b) Where a warrant of execution has been lodged with the sheriff conducting a sale in execution by any other sheriff referred to in sub-rule (2)(a), the sheriff conducting the sale shall make payment in terms of a distribution account to any sheriff who submitted a certificate referred to in subrule (2)(c) in respect of that sale.

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(c) Payment in terms of a distribution account shall only be made after the distribution account has lain for inspection for a period of 15 days after the sheriff who has lodged a warrant of execution with the sheriff who conducted the sale, has received a copy of the distribution account.

(7) No sheriff or person on behalf of the sheriff shall at a sale in execution purchase any of the property offered for sale either for himself or herself or for any other person.

Execution against a partnership

40. (1) Where a judgment debtor is a partner in a firm and the judgment is against him or her for a separate debt, the court may, after notice to the judgment debtor and to his or her firm, appoint the sheriff as receiver to receive any moneys payable to the judgment debtor in respect of his or her interests in the partnership.

(2) An appointment in terms of subrule (1) shall, until the judgment debt is satisfied, operate as an attachment of the interest of the judgment debtor in the partnership assets and the sheriff so appointed shall notify all other sheriffs appointed for that area of such appointment.

(3) Where a judgment is against a firm, the partnership property shall first be exhausted, so far as it is known to the judgment creditor, before the judgment is executed against the separate property of the partners.

Execution against movable property

41. (1) (a) The sheriff shall, upon receiving a warrant directing him or her to levy execution on movable property, repair to the residence, place of employment or business of the execution debtor or to another place pointed out by the execution creditor where movable property is to be attached as soon as circumstances permit, and there demand payment of the judgment debt and costs or else require that so much movable property be pointed out as the said sheriff may deem sufficient to satisfy the warrant, and if such last-mentioned request be complied with the sheriff shall make an inventory and valuation of such property.

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(b) If the property pointed out in terms of paragraph (a) is insufficient to satisfy the warrant, the sheriff shall nevertheless proceed to make an inventory and valuation of so much movable property as may be pointed out in part execution of the warrant.

(c) If the execution debtor does not point out any property as required in terms of subrule (1), the sheriff shall immediately make an inventory and valuation of so much of the movable property belonging to the execution debtor as he or she may deem sufficient to satisfy the warrant or of so much of the movable property as may be found in part execution of the warrant.

(d) If on demand the execution debtor pays the judgment debt and costs, or part thereof, the sheriff shall endorse the amount paid and the date of payment on the original and copy of the warrant, which endorsement shall be signed by him or her and counter-signed by the execution debtor or his or her representative.

(2) So far as may be necessary to the execution of any warrant referred to in subrule (1), the sheriff may open any door on any premises, or of any piece of furniture, and if opening is refused or if there is no person there who represents the person against whom such warrant is to be executed, the sheriff may, if necessary, use force to that end.

(3) The sheriff shall exhibit the original warrant of execution and shall hand to the execution debtor or leave on the premises a copy thereof.

(4) As soon as the requirements of this rule have been complied with by the sheriff, the goods inventoried by him or her shall be deemed to be judicially attached.

(5) The sheriff shall hand a copy of an inventory made under this rule, signed by himself or herself to the execution debtor or leave the same on the premises, which copy shall have subjoined thereto a notice of the attachment.

(6) Where specie and documents are found and attached, the number and kinds thereof shall be specified in the inventory and any such specie or documents shall thereupon be sealed and removed to the office of the sheriff where it shall be safely stored.

(7) (a) The execution creditor or his or her attorney shall, where movable property, other than specie or documents, has been attached, after notification of such attachment, instruct the sheriff in writing, whether the property shall be removed to a

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place of security or left upon the premises in the charge and custody of the execution debtor or in the charge and custody of some other person acting on behalf of the sheriff: Provided that the execution creditor or his or her attorney may, upon satisfying the registrar or clerk of the court, who shall endorse his or her approval on the document containing the instructions, of the desirability of immediate removal upon issue of the warrant of execution, instruct the sheriff in writing, to remove immediately from the possession of the execution debtor all or any of the articles reasonably believed by the execution creditor to be in the possession of the execution debtor.

(b) In the absence of any instruction under paragraph (a), the sheriff shall leave the movable property, other than specie or documents, on the premises and in the possession of the person in whose possession the said movable property is attached.

(c) Where a sheriff is instructed to remove the movable property, he or she shall do so without any avoidable delay, and he or she shall in the mean time leave the same in the charge or custody of some person who shall have the charge or custody in respect of the goods on his or her behalf.

(d) Any person in whose charge or custody movable property which has been attached, has been left, shall not use, let or lend such property, or permit it to be used, let or lent, nor shall he or she in any way do anything which will decrease its value and, if the property attached shall have produced any profit or increase, the custodian shall be responsible for any such profit or increase in like manner as he or she is responsible for the property originally attached.

(e) If a person in whose charge or custody movable property has been left, other than the execution debtor, makes a default in his or her duty he or she shall not be entitled to recover any remuneration for his or her charge and custody.

(f) (i) Unless an order of court is produced to the sheriff requiring him or her to detain any movable property under attachment for such further period as may be stipulated in such order, the sheriff shall, if a sale in respect of such property is not pending, release from attachment any such property which has been detained for a period exceeding four months.

(ii) If such order was made on application made *ex parte*, such order shall not be subject to confirmation.

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(iii) In the event of a claimant lodging an interpleader claim with the sheriff in accordance with rule 44, the period of four months referred to in paragraph (i) shall be suspended from the date on which the claimant delivers his or her affidavit to the sheriff until the final adjudication of the interpleader claim, including any review or appeal in respect of such interpleader claim.

(8) (a) Any movable property sold in execution of process of the court shall be sold publicly and for cash by the sheriff who removed the goods in terms of subrule (7)(b) or, with the approval of the magistrate, by an auctioneer or other person appointed by the sheriff, to the highest bidder at or as near to the place where the same was attached or to which the same had been so removed as aforesaid as may be advantageous for the sale thereof.

(b) The execution creditor shall, after consultation with the sheriff, prepare a notice of sale and furnish two copies thereof to the sheriff in sufficient time to enable one copy to be affixed not later than 10 days before the day appointed for the sale on the notice board or door of the court-house or other public building in which the said court is held and the other at or as near as may be to the place where the said sale is actually to take place.

(c) If in the opinion of the sheriff the value of the goods attached exceeds R5 000 he or she shall indicate some local or other newspaper circulating in the district and require the execution creditor to publish the notice of sale in that newspaper not later than 10 days before the date appointed for the sale in addition to complying with paragraph (b) and to furnish him or her with a copy of the edition of the paper in which the publication appeared not later than the day preceding the date of sale.

(9) The day appointed for a sale in execution shall be not less than 15 days after attachment: Provided that where the goods attached are of a perishable nature, or with the consent of the execution debtor, the court may, upon application, reduce any period referred to in this subrule or subrule (8) to such extent and on such conditions as it may deem fit.

(10) A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the said warrant and any warrant referred to in rule 39(2) and the costs of the sale.

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(11) (a) Should the sheriff have a balance in hand after satisfaction of the claim of the execution creditor and of all warrants of execution lodged with him or her on or before the day immediately preceding the date of the sale and of all costs he or she shall pay the same to the execution debtor if he or she can be found, otherwise he or she shall pay such balance into court.

(b) The balance paid into court in terms of paragraph (a), if not disposed of before the expiration of three years, shall be paid into the State Revenue Fund after three months' notice of such intention has been given to the persons concerned, whereafter any application for the refund of such balance shall be directed to the State Revenue Fund by a person concerned.

Execution against movable property (continued)

42. (1) Where the property attached in execution is a lease or a bill of exchange, promissory note, bond or other security for the payment of money-

(a) attachment shall not be complete until after notice to the lessor, lessee or person liable on the bill of exchange or other security, as the case may be; and

(b) the attachment shall not be valid unless and until the instrument in question is taken possession of by the sheriff and notice has, in the case of a registered lease or bond, been given to the registrar of deeds concerned.

(2) Where the movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person or is under the supervision or control of a third person-

(a) attachment shall be effected by service by the sheriff on the execution debtor and on such third person of notice of the attachment with a copy of the warrant of execution, which service may be effected as if such notice was a summons: Provided that where service cannot be effected in any manner prescribed the court may make an order allowing service to be effected in the manner stated in the order; and

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(b) the sheriff may, upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser, seller or such other third person, enter upon the premises where such property is and make an inventory and valuation of the said property.

(3) The method of attachment of property under section 32 of the Act shall *mutatis mutandis* be the same as that of attachment in execution.

Execution against immovable property

43. (1) A warrant of execution against immovable property shall contain a full and complete description of the nature and situation (including the address) of the immovable property to enable it to be traced and identified by the sheriff, and shall be accompanied by sufficient information to enable the sheriff to give effect to the provisions of subrule (2).

(2) (a) The mode of attachment of immovable property shall be by notice by the sheriff served in like manner as a summons together with a copy of the warrant of execution upon the execution debtor as owner thereof, upon the registrar of deeds or other officer charged with the registration of such immovable property, upon all registered holders of bonds (other than the execution creditor) registered against the property attached and, if the property is in the occupation of some person other than the execution debtor, also upon such occupier, and upon the local authority in whose area the property is situated.

(b) If the period of attachment is extended as referred to in section 66(5) of the Act, notice of such extension shall be given to the persons referred to in paragraph (a) in the manner referred to in that paragraph.

(c) If the attachment of immovable property lapses in terms of section 66(4) or section 66(5) of the Act, the Sheriff shall notify the persons who are entitled to receive notice in terms of paragraph (a) that such attachment has lapsed.

(3) After the attachment of immovable property the sheriff shall ascertain and record whether the property is subject to any claim preferent to that of the execution creditor and, if that be the case, he or she shall thereupon notify the execution creditor of the

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existence of any such claim to enable the latter to give notice in terms of section 66(2) of the Act.

(4) The sheriff may by notice, served in like manner as a summons, require the execution debtor to deliver to him or her all documents in his or her possession or under his or her control relating in any way to his or her title to attached immovable property.

(5) Where attached immovable property is situate in a district other than that in which the judgment was given, the party requiring execution shall forward the warrant of execution to a sheriff of the court of the district in which the property is situate, who shall proceed to attach the property in the manner provided in this rule.

(6) (a) The sheriff shall appoint a day and place for the sale of attached immovable property which day shall, except by special leave of the court, be not less than one month after service of the notice of attachment.

(b) The execution creditor shall, after consultation with the sheriff, prepare a notice of sale containing a short description of the attached immovable property and its situation, the date, time and place for the holding of the sale and the material conditions thereof and furnish the sheriff with as many copies of the said notice as he or she may require.

(c) The execution creditor shall publish a notice prepared in terms of paragraph (b) once in a newspaper registered with the Audit Bureau of Circulations of South Africa circulating in the district in which the immovable property is situated and in the *Government Gazette* not less than 5 days and not more than 15 days before the date of the sale and provide the sheriff, by hand or by facsimile, with one photocopy of each of the notices published in the newspaper and the *Government Gazette,* respectively, or, in the case of the *Government Gazette*, the number of the *Government Gazette* in which the notice was published.

(d) Not less than 10 days prior to the date of the sale in execution of immovable property the sheriff shall forward by registered post a copy of the notice of sale prepared in terms of paragraph (b) to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property whose address is reasonably ascertainable.

(e) Not later than 10 days before the day appointed for a sale in execution of immovable property the sheriff shall affix one copy of the notice of the sale on the notice board or door of the court-house or other public building in which the said court is held

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and one copy at or as near as may be to the place where the said sale is actually to take place.

(7) (a) The conditions of sale for a sale in execution of immovable property shall be prepared by the execution creditor and shall, *inter alia*, provide for payment by the purchaser of interest on the purchase price from the date of sale of the property to date of payment of the purchase price.

(b) The execution creditor shall not less than 20 days prior to the appointed date of a sale in execution of immovable property, deliver two copies of the conditions of sale to the sheriff and one copy thereof to each person who may be entitled to notice of the sale.

(c) Any interested party may not less than 15 days prior to the appointed date of a sale in execution of immovable property, upon 24 hours' notice to such other persons as may have received a copy of such conditions of sale and to the execution creditor, apply to a judicial officer for a modification of such conditions of sale and such judicial officer may make such order as he or she may deem fit.

(8) The execution creditor may appoint the conveyancer for the purposes of transfer of immovable property sold in execution.

(9) (a) The execution creditor or any person having an interest in the due and proper realisation of attached immovable property may, by notice given to the sheriff within 15 days after attachment, but subject to the provisions hereinafter contained, require that such property shall be sold by an auctioneer in the ordinary course of business and may in such notice nominate the auctioneer to be employed.

(b) (i) Where a notice in terms of paragraph (a) is given by any person other than the execution creditor, such notice shall be accompanied by the deposit of a sum sufficient to cover the additional expense of sale by an auctioneer in the ordinary course of business, and in default of such a deposit such notice shall be void.

(ii) A notice in terms of paragraph (a) shall lapse if in fact the services of an auctioneer are not obtainable.

(iii) If after satisfying the claim of the execution creditor and all warrants of execution lodged with the sheriff on or before the day immediately preceding the

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date of the sale and all costs there are surplus proceeds of such property, such deposit shall be returned to the depositor, but if there is not such a surplus such deposit shall, as far as may be necessary, be applied in payment of the auctioneer's fees and expenses.

(c) If two or more notices in terms of paragraph (a) are given, the first shall have the preference.

(10) A sale in execution of immovable property shall be by public auction without reserve and the property shall, subject to the provisions of section 66(2) of the Act and to the other conditions of sale, be sold to the highest bidder.

(11) A sale in execution of immovable property shall be held at a place deemed fit by the sheriff or, for good cause shown, at such other place as the magistrate may determine.

(12) Where immovable property is situate in a district other than that in which the judgment was given, the sale in execution of the property shall be effected by a sheriff of the court of the district in which it is situate in the manner provided in this rule.

(13) The sheriff shall give transfer of immovable property sold in execution to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.

(14) (a) Subject to paragraph (b), all moneys in respect of the purchase price of immovable property sold in execution shall be paid to the sheriff of the court and not to the execution creditor or any other person on his or her behalf, and the sheriff shall retain such moneys in trust until transfer has been given to the purchaser.

(b) The sheriff shall as soon as possible after the sale in execution of immovable property prepare in order of preference as provided in this rule, a plan of distribution of the purchase money received and such plan shall lie in his or her office for inspection of persons having an interest therein for a period of 15 days after the date of sale, unless all such persons inform the sheriff before the expiration of that period in writing that they have no objection to such plan, and a copy thereof shall be lodged with the registrar or

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clerk of the court and with any other sheriff who submitted a certificate referred to in rule 39(2)(c).

(c) After deduction from the purchase money of the costs of execution, the following shall be the order of preference:

(i) The claims of any creditors ranking in priority to the judgment debt in their legal order of preference;

(ii) the claim of the execution creditor to the extent of his judgment plus costs and the claims of other execution creditors who have lodged warrants of execution in terms of rule 39(2) plus costs; and

(iii) the claims of creditors secured in respect of that property in their legal order of preference.

(d) Any person having an interest in a plan prepared in terms of paragraph (b) and objecting thereto shall, within a period of 10 days after the expiration of the period referred to in paragraph (b), give notice in writing to the sheriff, the registrar or clerk of the court and all other persons having an interest therein of the particulars of his objection and may, if the grounds for his or her objection are not removed within 15 days after the expiration of the first-mentioned period, bring such plan before the court for review.

(e) A review under paragraph (d) shall be on 5 days' notice to the persons mentioned in that paragraph: Provided that if such notice is not given within 20 days after the expiration of the period of 15 days mentioned in that paragraph, the objection will be deemed to be withdrawn.

(f) The court, on review, may hear and determine the matter in dispute in a summary manner and may thereafter amend or confirm the plan of distribution or may make such order as it may deem fit.

(g) If-

(i) no objection be lodged to a plan of distribution; or

(ii) the persons having an interest signify their concurrence therewith; or

(iii) an objection be lodged to such plan and notice in accordance with the proviso in paragraph (e) be not duly given; or

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(iv) the plan be amended or confirmed on review,

the sheriff shall pay out the moneys retained by the sheriff in trust in terms of paragraph (a) in accordance with the plan of distribution, and any surplus shall, subject to section 71 of the Act, be paid to the execution debtor, if he or she can be found: Provided that if the sheriff is an officer of the Public Service and has certified that-

(aa) no objection has been lodged against such plan; or

(bb) all the persons having an interest therein have informed him or her that they have no objection; or

(cc) an objection has been lodged against such plan and notice in accordance with the proviso in paragraph (e) has not been given; or

(dd) the plan has been amended in accordance with an order of the court or has been confirmed on review,

such amount shall be paid out by the sheriff or any person authorised thereto by him or her in accordance with the plan of distribution so certified.

(h) Rule 41(11) shall, subject to section 71 of the Act, *mutatis mutandis* apply to any surplus amount not paid out to an execution debtor under paragraph (g).

(15) The sheriff shall, when notifying the result of the execution in terms of rule 8 (3) (a), also show the disposal of the amount recovered by him or her, and the notification to the registrar or clerk of the court shall be supported by a receipt for every amount paid out by him or her.

Enforcement of foreign civil judgments

43A. (1) Whenever a certified copy of a judgment referred to in section 3(1) of the Enforcement of Foreign Civil Judgments Act, 1988 (Act No. 32 of 1988), is filed with the registrar or clerk of the court in the Republic, such registrar or clerk of the court shall register that judgment by numbering it with a consecutive number for the year during which it is filed and by noting the particulars in respect of the judgment referred to in paragraphs (a), (b) and (c) of the said section on the case cover.

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(2) A judgment creditor shall, together with the certified copy of a judgment referred to in subrule (1)-

(a) file an affidavit made by himself or herself or by somebody else who can confirm the following facts stating-

(i) the amount of interest due, the appropriate rate of interest and how the amount of interest has been calculated; and

(ii) whether any amount has been paid by the judgment debtor since judgment, and, if so, whether such amount has been deducted from the capital amount of the judgment debt or from the interest or costs, as the case may be; and

(b) if any amount payable under the judgment is expressed in a currency other than the currency of the Republic, file a certificate issued by a banking institution registered in terms of section 4 of the Banks Act, 1965 (Act No. 23 of 1965), stating the rate of exchange prevailing at the date of the judgment.

(3) A notice issued in terms of section 3(2) of the Enforcement of Foreign Civil Judgments Act, 1988 (Act No. 32 of 1988), shall contain-

(a) the consecutive number referred to in subrule (1);

(b) the date on which the judgment was registered;

(c) the balance of the amount payable under the judgment;

(d) the taxed costs awarded by the court of the designated country;

(e) the interest, if any, which by the law or by order of the court of the designated country concerned is due on the amount payable under the judgment up to the time of registration of the judgment;

(f) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining a certified copy of the judgment;

(g) the names of the parties concerned; and

(h) the name of the court where the judgment was given.

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Interpleader claims

44. (1) (a) Where any third party (hereinafter in this subrule referred to as the "applicant") has in his or her custody or possession property to which two or more persons (hereinafter in this rule referred to as the "claimants") make adverse claims the applicant may sue out a summons in the form prescribed for that purpose in Annexure 1 calling upon the claimants to appear and state the nature and particulars of their claims and have such claims adjudicated upon.

(b) If the property in question consists of money, the applicant shall when suing out the summons pay the amount thereof into court.

(c) The applicant shall annex to a summons referred to in paragraph (a) an affidavit setting out that -

(i) he or she claims no interest in the subject matter in dispute other than for charges or costs;

(ii) he or she is not colluding with any of the claimants; and

(iii) in the case of property other than money paid into court in terms of paragraph (b), he or she is willing to deal with the property as the court may direct.

(2) (a) Where any person other than the execution debtor (hereinafter in this subrule referred to as the "claimant") makes any claim to or in respect of property attached by the sheriff in execution of any process of the court or where any such claimant makes any claim to the proceeds of property so attached and sold in execution the sheriff shall require from such claimant to lodge an affidavit in triplicate with the sheriff within 10 days from the date on which such claim is made, setting out-

(i) the claimant's full names, identity number and occupation;

(ii) the claimant's residential address and business address or address of employment; and

(iii) the nature and grounds of his or her claim substantiated by any relevant evidence.

(b) (i) Within 15 days after the date on which the claim is made the sheriff shall notify the execution creditor and all other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the claim.

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(ii) Simultaneously with the notice referred to in subparagraph (i), the sheriff shall deliver one copy of the claimant's affidavit to the execution creditor and one to the execution debtor.

(c) (i) The execution creditor shall, within 10 days of receipt of notice of the claimant's claim and affidavit, advise the sheriff in writing whether he or she admits or rejects the claimant's claim.

(ii) If the execution creditor gives the sheriff notice within the period stated in paragraph (i) that he or she admits the claim, he or she shall not be liable for any costs, fees or expenses afterwards incurred and the sheriff may withdraw from possession of the property claimed.

(3) (a) If the execution creditor gives the sheriff notice that he or she rejects the claim, the sheriff shall within 10 days from date of such notice prepare and issue out a summons in the form prescribed for that purpose in Annexure 1 calling upon the claimant and the execution creditor to appear on the date specified in the summons to have the claim of the claimant adjudicated upon.

(b) The sheriff shall notify all other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the date specified in the summons sued out under paragraph (a) and of the judgment of the court.

(c) The registrar or clerk of the court shall sign and issue the summons.

(4) If any claimant does not appear in pursuance of any summons sued out under this rule or appears but fails or refuses to comply with any order made by the court after his or her appearance, the court may make an order declaring him or her and all persons thereafter claiming under him or her barred from making any claim in respect of the subject matter referred to in the summons against the applicant or the sheriff.

(5) If any claimant referred to in this rule appears in pursuance of any summons sued out under this rule, the court may-

(a) order him or her to state, orally or in writing on oath or otherwise, as the court may deem expedient, the nature and particulars of his or her claim;

(b) order that the matters in issue shall be tried on a day to be appointed for that purpose and, if any such claimant is a claimant referred to in

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subrule (1), order which of the claimants shall be plaintiff and which defendant for the purpose of trial; or

(c) try the matters in dispute in a summary manner.

(6) Where the matters in issue are tried, whether summarily or otherwise, the provisions of rule 29 as to the trial of an action shall *mutatis mutandis* apply.

(7) The court may, in and for the purposes of any interpleader proceedings, make such order as to any additional expenses of execution occasioned by the claim and as to payment of costs incurred by the applicant or sheriff as it may deem fit.

Enquiry into financial position of judgment debtor

45. (1) A notice referred to in section 65A(1) of the Act calling upon a judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as the representative of the juristic person and in his or her personal capacity to appear before the court in chambers shall be similar to Form 40 of Annexure 1 and shall indicate the date of the judgment or order, the amount thereof, the balance of the capital, interest, costs and collection fees which the defendant undertook to pay under section 57(1) (c) of the Act owing as at the date of issue or reissue of such notice and shall be supported by an affidavit or affirmation by the judgment creditor or a certificate by his or her attorney stating-

(a) the date of the judgment or the date of the expiry of the period of suspension under section 48(e) of the Act, as the case may be;

(b) that the judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or became payable or from the expiry of the period of suspension in terms of section 48(e) of the Act;

(c) in what respect the judgment debtor has failed to comply with the judgment or order referred to in section 65A(1) of the Act, the amount in arrear and outstanding balance on the date on which the notice is issued;

(d) that the judgment debtor has been advised by registered letter of the terms of the judgment or of the expiry of the period of suspension

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under section 48(e) of the Act, as the case may be, and that a period of 10 days has elapsed since the date on which the said letter was posted;

(2) A notice referred to in subrule (1) shall state the consequences of failure to appear in court on the date determined for the enquiry.

(3) Any alteration in a notice referred to in subrule (1) or in a warrant of arrest in terms of section 65A(6) of the Act shall be initialled by the judgment creditor or his or her attorney and by the registrar or clerk of the court before issue or reissue.

(4) When a judgment or order referred to in section 65A(1) of the Act has been given in any court other than the court of the district in which the enquiry is held, the registrar or clerk of the court shall not issue the notice until there is lodged with him or her a copy of the judgment or order of such other court duly certified by the registrar or clerk of that court.

(5) (a) When a judgment debtor has been arrested and is brought before a court which is not the court which authorised the warrant of arrest, that registrar or clerk of the court shall open a file, allocate a case number to it and hand it, together with the warrant, to the court.

(b) When the court referred to in paragraph (a) transfers the matter in terms of section 65A(11) of the Act to the court which authorised the warrant, the registrar or clerk of the court shall without delay send the original warrant and certified copies of the minutes of the proceedings and the order to that effect to the court which authorised the warrant.

(c) If the court before which proceedings in terms of section 65A(10)(b) or (11) are pending is not the court which authorised the warrant in terms of section 65A(6), the registrar or clerk of the former court shall by telephone or in writing by facsimile notify the registrar or clerk of the latter court of the appearance of the judgment debtor, director or officer before the former court and shall inform the judgment creditor or his or her attorney by telephone or in writing by facsimile accordingly: Provided that full particulars of telephone calls and proof of transmission of facsimiles shall be filed in the case cover.

(6) The provisions of rule 55 shall apply *mutatis mutandis* to a request referred to in section 65A(3) of the Act.

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(7) A written offer referred to in section 65 of the Act shall be in affidavit or affirmation form setting out-

(a) the full names of the judgment debtor, his or her residential and business address;

(b) the name and address of his or her employer;

(c) his or her marital status;

(d) the number of his or her dependants, their age and their relationship to him or her;

(e) his or her assets and liabilities;

(f) his or her gross weekly or monthly income (including that of his or her spouse and dependants) and expenses;

(g) the number of emoluments attachment orders or other court orders against him or her and the total amount payable thereunder; and

(h) his or her offer and the dates of the proposed instalments.

(8) A warrant in terms of section 65A(6) of the Act shall be similar to Form 40A of Annexure 1.

(9) A notice in terms of section 65A(8)(b) of the Act shall be similar to Form 40B of Annexure 1.

Attachment of emoluments by emoluments attachment order

46. (1) When an emoluments attachment order is issued by a judgment creditor out of any court other than the court in which the judgment or order was obtained, a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit or affirmation or certificate referred to in section 65J(2)(b) of the Act.

(2) An emoluments attachment order shall be issued in the form prescribed in Annexure 1, being Form 38, and shall contain sufficient information to enable the garnishee to identify the judgment debtor, including the identity number or work number or date of birth of the judgment debtor.

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Attachment of a debt by garnishee order

47. (1) An application for an attachment of a debt shall be supported by an affidavit or affirmation by the creditor or a certificate by his or her attorney stating that-

(a) a court-

(i) has granted judgment to the judgment creditor; or

(ii) has ordered the payment of a debt referred to in section 55 of the Act and costs in specific instalments;

(b) the judgment or order referred to in subrule (1)(a) is still unsatisfied, stating the amounts still payable thereunder;

(c) the garnishee resides, carries on business or is employed within the district, with mention of the address of the garnishee; and

(d) a debt is at present or in future owing or accruing by or from the garnishee to the judgment debtor and the amount thereof.

(2) Unless an application for a garnishee order is directed to the court which granted the judgment or order referred to in subrule (1)(a), a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit or affirmation or certificate referred to in subrule (1).

(3) Sufficient information including the identity number or work number or date of birth of the judgment debtor shall be furnished in a garnishee order to enable the garnishee to identify the judgment debtor.

(4) Upon an application under this rule the court may require such further evidence as it may deem fit.

(5) Upon an application under this rule the court may order the garnishee to pay to the judgment creditor or his or her attorney so much of the debt at present or in future owing or accruing by or from him or her to the judgment debtor as may be sufficient to satisfy the said judgment, together with the costs of the garnishee proceedings (including the costs of service), or failing such payment to appear before the court on a day to be named in the said order and show cause why he should not pay such debt.

(6) The registrar or clerk of the court shall note upon the face of an order made under subrule (5) the day it was made.

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(7) An order made under subrule (5) shall be served upon the garnishee and upon the judgment debtor and shall operate as an attachment of the said debt in the hands of the garnishee.

(8) The judgment debtor and the garnishee may appear on the day fixed for the hearing of the application, but may not question the correctness of the judgment on which the application is based.

(9) If the garnishee does not dispute his or her indebtedness to the judgment debtor, or allege that he or she has a set-off against the judgment debtor or that the debt sought to be attached belongs to or is subject to a claim by some other person, or if he or she shall not appear to show cause as provided in subrule (5), the court may order the garnishee to pay the debt (or such portion of it as the court may determine) to the judgment creditor or his or her attorney on the dates set out in the said order, and should the garnishee make default, execution for the amount so ordered and costs of the said execution may be issued against the garnishee. Rules 36 to 43, inclusive shall *mutatis mutandis* apply to execution in terms of this subrule.

(10) If the garnishee disputes his or her liabilities to pay the debt or alleges that he or she has any other defence, set-off or claim in reconvention which would be available to him or her if he or she were sued for the said debt by the judgment debtor, the court may order the garnishee to state, orally or in writing, on oath or otherwise, as to the court may seem expedient, the particulars of the said debt and of his or her defence thereto and may either hear and determine the matters in dispute in a summary manner or may order that-

(a) the matters in issue shall be tried under the ordinary procedure of the court; and

(b) for the purpose of such trial, the judgment creditor shall be plaintiff and the garnishee defendant, or *vice versa*.

(11) If the garnishee alleges that the debt belongs to or is subject to a claim by some other person the court may extend the return day and order such other person to appear and state the nature and particulars of his or her claim and either to maintain or relinquish it, and may deal with the matter as if the judgment creditor and such other person were claimants in interpleader in terms of rule 44.

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(12) If the judgment debtor alleges that the judgment has been satisfied or is for some other reason not operative against him or her, or that the garnishee is not indebted to him or her, the court may try the issue summarily.

(13) After hearing the parties or such of them as appear the court may-

(a) order payment by the garnishee in terms of subrule (9);

(b) declare the claim of any person to the debt attached to be barred;

(c) dismiss the application; or

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

Administration orders

48. (1) A creditor who, in terms of section 74F(3) of the Act, wishes to object to any debt listed with an administration order or to the manner in which the order commands payments to be made, shall do so within 20 days after the granting of the order has come to his or her notice.

(2) A creditor who, in terms of section 74G(10)(b) of the Act, wishes to object to any debt included in the list of creditors shall, within 15 days after he or she has received a copy of the administration order, notify the administrator in writing of his or her objections and the grounds whereupon his or her objections are based.

(3) In a matter referred to in subrule (2) the administrator shall obtain from the registrar or clerk of the court a suitable day and time for the hearing of the objections by the court and thereupon, in writing, notify the creditor referred to in subrule (2), the debtor and any other involved creditors, of the said day and time.

(4) An administrator may, in terms of section 74L(1)(b) of the Act, before making a distribution referred to in that section detain an amount not exceeding 25 per cent of the amount collected to cover the costs that he or she may have to incur if the debtor is in default or disappears: Provided that the amount in the possession of the administrator for this purpose at any stage shall not exceed the amount of R600.

.(5) Should an administrator be an officer employed by the State the remuneration referred to in section 74L of the Act shall accrue to the State.

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Rescission and variation of judgments

49. (1) A party to proceedings in which a default judgment has been given, or any person affected by such judgment, may within 20 days after obtaining knowledge of the judgment serve and file an application to court, on notice to all parties to the proceedings, for a rescission or variation of the judgment and the court may, upon good cause shown, or if it is satisfied that there is good reason to do so, rescind or vary the default judgment on such terms as it deems fit: Provided that the 20 days' period shall not be applicable to a request for rescission or variation of judgment brought in terms of subrule (5).

(2) It will be presumed that the applicant had knowledge of the default judgment 10 days after the date on which it was granted, unless the applicant proves otherwise.

(3) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who wishes to defend the proceedings, the application must be supported by an affidavit setting out the reasons for the defendant's absence or default and the grounds of the defendant's defence to the claim.

(4) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who does not wish to defend the proceedings, the applicant must satisfy the court that he or she was not in wilful default and that the judgment was satisfied, or arrangements were made to satisfy the judgment, within a reasonable time after it came to his or her knowledge.

(5) (a) Where a plaintiff in whose favour a default judgment was granted has agreed in writing that the judgment be rescinded or varied, either the plaintiff or the defendant against whom the judgment was granted, or any other person affected by such judgment, may, by notice to all parties to the proceedings, apply to the court for the rescission or variation of the default judgment, which application shall be accompanied by written proof of the plaintiff's consent to the rescission or variation.

(b) An application referred to in paragraph (a) may be made at any time after the plaintiff has agreed in writing to the rescission or variation of the judgment.

(6) Where an application for rescission or variation of a default judgment is made by any person other than an applicant referred to in subrule (3), (4) or (5), the application must be supported by an affidavit setting out the reasons why the applicant seeks rescission or variation of the judgment.

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(7) All applications for rescission or variation of judgment other than a default judgment must be brought on notice to all parties, supported by an affidavit setting out the grounds on which the applicant seeks the rescission or variation, and the court may rescind or vary such judgment if it is satisfied that there is good reason to do so.

(8) Where the rescission or variation of a judgment is sought on the ground that it is void *ab origine* or was obtained by fraud or mistake, the application must be served and filed within one year after the applicant first had knowledge of such voidness, fraud or mistake.

(9) A magistrate who of his or her own accord corrects errors in a judgment in terms of section 36(1)(c) of the Act shall, in writing, advise the parties of the correction.

Appeals and transfer of actions to magistrates' courts

50. (1) Where an appeal lies to a magistrate's court it may be noted by delivery of notice within 10 days after the date of the judgment appealed against.

(2) The notice of appeal shall set out concisely and distinctly the grounds of appeal.

(3) The party noting an appeal shall prosecute the same within 20 days after the noting of the appeal.

(4) The hearing of an appeal shall be subject to the delivery by the appellant of notice of set down for a day approved by the registrar or clerk of the court.

(5) A notice of set down referred to in subrule (4) shall be delivered at least 10 days before the day of hearing.

(6) At any time after delivery of notice of appeal but not later than delivery of notice of set-down the appellant shall cause to be filed with the clerk of the court the record, or a duly certified copy thereof, of the proceedings which resulted in the judgment or decision appealed against.

(7) Subject to the provisions of any other law regulating procedure of the court on appeals, the court may, in its discretion, grant leave to a party to adduce oral evidence at the hearing of an appeal or proceed by way of rehearing either in whole or in part.

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(8) The court may in its discretion award to either party the costs incurred in an appeal, which costs shall be taxed on such scale of costs prescribed for actions in the court as the court may direct.

(9) The summons or other initial document issued in a case transferred to a court in terms of rule 39(22) of the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa shall stand as summons commencing an action in the court to which such case has been so transferred and shall, subject to any right the defendant may have to except thereto, be deemed to be a valid summons, issued in terms of the rules and any matter done or order given in the court from which such case has been transferred and the case shall thereupon proceed from the appropriate stage following the stage at which it was terminated before such transfer.

(10) Costs incurred in a case before transfer in terms of subrule (9) shall, unless the court otherwise directs, be costs in the cause.

Appeals in civil cases

51. (1) Upon a request in writing by any party within 10 days after judgment and before noting an appeal the judicial officer shall within 15 days hand to the registrar or clerk of the court a judgment in writing which shall become part of the record showing-

(a) the facts he or she found to be proved; and

(b) his or her reasons for judgment.

(2) The registrar or clerk of the court shall on receipt from the judicial officer of a judgment in writing supply to the party applying therefor a copy of such judgment and shall endorse on the original minutes of record the date on which the copy of such judgment was so supplied.

(3) An appeal may be noted within 20 days after the date of a judgment appealed against or within 20 days after the registrar or clerk of the court has supplied a copy of the judgment in writing to the party applying therefor, whichever period shall be the longer.

(4) An appeal shall be noted by the delivery of notice, and, unless the court of appeal shall otherwise order, by giving security for the respondent's costs of appeal to the

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amount of R1000: Provided that no security shall be required from the State or, unless the court of appeal otherwise orders, from a person to whom legal aid is rendered by a statutorily established legal aid board.

(5) Money paid into court under subrule (4) and outstanding for more than three years, may be paid into the State Revenue Fund, after three months' notice of such intention in writing has been given to the parties concerned, whereafter the parties concerned may apply for a refund of the amount paid into the said Fund.

(6) A cross-appeal shall be noted by the delivery of notice within 10 days after the delivery of the notice of appeal.

(7) A notice of appeal or cross-appeal shall state-

(a) whether the whole or part only of the judgment is appealed against, and if part only, then what part; and

(b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

(8) (a) Upon the delivery of a notice of appeal the relevant judicial officer shall within 15 days thereafter hand to the registrar or clerk of the court a statement in writing showing (so far as may be necessary having regard to any judgment in writing already handed in by him or her)-

(i) the facts he or she found to be proved;

(ii) the grounds upon which he or she arrived at any finding of fact specified in the notice of appeal as appealed against; and

(iii) his or her reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.

(b) A statement referred to in paragraph (a) shall become part of the record.

(c) This rule shall also, so far as may be necessary, apply to a cross-appeal.

(9) A party noting an appeal or a cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and, in default of such

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prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary.

(10) Subject to rule 50 of the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa, the registrar or clerk of the court shall, within 15 days after he or she receives notice that an appeal has been set down for hearing, transmit to the registrar of the court of appeal the record in the action duly certified.

(11) (a) A respondent desiring to abandon the whole or any part of a judgment appealed against may do so by the delivery of a notice in writing stating whether he or she abandons the whole, or if part only, what part of such judgment.

(b) Every notice of abandonment in terms of paragraph (a) shall become part of the record.

(12) Where the parties agree in terms of section 82 of the Act that the decision of the court shall be final, either party may lodge the memorandum of such agreement with the registrar or the clerk of the court, and such memorandum shall thereupon become part of the record in the action or matter.

Representation of parties

52. (1) (a) A party may institute or defend and may carry to completion any legal proceedings either in person or by a practitioner.

(b) A local authority, company or other incorporated body in doing so may act through an officer thereof nominated by it for that purpose.

(c) A partnership or group of persons associated for a common purpose in doing so may act through a member thereof nominated by it for that purpose.

(d) No person acting under paragraphs (a), (b) or (c) other than a practitioner shall be entitled to recover therefor any costs other than necessary disbursements.

(2) It shall not be necessary for any person to file a power of attorney to act, but the authority of any person acting for a party may be challenged by the other party within 10 days after he or she has noticed that such person is so acting or with the leave of the court for good cause shown at any time before judgement and thereupon such person may not, without the leave of the court, so act further until he or she has satisfied the

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court that he or she has authority so to act and the court may adjourn the hearing of the action or application to enable him or her to do so: Provided that no power of attorney shall be required to be filed by the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or to a deputy state attorney or any attorney instructed in writing by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting in his or her capacity as such.

(3) If a party dies or becomes incompetent to continue an action the action shall thereby be stayed until such time as an executor, trustee, guardian or other competent person has been appointed in his or her place or until such incompetence shall cease to exist.

(4) Where an executor, trustee, guardian or other competent person has been appointed for a party who has died or has become incompetent, the court may, on application, order that the person so appointed be substituted in the place of that party.

***Pro Deo* applicants**

53. (1) (a) Any person desiring to sue or defend as a *pro Deo* litigant may apply to the court on notice to the party to be sued or to the plaintiff, as the case may be, for leave to do so.

(b) The applicant shall deliver with a notice referred to in paragraph (a) an affidavit made by himself or herself setting out fully the grounds of action or of defence on which he or she intends to rely and particulars of his or her means.

(2) The registrar or clerk of the court shall, at the request of an applicant desiring to sue or defend as a *pro Deo* litigant and on the direction of a judicial officer, write out the relevant notice and affidavit, notwithstanding that the claim or value of the matter in dispute exceeds R100 and no fee shall be payable by the applicant for such assistance.

(3) The court may upon an application to sue or defend as a *pro Deo* litigant-

(a) examine the applicant on oath as to his or her right of action or grounds of defence, and as to his or her means;

(b) require the applicant to call further evidence with reference to either question; or

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(c) refer any such application to an attorney for investigation and report as to the applicant's means and whether he or she has a prima facie right of action or defence, as the case may be.

(4) If the court is satisfied that an applicant referred to in subrule (1) has a prima facie right of action or of defence and is not possessed of means sufficient to enable him or her to pay the costs of the action, court fees and sheriff's charges and will not be able within a reasonable time to provide such sums from his or her earnings, the court may order that-

(a) process of the court shall be issued and served free of charge to the applicant other than for the disbursements of the sheriff;

(b) an attorney be appointed to act for such applicant; or

(c) the registrar or clerk of the court, without charge, write out such process, affidavits, notices and other documents as may be required to comply with these rules.

(5) If a *pro Deo* litigant succeeds and is awarded costs against his or her opponent he or she shall, subject to taxation, be entitled to include and recover in such costs his or her attorney's costs and also the court fees and sheriff's charges so remitted and if he or she shall recover either the principal amount, the interest or the costs, he or she shall first pay and make good out of that pro rata all such costs, fees and charges.

(6) If the *pro Deo* litigant does not succeed or recover upon a judgment in his or her favour no fees shall be taken from him or her by the attorney so appointed to act for him or her.

(7) An order made under this rule-

(a) shall not exempt a *pro Deo* litigant from liability to be adjudged to pay adverse costs; and

(b) may, on application at any time before judgment by any person affected thereby, be reviewed and rescinded or varied by the court for good cause shown.

(8) Nothing contained in this rule shall prevent the court, at its discretion, from referring a *pro Deo* litigant or applicant to a convenient legal aid centre or justice centre for assistance at any given time.

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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. (1) (a) Any two or more persons claiming or being sued as co-partners may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action.

(b) In any case referred to in paragraph (a) any party may by notice require from the party so suing or sued a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm.

(2) A party receiving a notice in terms of subrule (1)(a) shall, within 10 days after receipt thereof, deliver the statement required.

(3) When the names of the partners are declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named in the summons; but all the proceedings shall nevertheless continue in the name of the firm.

(4) Any person carrying on business in a name or style other than his or her own name may sue or be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all the provisions of this rule relating to proceedings against firms shall apply.

(5) The provisions of this rule shall also *mutatis mutandis* apply to an unincorporated company, syndicate or association.

(6) When action has been instituted by or against a firm or by or against a person carrying on business in a name or style other than his own name or by or against an unincorporated company, syndicate or association in the name of the firm or in such name or style or in the name of the company, syndicate or association, as the case may be, the court may on the application of the other party to the action made at any time either before or after judgment on notice to a person alleged to be a partner in such firm or the person so carrying on business, or a member of such company, syndicate or association, declare such person to be a partner, the person so carrying on business or a member, as the case may be, and on the making of such order the provisions of

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subrule (3) shall apply as if the name of such person had been declared in a statement delivered as provided in subrule (2).

Applications

55. (1) (a) Every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(b) The notice of motion must be addressed to the party or parties against whom relief is claimed and to the registrar or clerk of the court.

(c) Where it is necessary or proper to give any person notice of an application, the notice of motion must also be addressed to such person and served on such person.

(d) The notice of motion in every application other than one brought *ex parte* shall be similar to Form 1A of Annexure 1 and copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.

(e) In a notice of motion the applicant shall-

(i) appoint a physical address within 15 kilometres of the office of the registrar or clerk of court, at which notice and service of all documents in such proceedings will be accepted;

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

(iii) set forth a day, not less than 5 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether he or she intends to oppose such application, and state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the respondent of the notice.

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

(g) Any party opposing the grant of an order sought in a notice of motion shall -

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(i) within the time stated in the notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint an address within 15 kilometres of the office of the registrar or clerk of the court, at which he or she will accept notice and service of all documents, as well as such party's postal, facsimile or electronic mail addresses where available;

(ii) within 10 days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents; and

(iii) where it intends to raise questions of law only, deliver notice of intention to do so, within the time stated in subparagraph (ii), setting forth such question.

(h) Within 10 days of the service upon him or her of the affidavit and documents referred to in paragraph (g)(ii), the applicant may deliver a replying affidavit.

(i) The court may in its discretion permit the filing of further affidavits.

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

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

(iii) If the applicant fails so to apply within the appropriate period provided for in subparagraph (ii), the respondent may do so immediately upon the expiry thereof.

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

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(k) (i) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision.

(ii) The court may in particular, but without affecting the generality of subparagraph (i) direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for that person or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

(2) (a) Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action.

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

(3) (a) No application in which relief is claimed against another party shall be considered *ex parte* unless the court is satisfied that –

(i) the giving of notice to the party against whom the order is claimed would defeat the purpose of the application; or

(ii) the degree of urgency is so great that it justifies dispensing with notice.

(b) The notice of motion in every application brought *ex parte* shall be similar to Form 1 of Annexure 1.

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

(d) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 24 hours notice.

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

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

(g) Any order made *ex parte* may be confirmed, discharged or varied by the court on cause shown by any person affected thereby and on such terms as to costs as the court may deem fit.

(h) *Ex parte* applications may be heard in chambers.

(4) (a) Interlocutory and other applications incidental to pending proceedings must be brought on notice, supported by affidavits if facts need to be placed before the court, and set down with appropriate notice.

(b) Applications to the court for authority to institute proceedings or directions as to procedure or service of documents may be made *ex parte* where the giving of notice of such application is not appropriate or not necessary.

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

(b) An application brought as a matter of urgency must be supported by an affidavit which sets out explicitly the circumstances which the applicant avers render the matter urgent and the reasons why the applicant claims that he or she could not be accorded substantial redress at a hearing in due course.

(c) A person against whom an order was granted in his or her absence in an urgent application may by notice set down the matter for reconsideration of the order.

(6) In any application against any Minister, Deputy Minister, Provincial Premier, officer or servant of the State, in his or her capacity as such, the State or the administration of any province, the respective periods referred to in subrule (1)(e), or for the return of a *rule nisi*, shall not be less than 15 days after the service of the notice of motion, or the *rule nisi*, as the case may be, unless the court has specially authorised a shorter period.

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(7) The court, after hearing an application, whether brought *ex parte* or otherwise, may make no order thereon (save as to costs if any) but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.

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

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

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

(9) (a) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client.

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

Amendment of pleadings

55A. (1) Any party desiring to amend a pleading or document other than an affidavit, filed in connection with any proceedings, shall notify all other parties of his or her intention to amend and shall furnish the particulars of the amendment.

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice of amendment, the amendment will be effected.

(3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.

(4) If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.

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(5) If no objection is delivered as contemplated in subrule (4), every party who received the notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days after the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7).

(6) Unless the court otherwise directs, an amendment authorised by an order of the court may not be effected later than 10 days after such authorisation.

(7) Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.

(8) Any party affected by an amendment may, within 15 days after the amendment has been effected or within such period as the court may determine, make any consequential adjustment to the documents filed by him or her, and may also take the steps contemplated in rule 19.

(9) A party giving notice of amendment in terms of subrule (1) shall, unless the court otherwise directs, be liable for the costs thereby occasioned to any other party.

(10) The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment, grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.

Arrests *tanquam suspectus de fuga*, interdicts, attachments to secure claims and *mandamenten van spolie*

56. (1) Application to the court for an order of arrest *tanquam suspectus de fuga*, an interdict or attachment or for a *mandament van spolie* shall be made in terms of rule 55.

(2) Every application referred to in subrule (1) shall be accompanied by an affidavit stating the facts upon which the application is made and the nature of the order applied for.

(3) The court may, before granting an order upon an application referred to in subrule (1), require the applicant to give security for any damages which may be caused by such order and may require such additional evidence as it may think fit.

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(4) An order made *ex parte* for the arrest *tanquam suspectus de fuga* of a person shall call upon the respondent to show cause against it at a time stated in the order, which shall be the first court day after service.

(5) The return day of an order made *ex parte* for arrest *tanquam suspectus de fuga* may be anticipated by the respondent upon 12 hours' notice to the applicant.

(6) Unless otherwise ordered by a court, an order for the arrest *tanquam suspectus de fuga* of a person or the attachment of goods shall *ipso facto* be discharged upon security being given by the respondent to the sheriff for the amount to which the order relates, together with costs.

(7) The security contemplated in subrule (6) may be given to abide the result of the action instituted or to be instituted; and may be assigned by the respondent to part only of the order and shall in that event operate to discharge the order as to that part only.

Attachment of property to found or confirm jurisdiction

57. (1) Any application to the court for an order of attachment of property under section 30bis of the Act may be made *ex parte*.

(2) (a) Any application for an order of attachment of property under section 30bis of the Act shall be supported by an affidavit in which is stated-

(i) the name, address, occupation and place of residence of the applicant;

(ii) the name, and, if known, the address, occupation and place of residence of the respondent;

(iii) the amount of the claim or the value of the matter in dispute and facts from which it is apparent that the action to be instituted against the respondent is within the jurisdiction of the court and that the attachment is necessary;

(iv) whether the attachment is intended to found or confirm jurisdiction;

(v) details of the property, including its ownership, value and situation;

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(vi) such other information as may be necessary to secure an order; and

(vii) the terms of the order applied for.

(b) An affidavit contemplated in paragraph (a) shall be made by the applicant or, if thereto authorised, by someone on his or her behalf and shall state whether the deponent knows of his or her own knowledge the facts to which he or she deposes: Provided that where the facts are not known to the deponent of his or her own knowledge but are alleged to be true to the best of his or her information and belief, it shall be stated how the information was obtained or on what grounds he or she bases his or her belief.

(c) Any application for an order in regard to service of any process in any action referred to in section 30bis of the Act may be combined with any application for attachment referred to in paragraph (a).

(3) The court may, before granting an order of attachment of property under subrule (2) require the applicant to give security for any damages which may be caused by such order and may, in regard to any application under subrule (2), require such additional evidence as it may deem fit.

(4) (a) Any order of attachment under subrule (2) shall call upon the respondent to show cause at a time and on a date stated in the order why such order should not be confirmed.

(b) The return date for an order of attachment under subrule (2) may be anticipated by the respondent upon 12 hours' notice to the applicant.

(c) Where the respondent appears to show cause against an order of attachment under subrule (2), the court may order the applicant or deponent to the affidavit or the respondent to attend for examination or cross-examination and may confirm, discharge or vary such order on such terms as to costs as it may deem fit.

(5) The minutes of any order referred to in this rule which are required for service or execution shall be prepared by the applicant and approved and signed by the registrar or clerk of the court and shall state that the return date may be anticipated by the respondent upon 12 hours' notice to the applicant and that the applicant may obtain release of his or her property upon security being given as hereinafter provided.

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(6) (a) Upon receipt of the minutes of the order and of a copy of the affidavit on which it was made the sheriff shall proceed to attach the property specified therein.

(b) Subject to paragraph (c), the rules relating to the powers and duties of the sheriff in regard to the method of attachment in execution against movable and immovable property shall, in so far as those rules are appropriate and can be applied, *mutatis mutandis* apply to an attachment of property under this rule.

(c) Subject to any order of the court, the sheriff shall where movable property is attached under this rule, remove such property to a place of security or, if such property be inconvenient to remove, shall leave such property upon the premises in the charge and custody of some person acting on his or her behalf.

(d) Any expense incurred in removing property attached under this rule to a place of security or for the storage of such property or in leaving such property in the charge or custody of some person acting on behalf of the sheriff, shall be borne by the applicant and shall, subject to any order of the court, be costs in the cause.

(7) Unless the court shall otherwise order, any property attached as provided in this rule shall, upon security being given to the satisfaction of the sheriff of the court for the amount of the applicant's claim and the costs of the application for attachment, be released from attachment.

(8) An order made for the attachment of property under subrule (1) shall *ipso facto* be discharged upon security being given by the respondent as provided in subrule (7).

Maintenance *pendente lite*, contribution towards costs, interim custody and access to children

58. (1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) Maintenance *pendente lite;*

(b) a contribution towards the costs of a pending matrimonial action;

(c) interim custody of any child; or

(d) interim access to any child.

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(2) (a) An applicant for any relief contemplated in subrule (1) shall deliver a sworn statement setting out the relief claimed and the grounds therefor, together with a notice to the respondent which shall substantially correspond with Form 42 of Annexure 1.

(b) A statement and notice contemplated in paragraph (a) shall be signed by the applicant or his or her legal practitioner, and contain an address for service and shall be served by the sheriff.

(3) The respondent shall within 10 court days after receiving a statement and notice contemplated in subrule (2) deliver a sworn reply in the nature of a plea, signed and giving an address for service, in default of which he or she shall be *ipso facto* barred.

(4) As soon as possible after subrule (3) has been complied with the registrar shall bring the matter before the court for summary hearing, on 10 court days' notice to the parties, unless the respondent is in default.

(5) The court may hear such evidence as is considered necessary and may dismiss the application or make such order as it deems fit to ensure a just and expeditious decision.

(6) The court may, on the same procedure, vary a decision referred to in subrule (5) in the event of a material change taking place in the circumstances of either party or a child, or the contribution towards costs proving inadequate.

(7) No advocate appearing in a case under this rule shall charge a fee of more than R175, 00 if the claim is undefended or R250, 00 if it is defended, unless the court in an exceptional case otherwise directs.

(8) No instructing attorney in cases under this rule shall charge a fee of more than R250, 00 if the claim is undefended or R375, 00 if it is defended, unless the court in an exceptional case otherwise directs.

Assessors

59. (1) The court may from time to time frame a list of persons who, having regard to the nature of the business of the court and to their ability and reputation, appear to be qualified and willing to act as assessors under section 34 of the Act upon reasonable notice and upon payment of the fees prescribed in Table D of Annexure 2.

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(2) (a) Every person for the time being named in the list of qualified and willing assessors shall be an assessor for the purposes of this rule and shall continue to be an assessor until a new list has been framed or until he or she gives to the registrar or clerk of the court his or her resignation in writing.

(b) Upon receipt of such resignation as an assessor the registrar or clerk of the court shall remove the name of such assessor from the list of qualified and willing assessors.

(c) An assessor summoned to act as such in any action may not, without the leave of the court, resign during the trial of the action.

(3) Nothing in this rule shall prevent the court from summoning, with the consent of all parties to the action, persons not on the list of qualified and willing assessors to act as assessors in any particular action.

(4) The number and names of the assessors to sit in any case shall be decided by consent of the parties or, where they are unable to agree, by the court: Provided that not more than two assessors shall sit in any case.

(5) (a) A party who desires the trial to take place with assessors shall deliver notice of application for assessors, if he or she is the plaintiff, with the notice of trial, and if he or she is the defendant not more than 5 days after receiving notice of trial.

(b) A notice contemplated in paragraph (a) shall contain either a consent by the other party or a notice setting down the application for hearing.

(6) (a) The party who desires a trial to take place with assessors shall, at the time of delivering the notice of application, deposit with the registrar or clerk of the court the amount prescribed in Table D of Annexure 2 for each assessor applied for and shall be liable for any further sum becoming due to the assessors for fees.

(b) The fees and expenses of assessors shall, unless otherwise ordered by the court, be costs in the action.

(7) If an application for a trial to take place with assessors is consented to or granted, the registrar or clerk of the court shall summon the assessors named in the consent or selected by the court by having a summons served upon each of them in the manner provided for the service of a summons commencing an action.

(8) If at the time and place appointed for the trial either of the assessors summoned does not attend, the court may either proceed to try the action with the assistance of the

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assessor, if any, who is in attendance, or without assistance, if none attended, or may adjourn the trial.

(9) Where a trial is postponed or adjourned due to the absence of an assessor, the party who applied for assessors shall, after the order for postponement or adjournment, pay to the registrar or clerk of the court, in addition to the deposit mentioned in subrule (6), the fees due up to the hour of postponement or adjournment to such assessors as have attended.

(10) Where the payment required under subrule (9) is not made the court may stay the action until it be made or may continue the trial without the assistance of assessors or may make such order as it may deem fit.

(11) Every assessor acting in a case shall be entitled to the fees set out in Table D of Annexure 2.

Non-compliance with rules, including time limits and errors

60. (1) Except where otherwise provided in these rules, failure to comply with these rules or with any request made in pursuance thereof shall not be ground for the giving of judgment against the party in default.

(2) Where any provision of these rules or any request made in pursuance of any such provision has not been fully complied with the court may on application order compliance therewith within a stated time.

(3) Where any order made under subrule (2) is not fully complied with within the time so stated, the court may on application give judgment in the action against the party so in default or may adjourn the application and grant an extension of time for compliance with the order on such terms as to costs and otherwise as may be just.

(4) The court may on an application under subrule (2) or (3) order such stay of proceedings as may be necessary.

(5) Any time limit prescribed by these rules, except the period prescribed in rule 51 (3) and (6), may at any time, whether before or after the expiry of the period limited, be extended-

(a) by the written consent of the opposite party; and

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(b) if such consent is refused, then by the court on application and on such terms as to costs and otherwise as it may deem fit.

(6) (a) Where there has been short service without leave, of any notice of set-down or notice of any application or of process of the court the court may, instead of dismissing such notice or process, adjourn the proceedings for a period equivalent, at the least, to the period of proper notice upon such terms as it may deem fit.

(b) If the proceedings are adjourned in the absence of the party who received short service, due notice of the adjournment must be given to such party by the party responsible for the short service.

(7) Subject to subrule (8) no process or notice shall be invalid by reason of any obvious error in spelling or in figures or of date.

(8) If any party has in fact been misled by any error in any process or notice served upon him or her, the court may on application grant that party such relief as it may deem fit and may for that purpose set aside the process or notice and rescind any default judgment given thereon.

Irregular proceedings

60A. (1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if-

(a) the applicant has not himself or herself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within 10 days of becoming aware of the step, by written notice afforded his or her opponent an opportunity of removing the cause of complaint within 10 days; and

(c) the application is delivered within 15 days after the expiry of the second period mentioned in sub-rule (2)(b).

(3) If at the hearing of an application in terms of subrule (1) the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part,

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either as against all the parties or as against some of them, and grant leave to amend or make any such order as it deems fit.

(4) Until a party has complied with any order of court made against him or her in terms of this rule, he or she shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

Records, entries or documents as evidence in civil matters

61. (1) Where it is necessary to give in evidence in the court any record, entry or document of the same court in another action, the registrar or clerk of the court shall, on reasonable notice, produce and show the original thereof, and the cost of copies shall not be allowed.

(2) Where it is necessary to give in evidence in another court any record, entry or document of a court, a copy thereof certified by the registrar or clerk of the court may be given in evidence in that other court without production of the original.

Security for costs

62. (1) A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.

(2) If only the amount of security demanded under subrule (1) is contested the registrar or clerk of the court shall determine the amount to be given and his or her decision shall be final.

(3) If a party from whom security is demanded under subrule (1) contests his or her liability to give security or fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar or clerk within 10 days of the demand or the registrar's or clerk's decision, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

(4) The court may, if security demanded is not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as it deems fit.

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(5) Any security for costs shall, unless the court otherwise directs, or the parties otherwise agree, be given in the form, amount and manner directed by the registrar or clerk of the court.

(6) The registrar or clerk of the court may, upon written request of the party in whose favour security is to be provided and on notice to interested parties, increase the amount thereof if he or she is satisfied that the amount originally furnished is no longer sufficient; and his or her decision shall be final.

Filing, preparation and inspection of documents

63. (1) (a) All documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blue-black ink on one side only of paper of good quality and of A4 standard size.

(b) A document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.

(2) Stated cases, affidavits, grounds of appeal and the like shall be divided into concise paragraphs which shall be consecutively numbered.

(3) In defended actions or opposed applications the plaintiff or applicant, as the case may be, shall not later than 10 days prior to the hearing of the matter collate, and number consecutively, and suitably secure, all pages of the documents delivered and shall prepare and deliver a complete index thereof.

(4) Every affidavit filed with the registrar or clerk of the court by or on behalf of a respondent shall, if he or she is represented, on the first page thereof bear the name and address of the attorney filing it.

(5) The registrar or clerk of the court may reject any document which does not comply with the requirements of this rule.

(6) Any person, with leave of the registrar or clerk of the court and on good cause shown, may examine and make copies of all documents in a court file at the office of the registrar or clerk of the court.

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Procedure for securing the attendance of witnesses in criminal cases

64. (1) The process for securing the attendance of any person before the court to give evidence in any criminal case or to produce any books, papers or documents, shall be by subpoena prepared by the party desiring the attendance of that person and issued by the registrar or clerk of the court.

(2) The original subpoena and so many copies thereof as there are witnesses to be subpoenaed, shall be delivered to the sheriff or other person authorised to serve subpoenas in the area where the witness is residing or to the person referred to in section 15(2) or (3) of the Act, as the case may be.

(3) A copy of the subpoena shall be served upon the witness personally or at his or her residence or place of business or employment by delivering it to some person thereat who is apparently not less than 16 years of age and apparently residing or employed thereat.

(4) If the person to be served with a subpoena keeps his residence or place of business closed and thus prevents the service of the subpoena, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

(5) The person serving a witness subpoena shall, if required by the person upon whom it is served, exhibit to him or her the original.

(6) The person serving a witness subpoena shall make a return of service by endorsing on the original or on a document attached thereto the manner in which the subpoena was served, and the original shall be returned to the registrar or clerk of the court out of whose office it was issued.

Criminal record book

65. (1) The registrar or clerk of the court shall keep a book to be styled the "criminal record book" in which he or she shall daily enter particulars of every criminal case coming before the court on that day.

(2) Where the court has issued a warrant in terms of the provisions of section 55 or section 56 of the Criminal Procedure Act, 1977, and the prosecutor subsequently withdraws the charge, it shall not be necessary to again enter particulars of such case in

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the criminal record book: Provided that if such particulars are not entered in the criminal record book a separate register shall be kept by the registrar or clerk of the court of all warrants issued in terms of the aforesaid sections and at each successive stage he or she shall enter therein particulars of the date of issue of the warrant, the case number, the name of the accused, the date upon which the warrant was forwarded to the police for execution, the fact that the case has been withdrawn and any other particulars that circumstances may require.

(3) The charge sheet in a criminal case or, when the matter comes before the court by way of preparatory examination, the covering sheet, shall, when the matter first comes before the court, be numbered by him or her with a consecutive number for the year and the case shall then be entered in the criminal record book under that number.

(4) The particulars recorded in the criminal record book shall include-

(a) the date of hearing;

(b) the case number;

(c) the name of the accused;

(d) the crime charged;

(e) the verdict;

(f) the sentence or other mode of disposal; and

(g) any remarks (including the date and effect of any order of the High Court of South Africa varying the verdict or sentence on review or appeal).

(5) The judicial officer presiding at a criminal hearing shall himself or herself record in the criminal record book any sentence imposed or other order of disposal made by him or her including acquittal, or other discharge, postponement of sentence, adjournment, remand to another court or committal for trial.

Records of criminal cases

66. (1) The plea and explanation or statement, if any, of the accused, the evidence orally given, any exception or objection taken in the course of the proceedings, the rulings and judgment of the court and any other portion of criminal proceedings, may be

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noted in shorthand (also in this rule referred to as "shorthand notes") either verbatim or in narrative form or recorded by mechanical means.

(2) Every person employed for the taking of shorthand notes in terms of subrule (1) or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his or her duties in writing take an oath or make an affirmation before a judicial officer as provided in rule 30(5).

(3) (a) Shorthand notes taken in the course of criminal proceedings shall be certified as correct by the shorthand writer and filed with the record of the case by the registrar or clerk of the court.

(b) Subject to the provisions of subrule (4) and rule 67(3), (8) and (10), no such shorthand notes shall be transcribed unless a judicial officer so directs.

(c) The transcript of any shorthand notes transcribed under paragraph (b) shall be certified as correct by the person making such transcript and shall be filed with the record.

(4) (a) In any case in which no transcription was directed in terms of subrule (3), any person may, on notice to the registrar or clerk of the court, request a transcription of any shorthand note taken by virtue of a direction given under subrule (1) and shall, in respect of proceedings made by mechanical means, save in the case of the State, pay the full cost thereof as predetermined by agreement between the contractor concerned and the State for such transcript.

(b) One copy of the transcript of such shorthand notes shall be supplied, free of charge, to the person at whose request the transcription was made.

(c) The original copy of the transcript of any shorthand notes referred to in paragraph (a), shall be certified as correct by the person making such copy and shall be filed with the record of the case.

(d) A sum sufficient to cover the approximate fee payable under paragraph (a) shall be deposited with the registrar or clerk of the court in advance.

(5) Subject to the provisions of subrule (6), any shorthand notes and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.

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(6) The prosecutor or the accused may, not later than 10 days after judgment or where the proceedings have been taken down in shorthand or by mechanical means, within 10 days after the transcription thereof has been completed, apply to the court to correct any error in the record or the certified transcript thereof and the court may correct any such error.

(7) Subject to subrule (4)(b), a copy of any transcript made simultaneously with the transcription of proceedings made by mechanical means may, upon application to the registrar or clerk of the court be supplied to any person upon payment, save in the case of the State, of the full cost thereof as predetermined by agreement between the contractor concerned and the State, in the case of a copy of a transcript referred to in subrules (3) and (4)(a).

(8) Any reference in this rule to shorthand notes or to a transcription or transcript of such notes or to a copy of such transcript, or to a person employed for the taking of such notes, or to a person transcribing such notes, shall be construed as a reference to a record of proceedings made by mechanical means, to a transcription or transcript of such record, or to a copy of such transcript, to a person employed for the making of such mechanical record, or to a person transcribing such record as the case may be.

(9) Where a magistrate or the court is satisfied that an accused is unable to pay the costs of obtaining a copy of any record or of any transcript thereof or is able to pay only part of such costs, such magistrate or court may, at the request of the accused, direct the registrar or clerk of the court to deliver a copy of such record or transcript to the accused free of charge or at such reduced charge as the magistrate or court may determine.

Criminal appeals

67. (1) (*a*) An appellant, other than a person who applies orally for leave to appeal immediately after the passing of the sentence or order as contemplated in section 309B(3)(*b*) of the Criminal Procedure Act, 1977 who wishes to apply for leave to appeal in terms of section 309B(1) of that Act, shall do so in writing to the registrar or clerk of the court and shall also send a copy of the application to the director of public prosecutions concerned, or, in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

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(*b*) An appellant who wishes to apply for condonation as contemplated in section 309B(1)(*b*)(ii) of the Criminal Procedure Act, 1977, or an appellant who wishes to apply for leave to adduce further evidence as contemplated in section 309B(5)(*a*) of that Act, shall do so in writing to the registrar or clerk of the court and shall also send a copy of the application to the director of public prosecutions concerned, or, in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(2) (*a*) Where an application for leave to appeal is made in writing, notice in terms of section 309B(2)(d) of the Criminal Procedure Act, 1977, shall be given by the registrar or clerk of the court at least 10 days before the date fixed for the hearing of the application for leave to appeal, unless the appellant or his or her legal representative and the director of public prosecutions or a person designated by him or her or in a case in which the prosecution was not at the public instance, the other prosecutor concerned have agreed to a shorter period, and shall correspond substantially to Form 57 of Annexure 1.

(*b*) The notice referred to in paragraph (*a*) shall –

(i) be handed to the appellant or his or her legal representative and the director of public prosecutions or a person designated by him or her or other prosecutor concerned and proof of receipt of such notice shall be indicated on a copy of the notice, which shall be kept by the registrar or clerk of the court; or

(ii) be sent by registered post.

(3) (*a*) A legal representative appearing on behalf of an appellant, shall simultaneously with the lodging of the application for leave to appeal lodge a power of attorney authorising him or her to act on behalf of the appellant, or if a legal representative is employed after an application for leave to appeal has been lodged, after such appointment.

(*b*) An appellant shall state in the application for leave to appeal referred to in subrule (1) a postal address where any notice may be served on him or her by registered post if he or she is not represented by a legal representative or if he or she ceases to be represented by a legal representative.

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(4) If the appellant is unable, owing to illiteracy or physical defect, to write out an application for leave to appeal or notice of appeal, the clerk of the court shall, upon his or her request, do so.

(5) Upon an application for leave to appeal being granted the registrar or clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and place such copy before the judicial officer who shall within 15 days thereafter furnish to the registrar or clerk of the court a statement in writing showing -

(*a*) the facts he or she found to be proved;

(*b*) his or her reasons for any finding of fact specified in the appellant's statement of grounds of appeal; and

(*c*) his or her reasons for any ruling on any question of law or as to the admission or rejection of evidence so specified as appealed against.

(5A) (*a*) A person contemplated in the first proviso of section 309(1)(*a*) of the Criminal Procedure Act, 1977, who wishes to appeal against his or her conviction or sentence or order, shall do so in writing to the registrar or clerk of the court and shall also send a copy of such notice of appeal to the director of public prosecutions concerned or in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(*b*) The notice of appeal contemplated in paragraph (a) shall set forth clearly and specifically the grounds upon which such person wishes to appeal.

(*c*) The provisions of subrules (3) to (8) and (14) and (15) shall apply further with any changes required by the context.

(6) The registrar or clerk of the court shall upon receipt of the judicial officer's statement contemplated in subrule (5) forthwith inform the appellant that the statement has been furnished.

(7) Within 15 days after the appellant has been informed in terms of subrule (6), he or she may by notice to the registrar or clerk of the court amend his or her statement of grounds of appeal and the judicial officer may, in his or her discretion, within 10 days

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